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8
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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13 Nevada Select Royalty, Inc.,

14 Plaintiff,

15 vs.

16 Jerritt Canyon Gold LLC,

17 Defendant.

18 Case Number: 3:22-cv-00415-LRH-CSD

19 **STIPULATED PROTECTIVE**
ORDER AND CONFIDENTIALITY
AGREEMENT

20 Jerritt Canyon Gold LLC,

21 Counterclaimant,

22 vs.

23 Nevada Select Royalty, Inc.; and NouHgt
Technologies, LLC,

24 Counterdefendants.

25 NouHgt Technologies, LLC,

26 Counterclaimant,

27 vs.

Jerritt Canyon Gold LLC, a Nevada limited

1 liability company; DOE I through X,
 2 inclusive; ROE ENTITIES I through X,
 2 inclusive,

3 Counterdefendants.

4

5 Plaintiff/Counterdefendant Nevada Select Royalty, Inc. (“Nevada Select”);
 6 Defendant/Counterclaimant/Counterdefendant Jerritt Canyon Gold LLC (“Jerritt”); and,
 7 Counterdefendant/Counterclaimant NouHgt Technologies, LLC (“NouHgt”), by and through their
 8 respective attorneys of record, hereby enter into this Stipulated Protective Order (“Order”)
 9 pursuant to the provisions of Federal Rules of Civil Procedure (“FRCP”) 26(c). Nevada Select,
 10 Jerritt, and NouHgt each may be referred to herein, individually, as a “Party” or, collectively, as
 11 the “Parties.”

12 The Parties have agreed and stipulated to the entry of this Order for the protection of
 13 confidential and sensitive documents, records, and information produced or otherwise disclosed by
 14 the Parties in this action.

15 IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, through their
 16 respective counsel of record, that the following terms and conditions shall govern the disclosure,
 17 production, and use of documents and information in this action:

18 **I. DEFINITIONS**

19 1. “Material” refers to any document, data compilation, testimony, report,
 20 interrogatory response, response to a request for admission, response to a request for production, or
 21 other information in any form produced or disclosed in this action (including copies), whether
 22 voluntarily or through any means of discovery authorized by law, and whether by a Party or non-
 23 party.

24 2. Material may be designated “Confidential” if the Designating Party in good faith
 25 believes that disclosure of such Material in this action without the designation presents a risk of
 26 injury to the legitimate business or personal interests of the Disclosing Party, or any other
 27 legitimate interest of the Disclosing Party. Confidential information includes, but is not limited to,

1 all Materials reflecting, referring to, or evidencing any information deemed confidential by any
2 local, state, or federal statute, ordinance, regulation, or other law, confidentiality agreement,
3 business plans or forecasts, financial plans and forecasts, operational plans and forecasts, and all
4 private or sensitive commercial, technical, financial, proprietary, personal, personnel, underwriting,
5 rating, claims and insurance policy information, which is not publicly known and cannot be
6 ascertained from an inspection of publicly-available documents or materials. Confidential
7 information may take the form of, but is not limited to, (a) documents, responses to request for
8 production, interrogatory responses, or responses to requests for admissions; (b) hearing or
9 deposition transcripts and related exhibits; and, (c) all copies, abstracts, excerpts, analyses, reports,
10 and complete or partial summaries prepared from or containing, reflecting, or disclosing such
11 confidential information.

12 3. Material may also be designated as "Sensitive-Attorney Eyes Only." Sensitive-
13 Attorney Eyes Only Material must meet the Confidential designation requirements of Section I(2)
14 and must be so proprietary or competitively sensitive or contain such highly sensitive and non-
15 public business, technical, financial, personal, or other information that its disclosure to persons
16 other than those enumerated in Section IV will irreparably harm the Disclosing Party.

17 4. "Disclosing Party" refers to a Party, or non-party, to this action who produces
18 Material.

19 5. "Designating Party" refers to a Party or non-party to this action who designates
20 Material as Confidential or Sensitive-Attorney Eyes Only.

21 6. "Requesting Party" refers to a Party who has made a discovery request.

22 7. "Receiving Party" refers to a Party who receives, or is otherwise exposed to,
23 Material during the course of this action.

24 **II. SCOPE OF PROTECTIVE ORDER**

25 1. Except as the Parties may otherwise agree, or the Court may order, any Material
26 produced in this action, which is designated Confidential or Sensitive-Attorney Eyes Only,
27 including any report, excerpt, analysis, summary, or description of it, shall be strictly controlled by

1 this Order, and no disclosure or use of such Material, by any Receiving Party, can be made except
 2 in accordance with the requirements of this Order. All Material designated Confidential or
 3 Sensitive-Attorney Eyes Only shall be used solely for the prosecution or defense of this action.

4 2. This Order shall govern all Material produced in this action, including Material
 5 produced prior to entry of this Order.

6 3. The protections of this Order shall not apply to Material that, prior to disclosure in
 7 this action, was within the actual possession or knowledge of a Receiving Party but was not subject
 8 to any confidentiality obligation between the Parties, was previously disclosed by a Disclosing
 9 Party to a non-party to this action without any obligation of confidentiality, or was actually public
 10 knowledge, provided that the Material did not become public knowledge through an act or
 11 omission of a Receiving Party. Material that was in the hands of the Receiving Party prior to
 12 disclosure in this action, however, and was subject to a confidentiality obligation between the
 13 Parties, shall be made subject to this Order. Any Party who claims that the Material was, prior to
 14 disclosure in this action, within its actual possession or knowledge and was not subject to a
 15 confidentiality obligation or was public knowledge shall have the burden of proving that fact.

16 4. Nothing in this Protective Order shall be construed to prohibit counsel from
 17 providing advice, guidance, or counsel to a Party, regardless of whether such advice, guidance, or
 18 counsel is based, in whole or in part, upon information counsel learned from Material designated
 19 Confidential or Sensitive-Attorney Eyes Only, so long as counsel does not disclose Confidential or
 20 Sensitive-Attorney Eyes Only Material to anyone not permitted to receive such Material under this
 21 Order.

22 **III. DESIGNATION OF MATERIAL**

23 **A. GENERAL PROVISIONS**

24 1. A Designating Party may designate Material as Confidential or Sensitive-Attorney
 25 Eyes Only, only if the Material (1) is Confidential, as defined by Section I(2), or Sensitive-
 26 Attorney Eyes Only, as defined by Section I(3); and, (2) is not excluded from the scope of this
 27 Order by Section II(3).

1 2. A Designating Party's failure to designate Material as Confidential or Sensitive-
2 Attorney Eyes Only at the time of production or disclosure of the Material does not waive its right
3 to later designate the Material as Confidential or Sensitive-Attorney Eyes Only, so long as the
4 Designating Party notifies all Parties in writing of the failure within a reasonable time period after
5 learning that the Material was produced without an appropriate confidentiality designation. After
6 any designation, each Receiving Party shall treat the designated Material as either Confidential or
7 Sensitive-Attorney Eyes Only and subject to the protections of this Order.

8 **B. METHODS OF DESIGNATION**

9 1. A Designating Party may designate Material as Confidential by placing or affixing
10 on the Material the word "Confidential."

11 2. A Designating Party may designate Material as Sensitive-Attorney Eyes Only by
12 placing or affixing on the Material the words "Sensitive-Attorney Eyes Only."

13 3. Testimony, including hearing or deposition transcripts, or portions of such
14 transcripts, and any applicable exhibits, may be designated Confidential or Sensitive-Attorney
15 Eyes Only by: (a) counsel so stating on the record during the hearing or deposition, or (b)
16 providing written notice to the reporter and all counsel of record. All transcripts of depositions, or
17 portions of such transcripts, and any applicable exhibits, shall be considered as designated
18 Confidential, except for any testimony or exhibits designated as Sensitive-Attorney Eyes Only at
19 the time of the deposition, until 30 days after the reporter sends notice that the written transcript is
20 available for review. The Parties may, however, designate transcripts, or portions of such
21 transcripts, and any applicable exhibits, as Confidential or Sensitive-Attorney Eyes Only at any
22 time, including after the 30-day period described in the preceding sentence. If such a designation
23 is made after the 30-day period, all designated Material shall be handled as Confidential or
24 Sensitive-Attorney Eyes Only, depending on the asserted designation, from the time of the
25 designation forward and all Receiving Parties shall make reasonable efforts to recover any
26 transcripts or portions of transcripts that have been disclosed beyond what is allowed for the
27 asserted designation. If transcripts or portions of such transcripts, and any applicable exhibits are

1 designated as Confidential or Sensitive-Attorney Eyes Only, the Parties' counsel and the court
 2 reporter shall make reasonable arrangements to maintain the confidentiality of any deposition
 3 testimony or exhibits so designated, in accordance with the terms of this Order. These
 4 arrangements may include the marking of transcript pages, covers or exhibits, and other measures
 5 to preclude the disclosure of Confidential or Sensitive-Attorneys Eyes Only Material other than to
 6 qualified persons.

7 4. When Confidential or Sensitive-Attorney Eyes Only Material is supplied or stored
 8 on a digital, electronic, or electromagnetic medium, the Confidential or Sensitive-Attorney Eyes
 9 Only designation shall be made, to the extent physically possible, on the medium itself (such as on
 10 a label attached to a disk), on the sleeve, envelope, box, or other container of such medium, or by
 11 submitting a written statement to all counsel of record identifying the appropriate designation.

12 **C. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 1. Any Party may challenge the designation of any Confidential or Sensitive-Attorney
 14 Eyes Only information through court intervention. The Party making such a challenge shall give
 15 the Designating Party written notice specifically setting forth the grounds for the objection to the
 16 designation, not less than 14 judicial days before filing any motion challenging any designation.
 17 During the above-identified notice period, the objecting Party shall meet and confer with the
 18 Designating Party in good faith in order to resolve the dispute without filing a motion. If the good
 19 faith meet-and-confer process fails, the objecting Party may then challenge the designation through
 20 motion practice.

21 2. Notwithstanding any such challenge, all such Material shall be treated as
 22 Confidential or Sensitive-Attorney Eyes Only as designated until one of the following occurs: (a)
 23 the Disclosing Party withdraws such Confidential or Sensitive-Attorney Eyes Only designation in
 24 writing, or (b) the Court rules that the designation is not proper and that the designation shall be
 25 removed.

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1 **IV. DISCLOSURE, USE, AND HANDLING OF CONFIDENTIAL OR SENSITIVE-**
 2 **ATTORNEY EYES ONLY MATERIAL**

3 **A. USE AND HANDLING OF CONFIDENTIAL OR SENSITIVE-ATTORNEY**
 4 **EYES ONLY MATERIAL**

5 1. To the extent any Material filed with the Court, including pleadings, exhibits,
 6 transcripts of hearings or depositions, expert reports, answers to interrogatories, and responses to
 7 requests for admissions, contains or reveals Confidential or Sensitive-Attorney Eyes Only
 8 Material, the Material or any portion thereof shall be filed under seal pursuant to the applicable
 9 rules.

10 2. All copies, duplicates, extracts, summaries, reports, or descriptions (collectively
 11 “copies”) of Materials designated as Confidential or Sensitive-Attorney Eyes Only, or any portion
 12 thereof, shall immediately be affixed with the label Confidential or Sensitive-Attorney Eyes Only
 13 if such label does not already appear thereon.

14 3. Material designated Confidential or Sensitive-Attorney Eyes Only does not lose
 15 protected status through an unauthorized disclosure, whether intentional or inadvertent, by a
 16 Receiving Party. If such a disclosure occurs, the Parties shall take all steps reasonably required to
 17 assure the continued confidentiality of the Material.

18 4. Any Material that is designated Confidential shall not be disclosed to any person or
 19 entity other than the following, and only after such person or entity has been advised of and has
 20 agreed to be subject to the terms of this Order:

21 (a) The Parties;

22 (b) Counsel of record for the Parties;

23 (c) Members of the legal, paralegal, secretarial, or clerical staff of such counsel who are
 24 assisting in or responsible for working on this action;

25 (d) The Court, its staff, the jury, and all appropriate courts of appellate jurisdiction and
 26 their staff;

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1 (e) Independent experts or consultants retained by a Party or counsels of record for
2 purposes of this litigation, and any employees, associates, or independent contractors retained by
3 those experts or consultants in their work in this litigation;

4 (f) Court reporters during depositions or hearings;

5 (g) Deponents during depositions or witnesses during hearings;

6 (h) Persons who have had, or whom any counsel for any party in good faith believes to
7 have had, prior access to the Confidential Material being disclosed, or who have been participants
8 in a communication that is the subject of the Confidential Material and from whom verification of
9 or other information about that access or participation is sought, solely to the extent of disclosing
10 such information to which they have or may have had access or that is the subject of the
11 communication in which they have or may have participated, except that, unless and until counsel
12 confirms that any such persons have had access or were participants, only as much of the
13 information may be disclosed as may be necessary to confirm the person's access or participation;

14 (i) Employees of third-party contractors of the Parties involved solely in providing
15 copying or litigation support services such as organizing, filing, coding, converting, storing, or
16 retrieving Material;

17 (j) Any other person agreed to in writing by the Disclosing Party; and

18 (k) Any other person by order of the Court, after notice to all Parties.

19 5. Any Material that is designated Sensitive-Attorney Eyes Only shall not be disclosed
20 to any person or entity other than the following, and only after such person or entity has been
21 advised of and has agreed to be subject to the terms of this Order:

22 (a) Counsel of record for the Parties;

23 (b) Members of the legal, paralegal, secretarial or clerical staff of such counsel who are
24 assisting in or responsible for working on this action:

25 (c) The Court, its staff, the jury, and all appropriate courts of appellate jurisdiction and
26 their staff;

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1 (d) Independent experts or consultants retained by a party or counsel of records for
2 purposes of this litigation, and any employees, associates, or independent contractors retained by
3 those experts or consultants in their work in this litigation;

4 (e) Court reporters during depositions or hearings;

5 (f) Deponents during depositions or witnesses during hearings;

6 (g) Persons who have had, or whom any counsel for any party in good faith believes to
7 have had, prior access to the Sensitive-Attorney Eyes Only Material being disclosed, or who have
8 been participants in a communication that is the subject of the Sensitive-Attorney Eyes Only
9 Material and from whom verification of or other information about that access or participation is
10 sought, solely to the extent of disclosing such information to which they have or may have had
11 access or that is the subject of the communication in which they have or may have participated,
12 except that, unless and until counsel confirms that any such persons have had access or were
13 participants, only as much of the information may be disclosed as may be necessary to confirm the
14 person's access or participation;

15 (h) Employees of third-party contractors of the Parties involved solely in providing
16 copying or litigation support services such as organizing, filing, coding, converting, storing, or
17 retrieving Material;

18 (i) Any other person agreed to in writing by the Disclosing Party; and

19 (j) Any other person by order of the Court, after notice to all Parties.

20 6. Prior to disclosure of any Confidential or Sensitive-Attorney Eyes Only Material to
21 any persons under Section IV(A)(4)(e), (g), (i)-(k), or Section IV(A)(5)(d), (f), (h)-(j), he or she
22 must first be advised of and agree in writing to be bound by the provisions of this Order. Such
23 written agreement shall consist of his or her endorsement of a copy of this Order or of the
24 Undertaking attached to this Order. Copies of such writings shall be produced to other parties
25 upon written request.

26 7. The recipient of any Confidential or Sensitive-Attorney Eyes Only Material shall
27 maintain such Material in a secure and safe area and shall exercise the same standard of due and

1 proper care with respect to the storage, custody, use, and/or dissemination of such information as is
2 exercised by the recipient with respect to its own confidential information.

3 **V. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

4 1. The inadvertent production by a Party of Material subject to the attorney-client
5 privilege, work-product protection, or any other applicable privilege or protection, despite the
6 Disclosing Party's reasonable efforts to prescreen such Material prior to production, will not waive
7 the applicable privilege and/or protection if a request for return of such inadvertently produced
8 Material is made promptly after the Disclosing Party learns of its inadvertent production.

9 2. Upon a request from any Disclosing Party who has inadvertently produced Material
10 that it believes is privileged and/or protected, each Receiving Party shall immediately return such
11 Material and all copies, including those that have been shared with experts, consultants, and
12 vendors, to the Disclosing Party, except for any pages containing privileged markings by the
13 Receiving Party which shall instead be destroyed and certified as such by the Receiving Party to
14 the Disclosing Party. Each Receiving Party shall confirm in writing that all such documents or
15 information have been returned or destroyed within five (5) business days of the request.

16 3. Nothing herein shall prevent the Receiving Party from preparing a record for its
17 own use containing the date, author, addresses, and topic of the inadvertently produced Material
18 and such other information as is reasonably necessary to identify the Material and describe its
19 nature to the Court in any motion to compel production of the Material. Any motion to compel
20 production of the Material shall be filed under seal and shall not assert as a ground for production
21 the fact of the inadvertent or unintentional production, nor shall the motion disclose or otherwise
22 use the content of the inadvertently or unintentionally produced document or information in any
23 way beyond that which is reasonably necessary to identify the Material and describe its nature to
24 the Court.

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1 **VI. INADVERTENT DISCLOSURE OF CONFIDENTIAL OR SENSITIVE-**
 2 **ATTORNEY EYES ONLY MATERIAL NOT AUTHORIZED UNDER**
 3 **PROTECTIVE ORDER**

4 1. In the event of a disclosure of any Material designated under this Order, to any
 5 person(s) not authorized to receive such disclosure, the Party responsible for having made such
 6 disclosure, and each Party with knowledge thereof, shall immediately notify counsel for the
 7 Disclosing Party whose Material has been disclosed and provide to such counsel all known
 8 relevant information concerning the nature and circumstances of the disclosure. The responsible
 9 Disclosing Party shall also promptly take all reasonable measures to retrieve the improperly
 10 disclosed Material and to ensure that no further or greater unauthorized disclosure and/or use
 11 thereof is made.

12 2. Unauthorized or inadvertent disclosure does not change the status of the Material or
 13 waive the right to hold the disclosed document or information as Protected.

14 **VII. OTHER PROVISIONS**

15 1. In the event a Receiving Party who has received Confidential or Sensitive-Attorney
 16 Eyes Only Material that is subject to this Order is: (a) subpoenaed in another action, (b) served
 17 with a request in another action to which the person is a party, or (c) served with any other legal
 18 process by one not a Party to this action, that seeks Confidential or Sensitive-Attorney Eyes Only
 19 Material, he, she, or it shall give prompt written notice of the receipt of such subpoena, demand, or
 20 other legal process to the Designating Party and its counsel, and, upon request, shall cooperate with
 21 the Designating Party in its efforts to obtain an appropriate court order protecting the Confidential
 22 or Sensitive-Attorneys Eyes Only Material.

23 2. Any third party producing Materials in this action may be included in this Order by
 24 endorsing a copy of this Order and delivering it to the Requesting Party, who, in turn, will serve a
 25 copy of it upon counsel for the other Party.

26 3. This Order shall not prevent any Party from applying to the Court for further or
 27 additional confidentiality orders, or from agreeing with the other Party to modify this Order,
 28 subject to the approval of the Court.

1 4. This Order shall not preclude any Party from enforcing its rights against any other
2 Party, or any non-party, believed to be violating its rights under this Order.

3 5. Except as provided for in this Order, nothing in this Order, nor any actions taken
4 pursuant to this Order, shall be deemed to have the effect of an admission or waiver by any Party,
5 including the right of either Party to object to the subject matter of any discovery request or the
6 relevance of any evidence. Also, nothing in this Order or any actions under the provisions of this
7 Order shall have the effect of proving, suggesting to prove, or otherwise creating a presumption
8 that information disclosed in this action is confidential, trade secret, or proprietary, as it pertains to
9 the Parties' respective claims in this action.

10 6. After final termination of this case, including any appeals, each counsel of record,
11 upon written request within 60 days of the date of final termination, shall within 60 days of such
12 request, (a) destroy, or (b) assemble and return to the counsel of record, all Material in their
13 possession and control, embodying Material designated Confidential or Sensitive-Attorneys Eyes
14 Only, including all copies thereof except that each counsel of record may maintain one archive
15 copy of all pleadings, correspondence, deposition transcripts, deposition exhibits, trial transcripts,
16 and trial exhibits, together with any attorney work product provided that such archive copy is
17 appropriately marked as Confidential or Sensitive-Attorneys Eyes Only and is retained in
18 accordance with the terms of this Order. Notwithstanding the foregoing, counsel for the Parties are
19 not required to destroy counsel's email communications (and corresponding attachments) related to
20 this case, regardless of whether such email communications contains Material designated
21 Confidential or Sensitive-Attorneys Eyes Only.

22 7. Counsel for any Party may exclude from the room at a deposition, during any
23 questioning that involves Confidential or Sensitive-Attorneys Eyes Only Material, any person
24 (other than the witness then testifying) who is not permitted the disclosure of such Material under
25 this Order.

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1 8. The Parties and any other person subject to the terms of this Order agree that this
2 Court has and retains jurisdiction during and after this action is terminated for the purpose of
3 enforcing this Order. This Order shall survive termination of this litigation, to the extent that the
4 Confidential or Sensitive-Attorneys Eyes Only Material is not or does not become known to the
5 public.

6 Dated this 14th day of November, 2022.

7 MARQUIS AURBACH

8 By: /s/ Jared M. Moser
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10 Nevada Bar No. 11220
11 Brian R. Hardy, Esq.
12 Nevada Bar No. 10068
13 Jared M. Moser, Esq.
14 Nevada Bar No. 13003
15 10001 Park Run Drive
16 Las Vegas, Nevada 89145

17 *Attorneys for NouHgt Technologies, LLC*

6 Dated this 17th day of November, 2022.

7 RICE REUTHER SULLIVAN &
8 CARROLL, LLP

9 By: /s/ Shamus T. O'Doherty
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34 *Attorneys for Jerritt Canyon Gold LLC*

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1 Signatures continued:

Case Number: 3:22-cv-00415-LRH-CSD

2 Dated this 17th day of November, 2022.

3 HOLLAND & HART LLP

4 By: /s/ Jessica L. Freitas

5 Laura K. Granier, Esq.

6 Nevada Bar No. 7357

7 Jessica L. Freitas, Esq.

8 Nevada Bar No. 16079

9 5441 Kietzke Lane, Suite 200

10 Reno, Nevada 89511

11 *Attorneys for Nevada Select Royalty, Inc.*

12 **ORDER**

13 Paragraph 8 (page 13) is modified to reflect that although the parties may agree to be bound by the
14 confidentiality terms of this Order beyond the conclusion of this lawsuit, the dismissal of this action will
15 terminate the jurisdiction of this court.

16 IT IS SO ORDERED.

17 DATED: November 21, 2022.

18 
19 UNITED STATES MAGISTRATE JUDGE

MARQUIS AURBACH

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Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

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UNDERTAKING

I, _____, have read and agree to be bound by the Protective Order in *Nevada Select Royalty, Inc. v. Jerritt Canyon Gold LLC* pending in the United States District Court, District of Nevada, Case Number 3:22-cv-00415-LRH-CSD. I hereby submit to the jurisdiction of the Court for purposes of ensuring compliance with the Protective Order.

Date: _____

Signature: _____

Printed Name: _____

Address: _____

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