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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

8 BIBTE MINING, INC., a Nevada limited
 9 liability company,

Case No.: 2:21-cv-01508-JCM-VCF

10 Plaintiff,

STIPULATION AND ~~PROPOSED~~
ORDER TO AMEND ANSWER

11 vs.

12 DAN GOLDEN, an individual, and individual
 13 DOES 1 through 10 and corporate ROES 1
 through 10,

14 Defendants.



15
 16 Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure and Local Rule 15-1 of
 17 the Local Rules of Practice for the United States District Court for the District of Nevada,
 18 Defendant, Dan Golden (“Mr. Golden”) and Plaintiff, BIBTE MINING, INC. (“Bibte”) by and
 19 through their undersigned counsel hereby stipulate and agree that Mr. Golden may file an
 20 Amended Answer and Counterclaims in substantially the same form attached hereto as Exhibit A.

21 ...
 22 ...
 23 ...
 24 ...
 25 ...

1 By entering into this stipulation, neither party waives any rights or defenses to the
2 Complaint and/or the Amended Answer and Counterclaim. Each party specifically reserves all
3 rights.

4 The parties further stipulate that Plaintiff shall have until September 30, 2021 to respond
5 to the counterclaims.

6 DATED September 2, 2021.

DATED September 2, 2021

7
8 /s/Peter E. Dunkley
9 J. William Ebert, Esq. #2697
10 Lisa J. Zastrow, Esq. #9727
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Attorneys for Defendant, Dan Golden

*Attorneys for Plaintiff,
Bibte Mining, Inc.*

ORDER

IT IS SO ORDERED.

UNITED STATES MAGISTRATE JUDGE

DATED: 9-3-2021



Exhibit A

Exhibit A

Exhibit A

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6
7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 BIBTE MINING, INC., a Nevada limited
liability company,

Case No.: 2:21-cv-01508-JCM-VCF

10 Plaintiff,

DEFENDANT, DAN GOLDEN'S FIRST
AMENDED ANSWER AND
COUNTERCLAIMS

11 vs.

12 DAN GOLDEN, an individual, and individual
DOES 1 through 10 and corporate ROES 1
13 through 10,

14 Defendants.

15 DAN GOLDEN, an individual,

16 Counterclaimant,

17 Vs.

18 BIBTE MINING, INC., a Nevada limited
19 liability company, EUGENE DONLAN, an
individual, RICK WILLARD, an individual;

20 Counterdefendants.
21

22 Defendant, Dan Golden ("Mr. Golden"), by and through his counsel of record hereby files
23 his amended answer to Plaintiff, Bibte Mining, Inc.'s ("Bibte") Complaint as follows:

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PARTIES AND JURISDICTION

1
2 1. Answering paragraph 1 of the Complaint, Mr. Golden admits the allegations
3 therein.

4 2. Answering paragraph 2 of the Complaint, Mr. Golden admits the allegations
5 therein.

6 3. Answering paragraph 3 of the Complaint, Mr. Golden is without sufficient
7 knowledge to either admit or deny the allegations contained in this paragraph and on that basis,
8 denies the allegations therein.

9 4. Answering paragraph 4 of the Complaint, the allegations therein call for a legal
10 conclusion and therefore, Mr. Golden need not respond to the allegations contained in paragraph

11 4. To the extent any of the allegations of paragraph 4 may be construed as factual allegations, Mr.
12 Golden is without sufficient information to either admit or deny the allegations contained in
13 paragraph 4 and on that basis, denies the allegations therein.

GENERAL ALLEGATIONS

14
15 5. Answering paragraph 5 of the Complaint, Mr. Golden repeats and realleges his
16 responses to the foregoing paragraphs as if fully set forth herein.

17 6. Answering paragraph 6 of the Complaint, the allegations therein call for a legal
18 conclusion and therefore, Mr. Golden need not respond to the allegations contained in paragraph

19 6. To the extent any of the allegations of paragraph 6 may be construed as factual allegations, Mr.
20 Golden denies the allegations therein.

21 7. Answering paragraph 7 of the Complaint, Mr. Golden denies the allegations
22 contained therein.

23 8. Answering paragraph 8 of the Complaint, Mr. Golden denies the allegations
24 contained therein.

25 ...



SECOND CLAIM FOR RELIEF

(Conversion)

20. Answering paragraph 20 of the Complaint, Mr. Golden repeats and realleges his responses to the foregoing paragraphs as if fully set forth herein.

21. Answering paragraph 21 of the Complaint, Mr. Golden denies the allegations contained therein.

22. Answering paragraph 22 of the Complaint, Mr. Golden denies the allegations contained therein.

23. Answering paragraph 23 of the Complaint, Mr. Golden denies the allegations contained therein.

24. Answering paragraph 24 of the Complaint, Mr. Golden denies the allegations contained therein.

25. Answering paragraph 25 of the Complaint, Mr. Golden denies the allegations contained therein.

26. Answering paragraph 26 of the Complaint, Mr. Golden denies the allegations contained therein.

THIRD CLAIM FOR RELIEF

(Injunction)

27. Answering paragraph 27 of the Complaint, Mr. Golden repeats and realleges his responses to the foregoing paragraphs as if fully set forth herein.

28. Answering paragraph 28 of the Complaint, Mr. Golden denies the allegations contained therein.

29. Answering paragraph 29 of the Complaint, Mr. Golden denies the allegations contained therein.

...



1 30. Answering paragraph 30 of the Complaint, Mr. Golden denies the allegations
2 therein.

3 **FOURTH CLAIM FOR RELIEF**

4 **(Accounting and Damages)**

5 31. Answering paragraph 31 of the Complaint, Mr. Golden repeats and realleges his
6 responses to the foregoing paragraphs as if fully set forth herein.

7 32. Answering paragraph 32 of the Complaint, Mr. Golden denies the allegations
8 therein.

9 33. Answering paragraph 33 of the Complaint, Mr. Golden denies the allegations
10 therein.

11 34. Answering paragraph 34 of the Complaint, Mr. Golden denies the allegations
12 therein.

13 **FIFTH CLAIM FOR RELIEF**

14 **(Declaration regarding void claims as expunction of same)**

15 35. Answering paragraph 35 of the Complaint, Mr. Golden repeats and realleges his
16 responses to the foregoing paragraphs as if fully set forth herein.

17 36. Answering paragraph 36 of the Complaint, Mr. Golden denies the allegations
18 therein.

19 37. Answering paragraph 37 of the Complaint, the allegations therein call for a legal
20 conclusion and therefore, Mr. Golden need not respond to the allegations contained in paragraph

21 37. To the extent any of the allegations of paragraph 37 may be construed as factual allegations,
22 Mr. Golden denies the allegation therein.

23 **AFFIRMATIVE DEFENSES**

24 1. Bibte’s SAC fails to state a claim upon which relief can be granted.

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2. Bibte’s claims for relief are barred by the doctrine of estoppel.

3. Bibte’s claims for relief are barred by the doctrine of laches.

4. Bibte is estopped by its own conduct from asserting the allegations in the Complaint.

5. If the conduct of Mr. Golden is found to have been wrongful, which Mr. Golden has denied and continues to deny, then Bibte’s claims are barred by the doctrine of unclean hands.

6. Bibte is barred by res judicata from asserting the allegation in the Complaint.

7. Bibte’s claims are barred under the doctrine of fraud.

8. Bibte’s claims are barred by the statute of frauds.

9. Bibte’s claims are barred by the doctrine of release.

10. Bibte is precluded from recovery under the doctrine of payment.

11. Bibte is precluded from recovery as set forth in the SAC under the doctrine of waiver and the applicable statute of limitations and repose.

12. Mr. Golden acted at all times in good faith and in accordance with his contractual and/or legal rights and in conformity with all applicable laws and regulations and therefore did not act improperly.

13. Mr. Golden hereby incorporates those defenses enumerated in Fed. R. Civ. P. 8(c) for the specific reason of not waiving the same.

14. Pursuant to Fed. R. Civ. P. 15, as amended, all possible affirmative defense may not have been alleged herein insofar as sufficient facts are not available after reasonable inquiry upon the filing of the Complaint, and therefore, Mr. Golden reserves the right to amend this Answer to add additional affirmative defenses as additional facts are discovered.

WHEREFORE, Mr. Golden prays for relief as follows:

1. That Bibte take nothing by way of its Complaint herein.

2. That Mr. Golden be awarded his attorneys’ fees and costs incurred in defending against the Complaint; and

...

1 8. Mr. Golden originally located the Golden Mining Claims in April of 2007.

2 9. Upon locating the Golden Mining Claims, Mr. Golden filed the appropriate notices
3 with the BLM.

4 10. Shortly after locating the Golden Mining Claims, Mr. Golden began taking and
5 selling materials from the Golden Mining Claims sites and selling those materials on his website
6 www.goldennevalite.com.

7 11. Additionally, Mr. Golden properly erected a monument at each site and posted the
8 appropriate notices required by NRS 517.010, and the monument complied with all requirements
9 of NRS 517.030.

10 12. Mr. Golden then prepared maps and documents in an effort to record those claims
11 with the Clark County Recorder's Office.

12 13. However, between 2007-2018, the Clark County Recorder's Office refused to
13 accept these maps and recordings and insisted that filing with the BLM was all that was required
14 of Mr. Golden.

15 14. Mr. Golden continued to take and sell materials from the Golden Mining Claims
16 and to comply with all other necessary legal requirements to hold and maintain the Golden Mining
17 Claims.

18 15. In 2017, Mr. Willard visited the www.goldennevalite.com website and found the
19 materials sold by Mr. Golden.

20 16. After visiting the site, Mr. Willard contacted Mr. Golden to inquire about the
21 materials and requested that Mr. Golden show Mr. Willard the mining site(s) where the materials
22 were found.

23 17. On March 2, 2017, Mr. Golden took Mr. Willard to the Golden Mining Claims to
24 show him the site. They spent the entire day at the site.

25 18. Two days later, Mr. Willard placed an order for 40 lbs. of material.



1 19. Mr. Willard is a chemist who uses the material from Mr. Golden and the Golden
2 Mining Claims to develop pet wellness products that, upon information and belief, he sells for a
3 substantial profit.

4 20. Due to the uniqueness of Mr. Golden’s material, Mr. Willard told Mr. Golden that
5 he wanted to partner with Mr. Golden for the ownership of the Golden Mining Claims to help with
6 development of Mr. Willard’s pet wellness products.

7 21. Based upon these representations, Mr. Golden continued to supply more materials
8 to Mr. Willard from the Golden Mining Claims.

9 22. In furtherance of the alleged partnership, Mr. Willard introduced Mr. Golden to Mr.
10 Donlan.

11 23. Mr. Donlan had experience surveying properties and informed Mr. Golden that he
12 would assist Mr. Golden with preparing and recording the proper documents with the Clark County
13 Recorder’s Office.

14 24. Based upon these representations, in May of 2017, Mr. Golden sent Mr. Donlan a
15 map to show Mr. Donlan the location of the Golden Mining Claims.

16 25. Upon information and belief, Mr. Willard and Mr. Donlan never intended to enter
17 into a partnership with Mr. Golden on the Golden Mining Claims.

18 26. Instead, upon information and belief, Mr. Willard and Mr. Donlan sought to
19 discover the location of the valuable materials and file their own mining claims at the site.

20 27. Meanwhile, Mr. Golden continued to seek to record the Golden Mining Claims with
21 the Clark County Recorder’s Office.

22 28. Finally, on May 10, 2018, Mr. Golden recorded his Affidavit and Notice of Intent
23 to Hold Mining Claims and Sites with the Clark County Recorder’s Office as Instrument No.
24 20180510-0001713.

25 ...



1 29. At the time that Mr. Golden recorded his Affidavit and Notice of Intent to Hold
2 Mining Claims and Sites with the Clark County Recorder’s Office, the Clark County Recorder’s
3 Office apologized to Mr. Golden for years of misinformation and honored his properly located and
4 mapped claims.

5 30. Mr. Golden has and continues to file the annual Affidavit and Notice of Intent to
6 Hold Mining Claims for the years 2019, 2020 and 2021.

7 31. Mr. Golden has and continues to comply with all requirements of state and federal
8 law that allow him to properly maintain the Golden Mining Claims.

9 32. Meanwhile, having been shown the location of the mines from Mr. Golden, Mr.
10 Donlan and Mr. Willard formed Bibte with the purpose of filing their own mining claims, some of
11 which overlap with the Golden Mining Claims.

12 33. Specifically, Bibte filed approximately 10 separate claims with the BLM.

13 34. First, in June of 2017, Bibte filed a lode claim named M4PH-1, which is registered
14 with the BLM as NMC No. 1145575 (“Bibte Claim 1”).

15 35. Bibte Claim 1 is located west of the Golden Mining Claims and does not overlap
16 the Golden Mining Claims.

17 36. In August of 2017, Bibte filed three more lode claims known as Bibte-2, Bibte-3
18 and Bibte-4, all registered with the BLM and bearing NMC No. 1149252 (the “Bibte Abandoned
19 Claims”).

20 37. The Bibte Abandoned Claims originally overlapped with the Golden Mining
21 Claims. However, Bibte decided not to renew the Bibte Abandoned Claims in 2019. As such, the
22 Bibte Abandoned Claims have since expired and no longer show up on the BLM’s register.

23 38. Then, in September of 2018, Bibte filed three more lode claims known as Bibte-5,
24 Bibte-6 and Bibte-7, which are registered with the BLM as NMC No. 1178886 (“Bibte Claims 5-
25 7”).



1 39. Like Bibte Claim 1, Bibte Claims 5-7 are also located due west of the Golden
2 Mining Claims and do no overlap with the Bibte Mining Claims.

3 40. Finally, in November of 2018, Bibte filed three new lode claims known as Bibte-8,
4 Bibte-9 and Bibte-10, which are all registered with the BLM as NMC No. 1181081 (“Bibte Claims
5 8-10”).

6 41. Bibte Claims 8-10 are in the precise location that Bibte-2, Bibte-3 and Bibte-4 were
7 originally located. In other words, Bibte Claims 8-10 have replaced the Bibte Abandoned Claims.

8 42. On November 2, 2018, Bibte filed its own Certificate of Location of Mining Claim
9 with the Clark County Recorder’s Office as Instrument No. 20181102-0002354, for Bibte Claims
10 8-10.

11 43. Despite filing 10 separate claims with the BLM, Bibte did not comply with all
12 requirements of Nevada law when making Bibte Claim 1, the Bibte Abandoned Claims, Bibte
13 Claims 5-7 and Bibte Claims 8-10 (collectively the “Bibte Mining Claims”).

14 44. Specifically, Bibte did not erect any monuments for its claims, did not place the
15 proper information related to its claims at the location and did not prepare the proper notices as
16 required by NRS 517.010 and NRS 517.030.

17 45. As a result of Bibte’s failure to comply with NRS 517.010 and NRS 517.030, the
18 Bibte Mining Claims are void.

19 46. More importantly, even if the Bibte Mining Claims were not void due to non-
20 compliance with NRS 517.010 and NRS 517.030, Mr. Golden has superior claims over Bibte
21 Claims 8-10 (i.e. the only remaining claims that overlap with the Golden Mining Claims) because
22 Mr. Golden located and recorded the Golden Mining Claims before Bibte located and recorded
23 Bibte Mining Claims 8-10.

24 ...

25 ...



1 47. In fact, in September of 2020, the BLM sent a letter to Bibte specifically advising
2 Bibte that the Golden Mining Claims remain valid and refusing to void the Golden Mining Claims
3 despite Bibte’s request that the BLM do so.

4 48. Notwithstanding this letter, Bibte continues to send agents to the site of the Golden
5 Mining Claims and illegally extract materials and otherwise interfere with the Golden Mining
6 Claims.

7 49. This illegal extraction and interference have caused and continue to cause damage
8 to Mr. Golden in an amount in excess of \$75,000.00.

9 **FIRST CLAIM FOR RELIEF**

10 **(Declaratory Relief – against Bibte)**

11 50. Mr. Golden repeats and realleges all the allegations contained in the preceding
12 paragraphs of this Complaint as though fully set forth herein.

13 51. NRS 30.040(1) provides that “Any person interested under a deed, written contract
14 or other writings constituting a contract, or whose rights, status or other legal relations are affected
15 by a statute, municipal ordinance, contract or franchise, may have determined any question of
16 construction or validity arising under the instrument, statute, ordinance, contract or franchise and
17 obtain a declaration of rights, status or other legal relations thereunder.”

18 52. A declaratory judgment is appropriate where there exists a justiciable controversy
19 between two parties concerning the rights, status, or legal relationship of those parties under a
20 contract, statute, or other writing.

21 53. As set forth herein, an actual justiciable controversy has arisen between Mr.
22 Golden, on the one hand, and Bibte on the other hand, concerning whether the Bibte Mining Claims
23 are void for failure to comply with federal and state law in locating and maintaining the claims.

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CERTIFICATE OF SERVICE

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I hereby certify that the foregoing **DEFENDANT DAN GOLDEN’S FIRST AMENDED ANSWER AND COUNTERCLAIMS** was submitted electronically for filing and/or service with the United States District Court for the District of Nevada on the ___ day of August, 2021. Electronic service of the foregoing document shall be made in accordance with the CM/ECF E-Service System as follows:

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