



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

RAMCO ASSET MANAGEMENT,  
LLC, US TRADING COMPANY  
METALS RE, LLC, and DINSHA  
DYNASTY TRUST,

Plaintiffs,

v.

C.A. No.

USA RARE EARTH, LLC, MORZEV  
PTY LTD., MORDECHAI GUTNICK  
ATF THE MORZEV TRUST,  
MORDECHAI GUTNICK, and PINI  
ALTHAUS,

Defendants.

**VERIFIED COMPLAINT**

Plaintiffs Ramco Asset Management, LLC (“Ramco”), US Trading Company Metals RE, LLC (“US Trading Company”) and the DinSha Dynasty Trust (“DinSha”) (together, “Plaintiffs”), by and through their undersigned attorneys, as and for a Complaint against Defendants USA Rare Earth, LLC (“USARE”), the Mordechai Gutnick ATF the Morzev Trust (“ATF Morzev Trust”), Morzev PTY Ltd. (“Morzev”), Mordechai Gutnick (“Gutnick”), and Pini Althaus (“Althaus”) (collectively, “Defendants”), hereby allege as follows:

## INTRODUCTION

1. Plaintiffs were early investors in Morzev, an Australian rare earth mining company. In 2019, Gutnick, the founder and majority shareholder of Morzev, and Althaus, the CEO of Morzev, informed Plaintiffs that they were transferring the assets of Morzev to a U.S. company, USARE. Each of the Plaintiffs was invited to exchange their interests in Morzev on a “1:1” basis for interests in USARE. Each of the Plaintiffs agreed to surrender their interests in Morzev in exchange for equivalent interests in USARE. However, none of the Plaintiffs received such “equivalent interests” in USARE. Rather each of Plaintiffs’ “Day One” equity in USARE was between 14% and 20% less than their previous equity stakes in Morzev.

2. In addition, just weeks before the transfers of the Plaintiffs’ interests from Morzev to USARE, Gutnick and Althaus caused USARE to issue approximately 7.8 million Class A shares to Down Under, LLC, an entity owned and controlled by Gutnick, for no consideration. Around that time, Gutnick and Althaus also transferred approximately \$6 million from Morzev to themselves or their nominees. Gutnick and Althaus never informed any of the Plaintiffs of the issuance of these shares or transfer of assets from Morzev, which further reduced the value of each of their respective stakes in USARE. Further, these were material omissions by Gutnick and Althaus in that, had Plaintiffs known of these self-dealing transactions, they would have bargained for different terms for the transfers of their interests from

Morzev to USARE. These omissions made the statements in the contracts that Gutnick and Althaus executed on behalf of ATF Morzev Trust, Morzev, and USARE regarding the “1:1” exchanges materially misleading, as Gutnick and Althaus both knew they would.

3. Finally, by furthering these transactions under false pretenses that directly damaged Plaintiffs’ equity interests as shareholders of USARE, both Gutnick and Althaus violated the fiduciary duties that they owed Plaintiffs, as officers and directors, and upon information and belief, as majority owners and controlling owners, of both Morzev and USARE.

4. As described in more detail below, these events give rise to causes of action for breach of contract, breach of the duty of good faith and fair dealing, breach of fiduciary duty and fraud.

### **PARTIES**

5. Plaintiff Ramco is a New Jersey limited liability company.

6. Plaintiff US Trading Company is a Delaware limited liability company, with its headquarters in New York.

7. Plaintiff DinSha is a trust organized under the laws of New Jersey.

8. Defendant USARE is a limited liability company organized under the laws of the State of Delaware. At all relevant times, Gutnick was a Manager of USARE, expressly authorized to act on behalf of USARE. At all relevant times,

Althaus was, upon information and belief, also chief executive officer or president of Morzev, as well as a director.

9. Morzev is an Australian limited liability company and a current or former Member of USARE. At all relevant times, Gutnick was a director of Morzev, expressly authorized to act on behalf of Morzev.

10. ATF Morzev Trust is a trust organized under the laws of Australia and a current or former Member of USARE. At all relevant times, Gutnick was authorized to act on behalf of ATF Morzev Trust.

11. Defendant Gutnick is, and was at all relevant times, a Manager of USARE, and is the largest current holder of USARE Class A shares. Gutnick is a resident of the State of New York.

12. Defendant Althaus was the chief executive officer of USARE through 2019-2021 and is a former Manager of the company. Concurrently, Althaus was also chief executive officer or president of Morzev, as well as a director. Althaus is a current member of Cove Capital, LLC, a large shareholder of USARE. Althaus is a resident of the State of New York.

### **JURISDICTION**

13. Jurisdiction is proper in this Court because USARE's Third Amended and Restated Company Agreement dated March 3, 2021 (attached hereto as Exhibit A), provides that any proceeding arising out of or relating to the Agreement or the

USARE's activities or properties may be brought only in the Delaware Court of Chancery, in the state courts of the county where the USARE's principal office is located, or, if jurisdiction can be acquired, in the United States District Court for the district in which the USARE's principal office is located. *Id.* at §15.3. The provision also states that the laws of the State of Delaware govern all matters arising out of or relating to the agreement. *Id.* Each Member of USARE irrevocably consented to such jurisdiction as a condition of their investment in USARE.<sup>1</sup>

14. Further, this Court has jurisdiction over USARE and internal disputes among its members and managers pursuant to 6 *Del. C.* § 18-111.

### **FACTUAL BACKGROUND**

#### **The Entities and Investments**

15. Morzev is an Australian company founded by Gutnick on March 6, 2015. Morzev's primary asset was the option (the "Round Top Option") to acquire up to 80% of the Round Top heavy rare earth and critical minerals project in Hudspeth County, Texas owned by Texas Mineral Resources Corp. ("TMRC").

16. Ramco invested in Morzev by purchasing convertible notes.

17. DinSha invested in Morzev by purchasing shares.

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<sup>1</sup> Identical jurisdiction and choice of law provisions are contained in original Operating Agreement dated August 27, 2019, the First Amended Operating Agreement dated April 22, 2020, and the Second Amended Operating Agreement dated October 15, 2020.

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