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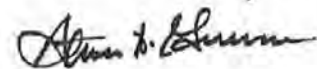
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Holley, Woloson & Thompson



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DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

CAM CONSULTING, INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD. dba MOJAVE
ELECTRIC, a Nevada corporation; WESTERN
SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW BASED UPON
COUNTERCLAIMANTS MOTION TO
TO PROCURE CODES**

AND RELATED MATTERS.

Counterclaimants' Motion for Mandatory Injunction to Procure Codes on Order Shortening Time or in the Alternative Application for Writ of Possession, having been heard by the Court on August 3, 2012 at 9:00 a.m.; Brian Boschkee, Esq. and Shemilly Briscoe, Esq., appearing on behalf of Counterclaimants WEST EDNA ASSOCIATES, LTD., dba MOJAVE

1 ELECTRIC("Mojave"), WESTERN SURETY COMPANY, THE WHITING TURNER
2 CONTRACTING COMPANY ("Whiting") and FIDELITY AND DEPOSIT COMPANY OF
3 MAYRLAND's (hereinafter collectively Counterclaimants); Jennifer Lloyd-Robinson, Esq.,
4 appearing on behalf of Plaintiff, CASHMAN EQUIPMENT COMPANY("Cashman"). The
5 Court having reviewed the Motion, Opposition and Reply briefs, and having heard argument and
6 being fully advised, the Court concludes as follows:

7 **FINDINGS OF FACT**

8 1. On or about February 11, 2010, Mojave entered into a Construction contract with
9 Whiting to construct the New Las Vegas City Hall Project.

10 2. The scope of Mojave's work partially included bringing power to the Project and
11 obtaining the equipment to consolidate the different electrical systems.

12 3. The equipment was delivered by Cashman and was installed on the Project, but
13 the accompanying codes for the switchgear were not provided.

14 4. The Building Automated System for City Hall is not fully functional without the
15 codes.

16 5. Cashman refused to produce the code information based upon the underlying pay
17 dispute with CAM, as CAM failed to pay Cashman for the equipment.

18 6. Without the codes, the City Hall has an incomplete operating system which
19 prevents the City from completion of the project.

20 **CONCLUSIONS OF LAW**

21 **THE COURT FINDS:**

22 1. Counterclaimants have shown, through declarations and other evidence, that
23 potential immediate and irreparable injury, loss and/or damage will occur to the City without an
24 injunction;

25 2. The instant Order is appropriate considering public policy issues to protect City
26 from future equipment issues;

27 3. The City will suffer irreparable harm if Plaintiffs are not mandated in this Order
28 as requested by the Plaintiffs.

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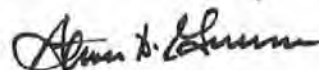
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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CASHMAN EQUIPMENT COMPANY,)	CASE NO.	A642583
)		A653029
Plaintiff,)	DEPT NO.	XXXII
vs.)		
)		
CAM CONSULTING INC.,)	TRANSCRIPT OF	
)	PROCEEDING	
Defendant.)		
)		
<u>AND RELATED PARTIES</u>)		

BEFORE THE HONORABLE ROB BARE, DISTRICT COURT JUDGE

**COUNTERCLAIMANTS' MOTION FOR MANDATORY INJUNCTION TO PROCURE
CODES ON ORDER SHORTENING TIME OR IN THE ALTERNATIVE
APPLICATION FOR WRIT OF POSSESSION**

FRIDAY, AUGUST 3, 2012

APPEARANCES:

For the Plaintiff: JENNIFER LLOYD-ROBINSON, ESQ.

For the Defendant: BRIAN W. BOSCHEE, ESQ.
SHEMILLY A. BRISCOE, ESQ.

RECORDED BY ELLEN FUMO, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

1 LAS VEGAS, NEVADA, FRIDAY, AUGUST 3, 2012, 9:49 A.M.

2 * * * * *

3 THE CLERK: Page 4, Cashman Equipment Company v CAM
4 Consulting Incorporated, Case No. A-642583.

5 MR. BOSCHEE: Good morning, Judge. Brian Boschee,
6 Shemilly Briscoe for defendants.

7 MS. LLOYD-ROBINSON: Good morning, Your Honor.
8 Jennifer Lloyd for Cashman Equipment Company.

9 THE COURT: And — who did you say — who was here
10 again? I'm sorry.

11 MR. BOSCHEE: Oh, I'm sorry. Brian Boschee and
12 Shemilly Briscoe from Driggs —

13 THE COURT: Oh, okay.

14 MR. BOSCHEE: — on behalf of —

15 THE COURT: Got it.

16 MR. BOSCHEE: — the defense and the —

17 THE COURT: And who are you?

18 MS. LLOYD-ROBINSON: Jennifer Lloyd.

19 THE COURT: Lloyd-Robinson?

20 MS. LLOYD-ROBINSON: Yeah. For Cashman Equipment
21 Company.

22 THE COURT: Okay.

23 MS. LLOYD-ROBINSON: Thank you, Your Honor.

24 MR. BOSCHEE: I think I can safely say that Mr.
25 Coleman will not be appearing on behalf of the Carvalhos since

1 he just told us he had the walking pneumonia earlier in —
2 earlier in the day.

3 THE COURT: Okay. Yeah. I think you're right.
4 Okay.

5 So CAM consulting, Mr. Boschee, Ms. Briscoe, you want
6 me to — to give you — let's — let's start off with that.
7 What do you want me to do? You want me to enter a court
8 injunctive order, or court order, so you can procure these
9 generator codes and restrain Cashman from entering the City
10 Hall project and tampering with the equipment or codes? Is
11 that it?

12 MR. BOSCHEE: Not exact — I don't think we — we
13 want to prohibit Cashman from going in and tampering with
14 anything. What we want, essentially that's why the motion was
15 a little bit of a hybrid, kind of a mandatory injunction slash
16 perhaps writ of possession might be the — the proper — the
17 proper vehicle for this.

18 We just want the codes. What we're looking for and
19 — and what I — I think we tried to make clear in the reply
20 is the — the City Hall is pretty much done. All of the stuff
21 is in there, all of the equipment has been delivered.
22 Obviously, Mojave, you know, that's the whole dispute in the
23 case. Mojave paid for it, CAM then did not pay Cashman, and
24 here we all are.

25 But what we're asking for is —

1 THE COURT: Yeah. I was wondering how -- how -- I
2 mean, I saw the Whiting Turner representative. I guess they
3 were the general contractor. They've got an affidavit in here
4 saying that the codes were necessary to run the -- the air
5 conditioning over there?

6 MR. BOSCHEE: Well, to run a lot of the safety -- a
7 lot of the safety apparatus over there. I mean, it's really --

8 THE COURT: Which --

9 MR. BOSCHEE: -- they're -- they're a necessary --
10 they're a necessary evil, I guess, for lack of a better word.
11 They're necessary for the safety and the ongoing finish --
12 completion of the project.

13 THE COURT: Okay. So HVAC, that's air conditioning,
14 isn't it?

15 MR. BOSCHEE: Yes.

16 THE COURT: Okay. So how long has City Hall been
17 open?

18 MR. BOSCHEE: That I don't know. Couple months,
19 maybe. I mean, to the extent it's been open --

20 THE COURT: Well, I mean --

21 MR. BOSCHEE: -- at all --

22 MS. LLOYD-ROBINSON: I think they haven't --

23 THE COURT: -- the mayor -- the mayor's over there
24 for --

25 MR. BOSCHEE: I was going to say --

1 MS. LLOYD-ROBINSON: The mayor.

2 MR. BOSCHEE: -- the mayor's been there for --

3 MS. LLOYD-ROBINSON: I think they have a temp --
4 temporary --

5 MR. BOSCHEE: Yeah.

6 THE COURT: And my -- my guess is you turn our air
7 conditioning on, it's --

8 MR. BOSCHEE: Well, I was going to say --

9 THE COURT: -- it's working.

10 MR. BOSCHEE: -- they -- they have a temporary
11 certificate. That's so -- I don't know whose --

12 THE COURT: That's what I was wondering. I mean,
13 how's it -- how's the stuff working now without the codes?

14 MS. LLOYD-ROBINSON: It's working, it's like a backup
15 system --

16 MR. BOSCHEE: Yeah.

17 MS. LLOYD-ROBINSON: -- is my understanding. It's
18 sort -- it runs behind the scenes in case the power goes out
19 or in case the -- something happened to the generator, the
20 generator needs to come on.

21 THE COURT: So using a backup system, but they're not
22 using the contemplated sort of front line system that requires
23 these codes?

24 MS. LLOYD-ROBINSON: I'm sorry. I made -- I mis -- I
25 misstated that. This is the backup system.

1 MR. BOSCHEE: This is the backup system.

2 MS. LLOYD-ROBINSON: These codes are to run the
3 backup system.

4 THE COURT: Oh, okay.

5 MS. LLOYD-ROBINSON: They're to run the generators.
6 The electrical is functioning, the HVAC is functioning, City
7 Hall has been moved into. It's been occupied —

8 THE COURT: Well, I — I figured that —

9 MS. LLOYD-ROBINSON: — it has a TCO.

10 THE COURT: — out already.

11 MR. BOSCHEE: What also, aside from being a backup
12 system, my understanding, and — and Jennifer could probably,
13 if — if I'm wrong about this, can correct me, I believe that
14 these codes and this backup system, when something does go
15 wrong, these are necessary to tell you what is wrong, what it
16 actually — what's wrong.

17 So let's say something in the mainframe doesn't work,
18 the HVAC, whatever, stops working, these codes would be
19 necessary as part of the backup to tell you exactly what is —
20 what has failed so you can go in and fix it without having to
21 kind of recreate the wheel.

22 THE COURT: Okay.

23 MR. BOSCHEE: So that's — and really, I mean, in
24 terms of, you know, the way the motion is styled, that's all
25 we're asking for. I mean, we're just asking for those codes

1 so that this backup system can be put in place. We're not
2 asking to kind of alter the status quo, we're not asking to do
3 anything. I understand Cashman's position that they don't
4 want to do work anymore on — on a project they haven't been
5 paid for. But really our concern here is it's more of a
6 safety mechanism. The — the City Hall is done, it's open,
7 but this backup isn't in place —

8 THE COURT: Okay. I understand that —

9 MR. BOSCHEE: -- and our concern is, you know, we
10 just want to get that in there.

11 THE COURT: I understand it. And you -- let me tell
12 you a little bit. You guys can sit down and relax for a
13 second. I -- I want to tell you a little bit about sort of my
14 initial thoughts in looking at this. And I say this in all
15 due respect to your side of it, Mr. Boschee, okay.

16 I mean, Cashman provided equipment to CAM Consulting,
17 it appears to me, in this whole case. Now, did — did — and
18 then CAM did work on City Hall. And the idea was money was
19 paid to CAM from a subcontractor and I see the complaint, of
20 course, says Cashman says, Wait a second, we didn't get paid.
21 We were -- we acted in good faith, we provided the equipment,
22 we didn't get paid.

23 And that, of course, involved allegations that extend
24 all the way to the owner of CAM, this guy Angelo Carvalho.
25 And the idea is supplemented, I think, that — I mean, I'm not

1 saying that Cashman wins. But I am saying that they —
2 they've asserted and somewhat shown that there were some
3 checks that were submitted that couldn't be negotiated, and
4 their claim is for over \$750,000 in damages. And that right
5 now it seemed like the discovery and the activity in the case
6 is really designed to figure out what happened to the money
7 and do a money trail and figure out where it went.

8 And what I — what I'm saying is, Mr. Boschee, I
9 mean, again, I'm not saying that Cashman wins, and they've got
10 a dead-on case. But what I am saying is their claims seem to
11 be pretty substantial and I don't blame them, really, for what
12 — for taking the posture that they don't want to necessarily
13 release these codes, because they provided equipment and they
14 feel like they've really been damaged and they've been through
15 a lot. And I respect that.

16 So what I'm thinking as a preliminary thought is
17 this. It seems like it, just from a public policy, for the
18 goodness of the city and the building sort of a point of view,
19 it makes sense to have a backup system that's operational in
20 the event you were to need it. And I'll just take it as a
21 fact that these codes are necessary to make it operational if
22 it were needed.

23 But the deal is, I think that in fairness to it,
24 Cashman should be protected financially somehow. And so that
25 some sort of a bond for the full value of what this code

1 situation would equate out to. I say this in all due respect,
2 but I think that's the balancing here.

3 Now, I know that you said in here that there's some
4 sort of already public bond put in place, a surety bond in
5 public works and all. But I'd rather — I'd rather see
6 something standalone put in place to make sure that Cashman
7 has an absolute protection, financial protection. I just
8 think that's appropriate.

9 The other thing I'd say to you is this writ of
10 attachment or writ of possession angle, though I respect it, I
11 think it'll become unnecessary to get to if we just proceed in
12 the injunctive mode with having to do with the codes. In
13 other words, I'd be inclined to give you a court order that —
14 that we — the codes come over. But the bond amount I think
15 should be the full value that Cashman tells me they'd be owed
16 for this. As a — and not — not worry about whether there's
17 some kind of public works, lien stuff going on. Because I
18 think you'd be better protected if there was a standalone
19 security protection. That's what I think.

20 So tell — why don't you tell me what you — you
21 think about that, please, Ms. Lloyd-Robinson — Robinson?

22 MS. LLOYD-ROBINSON: I think if you are leaning
23 toward issuing a preliminary injunction, that there would be a
24 separate bond required. I would argue that really what
25 they're seeking is specific performance, that they're lacking

1 a few key elements and going against the wrong party. I mean,
2 to get specific performance, you need to have paid tendered
3 performance, and they haven't paid my client. Because their
4 contract was with CAM, this motion should really be against
5 CAM, forcing CAM to perform under its contract with Mojave.

6 If you're going to require a bond, I mean, I don't
7 know the value of the codes broken out, because it was a full
8 complete system. So I would say the bond should be in the
9 amount of the contract, which was \$755,000. Because they are
10 seeking specific performance, even though there's no contract,
11 there's no mutuality, and my client has not been paid. My
12 client is the only party that hasn't been paid.

13 THE COURT: I know. And I'm real sympathetic to your
14 client. I think you can see that. I think that —

15 MS. LLOYD-ROBINSON: Mojave's been paid, CAM's been
16 paid —

17 THE COURT: I think — I think your client got the
18 short end of it. I think your client probably trusted, you
19 know, the events —

20 MS. LLOYD-ROBINSON: Things to work right —

21 THE COURT: Of course. And that's usually what you
22 do in these contractor deals, right. But it just didn't — it
23 didn't work out. So I — I totally sympathize with your
24 client being reluctant to do anything further.

25 But I do think that the bond amount, I mean, the

1 compromise in my mind is I'll give you a standalone bond
2 amount. But I don't know if it's the whole \$750,000. I mean,
3 it'd be something reasonably related to the code issue. I
4 don't know how you value that.

5 MS. LLOYD-ROBINSON: I would actually have to check
6 with my — my client. I don't really know how if it's —
7 there's a way to break it down. Because —

8 THE COURT: Yeah.

9 MS. LLOYD-ROBINSON: — like I said, it was sold kind
10 of as a — a complete package to CAM. And I would only add in
11 equity that Mojave is the one that chose not to issue a joint
12 check to ensure that Cashman was paid. They chose to pay CAM
13 directly, they had previous dealings with CAM, they required
14 CAM to be used. So they're asking for fairness, but I really
15 feel like my client is being, you know, almost damaged again
16 in being, you know, required to provide these codes, where
17 their performance has been excused. They have not been paid.
18 They are not required to do anything else until they've been
19 paid.

20 THE COURT: I understand. But I'm — my thought is
21 it makes sense to have the — the backup system potentially
22 operational. And that wins the day for me.

23 So, Mr. Boschee, why don't you tell me what you think
24 the reasonable value of the codes would be?

25 MR. BOSCHEE: Yeah. Again, and — and Jennifer's

1 right. I mean, we have a — we have a little bit of an issue
2 in terms of it's difficult to value the codes independently of
3 the equipment. What I would say is, you know, the — the
4 bonds that are in place that my client -- again, my client,
5 Mojave has paid, did pay out, I understand it didn't get to
6 Cashman, but they did — they did pay. They have posted the
7 bond in one and a half times the amount of the contract, the
8 lien amount.

9 So there's a bond in place. They're protected to the
10 tune of — of over a million dollars at this point in terms of
11 damages. So, I — I don't — you know, I don't think
12 protection is that big of an issue for them in terms of if
13 they prevail and they're awarded the — the contract amount,
14 you know, unless there's something defective in their —
15 they're going to get it. So I don't think that that's really
16 that -- that -- that great of an issue for — for Cashman
17 going forward.

18 In terms of the amount of the codes based upon that
19 protection, I would — I would submit that it should be a
20 nominal amount of — the -- the lien should be, you know, I
21 would think, you know, something, \$25-\$50,000 at the most.
22 Because I — I just don't think that the codes independently
23 are worth that much more than the amount that's already
24 protected. Again, the entire contract amount, which is
25 protected with the other surety bond. So.

1 MS. LLOYD-ROBINSON: I would only add to that the
2 lien release bond. So, if for some reason the lien failed,
3 the surety's not going to pay on that bond. It's not security
4 for Cashman's breach of contract, unjust enrichment, every
5 other claim that's been brought in this case. So, if we
6 prevail on some other claim besides that, it wouldn't secure
7 payment. So -- and I mean, their -- their own affidavit I
8 think valued the codes at something like \$200,000.

9 So I would request if -- if Your Honor was trying to
10 value the codes, that I be allowed to provide some type of
11 settlement to the Court, given that I wasn't really
12 anticipating that to be the central issue.

13 MR. BOSCHEE: I think the declaration -- I think the
14 declaration was as to the -- the entire switch gear. I don't
15 think that was the codes that -- that was -- that the -- but
16 again, I mean, that -- that was a number that -- that valued,
17 again, more than just the codes. But -- but I -- I think, you
18 know, again --

19 THE COURT: How about we just do a \$200,000 bond and
20 we -- and that's it. You don't have to supplement anything,
21 because you -- you'd agree with that, wouldn't you?

22 MS. LLOYD-ROBINSON: I mean, I -- I -- I hesitate. I
23 don't agree that it's correct to issue the injunction. But if
24 Your Honor's inclined to, I do agree that there must be a bond
25 required. I think I've offered argument on that. So --

1 THE COURT: That seems pretty reasonable, given that
2 your initial request was \$750,000, the whole deal as a bond.
3 I mean, I understand there's protection put in place with the
4 surety situation, but I do agree that with your — with your
5 line of argument, there's a — there's a scenario whereby
6 something bad could happen and you're not protected. I want
7 you to be protected, because I think you've been through a lot
8 on this and it's fair to you. It's fair.

9 I also want to give them the codes, because I — I
10 find that that's the right thing to do for a lot of reasons.
11 So what I'll do is the Motion for Mandatory Injunction to
12 procure the codes, I'll grant that. I'm going to put a bond
13 requirement, however, attached to it, so it wouldn't be
14 effective until after the bond's posted, of \$200,000. And
15 that's a standalone bond. And I think that's sufficient to
16 protect further -- further protect Cashman in this situation.
17 I think that's a fair combination to it.

18 Now, the prejudgment writ of attachment, then,
19 becomes an area moot, I don't need to get to, given that I've
20 given injunctive relief. Okay?

21 MR. BOSCHEE: Okay. Yeah. The only — the — the
22 prejudgment writ of attachment argument that I think we made
23 was kind of a long the lines of if you're inclined to give
24 them a bond and put a value on this, I don't think they've
25 made a showing as to their other claims. I mean, they've got

1 a lien claim and a contract claim that I think it protected by
2 the surety bond. But as to everything else, the conspiracy
3 and the fraud and everything else, I mean, they just haven't
4 made a showing as to that, we're way too early in the case to
5 even put a value on any of that --

6 THE COURT: I don't need to get to that.

7 MR. BOSCHÉE: -- because we haven't even --

8 THE COURT: I don't need to get to that --

9 MR. BOSCHÉE: -- taken the depositions yet.

10 THE COURT: -- that either, really.

11 MR. BOSCHÉE: So.

12 THE COURT: I just -- all I'm doing is giving the --
13 you the injunctive relief, and you can draft the order. Okay?

14 MR. BOSCHÉE: Okay. And we'll write up a -- counsel,
15 obviously, before you submit it.

16 MS. LLOYD-ROBINSON: Thank you, Your Honor.

17 MR. BOSCHÉE: Thank you, Judge.

18 THE COURT: All right.

19 (Court recessed at 10:03 a.m.)

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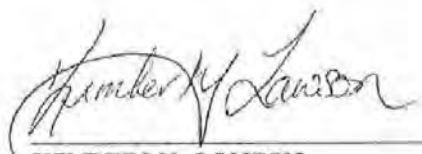
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

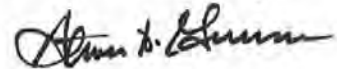
I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**KARR REPORTING, INC.
Aurora, Colorado**


KIMBERLY LAWSON

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CLERK OF THE COURT

1 MOT

2 Jennifer R. Lloyd-Robinson, Esq.

3 Nevada Bar No. 9617

4 Marisa L. Maskas, Esq.

5 Nevada Bar No. 10928

6 **PEZZILLO ROBINSON**

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13 *Attorneys for Plaintiff,*

14 *Cashman Equipment Company*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 CASHMAN EQUIPMENT COMPANY, a

18 Nevada corporation,

19 Plaintiff,

20 vs.

CASE NO.: A642583

DEPT.: 32

Consolidated with Case No.: A653029

21 CAM CONSULTING INC., a Nevada
22 corporation; ANGELO CARVALHO, an
23 individual; JANEL RENNIE aka JANEL
24 CARVALHO, an individual; WEST EDNA
25 ASSOCIATES, LTD., dba MOJAVE
26 ELECTRIC, a Nevada corporation; WESTERN
27 SURETY COMPANY, a surety; THE
28 WHITING TURNER CONTRACTING
COMPANY, a Maryland corporation;
FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, a surety; DOES 1 - 10, inclusive;
and ROE CORPORATIONS 1 - 10, inclusive;

Defendants.

AND ALL RELATED MATTERS.

**MOTION FOR RECONSIDERATION
OF ORDER GRANTING IN PART
COUNTERCLAIMANTS' MOTION FOR
PRELIMINARY INJUNCTION TO
PROCURE CODES OR ALTERNATIVELY
MOTION FOR CLARIFICATION AND
REQUEST FOR ORDER SHORTENING
TIME**

Date:

Time:

PEZZILLO ROBINSON
6725 VIA AUSTI PARKWAY, SUITE 290
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1

JA 0000439

PEZZILLO ROBINSON
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1 Plaintiff, CASHMAN EQUIPMENT COMPANY ("Cashman"), by and through its attorney
2 of record, respectfully submits the following Motion for Reconsideration of Order Granting in Part
3 Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for
4 Clarification and Request for Order Shortening Time. This Motion is supported by the following
5 Memorandum of Points and Authorities, the exhibits attached hereto, and any evidence adduced at
6 the hearing hereof.

7
8 ORDER SHORTENING TIME

9 It appearing to the satisfaction of the Court, and good cause appearing therefore,

10 IT IS HEREBY ORDERED that the time for hearing on Motion for Reconsideration of Order
11 Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or
12 Alternatively Motion for Clarification be shortened, therefore the hearing will be held on the

13 14th day of September, 2012, at 9:00 a.m. Any opposition shall
14 be filed with a courtesy copy to chambers, by
DATED: August 28, 2012

15 September 7, 2012, at
16 5:00pm. Any Reply shall be filed, with a courtesy
17 copy to chambers, by September 11, 2012, at 5:00pm. ^②
Respectfully Submitted:

18 DATED: August 22, 2012

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

21 By:

22 Jennifer R. Lloyd-Robinson, Esq.
23 Nevada Bar No. 9617
24 Marisa L. Maskas, Esq.
25 Nevada Bar No. 10928
26 PEZZILLO ROBINSON
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Attorneys for Cashman Equipment Company

27 ///
28

AFFIDAVIT OF JENNIFER R. LLOYD-ROBINSON, ESQ.
IN SUPPORT OF APPLICATION FOR ORDER SHORTENING TIME

I, Jennifer R. Lloyd-Robinson, Esq., after being duly sworn, depose and say:

1. I am a partner at the law firm of Pezzillo Robinson, attorneys for Cashman Equipment Company, in the above-captioned lawsuit. I am over the age of eighteen years and am competent to testify to the matters set forth herein. This affidavit is based upon my personal knowledge of this action and is submitted in support of the request that the Motion for Reconsideration of Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes be heard on shortened time.


2. The order shortening time is necessary because it is anticipated that Defendants will seek enforcement of the Order Based upon Counterclaimants Motion to Procure Codes shortly.

3. Cashman's Motion for Reconsideration cannot be heard in the ordinary course as the preliminary injunction obtained by Defendants in this matter was issued in error, as the Court did not make the findings required to issue a preliminary injunction; therefore Cashman seeks reconsideration prior to being forced to perform under a contract where its performance has been excused.

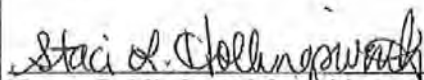
4. An Order Shortening Time is also required should the Court deny Cashman's request for reconsideration of its decision granting Counterclaimants' request for a preliminary injunction, as the language contained in the Order is unclear and Cashman requires clarification in order to comply with the Order.

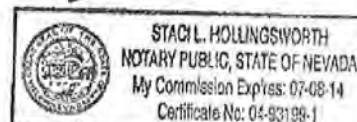
5. The Security Bond posted by Defendants contains defects and Cashman requests a determination from the Court as to the sufficiency of the Security Bond prior to being required to act.

FUTHER AFFIANT SAYETH NAUGHT.


Jennifer R. Lloyd-Robinson, Esq. (NV Bar #9617)

Subscribed and sworn to before me
this 22 day of August, 2012.


Notary Public in and for said county and state



1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Cashman's Motion for Reconsideration of Order Granting in Part Counterclaimants' Motion
5 for Preliminary Injunction to Procure Codes should be granted and the Court should deny
6 Counterclaimant's requested relief, as the Court did not find and they did not establish a likelihood
7 of success on the merits of their claims, nor did the Court find that Counterclaimants would suffer
8 irreparable harm if Cashman is not forced to complete startup on equipment supplied to the New Las
9 Vegas City Hall Project (the "Project") and for which Cashman has not received payment. In other
10 words, Counterclaimants have not and cannot meet their burden under Nevada law to request from
11 the Court equitable relief, in the form of a preliminary injunction, that actually harms Cashman, as
12 the cost of startup is significant, especially where Cashman has not received any payment for the
13 equipment supplied and the potential liability assumed by Cashman is great.

14 Additionally, even if the Court were to find that the preliminary injunction is valid as issued,
15 the relief requested by Counterclaimants in the Motion was not clear, has led to the issuance of an
16 order with which Cashman is unable to comply, and the bond posted by Counterclaimants is not
17 sufficient. First, the Order requires Cashman to "install" the switchgear codes. See Exhibit "1," a
18 true and correct copy of the Notice of Entry of Order. Given that Counterclaimants have not detailed
19 what work has been completed on the equipment, the status of the equipment, what startup functions
20 have been completed or even what they want the requested relief to accomplish, Cashman cannot
21 know what the "install" would require to adequately determine what needs to be completed, the cost
22 to Cashman and the potential liability Cashman could assume. Further, the bond requirements must
23 be more clearly determined by the Court so as to provide adequate protection to Cashman, as it is the
24 only party to this matter that has not received payment and this injunction would force Cashman to
25 perform under a contract where Cashman's performance has been excused due to nonpayment.

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II.

ARGUMENTS AND AUTHORITIES

A. Cashman's Motion For Reconsideration Is Properly Before The Court

Cashman's Motion for Reconsideration is timely pursuant to EDCR 2.24. EDCR 2.24(b) provides:

A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the 30-day period for filing a notice of appeal from a final order or judgment.

The Notice of Entry of Order on Counterclaimants' Motion to Procure Codes was served on August 13, 2012. *See* Exhibit "1." Cashman has filed this Motion within 10 days of the Notice of Entry of Order, making its Motion for Reconsideration timely.

Cashman's Motion for Reconsideration is based upon clear error as Counterclaimants' did not establish, nor did the Court find, that the Counterclaimants have a likelihood of success on the merits of their claims, nor did the Counterclaimants establish that they would suffer irreparable harm, both of which are required in order for a preliminary injunction to issue. Re-hearings are appropriate when substantially different evidence is subsequently introduced or the decision is clearly erroneous. *See Masonry & Tile Contractor Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486 (1997). If the motion to reconsider is being made upon an allegation of clear error, the burden is on the movant to demonstrate that there exist manifest errors of law or fact upon which the judgment is based. *See McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. Cal. 1999). A finding of clear error requires "a definite and firm conviction that a mistake has been committed." *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) (citing *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

Here, Cashman's Motion for Reconsideration is not brought merely because Cashman does not agree with the Court. A preliminary injunction is an equitable remedy and the party moving for the preliminary injunction must demonstrate certain specific elements in order for its request to be considered. Specifically, Counterclaimants were required to show that there was a likelihood of

1 success on the merits of their claims and that Counterclaimants would suffer irreparable harm if the
2 startup of the equipment Cashman supplied to the Project was not completed. As demonstrated
3 below, Counterclaimants did not meet their burden and the preliminary injunction was issued in
4 error.

5
6 **B. The Preliminary Injunction Was Issued In Error As There Was No Finding By The**
7 **Court That Counterclaimants Have A Likelihood Of Success On The Merits Of Their**
8 **Claims, Nor Did The Court Find Counterclaimants Would Suffer Irreparable Injury;**
9 **Therefore, The Court Should Reconsider Its Decision And Deny Counterclaimants'**
10 **Request As They Cannot Meet Their Burden Under The Facts Of This Matter.**

11 The Court need look no further than the Findings of Fact and Conclusions of Law and the
12 Order on Counterclaimants' Motion to Procure Codes to determine that the preliminary injunction
13 was issued without sufficient basis in law and that Counterclaimants' Motion to Procure Codes
14 should have been denied, as the Counterclaimants did not and cannot demonstrate a likelihood of
15 success on the merits of their claims and the Counterclaimants did not demonstrate that Cashman's
16 refusal to complete full startup on equipment for which Cashman has not been paid will irreparably
17 harm Counterclaimants such that compensatory damages are inadequate. As such, this Court should
18 reconsider its decision and deny Counterclaimants' request.

19 A preliminary injunction is only appropriate when "an applicant can show a likelihood of
20 success on the merits and a reasonable probability that the non-moving party's conduct, if allowed to
21 continue, will cause irreparable harm for which compensatory damages is an inadequate remedy."
22 *Dangberg Holdings Nevada, LLC v. Douglas County and its Board of County Commissioners*, 115
23 Nev. 129, 142-43 (1999); *see also State, Bus. & Indus. v. Nev. Ass'n Servs.*, 128 Nev. Adv. Op. No. 34
24 (2012). The requirements for an injunction are also provided for by statute. NRS 33.010 provides
25 that an injunction may be granted:

- 26 1. When it shall appear by the complaint that the plaintiff is entitled to the
27 relief demanded, and such relief or any part thereof consists in restraining
28 the commission or continuance of the act complained of, either for a
limited period or perpetually,

2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

In other words, injunctive relief is available if there exists a reasonable probability that real injury, loss or damage will occur if the injunction does not issue. *Berryman v. International Brotherhood of Electrical Workers*, 82 Nev. 277, 280 (1966). As discussed below, Counterclaimants did not meet their burden in requesting the Court to issue a preliminary injunction, and instead rely upon some vague allegations of harm to a nonparty to justify their request.

1. The Court Did Not Find That The Counterclaimants Have A Likelihood Of Success On The Merits Of Their Claims, Which Is Required To Issue a Preliminary Injunction.

The Findings of Fact and Conclusions of Law on Counterclaimants' Motion to Procure Codes do not contain a finding that Counterclaimants have a likelihood of success on the merits of their claims in this matter. See Exhibit "1." In order to show a likelihood of success on the merits, Counterclaimants were not required to prove that they would ultimately prevail in this lawsuit; however, Counterclaimants were required to establish "a reasonable probability of success on the merits." *Clark County Sch. Dist. v. Buchanan*, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996). As the Court did not find that Counterclaimants have a likelihood of success on the merits of their claims, the preliminary injunction was issued in error.

Counterclaimants did not demonstrate a likelihood of success on the merits of their claims, likely because such a showing would be nearly impossible. Counterclaimants do not even fully address this requirement in their Motion, merely offering conclusory statements instead of demonstrating a reasonable probability of success, likely because Counterclaimants should be looking to Cam, the party Mojave contracted with to supply the equipment for the requested relief.

Counterclaimants have brought claims against Cashman for Breach of Contract, Breach of Implied Covenant of Good Faith and Fair Dealing and Misrepresentation. See Counterclaimants Answer to Third Amended Complaint, Counterclaim Against Cashman Equipment Company and

1 Crossclaim, filed on June 28, 2012. Counterclaimants did not present to this Court reasoning as to
2 why they would likely succeed on these claims as that would be difficult if not impossible in this
3 matter, given that Cashman's contract was with Cam, not Mojave. If Counterclaimants had brought
4 this Motion against Cam, they could demonstrate that they had a likelihood of success on the merits
5 of their claims against Cam, as they paid Cam for the equipment and Cam failed to fulfill its
6 contractual duties and complete performance. Instead, Counterclaimants brought their request for a
7 preliminary injunction against the only party that has not been paid in this matter – Cashman. It was
8 Counterclaimants that required that Cam be used and Counterclaimants that refused to issue a joint
9 check to ensure that Cashman received payment. Given that Cashman has offered unopposed
10 testimony as to the contract it had with Cam and the fact that Cam failed to pay Cashman for the
11 equipment Cashman supplied to the Project, it is difficult to see how Counterclaimants can
12 demonstrate a likelihood of success on its claims against Cashman.

13 Further, Counterclaimants' Motion essentially sought specific performance, not a preliminary
14 injunction. Specific performance is only available when: (1) the terms of the contract are definite and
15 certain; (2) the remedy at law is inadequate; (3) an appellant has tendered performance; and (4) a
16 court is willing to order specific performance. *Mayfield v. Koroghli*, 124 Nev. 343, 367 (2008).
17 Here, Counterclaimants want Cashman to complete performance under Cashman's contract with
18 Cam. However, Counterclaimants cannot seek specific performance without tendering performance.
19 In other words, Counterclaimants must pay Cashman in order to seek to have Cashman perform under
20 a contract where Cashman's performance was excused due to nonpayment. Simply calling their
21 request a preliminary injunction does not make it so, when they are seeking to have Cashman
22 complete performance. Counterclaimants should be looking to Cam, the party with which
23 Counterclaimants chose to contract for any requested relief.

24 Finally, the Court, at the hearing on Counterclaimants' Motion, stated that Cashman had a
25 likelihood of success on the merits of its claims, given that it supplied equipment to the Project and
26 had not been paid for the equipment supplied. This statement calls into question how
27 Counterclaimants could demonstrate a likelihood of success on the merits of their claims in this
28 matter. Therefore, as the Court did not find that Counterclaimants have a likelihood of success on the

1 merits of their claims and that Counterclaimants are unable to fulfill this requirement, the Court
2 should reconsider its previous ruling in issuing the preliminary injunction as it was in error and
3 cannot issue as a matter of law.

4
5 2. The Court Did Not Find That The Counterclaimants Will Be Irreparably Harmed If
6 Cashman Is Not Forced To Perform Under A Contract Where Its Performance Has Been
7 Excused.

8 In addition to Counterclaimants' failure to establish a likelihood of success on their claim,
9 Counterclaimants have also failed to establish that they would suffer irreparable injury, another
10 requirement to the issuance of a preliminary injunction. In the Order, Paragraph 3 of the
11 Conclusions of Law expressly states, "*the City* will suffer irreparable harm if Plaintiffs are not
12 mandated..." See Exhibit "1." (Emphasis added). NRS 33.010(2) calls for Counterclaimants to
13 establish that *they* will be irreparably harmed, and not the City; therefore, the preliminary injunction
14 was issued in error. NRS 33.010(2) clearly states that an injunction is proper:

15 When it shall appear by the complaint or affidavit that the commission or
16 continuance of some act, during the litigation, would produce great or
17 irreparable injury to the [Counterclaimant].

18 (Emphasis added). "[A]n injunction should issue only in cases ... where irreparable injury to the
19 personal or property rights of the individual will result unless protected by its restraining effect."
20 *Carroll v. Associated Musicians of Greater New York*, 206 F. Supp. 462,478 (S.D.N.Y. 1962). It is
21 the *movant* who must establish and affirmatively show that the acts sought to be restrained will
22 violate the movant's rights. *Id.* See also *Swift & Co. v. United States*, 276 U.S. 311, 48 S.Ct. 311,
23 72 L.Ed. 587 (1928). Further, it must be established with reasonable probability that irreparable
24 harm will be caused to the claimant should the injunction not be issued. See *Carroll v. Associated*
25 *Musicians of Greater New York*, 206 F. Supp. 462. "Injunctions will not be granted merely to allay
26 fears and apprehensions of individuals." *Id.* at 478. Counterclaimants have failed to establish with
27 reasonable probability that they, not the City, will be irreparably harmed should Cashman not
28 complete startup of the equipment, demonstrating Counterclaimants failure to meet its burden in
requesting a preliminary injunction.

1 Further, "irreparable harm is harm for which compensatory damages would be inadequate."
2 *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650 (2000). Here, Counterclaimants'
3 requested relief against Cashman is monetary damages. Their Counterclaims are for Breach of
4 Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing and Misrepresentation. If
5 Cashman does not install switchgear codes, as the Order currently requires, Counterclaimants have
6 the alternative remedy of monetary damages. Therefore, as Counterclaimants have failed to meet the
7 requirements to merit injunctive relief, Cashman's Motion to Reconsider should be granted and the
8 Court should deny Counterclaimants request.

9
10 **C. The Preliminary Injunction as Issued is Vague and the Bond posted by Counter-**
claimants is Insufficient

11 In the alternative, should the Court deny Cashman's Motion for Reconsideration, Cashman
12 respectfully requests clarification of the Order as it is unclear as to Cashman's responsibilities and
13 Cashman also seeks clarification as to the bond required for the preliminary injunction to issue as the
14 bond posted is not sufficient.

15 **1. The Preliminary Injunction is Vague**

16 The Order Granting in Part Counterclaimants' Motion to Procure Codes is vague regarding
17 the requirement for Cashman to "install the switchgear codes." See Exhibit "1." Cashman sold to
18 Cam an entire package of equipment for the Project that included certain items. The equipment itself
19 was delivered to the Project and installed by Mojave; this fact is not in dispute. However,
20 subsequent to installation there are startup and other functions that are included with the package
21 that Cashman did not perform, as its performance was excused due to Cam's breach of the contract
22 in failing to pay Cashman for the equipment as required. This breach and the damage to Cashman
23 have been established in the default judgments against Defendants Cam and Carvalho, currently
24 submitted to the Court against Cam and Carvalho. Cashman understands and Mojave has
25 represented that it has had third parties work on the equipment, and it is unclear what work was done
26 to the equipment or how that may affect what Cashman is being required to do by this preliminary
27 injunction. As such, Cashman seeks clarification as to what the word "install" requires. Cashman
28 could install the switch codes, and the equipment may still not operate as anticipated given the state

1 the equipment may be in. Mojave has not accounted for the status of the equipment or whether any
2 startup work has already been completed on the equipment. This information is critical and Cashman
3 cannot comply with the Order without additional information.

4 Cashman also seeks clarification regarding the costs associated with this "install"
5 requirement and the potential liability Cashman could assume in complying with the Order. As was
6 acknowledged by the Court at the hearing, it is unclear where Cashman's potential work on this
7 Project begins and may end. Is Cashman forced to assume liability for equipment that has been
8 worked on by third parties, when this work could have been performed incorrectly? The Order is
9 unclear regarding these issues and must be addressed.

10 **2. The "Injunction Bond" is Insufficient**

11 The "Injunction Bond" posted by Mojave is insufficient as it identifies Mojave as the Plaintiff
12 and contains conditions that are inapplicable to this matter and the claims that are currently pending
13 before the Court. The Findings of Fact and Conclusions of Law Based upon Counterclaimants'
14 Motion to Procure Codes and Order required Counterclaimants to post a bond in the amount of
15 \$200,000.00 for the protection of Plaintiff in order for the requested injunctive relief to become
16 effective and enforceable. *See* Notice of Entry of Order, a true and correct copy of which is attached
17 hereto as Exhibit "2". If the Court denies Cashman's request for reconsideration, Cashman seeks to
18 have the "Injunction Bond" modified so as to provide the protection the Court ordered Cashman to
19 receive in order for the injunctive relief sought by Mojave to become effective and enforceable.

20 The Injunction Bond does not provide the protection ordered by the Court to be provided to
21 Cashman. NRCP 65(c) requires that the injunction shall issue only "upon the giving of security by
22 the applicant, in such sum as the court deems proper, for the payment of such costs and damages as
23 may be incurred or suffered by any party who is found to have been wrongfully enjoined or
24 restrained." During the hearing on Counterclaimants' Motion to Procure Codes, the Court indicated
25 that Mojave should provide security to Cashman and Mojave was requesting that Cashman provide,
26 and apparently install, switchgear codes even though Cashman has not been paid for the equipment
27 provided to the New Las Vegas City Hall Project, and should be excused from further performance
28 under its contract with Cam. The Injunction Bond posted does not provide that security.

1 While the Injunction Bond is in the amount of \$200,000.00 as ordered by the Court, the terms
2 under which the bond is required to pay are vague and ambiguous, especially under the facts and
3 circumstances of this matter. The Injunction Bond states that "if the said Plaintiff(s) shall pay such
4 costs and damages as may be incurred or suffered by any party who is found to have been wrongfully
5 enjoined or restrained, then this obligation is void, otherwise to remain in full force and effect,
6 provided, however, that the total liability of the Surety shall not exceed the above amount." *Id.* The
7 Order entered on Mojave's Motion to Procure Codes is essentially requiring Cashman to perform
8 under a contract where it has not been paid. It is undisputed in this matter that Cashman has already
9 incurred damages, as it has supplied equipment to the Project and has not been paid. The injunctive
10 relief sought by Mojave is causing Cashman to incur additional damage as it is essentially requiring
11 Cashman to fulfill duties under a contract where Cashman's performance has been excused due to
12 Cam's breach and failure to pay.

13 The terms of the Injunction Bond limit payment and provide that it will pay only if a party has
14 been wrongfully enjoined or restrained. It is unclear how, where it is undisputed that Cashman has
15 not been paid for the equipment supplied, has been damaged by that nonpayment, and will suffer
16 more damage because of Mojave's requested injunctive relief, Cashman can further establish that the
17 injunctive relief requested is wrongful, and that it should be paid. At the hearing concerning
18 Cashman's Applications for Default Judgments against Cam and Angelo Carvalho, the Court heard
19 testimony as to the equipment supplied by Cashman which was incorporated into the Project and that
20 Cashman remains unpaid for this equipment and is owed the principal amount of \$755,893.89.
21 Mojave did not object to this testimony. Cashman has submitted the Default Judgments to the Court.

22 Finally, the Injunction Bond incorrectly identifies Mojave Electric as the Plaintiff in this
23 matter. *See* Exhibit "1". This error may be no more than a scrivener's error; however, it should be
24 corrected so as to avoid any issues that may arise with the surety based upon the misidentification of
25 the parties.

26 ///

27 ///

28 ///

PEZZILLO ROBINSON
6725 VIA AUSTI PARKWAY, SUITE 290
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III.

CONCLUSION

For the reasons set forth herein, Cashman respectfully requests that this Court grant its Motion for Reconsideration due to Counterclaimants' failure to meet the requirements for a preliminary injunction. In the alternative, should the Court deny Cashman's Motion for Reconsideration, Cashman seeks clarification of the Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes and for the "Injunction Bond" to be modified as requested.

DATED: August 22, 2012

PEZZILLO ROBINSON

By:

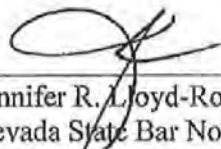
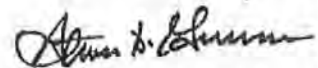

Jennifer R. Lloyd-Robinson, Esq.
Nevada State Bar No. 9617
Marisa L. Maskas, Esq.
Nevada State Bar No. 10928
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
*Attorneys for Plaintiff,
Cashman Equipment Company*

EXHIBIT 1



CLERK OF THE COURT

1 NOTC
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5 SHEMILLY A. BRISCOE, ESQ.
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9 HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, Third Floor
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Attorney for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The
Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland,
Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

CAM CONSULTING, INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD. dba MOJAVE
ELECTRIC, a Nevada corporation; WESTERN
SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROB
CORPORATIONS 1-10 inclusive;

Defendants.

Case No: A642583
Dept. No.: 32

NOTICE OF ENTRY OF ORDER

AND RELATED MATTERS.

YOU, and each of you, will please take notice that an Order Granting Counterclaimants'
Motion to Procure Codes in the above entitled matter was filed and entered by the Clerk of the
above-entitled Court on the 10th day of August, 2012, a copy of which is attached hereto

1 Dated this 13th day of August, 2012.

2 COTTON, DRIGGS, WALCH,
3 HOLLEY, WOLOSON & THOMPSON

4 Mista
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8 Nevada Bar No. 9985
9 400 South Fourth Street, Third Floor
10 Las Vegas, Nevada 89101

11 *Attorneys for Defendants West Edna, Ltd., dba*
12 *Mojave Electric, Western Surety Company, The*
13 *Whiting Turner Contracting Company and*
14 *Fidelity and Deposit Company of Maryland,*
15 *Travelers Casualty and Surety Company of*
16 *America, Counterclaimant and Crossclaimant*

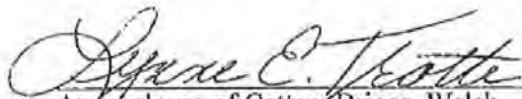
1 CERTIFICATE OF MAILING

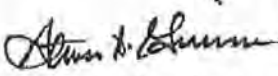
2 I HEREBY CERTIFY that, on the 13th day of August, 2012 and pursuant to NRCP
3 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing NOTICE
4 OF ENTRY OF ORDER, postage prepaid and addressed to:

5 Jennifer R. Lloyd-Robinson, Esq.
6 Marisa L. Maskas, Esq.
7 PEZZILLO ROBINSON
8 6725 Via Austi Parkway, Suite 290
9 Las Vegas, Nevada 89119
10 *Attorneys for Plaintiff*

11 Edward Coleman, Esq.
12 COLEMAN LAW ASSOCIATES
13 8275 S. Eastern, Suite 200
14 Las Vegas, Nevada 89123
15 *Attorneys for Defendant Janel Rennie aka Janel Carvalho*

16 Keen L. Ellsworth, Esq.
17 ELLSWORTH & BENNION, CHTD.
18 777 N. Rainbow Blvd., Suite 270
19 Las Vegas, Nevada 89107
20 *Attorneys for Element Iron and Design*

21
22
23
24
25
26
27
28

An employee of Cotton, Driggs, Walch,
Holley, Woloson & Thompson


CLERK OF THE COURT

1 **ORDER**

2 BRIAN W. BOSCHKE, ESQ.

3 Nevada Bar No. 7612

4 E-mail: bboschke@nevadafirm.com

5 SHEMAILY A. BRISCOE, ESQ.

6 Nevada Bar No. 9985

7 E-mail: SBriscoe@nevadafirm.com

8 COTTON, DRIGGS, WALCH,

9 HOLLEY, WOLOSON & THOMPSON

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

Facsimile: 702/791-1912

10 *Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The*
11 *Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland,*
12 *Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 CASHMAN EQUIPMENT COMPANY, a
16 Nevada corporation,

17 Plaintiff,

18 v.

19 CAM CONSULTING, INC., a Nevada
20 corporation; ANGELO CARVALHO, an
21 individual; JANEL RENNIE aka JANEL
22 CARVALHO, an individual; WEST EDNA
23 ASSOCIATES, LTD. dba MOJAVE
24 ELECTRIC, a Nevada corporation; WESTERN
25 SURETY COMPANY, a surety; THE WHITING
26 TURNER CONTRACTING COMPANY, a
27 Maryland corporation; FIDELITY AND
28 DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW BASED UPON
COUNTERCLAIMANTS MOTION TO
TO PROCURE CODES**

AND RELATED MATTERS.

Counterclaimants' Motion for Mandatory Injunction to Procure Codes on Order
Shortening Time or in the Alternative Application for Writ of Possession, having been heard by
the Court on August 3, 2012 at 9:00 a.m.; Brian Boschke, Esq. and Shemilly Briscoe, Esq.,
appearing on behalf of Counterclaimants WEST EDNA ASSOCIATES, LTD., dba MOJAVE

1 ELECTRIC("Mojave"), WESTERN SURETY COMPANY, THE WHITING TURNER
2 CONTRACTING COMPANY ("Whiting") and FIDELITY AND DEPOSIT COMPANY OF
3 MAYRLAND's (hereinafter collectively Counterclaimants); Jennifer Lloyd-Robinson, Esq.,
4 appearing on behalf of Plaintiff, CASHMAN EQUIPMENT COMPANY("Cashman"). The
5 Court having reviewed the Motion, Opposition and Reply briefs, and having heard argument and
6 being fully advised, the Court concludes as follows:

7 **FINDINGS OF FACT**

8 1. On or about February 11, 2010, Mojave entered into a Construction contract with
9 Whiting to construct the New Las Vegas City Hall Project.

10 2. The scope of Mojave's work partially included bringing power to the Project and
11 obtaining the equipment to consolidate the different electrical systems.

12 3. The equipment was delivered by Cashman and was installed on the Project, but
13 the accompanying codes for the switchgear were not provided.

14 4. The Building Automated System for City Hall is not fully functional without the
15 codes.

16 5. Cashman refused to produce the code information based upon the underlying pay
17 dispute with CAM, as CAM failed to pay Cashman for the equipment.

18 6. Without the codes, the City Hall has an incomplete operating system which
19 prevents the City from completion of the project.

20 **CONCLUSIONS OF LAW**

21 **THE COURT FINDS:**

22 1. Counterclaimants have shown, through declarations and other evidence, that
23 potential immediate and irreparable injury, loss and/or damage will occur to the City without an
24 injunction;

25 2. The instant Order is appropriate considering public policy issues to protect City
26 from future equipment issues;

27 3. The City will suffer irreparable harm if Plaintiffs are not mandated in this Order
28 as requested by the Plaintiffs.

1 5. The balance of hardships weighs in favor of the City.

2 6. Plaintiffs merit protection due to the ongoing dispute in the form of a separate
3 bond in the amount of \$200,000.00.

4 ORDER

5 Based upon the foregoing, IT IS HEREBY ORDERED, ADJUDGED AND
6 DECREED that Counterclaimants' Motion to Procure Codes is GRANTED IN PART AND
7 DENIED IN PART;

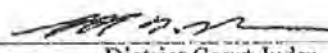
8 IT IS FURTHER ORDERED Cashman Equipment Company install the switchgear codes
9 on the City Hall Project; and

10 IT IS FURTHER ORDERED that pursuant to NRCP 65(e), before any injunctive relief,
11 as stated herein, shall become effective and enforceable, Defendant shall post a bond or cash
12 security with the Clerk of this Court in the amount of \$200,000.00.

13 IT IS FURTHER ORDERED that Counterclaimants Motion for a Writ of Possession is
14 DENIED as MOOT.

15 IT IS SO ORDERED.

16 Dated this 10 day of August, 2012.

17
18 
District Court Judge

19 Respectfully submitted by:

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

20 COTTON, DRIGGS, WALCH,
21 HOLLEY, WOLOSON & THOMPSON

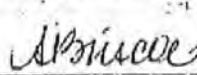
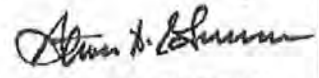
22 
23 SHEMILLY A. BRISCOE, ESQ.
24 Nevada Bar No. 9985
25 400 South Fourth Street, Third Floor
26 Las Vegas, Nevada 89101
27 Attorneys for Defendants West Edna, Ltd.,
28 dba Mojave Electric, Western Surety Company,
The Whiting Turner Contracting Company and
Fidelity and Deposit Company of Maryland,
Travelers Casualty and Surety Company of
America, Counterclaimant and Crossclaimant

EXHIBIT 2


CLERK OF THE COURT

1 NOTC
2 BRIAN W. BOSCHKE, ESQ.
3 Nevada Bar No. 7612
4 E-mail: bboschke@nevadafirm.com
5 SHERILLY A. BRISCOE, ESQ.
6 Nevada Bar No. 9985
7 E-mail: SBriscoe@nevadafirm.com
8 COTTON, DRIGGS, WALCH,
9 HOLLEY, WOLOSON & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The
Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland,
Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant

DISTRICT COURT
CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

CAM CONSULTING, INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD. dba MOJAVE
ELECTRIC, a Nevada corporation; WESTERN
SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

Case No.: A642583
Dept. No.: 32

(Consolidated with Case No. A653029)

AND RELATED MATTERS.

NOTICE OF POSTING SECURITY BOND

PLEASE TAKE NOTICE, Defendant West Edna, Ltd., dba Mojave Electric,
Counterclaimant and Crossclaimant, has herewith posted a security bond in the amount of

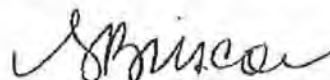
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\$200,000 pursuant to the Court's Order dated August 3, 2012.

Original Bond No. 58690045 is attached hereto as Exhibit "A."

Dated this 9th day of August, 2012.

**COTTON DRIGGS, WALCH,
HOLLEY, WOLOSON & THOMPSON**



BRIAN W. BOSCH, ESQ.

Nevada Bar No. 7612

SHEMILLY A. BRISCOE, ESQ.

Nevada Bar No. 9985

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

*Attorneys for Defendants West Edna, Ltd., dba
Mojave Electric, Western Surety Company, The
Whiting Turner Contracting Company and
Fidelity and Deposit Company of Maryland,
Travelers Casualty and Surety Company of
America, Counterclaimant and Crossclaimant*

EXHIBIT A

STATE OF NEVADA

County of Clark

IN THE District COURT

vs.

Plaintiff(s)

Defendant(s)

INJUNCTION BOND

KNOW ALL PERSONS BY THESE PRESENTS:

Bond No. 58890045

That we, the above named Plaintiff(s), as Principal, and WESTERN SURETY COMPANY, a corporation duly licensed to do business in the State of Nevada, as Surety, are held and firmly bound unto the above entitled Court in the sum of Two Hundred Thousand Only DOLLARS (\$ 200,000.00), for the payment of which well and truly to be made, we bind ourselves and our legal representatives, jointly and severally by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas, the Plaintiff(s) seeks an Injunction or Restraining Order in the above action and is required to give bond by virtue of N.R.C.P. 65 (c).

NOW, THEREFORE, if the said Plaintiff(s) shall pay such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained, then this obligation to be void, otherwise to remain in full force and effect, provided, however, that the total liability of the Surety shall not exceed the above amount.

Dated this 6th day of August, 2012.

West Edna, Ltd., dba Mojave Electric

Principal

Principal

WESTERN SURETY COMPANY

By Gregory J. Harris,

Attorney-in-Fact

Countersigned

By

Nevada Resident Agent

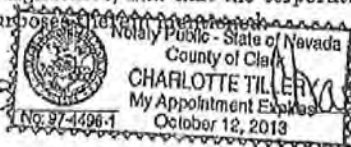
ACKNOWLEDGMENT OF PRINCIPAL
(Corporate Officer)

STATE OF NEVADA

County of Clark

On this 6th day of August, 2012, personally appeared before me, a Notary Public in and for the above County, Tray Nelson, known (or proved) to me to be the President, executing the same on behalf of the corporation that executed the foregoing instrument, and on oath did depose that he is the officer of the corporation as above designated; that he is acquainted with the seal of the corporation and that the seal affixed to the instrument is the corporate seal of the corporation; that the signatures to the instrument were made by officers of the corporation as indicated after the signatures; and that the corporation executed the instrument freely and voluntarily and for the uses and purposes therein mentioned.

My commission expires 10-12-13



Charlotte Tillery
Notary Public, Nevada

ACKNOWLEDGMENT OF PRINCIPAL
(Individual or Firm)

STATE OF NEVADA

County of _____

On this _____ day of _____, _____, personally appeared before me, a Notary Public in and for the above County, _____, known (or proved) to me to be the person _____ described in and who executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

My commission expires _____

Notary Public, Nevada

ACKNOWLEDGMENT OF SURETY
(Attorney-in-Fact)

STATE OF Nevada

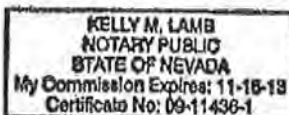
County of Clark

On this 6th day of August, 2012, before me, a notary public in and for said State, personally appeared Gregory J. Harris to me personally known and being by me duly sworn, did say that he is the Attorney-in-Fact of WESTERN SURETY COMPANY, a corporation of Sioux Falls, South Dakota, created, organized and existing under and by virtue of the laws of the State of South Dakota, that the said instrument was executed on behalf of the said corporation by authority of its Board of Directors and that the said Attorney-in-Fact acknowledges said instrument to be the free act and deed of said corporation and that he has authority to sign said instrument.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Las Vegas, Nevada, the day and year last above written.

My commission expires

November 15, 2013



Kelly M. Lamb

Notary Public

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Gregory J Harris, Kelly M Lamb, Chris V Summers, Individually

of Las Vegas, NV, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed,

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 8th day of September, 2011.



WESTERN SURETY COMPANY

Paul T. Bruffat

Paul T. Bruffat, Senior Vice President

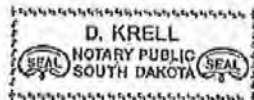
State of South Dakota }
County of Minnehaha }

ss

On this 8th day of September, 2011, before me personally came Paul T. Bruffat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

November 30, 2012



CERTIFICATE

D. Krell

D. Krell, Notary Public

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 14th day of August, 2012.



WESTERN SURETY COMPANY

L. Nelson

L. Nelson, Assistant Secretary

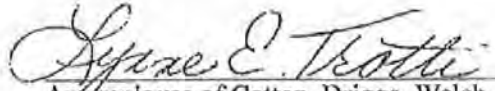
1 CERTIFICATE OF MAILING

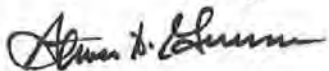
2 I HEREBY CERTIFY that, on the 9th day of August, 2012 and pursuant to NRCP
3 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing NOTICE
4 OF POSTING SECURITY BOND, postage prepaid and addressed to:

5 Jennifer R. Lloyd-Robinson, Esq.
6 Marisa L. Maskas, Esq.
7 PEZZILLO ROBINSON
8 6725 Via Austi Parkway, Suite 290
9 Las Vegas, Nevada 89119
10 *Attorneys for Plaintiff*

11 Edward Coleman, Esq.
12 COLEMAN LAW ASSOCIATES
13 8275 S. Eastern, Suite 200
14 Las Vegas, Nevada 89123
15 *Attorneys for Defendant Janel Rennie aka Janel Carvalho*

16 Keen L. Ellsworth, Esq.
17 ELLSWORTH & BENNION, CHTD.
18 777 N. Rainbow Blvd., Suite 270
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20 *Attorneys for Element Iron and Design*

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An employee of Cotton, Driggs, Walch,
Holley, Woloson & Thompson



CLERK OF THE COURT

MSJD
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*Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The
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Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant*

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

CAM CONSULTING, INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD. dba MOJAVE
ELECTRIC, a Nevada corporation; WESTERN
SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

AND RELATED MATTERS.

Case No.: A642583
Dept. No.: 32

(Consolidated with Case No. A653029)

**MOTION FOR SUMMARY JUDGMENT
OF SURETY PAYMENT AND LICENSE
BOND CLAIMS**

COMES NOW, Defendants/Counterclaimants WEST EDNA ASSOCIATES, LTD. dba
MOJAVE ELECTRIC, a Nevada corporation ("Mojave"), WESTERN SURETY COMPANY,
("Western"), a surety, THE WHITING TURNER CONTRACTING COMPANY, ("Whiting"),

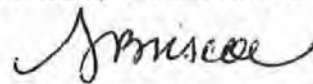
1 TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, ("Travelers") a
2 surety, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ("Fidelity")
3 (collectively "Counterclaimants" or "Defendants"), by and through their attorneys of record,
4 Brian W. Boschee, Esq. and Shemilly A. Briscoe, Esq. of the law firm of COTTON, DRIGGS,
5 WALCH, HOLLEY, WOLOSON & THOMPSON, hereby move this Honorable Court for
6 summary judgment against Plaintiff CASHMAN EQUIPMENT COMPANY ("Cashman" or
7 "Plaintiff") and in favor of the Fidelity and Travelers Licensing and Payment Bonds.

8 Summary judgment is warranted here because: (1) there are no genuine issues of
9 material fact that Cashman failed to comply with the mandatory notice provisions of the bonds,
10 and therefore recovery is barred; (2) Cashman failed to mitigate its damages and put any
11 Insurance Policy on notice of Angelo Carvalho's ("Carvalho") acts; (3) Nevada statutes preclude
12 surety coverage to a fourth-tier supplier; and (4) an intervening mechanic's lien bond and
13 additional bond for codes supersede and release the surety bonds and render them unnecessary.

14 This Motion for Summary Judgment of Surety Payment and License Bond Claims (the
15 "Motion") is made and based upon NRCP 56, the following Memorandum of Points and
16 Authorities below, the declarations attached hereto and incorporated by reference, the pleadings
17 and papers on file herein and such oral argument as may be adduced at a hearing on this matter.

18 Dated this 30th day of August, 2012.

19 COTTON, DRIGGS, WALCH,
20 HOLLEY, WOLOSON & THOMPSON

21 

22 BRIAN W. BOSCHKEE, ESQ.
23 Nevada Bar No. 7612
24 SHEMILLY A. BRISCOE, ESQ.
25 Nevada Bar No. 9985
26 400 South Fourth Street, Third Floor
27 Las Vegas, Nevada 89101

28 *Attorneys for Defendants West Edna, Ltd., dba
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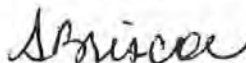
1 NOTICE OF MOTION

2 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

3 YOU, and each of you, will please take notice that the undersigned will bring the above
4 and foregoing **MOTION FOR SUMMARY JUDGMENT OF SURETY PAYMENT AND**
5 **LICENSE BOND CLAIMS** on for hearing before the above-entitled Court on the 15 day of
6 Oct., 2012 at 9:00 a.m. in Department XXXII.

7 Dated this 30th day of August, 2012.

8 **COTTON, DRIGGS, WALCH,**
9 **HOLLEY, WOLOSON & THOMPSON**

10 

11 BRIAN W. BOSCH, ESQ.
12 Nevada Bar No. 7612
13 SHELLEY A. BRISCOE, ESQ.
14 Nevada Bar No. 9985
15 400 South Fourth Street, Third Floor
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17 *Attorneys for Defendants West Edna, Ltd., dba*
18 *Mojave Electric, Western Surety Company, The*
19 *Whiting Turner Contracting Company and*
20 *Fidelity and Deposit Company of Maryland,*
21 *Travelers Casualty and Surety Company of*
22 *America, Counterclaimant and Crossclaimant*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Simply because a subcontractor or supplier is owed money does not establish liability
4 pursuant to surety bonds. First, Nevada law provides that a claimant must comply with the notice
5 and limitation provisions of the bond before the surety's obligations will arise. Here, Cashman
6 failed to comply with direct and obvious notice provisions and thus, it waived its ability to now
7 collect on the bond. Second, the payment bond applies to only parties who contracted directly
8 with Whiting. Mojave was the party that contracted with CAM Consulting, Inc. ("CAM") on
9 behalf of Cashman. Third, Cashman is four (4) steps removed from coverage and NRS §339.035
10 precludes such claim. Finally, an intervening bond has been issued by Mojave, which takes the
11 place of any prior surety bond (including a license bond) and secures payment for Cashman. This
12 action does not require Travelers and Fidelity (collectively, the Sureties") in any capacity, and
13 thus, Defendants respectfully request summary judgment, because there are no genuine issues of
14 material fact remaining and the Payment Bond and License Bond (both defined below) have no
15 relevant place in this lawsuit.

16 **II. STATEMENT OF RELEVANT FACTS**

17 This action resulted from a subcontractor, CAM's failure to issue payment to Cashman
18 for equipment provided on the construction project referred to as the New Las Vegas City Hall
19 Project (the "Project") located in Las Vegas, Nevada. Fidelity and Travelers Casualty and Surety
20 Company of America ("Travelers") (collectively the "Sureties"), respectively, issued two co-
21 surety bonds on the Project. These bonds included the Performance and Payment Bonds on
22 behalf of Whiting Turner for the contract between Whiting Turner and QH Las Vegas, LLC. A
23 licensing bond was also issued by Fidelity for Whiting Turner.

24 Cashman has alleged in this action that CAM fraudulently transferred the Cashman
25 payment to other parties.¹ Cashman has brought claims in its Third Amended Complaint against
26 the Whiting Contractor's License Bond of Fidelity, and Payment Bond of Fidelity and
27

28 ¹ See Third Am. Compl., pgs. 3 and 14-17.

1 Travelers.² Cashman has also sought relief through a recorded mechanic's lien in its Third
2 Amended Complaint.³ As a result, Mojave entered a Mechanic's Lien Release Bond (the
3 "Mechanic's Bond") issued by Western as Bond Number 58685401.⁴

4 Cashman does not qualify for coverage pursuant to either the Payment Bond (defined
5 below) or License bond in this matter and has not complied with its obligations as a claimant.

6 **A. Payment Bond**

7 Fidelity-Travelers Payment Bond No. 8997023/105375118 (the "Payment Bond") dated
8 1/7/2010 was issued on the Whiting contract in this action.⁵ The Payment Bond provides that the
9 Surety (*i.e.*, Fidelity or Travelers) has no obligation to make payment to persons who remain
10 unpaid by the Principal, Whiting, if the conditions precedent are not met.⁶ Specifically, in
11 relevant part, the Payment Bond provides:

12 Claimants who do not have a direct contract with the Contractor: Not
13 having been paid within the above 30 days, have **sent a written notice to**
14 **the surety** (at the address described in Paragraph 12) and sent a copy, or
15 notice thereof, to the Owner, stating that the claim is being made under this
Bond and enclosing a copy of the previous written notice furnished to the
Contractor. (Section 4.2.3)

16 Written notice by any claimant is mandatory before the Surety (*i.e.*, Fidelity or Travelers)
17 has any obligation thereto.⁷ Cashman did not contract directly with Whiting and has not
18 submitted any notice to either Fidelity or Travelers *at any time*.⁸ In fact, for Travelers, the first
19 notice of this action came with the service on June 21, 2012 of the Third Amended Complaint
20 filed on May 24, 2012.⁹

21 **B. License Bond**

22 Fidelity License Bond No. 9045603 (the "License Bond") was issued on the Whiting
23

24 ² See *id.*, pgs. 14-17.

25 ³ See *id.*, pgs. 11-12.

26 ⁴ See Third Am. Compl., pgs. 3, ¶ 6.

27 ⁵ See attachment A-1 to the *Declaration of Roxanne H. Kasten and Susan Getz Kerbel*.

28 ⁶ See *id.*, pg. 4, ¶22.

⁷ See *id.*

⁸ See *Declaration of Susan Getz Kerbel*, pg. 3, ¶21, *Roxanne Kasten*, pg. 3, ¶ 15.

⁹ See *Declaration of Susan Kerbel and Roxanne Kasten*, pg.3, ¶16.

1 license No 33400 in the amount of \$50,000.00.¹⁰ The License Bond is required by the Nevada
2 State Contractor's Board to protect members of the public who contract with Whiting and are
3 harmed by Whiting.¹¹ At no time during the Project did Cashman contract with Whiting and
4 Cashman also has no evidence or relationship that implicates the License Bond.¹²

5 Cashman improperly seeks relief from the sureties in this action, sureties that have no
6 obligation to provide coverage. The language of the bonds is clear and unambiguous. Thus, its
7 interpretation is a suitable subject for summary judgment.

8 III. LEGAL STANDARD

9 In order to defeat a motion for summary judgment, the nonmoving party "must by
10 affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for
11 trial" and "is not entitled to build a case on gossamer threads of whimsy, speculation, and
12 conjecture." *Wood v. Safeway, Inc.*, 21 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) (quoting
13 *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 110, 825 P. 2d 588, 591 (1992)). The "non-moving
14 party [is required,] by affidavit or otherwise, [to] set forth specific facts demonstrating the
15 existence of a genuine issue [of fact] for trial or have summary judgment entered against him."
16 *Bulbman, Inc. v. Nev. Bell*, 108 Nev. 105, 110, 825 P.3d 588, 591 (1992). "The nonmoving party
17 'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'"
18 *Wood*, 121 Nev. at 732, 121 P.3d at 1031 (quoting *Collins v. Union Fed. Sav. & Loan Ass'n*, 99
19 Nev. 284, 302, 662 P.2d 610, 621 (1983)). "A genuine issue of material fact is one where the
20 evidence is such that a reasonable jury could return a verdict for the non-moving party." *Pegasus*
21 *v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (citations omitted).

22 Here, the Declarations of the Fidelity and Traveler's Representatives clearly set out that
23 the License Bond and the Payment Bond (collectively the "Bonds") do not apply and further that
24 there are no facts at issue that Cashman has failed to comply with the conditions precedent for
25 coverage. Thus, summary judgment on behalf of the Sureties is appropriate in this action.

26 ¹⁰ See Third Am. Compl., pgs. 3, ¶ 8.

27 ¹¹ *Id.*

28 ¹² See Declaration of Roxanne H. Kasten, p. 3, ¶ 13, Declaration of Susan Getz Kerbel, p. 3, ¶ 20.

IV. ARGUMENT

1. Claims Against the Payment Bond are Barred as a Matter of Law.

Generally, a bond is a contract and thus is subject to the general rules of contract interpretation and construction.¹³ Courts look to the standard principles of contract interpretation to determine the rights and obligations of a surety under bond.¹⁴ One of those principles is that before a surety's obligations under a bond can mature, the obligee and claimants, such as Cashman, must comply with any conditions precedent. "A condition precedent is an act or event, other than the lapse of time, which, unless the condition is excused, must occur before a duty to perform a promise in the agreement arises."¹⁵

Here, the plain language of the Payment Bond contains a number of condition precedents to the Sureties' obligations. Importantly, Section 4.2.3 of the Payment Bond provides:

Claimants who do not have a direct contract with the Contractor: Not having been paid within the above 30 days, have **sent a written notice to the surety** (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that the claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor. (Section 4.2.3)

There is no dispute that Cashman contracted with CAM and Mojave on the Project and did not have any agreement directly with Whiting.¹⁶ Consequently, Cashman was required to provide Fidelity and/or Travelers with written notice of the claim. *Id.* 4.2.3. The Sureties confirmed that Cashman failed to timely provide notice and in fact has failed to provide any documents other than the Third Amended Complaint after it was filed.¹⁷ The Bond provides that without such notice by a claimant that "no action shall be commenced" (Section 11). Therefore, failure to provide the mandatory notice precludes a claim, and thus, Cashman is barred from recovery under this surety as a matter of law. "A third party supplier of labor and material has no

¹³ See *L. Schreiber & Sons Co. v. Miller Supply Co.*, 87 S.E. 353, 355 (W. Va. 1915).

¹⁴ See generally, *William H. Woods, Historical Development of Suretyship from Prehistoric Custom to a Century's Experience with the Compensated Corporate Surety*, In *A.B.A., the Law of Suretyship*, 3, 30-39 (Edward G. Gallagher, 2d ed. 2000).

¹⁵ *Oppenheimer & Co. v. Oppenheim*, 660 N.E. 2d, 415, 418 (N.Y. 1995) (internal quotation marks omitted); see also *New Orleans v. Tex. and Pac. Ry. Co.*, 171 U.S. 312, 334 (1898); see also 17A Am. Jur. 2d Contracts §459 (1997) (generally, a condition precedent to an obligation to perform).

¹⁶ See Third Am. Compl., pg. 4.

¹⁷ See *Declaration of Kerbel*, p. 3, ¶ 15 and 17 and *Roxanne Kasten*, p. 3, ¶ 15, 16.

1 right against a common law bond on private construction unless the terms of the bond expressly
2 give that right.”¹⁸

3 **2. NRS 339.035 precludes a claim by Cashman as a Fourth-Tier Contractor.**

4 NRS Chapter 339, Nevada’s payment bond statute, is commonly referred to as the “Little
5 Miller Act” because it is patterned after its federal counterpart, the “Miller Act,” 40 U.S.C. §270.
6 Although the Project has public and private components,¹⁹ NRS §339.035 allows any claimant
7 who has provided labor, material or equipment to make a claim against the payment bond posted
8 by a prime contractor, or other upstream contractor, if the claimant has not been paid within 90
9 days of the last time it performed work, or supplied materials or equipment on the project.²⁰

10 The language in NRS §339.035 states that any claimant who has a direct contractual
11 relationship to a subcontractor may bring a claim. However, Cashman has argued repetitively
12 throughout this matter that it did not contract with subcontractor Mojave, but instead only with
13 CAM, a third tier minority subcontractor to Mojave. As a result, the Prime Contractor, Whiting,
14 did not have direct notice of the work. Further, the relationships make Cashman a party too far
15

16 ¹⁸ See *Layrite Concrete Prods. of Kennewick v. H. Halvorson*, 411 P.2d 405, 407 (Wash. 1966); see also *Brower Co.*
17 *v. Noise Control of Seattle*, 401 P.2d 860, 863 (Wash. 1965).

18 ¹⁹ Whiting’s contract was with Forest City, a private developer. However, Forest City’s contract was with the City of
Las Vegas (a public entity). The building belongs to the City.

19 ²⁰ See NEV. REV. STAT. §339.035, which provides as follows: Actions on payment bonds by claimants.

20 1. Subject to the provisions of subsection 2, any claimant who has performed labor or furnished material in the
21 prosecution of the work provided for in any contract for which a payment bond has been given pursuant to the
22 provisions of subsection 1 of NRS 339.025, and who has not been paid in full before the expiration of 90 days after
the date on which the claimant performed the last of such labor or furnished the last of such materials for which the
claimant claims payment, may bring an action on such payment bond in his or her own name to recover any amount
due the claimant for such labor or material, and may prosecute such action to final judgment and have execution on
the judgment.

23 2. Any claimant who has a direct contractual relationship with any subcontractor of the contractor who gave
such payment bond, but no contractual relationship, express or implied, with such contractor, may bring an action on
the payment bond only:

24 (a) If the claimant has, within 30 days after furnishing the first of such materials or performing the first of such
labor, served on the contractor a written notice which shall inform the latter of the nature of the materials being
furnished or to be furnished, or the labor performed or to be performed, and identifying the person contracting for
such labor or materials and the site for the performance of such labor or materials; and

26 (b) After giving written notice to such contractor within 90 days from the date on which the claimant performed
the last of the labor or furnished the last of the materials for which the claimant claims payment. Each written notice
shall state with substantial accuracy the amount claimed and the name of the person for whom the work was
performed or the material supplied, and shall be served by being sent by registered or certified mail, postage prepaid,
in an envelope addressed to such contractor at any place in which the contractor maintains an office or conducts
business, or at the residence of the contractor.

1 removed to bring this cause of action as a fourth-tier sub/subcontractor.²¹

2 Moreover, in order to make a timely claim against the Payment Bond, NRS §339.035(2)
3 requires sub-subcontractors and material suppliers that do not have contracts directly with the
4 prime contractor to: (1) have sent a notice of furnishing labor, materials and/or equipment to
5 prime contractor via certified mail within 30 days of first providing labor, materials or equipment
6 on the project; and (2) send a notice of claim against the payment bond to the prime contractor at
7 his place of business or residence via certified mail within 90 days from the last time they
8 performed work, or provided equipment or materials. Here, notice did not conform. It appears
9 the equipment on the Project was shipped by Cashman in February 2011. Cashman did not
10 provide notice to Whiting until June 23, 2011, rather than May 2011, as mandated by Nevada
11 law.²²

12 Even if the Court concludes that the Nevada "Little Miller Act" does not apply, Section
13 4.2.1 of the Payment Bond further requires notice from Cashman *within 90 days*. Cashman's
14 failure to comply with this section also precludes claims against the Sureties and makes summary
15 judgment appropriate in this action.

16 **3. Cashman is not Entitled to Recover Against Whiting's License Bonds**

17 "Each contractor's license issued in the State of Nevada requires a license bond."²³ "The
18 Nevada State Contractors' Board determines the amount of the bond at the time of license
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21 ²¹ See *Electron Energy Corp. v. Edwin P. Short, Jr. and Prudy Eng'rs., Inc.*, 597 A.2d 175, 178 (Pa. Super. Ct.
22 1991) (holding that it is fundamental contract law that one cannot be liable for a breach of contract unless one is a
23 party to that contract); see also *Vargas v. Cal. State Auto Ass'n Inter-Insurance Bureau*, 788 F. Supp. 462, 465 (D.
24 Nev. 1992) (nothing that "[i]t is antithetical to the concept of the bad faith cause of action to assert that someone
25 who is not a party to the contract may be liable for violating one of the contract's implied covenants); see also
26 *Heather Hardee-Guerra v. Shire Pharmaceuticals*, 737 F. Supp. 2d 318, 325 (E.D. Pa. 2010) ("It is fundamental
27 contract law that one cannot be liable for a breach of contract unless one is a party to that contract").

28 ²² See *Garff v. J.R. Bradley Co.*, 84 Nev. 79, 82-83, 436 P.2d 428, 430-31 (1968) (citations omitted) (holding that
the language of NRS §339.035 is mandatory in nature. This statute requires that "[t]he claimant must, within 30 days
after furnishing the first of such materials or performing the first of such labor serve on the contractor a written
notice of the nature of the materials furnished or labor performed, identifying the person contracting for the labor or
materials, and the site of performance. The claimant must also, within 90 days after performing the last of the labor
or furnishing the last of the material, give the contractor written notice of the amount claimed, and the name of the
person for whom the work was performed or the material supplied . . . [A]wareness or knowledge [by a contractor of
the identity of material suppliers to subcontractors] standing alone, does not erase the duty which the legislature has
placed upon claimants to give the 30- and 90-day notices before becoming eligible to file suit on a payment bond.").

²³ See <http://www.nvcontractorsboard.com/bonds.html> (last visited on August 10, 2012).

1 approval,” and the purpose of the bond is to protect the public who contracts with a licensee.²⁴
2 Whiting has a license bond through Fidelity in the amount of \$50,000.00 for contractor’s license
3 number 33400.

4 Cashman has alleged upon NRS Chapter 624, that Whiting willfully and deliberately
5 failed to pay money to Cashman, and therefore, Cashman is entitled to recover against the
6 Fidelity Bond.²⁵ This argument fails because: (1) Cashman has no contractual relationship with
7 Whiting and is not entitled to claim payment on the license bond; and (2) the evidence in this
8 matter demonstrates that Whiting already paid Mojave, and Mojave paid CAM on behalf of
9 Cashman. Thus, Whiting did not willfully and deliberately fail to pay. Instead, Carvalho, as the
10 bad actor, absconded with the funds.

11 The Thirteenth Cause of Action in the Third Amended Complaint fails because Whiting
12 did not have a contract directly with Cashman at any time during the Project.²⁶ Whiting
13 contracted with Mojave and paid Mojave for the work performed. Cashman seeks double
14 payment from Whiting due to the unsuspected acts of Carvalho as a lone bad actor. However,
15 Whiting was not unjustly enriched because it paid for the equipment, and did nothing to deprive
16 Cashman of its payment. There is not a shred of evidence here that demonstrates Whiting had
17 any involvement with CAM or Carvalho.

18 Moreover, Mojave has obtained the Mechanic’s Bond from Western Surety to secure any
19 legitimate lien claims by Cashman and recently entered a second bond for the codes in the
20 amount of \$200,000.00.²⁷ Accordingly, Cashman is bonded up to \$1,333,840.80 on this claim.
21 Not to mention that neither Whiting nor Mojave is insolvent. Therefore, Whiting’s licensing
22 bond, the License Bond, should not be implicated when intervening bonds are already in place

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24 ²⁴ See *id.*

25 ²⁵ See Third Am. Compl., pgs. 15-16.

26 ²⁶ See *Electron Energy Corp. v. Edwin P. Short, Jr. and Prudy Eng'rs., Inc.*, 597 A.2d 175, 178 (Pa. Super. Ct. 1991) (holding that it is fundamental contract law that one cannot be liable for a breach of contract unless one is a party to that contract); see also *Vargas v. Cal. State Auto Ass'n Inter-Insurance Bureau*, 788 F. Supp. 462, 465 (D. Nev. 1992) (nothing that “[i]t is antithetical to the concept of the bad faith cause of action to assert that someone who is not a party to the contract may be liable for violating one of the contract’s implied covenants); see also *Heather Hardee-Guerra v. Shire Pharmaceuticals*, 737 F. Supp. 2d 318, 325 (E.D. Pa. 2010) (“It is fundamental contract law that one cannot be liable for a breach of contract unless one is a party to that contract”).

27 ²⁷ See Third Am. Compl., pg. 3, Western Surety Bond 58685401 for \$1,133,840.84.

1 by the party who contracted directly with Cashman, Mojave. Duplicate security is unwarranted
2 and summary judgment is proper for the License Bond.

3 Finally, the allegations in the Third Amended Complaint give rise to a potential claim
4 brought under a third-party crime insurance policy. Upon information and belief, Cashman does
5 have such a policy in place, but failed to bring a claim, because it is self-insured.²⁸ Generally,
6 third-party crime coverage specifically covers Carvalho's type of criminal acts. However,
7 Cashman failed to even attempt to mitigate damages by making a claim, and instead improperly
8 seeks relief from the Sureties that have no obligation to provide coverage.

9 The language of the Payment Bond and License Bonds is clear and unambiguous. Thus,
10 summary judgment should be issued on behalf of Fidelity and Travelers, the Sureties, for the
11 Payment Bond and License Bond.

12 V. CONCLUSION

13 Based on the foregoing, Defendants move this Court for summary judgment pursuant to
14 NRCP 56. There are no genuine issues of material fact that Cashman failed to comply with the
15 mandatory notice provisions as conditions precedent of the Payment Bond and License Bond and
16 also failed to put any applicable crime policy on notice of Carvalho's acts. Further, Nevada
17 statutes preclude surety coverage to a fourth-tier supplier who had no direct relationship with the
18 prime contractor, Whiting. Also, the Payment Bond and License Bond are superseded by the

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28 ²⁸ Such policy will be the subject of an upcoming deposition.

1 intervening mechanic's lien bond and render them unnecessary to this action.

2 Dated August 30th, 2012.

3 COTTON, DRIGGS, WALCH,
4 HOLLEY, WOLOSON & THOMPSON

5 

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14 *Whiting Turner Contracting Company and*
15 *Fidelity and Deposit Company of Maryland,*
16 *Travelers Casualty and Surety Company of*
17 *America, Counterclaimant and Crossclaimant*

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Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 CASHMAN EQUIPMENT COMPANY, a
13 Nevada corporation,

14 Plaintiff,

15 v.

16 CAM CONSULTING, INC., a Nevada
17 corporation; ANGELO CARVALHO, an
18 individual; JANEL RENNIE aka JANEL
19 CARVALHO, an individual; WEST EDNA
20 ASSOCIATES, LTD. dba MOJAVE
21 ELECTRIC, a Nevada corporation; WESTERN
22 SURETY COMPANY, a surety; THE WHITING
23 TURNER CONTRACTING COMPANY, a
24 Maryland corporation; FIDELITY AND
25 DEPOSIT COMPANY OF MARYLAND, a
26 surety; TRAVELERS CASUALTY AND
27 SURETY COMPANY OF AMERICA, a surety;
28 DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

AND RELATED MATTERS.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

**DECLARATION OF ROXANNE H.
KASTEN IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT OF SURETY
PAYMENT AND LICENSE BOND
CLAIMS**

I, Roxanne H. Kastan, declare as follows:

1. I am a Sr. Claim Representative with Travelers Casualty and Surety Company of
America ("Travelers"), one of the defendants in this action.

1 2. I am over the age of eighteen (18) years and competent to testify to the matters set
2 forth herein.

3 3. I am making this declaration based on my personal knowledge of the facts and
4 matters of this action.

5 4. I have personal knowledge of the facts and matters set forth below based upon my
6 personal review of the books and records maintained by Travelers in the ordinary course of
7 business and based upon my involvement in monitoring the history of the transactions and bonds
8 giving rise to this action.

9 5. It is Travelers' practices and procedures to maintain records and to record
10 transactions, acts, conditions and events concerning Travelers and their various bonds, including
11 the bond relating to this action, at or about the time such transactions, acts, conditions, or events
12 occur. Travelers relies upon these records in connection with its business dealings.

13 6. I am personally familiar with the manner in which Travelers' documents, books,
14 files and records are prepared and maintained. I have personally reviewed the business records of
15 Travelers concerning the bonds at issue. Based upon this review, I have reached the conclusions
16 set forth below.

17 7. With respect to matters based upon information and belief, I believe the
18 statements made to be true and correct.

19 8. I am submitting this Declaration in support of the Motion for Summary Judgment
20 of Surety Payment and License Bond Claims (the "Motion").

21 9. Fidelity & Deposit Company of Maryland ("Fidelity") and Travelers,
22 respectively, issued two co-surety bonds on the construction project referred to as the New Las
23 Vegas City Hall Project (the "Project") located in Las Vegas, Nevada, the bonds being the
24 Performance and Payment Bonds issued on behalf of Whiting Turner for the contract between
25 Whiting Turner and QH Las Vegas, LLC..

26 10. Fidelity-Travelers Payment Bond No. 8997023/105375118 (the "Payment Bond")
27 dated 1/7/2010 was issued on the Whiting contract in this action.

28 11. The Payment Bond provides that the Surety (i.e. Fidelity or Travelers) will have

1 no obligation to make payment to persons who remain unpaid by the Principal, Whiting, unless
2 the conditions precedent as set forth in paragraphs 4 through 4.3 of the Payment Bond are met.

3 12. Pursuant to Paragraph 4.2.1, Written notice by a claimant who does not have a
4 direct contract with the Contractor (in this case Whiting) is mandatory and must be furnished
5 within ninety (90) days of last providing labor and/or materials to the project before the Surety
6 (i.e. Fidelity and/or Travelers) has any obligation thereto.

7 13. Upon information and belief, Cashman Equipment Company ("Cashman") did not
8 contract directly with Whiting for the City Hall Project.

9 14. Upon information and belief, Cashman last provided materials to this project on
10 March 25, 2011.

11 15. Cashman has not submitted any notice to Travelers at any time related to the
12 facts at issue in this case.

13 16. In fact, Travelers' first notice of this action came with the service of the Third
14 Amended Complaint on June 21, 2012.

15 17. Absent the required notice, Travelers has no obligation under its bonds in this
16 action.

17 I declare under penalty of perjury under the law of the State of Nevada that the foregoing
18 is true and correct to the best of my knowledge.

19 Dated this 21st day of August, 2012.

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22 
23 ROXANNE H. KASTEN
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1 **DECL**

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Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 CASHMAN EQUIPMENT COMPANY, a
13 Nevada corporation,

14 Plaintiff,

15 v.

16 CAM CONSULTING, INC., a Nevada
17 corporation; ANGELO CARVALHO, an
18 individual; JANEL RENNIE aka JANEL
19 CARVALHO, an individual; WEST EDNA
20 ASSOCIATES, LTD. dba MOJAVE
21 ELECTRIC, a Nevada corporation; WESTERN
22 SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

23 Defendants.

24 AND RELATED MATTERS.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

**DECLARATION OF SUSAN GETZ
KERBEL IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT OF SURETY
PAYMENT AND LICENSE BOND
CLAIMS**

25 I, Susan Getz Kerbel, declare as follows:

26 1. I am Claims Counsel at Fidelity & Deposit Company of Maryland ("Fidelity"),
27 one of the defendants in this action.

28 2. I am over the age of eighteen (18) years and competent to testify to the matters set

1 forth herein.

2 3. I am making this declaration based on my personal knowledge of the facts and
3 matters of this action.

4 4. I have personal knowledge of the facts and matters set forth below based upon my
5 personal review of the books and records maintained by Fidelity in the ordinary course of
6 business and based upon my involvement in monitoring the history of the transactions and bonds
7 giving rise to this action.

8 5. It is Fidelity's practices and procedures to maintain records and to record
9 transactions, acts, conditions and events concerning Fidelity and their various bonds, including
10 the bonds relating to this action, at or about the time such transactions, acts, conditions, or events
11 occur. Fidelity relies upon these records in connection with its business dealings.

12 6. Based upon this review, I have reached the conclusions set forth below.

13 7. I am personally familiar with the manner in which Fidelity's documents, books,
14 files and records are prepared and maintained and have personally reviewed the business records
15 of Fidelity concerning the bonds at issue.

16 8. With respect to matters based upon information and belief, I believe the
17 statements made to be true and correct.

18 9. I am submitting this Declaration in support of the Motion for Summary Judgment
19 of Surety Payment and License Bond Claims (the "Motion").

20 10. Fidelity and Travelers Casualty and Surety Company of America
21 ("Travelers")(collectively the "Sureties"), respectively, issued two co-surety bonds on the
22 construction project referred to as the New Las Vegas City Hall Project (the "Project") located in
23 Las Vegas, Nevada. These bonds included the Performance and Payment Bonds on behalf of
24 Whiting Turner for the contract between Whiting Turner and QH Las Vegas, LLC.

25 11. A licensing bond was also in place and issued by Fidelity.

26 12. Fidelity-Travelers Payment Bond No. 8997023/105375118 (the "Payment Bond")
27 dated 1/7/2010 was issued on the Whiting contract in this action. A true and correct copy of the
28 Payment Bond is attached as **Exhibit A-1**.

1 13. The Payment Bond provides that the Surety (i.e. Fidelity or Travelers) will have
2 no obligation to make payment to persons who remain unpaid by the Principal, Whiting, unless
3 the conditions precedent are met.

4 14. Pursuant to Paragraph 4.2.1, Written notice by a claimant who does not have a
5 direct contract with the Contractor (in this case Whiting) is mandatory and must be furnished
6 within ninety (90) days of last providing labor and/or materials to the project before the Surety
7 (i.e. Fidelity and/or Travelers) has any obligation thereto.

8 15. Cashman Equipment Company ("Cashman") has not submitted any notice to
9 Fidelity at any time related to this action.

10 16. Upon information and belief, Cashman last provided materials to this project on
11 March 25, 2011.

12 17. In fact, the first notice of this action, to Fidelity, came when Fidelity was
13 contacted by Counsel in January 2012 and notified of a complaint filed.

14 18. Fidelity License Bond No. 9045603 (the "License Bond") was issued on the
15 Whiting license No 33400 in the amount of \$50,000.00. A true and correct copy of the Proof of
16 the License Bond is attached as **Exhibit A-2**.

17 19. The License Bond is required by the Nevada State Contractor's Board to protect
18 members of the public who contract with Whiting and are harmed by Whiting.

19 20. Upon information and belief, at no time during the Project did Cashman contract
20 directly with Whiting.

21 21. Cashman failed to timely provide notice of its claim under the bonds in this action
22 and in fact, failed to provide any documents to Fidelity.

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28 ///

22. Absent the required notice, Fidelity has no obligation that arises under its bonds in this action.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

Dated this 22 day of August, 2012.

Susan Getz Kerbel
SUSAN GETZ KERBEL

EXHIBIT A-1

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
The Whiting-Turner Contracting Company
300 East Joppa Road
Baltimore, Maryland 21286

OWNER (Name and Address):
QH Las Vegas, LLC
1100 Terminal Tower
50 Public Square, Suite 1005
Cleveland, Ohio 44113

CONSTRUCTION CONTRACT

Date: 11/05/2009

Amount: \$97,802,854.00

Description (Name and Location): Construction of Las Vegas City Hall, Las Vegas, Nevada

SURETY (Name and Principal Place of Business):

Fidelity and Deposit Company of Maryland, 1400 American
Lane, Tower I, 19th Floor, Schaumburg, Illinois 60196-1056
and Travelers Casualty and Surety Company of America, One
Tower Square, Hartford, CT 06183, as co-sureties

DOLLARS

BOND

Date (Not earlier than Construction Contract Date): 01/07/2010

Amount: \$97,802,854.00

Modifications to this Bond:

DOLLARS

☐ None ☒ See Page 3

CONTRACTOR AS PRINCIPAL

Company: The Whiting-Turner Contracting Company

Signature:  Corporate Seal

Name and Title: STEPHEN P. DUFFY, Exec. Vice President

SURETY

Company: Fidelity and Deposit Company of Maryland

Signature:  Corporate Seal

Name and Title: Craig Bancroft
Attorney-in-Fact

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

HMS Insurance Associates, Inc.
10751 Falls Road, Suite 256
Brooklandville, MD
(410) 337-9755

OWNER'S REPRESENTATIVE (Architect, Engineer or
other party):

JMA Architecture
10150 Covington Cross Dr.
Las Vegas, Nevada 89144

Printed in cooperation with The American Institute of Architects (AIA) by

the language used in AIA Document A-312, December 1984 EDITION.

vouches that the language in the document conforms exactly to

PAY76001221107F
With Modifications

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services

required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

Paragraph 4 is amended to insert sub-paragraph 4.3, which states:

4.3 Claimants have furnished to Surety proof of claim duly sworn to by Claimants with adequate supporting documentation proving the amount claimed is due and payable.

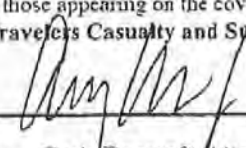
Paragraph 5 shall be amended to delete the word "or" and insert the word "and" in its place.

Paragraph 6 and its sub-paragraphs 6.1 and 6.2 shall be deleted in their entirety and replaced with the following: When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall, within 90 days of the date when claimant finally completed its satisfactions of the conditions of Paragraph 4 notify the Claimant of the amounts that are undisputed and the basis for challenging any amounts that are disputed, including, but not limited to, the lack of substantiating documentation to support the claim as to entitlement or amount, and the Surety shall pay or make arrangements for payment of any undisputed amount; provided, however, that the failure of the Surety to timely discharge its obligations under this paragraph or to dispute or identify any specific defense to all or any part of a claim shall not be deemed to be an admission of liability by the Surety as to such claim or otherwise constitute a waiver of the Contractor's or Surety's defenses to, or right to dispute, such claim. Rather, the Claimant's sole remedy shall be the immediate right, without further notice, to bring suit against the Surety to enforce any remedy available to it under this Bond.

Paragraph 12 shall be amended to add the following paragraph: CLAIM NOTICE for the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND INSURANCE COMPANY and/or AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY must be sent to the following address: Contract Surety Bond Claims, c/o ZURICH, 1400 American Lane, Schaumburg, IL 60196.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL (Corporate Seal)
Company:
Signature: _____
Name and Title:
Address:

SURETY: Travelers Casualty and Surety Company of America (Corporate Seal)
Company:
Signature: 
Name and Title: Craig Bancroft, Attorney-in-Fact
Address: One Tower Square, Hartford, CT 06183

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, corporations of the State of Maryland, by DAVID S. HEWETT, Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint Gary A. PYNE, Stephen M. MUTSCHELLER, Brian E. WILCOX, Robert F. WHITE, Gary L. BERGER, Shari L. BOWERS, R. Nelson OSTER, Craig BANCROFT and Joshua B. HAUSERMAN, all of Brooklandville, Maryland, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Gary A. PYNE, Stephen M. MUTSCHELLER, Brian E. WILCOX, Robert F. WHITE, Gary L. BERGER, Shari L. BOWERS, R. Nelson OSTER, Craig BANCROFT, Joshua B. HAUSERMAN, William R. MILLER, dated May 4, 2009.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seals of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, this 23rd day of July, A.D. 2009.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY



Gregory E. Murray

By:

David S. Hewett

Gregory E. Murray Assistant Secretary

David S. Hewett

Vice President

State of Maryland } ss:
City of Baltimore }

On this 23rd day of July, A.D. 2009, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came DAVID S. HEWETT, Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Companies aforesaid, and that the seals affixed to the preceding instrument is the Corporate Seals of said Companies, and that the said Corporate Seals and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Maria D. Adamski

Maria D. Adamski

Notary Public

My Commission Expires: July 8, 2011

EXHIBIT A-2



Nevada State Contractors Board

2310 Corporate Circle, Suite 200 Henderson NV 89074 (702)486-1100 Fax: (702)486-1150 Investigation: (702)486-1110
 5670 Gateway Drive, Suite 100 Reno NV 89521 (775)688-1141 Fax: (775)688-1271 Investigation: (775)688-1150
www.nscob.state.nv.us

License Search Details

Press "Previous Record" to view the previous record in the list

Press "Next Record" to view the next record in the list.

Press "Search Results" to return to the search results list screen.

Press "New Search Criteria" to revise your existing search criteria or enter new search criteria.

Press "New Search" to select a different search.

License Number:
0033400

Current Date: 08/29/2012 04:31 PM (mm/dd/yyyy)

Business Primary Name: **WHITING TURNER CONTRACTING COMPANY (THE)** **License** **Unlimited**
Monetary Limit:

Business Address: **6720 VIA AUSTI PKWY**
#300
LAS VEGAS, NV 89119
Phone Number: **(702)650-0700**

Status: **Active**
Status Date: **06/01/2011** (mm/dd/yyyy)
Origin Date: **06/26/1992** (mm/dd/yyyy)
Expiration Date: **06/30/2013** (mm/dd/yyyy)

Business Type: **Corporation**
Classification(s): **B - GENERAL BUILDING**

Principal Name	Relation Description
SCHMITT, PAUL NICHOLAS	Vice President Qualified Individual
WHITE, WILLIAM DANIEL	Vice President
CANNATELLI, LEONARD ANTHONY	Vice President

Bonds

Bond Type:	Surety Bond
Bond Number:	9045603
Bond Agent:	BERGER, GARY LOUIS
Surety Company:	FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Bond Amount: **\$50,000.00**
Effective Date: **04/02/2011** (mm/dd/yyyy)

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[Previous Record](#)[Search Results](#)[New Search Criteria](#)[New Search](#)

2012-08-29 4:31:59 PM



NEVADA STATE CONTRACTORS BOARD

9570 GATEWAY DRIVE, SUITE 103, RENO, NEVADA, 89521 (775) 686-1141 FAX (775) 686-1271, INVESTIGATIONS (775) 686-1163
2250 CORPORATE CIRCLE, SUITE 200, HENDERSON, NEVADA, 89074 (702) 485-1180 FAX (702) 436-1190, INVESTIGATIONS (702) 436-1110
www.nscb.state.nv.us

LICENSE BOND NO. 9045603

KNOW BY ALL MEN THESE PRESENTS:

THAT The Whiting-Turner Contracting Company, having a principal place of business in the City of Baltimore, in the State of Maryland, as principal (hereinafter "Principal"), and Fidelity and Deposit Company of Maryland, a corporation licensed to execute surety bonds under the provisions of the Nevada Insurance Code, and whose long-term obligations are rated "A" or better by a nationally recognized rating agency, as surety (hereinafter "Surety"), are held and firmly bound to the State of Nevada, in the full and just sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) for which payment well and truly to be made, the Principal and Surety bind themselves, their respective heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the principal has applied for or holds a contractor's license with the Nevada State Contractors' Board pursuant to Chapter 624, Nevada Revised Statutes.

NOW, THEREFORE, this bond is made in favor of the State of Nevada for the benefit of any person having a valid claim who:

1. As owner of the property to be improved entered into a construction contract with the contractor and is damaged by failure of the contractor to perform the contract or to remove liens filed against the property; or
2. As an employee of the contractor performed labor on or about the site of the construction covered by the contract; or
3. As a supplier or materialman furnished materials or equipment for the construction covered by the contract; or
4. Is injured by any unlawful act or omission of the contractor in the performance of a contract.

If an action is commenced on this bond, the Surety shall notify the Board of the action within 30 days after (a) being served with a complaint and summons; or (b) the action is commenced, whichever occurs first. The total aggregate liability of the Surety for all claims shall be limited to the face amount of the bond, irrespective of the number of years the bond is in force or the number of claims filed. The Surety shall have the right to terminate its suretyship under this obligation by serving written notice of its election so to do upon the State Contractors' Board, at its office in Reno, Nevada, by certified mail at least sixty (60) days prior to the date of termination of suretyship. Thereafter the Surety shall be discharged from any liability hereunder for any default of the Principal occurring after the date of termination. The liability of the Surety shall be confined to acts, omissions or defaults of the principal occurring subsequent to the effective date hereof; the Surety shall not be liable for labor and material bills incurred by the Principal prior to the date hereof.

NO ACTION MAY BE COMMENCED on this bond after the expiration of TWO (2) YEARS following the commission of the act upon which the action is based.

IN THE EVENT the surety shall make any payments hereunder, without awaiting court action, the bond amount shall be reduced to the extent of any payment made by surety in good faith under the bond, provided, the surety shall notify the board in writing within (10) days of any payments made hereunder.

IN WITNESS WHEREOF, the Principal and said Surety have executed this instrument on the dates below, to be effective on the 2nd day of April, 2011.

Signed this 8th day of March, 2011

Signed this 8th day of March, 2011
The Whiting-Turner Contracting Company

BY: _____
(NEVADA AGENT SIGNATURE)

BY: _____
(PRINCIPAL SIGNATURE)

TYPE OR PRINT (Nevada Agent Information)

Fidelity and Deposit Company of Maryland
(SURETY)

Gary L. Berger - Non-Resident License #78798

(AGENT/AGENT'S INSURANCE LICENSE NO.)

RMS Insurance Associates, Inc. - License #10300

(AGENCY/AGENCIES INSURANCE LICENSE NO.)

(ATTORNEY-IN-FACT SIGNATURE/PHONE NO.)

Craig Bancroft, Attorney-in-Fact (410) 337-9755
POWER OF ATTORNEY REQUIRED

P.O. Box 1750

(ADDRESS)

Cockeysville, MD 21030 (410) 337-9755

(CITY, STATE, ZIP CODE/PHONE NUMBER)



Nevada State Contractors Bond Form
Revised 7/01

JA 0000494

HMS INSURANCE ASSOCIATES INC
PO BOX 1750
COCKEYSVILLE MD 21030



Brett J. Barratt, Commissioner of Insurance

HMS INSURANCE ASSOCIATES INC

License Number 10300

is licensed to engage in the business of insurance in the State of Nevada in the capacity stated below, subject to applicable laws and regulations.

License Type: Non-Res. Producer Firm
Qualifications: Casualty, Property, Surety

Effective Date: 10-01-2001
Expiration Date: 10-01-2013

Licenses must notify the Division of any change of address within 30 days of the change. You are subject to revocation for noncompliance.

Individuals - If you are affiliated to a business entity it will not print on the license. Individuals must be properly affiliated to the business entity's license prior to transacting insurance on the entity's behalf. The individual and the business entity are responsible for maintaining the affiliation.

A producer of insurance acting as an agent of the insurer must be appointed by the insurer prior to transacting insurance.

This license must be conspicuously displayed in your place of business that is open to the public.

HMS INSURANCE ASSOCIATES INC

License Number 10300
National Producer ID

is licensed to engage in the business of insurance in the State of Nevada in the capacity stated below, subject to applicable laws and regulations.

LICENSE TYPE **EFFECTIVE DATE**
Non-Res. Producer Firm 10-01-2001
QUALIFICATIONS **EXPIRATION DATE**
Casualty, Property, Surety 10-01-2013

GARY LOUIS BERGER
31 SPRINGHILL FARM CT
COCKEYSVILLE MD 21030-1430



Brett J. Barratt, Commissioner of Insurance

GARY LOUIS BERGER

License Number 78798

Is licensed to engage in the business of insurance in the State of Nevada in the capacity stated below, subject to applicable laws and regulations.

License Type: Non-Resident Producer

Qualifications: Casualty, Property, Surety

Effective Date: 10-01-2001

Expiration Date: 10-01-2013

Licensees must notify the Division of any change of address within 30 days of the change. You are subject to revocation for noncompliance.

Individuals - If you are affiliated to a business entity it will not print on the license. Individuals must be properly affiliated to the business entity's license prior to transacting insurance on the entity's behalf. The individual and the business entity are responsible for maintaining the affiliation.

A producer of insurance acting as an agent of the insurer must be appointed by the insurer prior to transacting insurance.

This license must be conspicuously displayed in your place of business that is open to the public.

GARY LOUIS BERGER

License Number 78798

National Producer ID 352885

Is licensed to engage in the business of insurance in the State of Nevada in the capacity stated below, subject to applicable laws and regulations.

LICENSE TYPE: Non-Resident Producer

EFFECTIVE DATE: 10-01-2001

QUALIFICATIONS: Casualty, Property, Surety

EXPIRATION DATE: 10-01-2013

CRAIG BANCROFT
303 GAILRIDGE RD
LUTHERVILLE MD 21093-2904



Scott J. Kipper, Commissioner

CRAIG BANCROFT

License Number 619617

Is licensed to engage in the business of insurance in the State of Nevada in the capacity stated below, subject to applicable laws and regulations.

License Type: Non-Resident Producer

Effective Date: 10-08-2008
Expiration Date: 11-01-2011

Qualifications: Casualty, Property

Licenses must notify the Division of any change of address within 30 days of the change. You are subject to revocation for noncompliance.

Individuals - If you are affiliated to a business entity it will not print on the license. Individuals must be properly affiliated to the business entity's license prior to transacting insurance on the entity's behalf. The individual and the business entity are responsible for maintaining the affiliation.

A producer of insurance acting as an agent of the insurer must be appointed by the insurer prior to transacting insurance.

This license must be conspicuously displayed in your place of business that is open to the public.

CRAIG BANCROFT

License Number 619617
National Producer ID 3336262

Is licensed to engage in the business of insurance in the State of Nevada in the capacity stated below, subject to applicable laws and regulations.

LICENSE TYPE	EFFECTIVE DATE
Non-Resident Producer	10-08-2008
QUALIFICATIONS	EXPIRATION DATE
Casualty, Property	11-01-2011

AMENDED
Certificate
OF
AUTHORITY
STATE OF NEVADA



INSURANCE DIVISION

Carson City, Nevada

Nevada I.D. #: X 0263

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Incorporated in the State of Maryland

Home office at Baltimore, Maryland

having duly qualified, is hereby licensed to transact

**** PROPERTY - CASUALTY - SURETY - MARINE & TRANSPORTATION ****

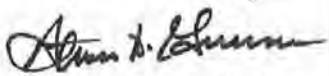
(Including Workmen's Compensation - Effective July 01, 1999)

insurance business within the State of Nevada until terminated at the request of the insurer or suspended or revoked by the Commissioner of Insurance.



Dated at Carson City, Nevada this 9th
day of June 19 99

William H. Holaday - Bureau
Commissioner of Insurance



CLERK OF THE COURT

OPP

BRIAN W. BOSCHKE, ESQ.

Nevada Bar No. 7612

E-mail: bboschke@nevadafirm.com

SHEMILLY A. BRISCOE, ESQ.

Nevada Bar No. 9985

E-mail: sbriscoe@nevadafirm.com

COTTON, DRIGGS, WALCH,

HOLLEY, WOLOSON & THOMPSON

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

Facsimile: 702/791-1912

*Attorneys for Counterclaimants West Edna, Ltd., dba Mojave Electric, Western Surety Company,
The Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland,
Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant*

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

CAM CONSULTING, INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD. dba MOJAVE
ELECTRIC, a Nevada corporation; WESTERN
SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

AND RELATED MATTERS.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

**OPPOSITION TO MOTION FOR
RECONSIDERATION OF ORDER
GRANTING IN PART
COUNTERCLAIMANTS' MOTION FOR
PRELIMINARY INJUNCTION TO
PROCURE CODES OR
ALTERNATIVELY MOTION FOR
CLARIFICATION AND REQUEST FOR
ORDER SHORTENING TIME**

COMES NOW, Defendants/Counterclaimants WEST EDNA ASSOCIATES, LTD. dba
MOJAVE ELECTRIC, a Nevada corporation ("Mojave"), WESTERN SURETY COMPANY,
("Western"), a surety, THE WHITING TURNER CONTRACTING COMPANY, ("Whiting"),

1 TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, ("Travelers"), a
2 surety, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ("Fidelity")
3 (collectively "Counterclaimants" or "Defendants"), by and through their attorneys of record,
4 Brian W. Boschee, Esq. and Shemilly A. Briscoe, Esq. of the law firm of COTTON, DRIGGS,
5 WALCH, HOLLEY, WOLOSON & THOMPSON, hereby submit their Opposition to Plaintiff's
6 Motion for Reconsideration of Order Granting in Part Counterclaimants' Motion for Preliminary
7 Injunction to Procure Codes or Alternatively Motion for Clarification and Request for Order
8 Shortening Time. This Opposition is based upon the following Memorandum of Points and
9 Authorities, the court's file, relevant deposition testimony of Keith Lozeau and Shane Norman,
10 PMKs of Cashman Equipment Company, and any argument allowed at the hearing.

11 12 MEMORANDUM OF POINTS AND AUTHORITIES

13 I. INTRODUCTION

14 Cashman's Motion for Reconsideration ("Motion") should be summarily rejected by this
15 Court, because the Motion misinterprets the Court's ruling and tirelessly repeats arguments
16 already made in an attempt to avoid the obligations at issue. Cashman will stop at nothing to hold
17 the project hostage, because it has not been paid by CAM Consulting. The Court received all of
18 the relevant information necessary to make a sound decision, and Cashman's own deposition
19 testimony demonstrates that they know exactly what minimal work is required and have no
20 technical concerns about completion. In fact, the instructions are set out on manufacturer
21 checklists that only Cashman maintains. All arguments otherwise are smoke and mirrors.

22 Cashman also throws around a lot of overused accusations directed at the
23 Counterclaimants without support and which their own testimony contradicts. The depositions to
24 date have revealed the flaws in Plaintiff's position including:

- 25 • that Plaintiff never received joint checks from Mojave or joint checks on minority
- 26 contracts;
- 27 • Plaintiff failed to do reasonable independent investigation of CAM; and
- 28 • the work necessary to complete the startup of the equipment can be completed in

1 5. I sent a letter of demand to Cashman's counsel and was denied the codes.

2 6. I subpoenaed the codes from CAT, a material supplier of Cashman, but was
3 informed that CAT provided the codes to Cashman with the equipment and no longer has
4 possession of the codes.

5 7. The City should be permitted completion, and if the Court is not willing to grant a
6 mandatory injunction, Cashman should show cause why a Writ of Possession should not issue in
7 this matter.

8 8. Counterclaimants will be immediately and irreparably harmed if the codes are not
9 provided.

10 9. Due to the immediacy and ongoing harm being suffered by the Counterclaimants
11 and the City of Las Vegas, the Counterclaimants respectfully request that this Court consider this
12 Motion on time shorter than ordinarily permitted by applicable rules and return the project to
13 status quo.

14 FURTHER YOUR AFFIANT SAYETH NAUGHT.

15

16

S. Briscoe
SHEMILLY A. BRISCOE, ESQ.

17

18 SUBSCRIBED and SWORN to before me
19 this 16th day of July, 2012.

20

21

Carmen M. Militello
NOTARY PUBLIC

22

23

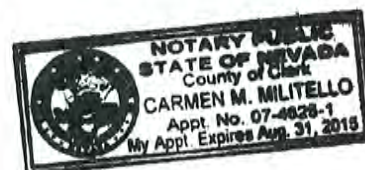
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1 **POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The City of Las Vegas is the owner of real property where the New City Hall Project
4 ("City Hall" or "Project") is currently under construction. Whiting is the Prime Contractor for
5 the Project and entered into an agreement with Mojave to provide electrical work and equipment
6 to City Hall. Mojave entered into a subcontract with CAM, agent of Cashman, whereby
7 Cashman would provide electrical equipment for City Hall in exchange for Mojave's payment.
8 Mojave properly and timely provided payment in full to CAM, and Cashman released the
9 equipment, but CAM failed to remit its payment to Cashman.

10 Part of the equipment provided by Cashman was switchgear for City Hall. The
11 switchgear requires codes that permit communication between the electrical systems and the
12 building's overall control and communication system, or BAS. Cashman has refused to provide
13 the codes due to the litigation, and this failure prevents completion of the Project. Further, there
14 is the potential for unknown malfunctions with the equipment which has caused overall Project
15 paralysis.

16 Absent injunctive relief from the Court, the City Hall Building Management has not
17 ability to monitor and maintain the systems. Cashman is fully aware of this fact and in a position
18 to extort the disputed funds due to the necessity of the unique codes. These tactics are
19 unnecessary and unreasonable when Mojave has fully bonded around Cashman's mechanic's
20 lien, preserving Cashman's ability to obtain payment. Further, Counterclaimants have diligently
21 attempted to resolve the issue and mitigate damages another way with new contractors and
22 material suppliers, demand letters and subpoenas, without success. Thus, Counterclaimants
23 respectfully request immediate injunctive relief to permit the job completion. Cashman must be
24 compelled to provide the required codes for the switchgear at the project site. The codes are
25 unrelated to the dispute between the parties. Conversely, if the Court is uncomfortable with a
26 mandatory injunction, the Court should issue a writ of possession to obtain the codes.

II. STATEMENT OF FACTS¹

On or about February 11, 2010, Mojave entered into a Construction contract with Whiting to construct the New Las Vegas City Hall Project. The scope of Mojave's work partially included bringing power to the Project and obtaining the equipment to consolidate the different electrical systems. Mojave subcontracted with CAM CONSULTING INC. ("CAM") on behalf of CASHMAN EQUIPMENT COMPANY, ("Cashman") to obtain electrical equipment and the codes required to activate the equipment ("Agreement"). Mojave paid in full for the Agreement, but a dispute regarding payment arose between CAM and Cashman when Angelo Carvalho allegedly absconded with the money and failed to pay Cashman. That dispute is the subject of this action.

Cashman refused to complete its work, and Mojave was forced, at great expense, to obtain new subcontractors to finish in an effort to avoid any delay. Now, Cashman is steadfastly refusing to produce the code information based upon the underlying pay dispute with CAM, and thus, Cashman is wrongfully detaining the subject codes to hold Counterclaimants and the City hostage. Specifically, the Project includes a Building Automated System ("BAS") which monitors all of the electrical functions of the Hall including the power and HVAC systems. In order for the BAS to function, codes are required within the switchgear which allows transfer of information between the equipment and the BAS. Without the codes, the City Hall has an incomplete operating system which prevents the City from completion of the project.

Despite requests by Counterclaimant and Counterclaimants' Counsel, Cashman has refused to provide the pertinent codes.² As a result, Counsel attempted to subpoena the codes from CAT, a material supplier of Cashman, but was informed instead that CAT provided the codes to Cashman with the equipment and no longer had possession of the codes.³ Short of replacement of the entire system, the BAS is not operational and the public can not be permitted

¹ The factual assertions made in this Motion are supported by the Declarations of Brian Bugni (Exhibit "A"), and Paul Schmitt (Exhibit "B").

² See Letter of Request from Attorney Briscoe and Letter of Refusal from Attorney Robinson attached as Exhibit "C."

³ See Declaration of Shemilly Briscoe pursuant to EDCR 2.26.

1 entry into the City Hall. Thus, Cashman has knowingly and intentionally caused the project to
2 cease in an effort to obtain payment.⁴ Cashman's conduct is in direct irreparable harm to City
3 Hall, because there is no other way to obtain the unique codes and the project remains
4 incomplete. Further, Cashman has no justification for withholding the codes when full payment
5 has been made, and Mojave has bonded around Cashman's mechanic's lien. Cashman's conduct
6 is simply an attempt to hold the Project hostage over the money purportedly owed from
7 Defendant Carvalho.

8 **III. LEGAL ARGUMENT**

9 **a. Immediate Injunctive Relief is Proper and Necessary**

10 The Nevada Supreme Court has held that injunctive relief is available where: (1) the
11 party seeking such relief enjoys a reasonable likelihood of success on the merits, and (2) the
12 party's conduct to be enjoined, if permitted to continue, will result in irreparable harm for which
13 compensatory damages are an inadequate remedy. See, Dixon v. Thatcher, 103 Nev. 414, 415,
14 742 P.2d 1029, 1029 (1987); Sobel v. Capital Management Consultants, Inc., 102 Nev. 444, 446,
15 726 P.2d 335, 337 (1986). The Court may also consider two additional factors: (1) the relative
16 interests of the parties—how much damage the plaintiff will suffer if injunctive relief is denied
17 versus the hardship to the defendant if injunctive relief is granted, and (2) the interest the public
18 may have in the litigation, if any. See Home Finance Co. v. Balcom, 61 Nev. 301, 127 P.2d 389
19 (1942).

20 Mandatory injunctions are affirmative orders that are sanctioned to accomplish the
21 restorations of status quo. Leonard v. Stoebling, 102 Nev. 543, 550-551, 728 P. 2d 1358, 1363
22 (1986); see also City of Reno v. Matley, 79 Nev. 49, 61, 378 P. 2d 256, 262 (1963). In this case,
23 all of these factors weigh in favor of granting a Mandatory Injunction, because the Project will
24 remain incomplete until the code information is provided by Cashman. As a result, the City Hall
25 cannot be utilized moving forward.

26 ///

27
28 ⁴ See Exhibit "C."

1 **b. There is Reasonable Probability that Counterclaimants will Prevail on the**
2 **Merits**

3 For purposes of obtaining a preliminary injunction, a plaintiff need only show a
4 *reasonable* probability of success on the merits. See Sobel, 102 Nev. at 446, 726 P.2d at 337;
5 Rhodes Mining Co. v. Belleville Placer Mining Co., 32 Nev. 230, 106 P.2d 561, 562 (1910). In
6 the present case, the evidence demonstrates that Counterclaimants will succeed on the merits of
7 its claims. Cashman has willfully sabotaged the project by withholding critical information
8 required for its completion. The system as designed is not fully operable.

9 Cashman has any number of means at their disposal if they believe that they have not
10 been paid for services and materials provided for the Project, and they are pursuing those means
11 in this action. Mojave has bonded around Cashman's mechanic lien fully securing payment
12 options upon this Court's decision. The codes required enable the installed equipment and
13 prevent public health and safety issues. Sabotaging construction of the project is unnecessary and
14 creates a hardship for no reason.

15 **c. Counterclaimants will be Irreparably Harmed if Injunctive Relief is not Granted**

16 A plaintiff must show that irreparable harm for which compensatory damages is an
17 inadequate remedy... Danberg Holdings Nevada, LLC. v. Douglas County and its Bd. Of County
18 Com'rs, 115 Nev. 129, 978 P.2d 311 (1999); Dixon v. Thatcher, 103 Nev. 414, 742 P. 2d 1029
19 (1987). In the present case, Counterclaimants and the City will be irreparably harmed if Cashman
20 is permitted to retain the code components in breach of the parties' Agreement.

21 First, the codes are the only way to link the BAS to the remaining electrical systems in
22 compliance with the overall project design. Therefore, to avoid any maintenance issues, the City
23 cannot close the project without the codes. In addition, other impacts likely to add additional
24 costs that cannot be presently quantified include without limitation:

- 25 1. Costs to extend and maintain insurance;
- 26 2. System testing schedules coordinated with Clark County and outside consultants
27 must be rescheduled and inspectors may not be available on an expedited basis;
- 28 3. Cost of a new switchgear system with new codes at approximately \$180,000.00;

1 4. Damages, additional charges and potential change orders due to “defaults” other
2 parties may claim result from delays in completion of the job.

3 In sum, Counterclaimants cannot complete the Project and these issues could result in
4 duplicitous disputes that will create litigation burdens on all parties, the City, and this Court for
5 no purpose. Any payment at issue in the dispute has been secured by a mechanic’s lien bond and
6 Cashman has no justification for withholding the equipment.

7 Therefore, given the irreparable harm that is occurring, and will continue to occur so long
8 as Cashman’s intentional conduct is not curbed by this Court through injunctive relief,
9 Counterclaimants respectfully submit that injunctive relief is proper and necessary at this stage.

10 **d. The Balance of Hardships and Weighing the Public’s Interest Greatly Favors**
11 **Issuance of Injunctive Relief**

12 To determine whether to grant injunctive relief, the court must examine the relative
13 hardships of the parties. Home Finance Co. v. Balcom, 61 Nev. 301, 127 P. 2d 389 (1942); see
14 also, Ottenheimer v. Real Estate Division, 91 Nev. 338, 535 P. 2d 1284 (1975). Maintaining the
15 status quo by ordering the codes turned over in this case will not be a hardship on Cashman.
16 Cashman has no use for the codes outside of the City Hall. Moreover, Cashman still has the
17 ability to pursue any monetary claims it may have without affecting the closure of the Project.
18 The mechanic’s lien Cashman recorded has been bonded.

19 The City and Counterclaimants will suffer irreparable harm if injunctive relief is not
20 granted by the Court. Without the codes, the BAS system is not fully operational. Cashman is the
21 only party who has possession of the codes and replacement of the system will cost hundreds of
22 thousands of dollars.⁵ Therefore, the City cannot complete the Project and cannot afford to
23 replace it with different functional equipment.

24 Given that the balance of hardships weighs dramatically in favor of Counterclaimants,
25 and given the lack of any risk to Cashman, the granting of injunctive relief at this time is both
26 proper and necessary.

27 ⁵ The exact replacement cost cannot be determined at this time, but estimates have been in the neighborhood of
28 \$200,000.

1 c. **An Additional Bond Should Not be Required.**

2 There is an existing bond in place around the mechanic's lien for this matter that protects
3 the parties' interests. Accordingly, Cashman will suffer absolutely no harm, monetary or
4 otherwise, if injunctive relief is issued. Cashman can still pursue any and all rights they believe
5 are available to them to obtain payment of the sums allegedly owed in any number of forums that
6 will not irreparably harm the City Hall Project. Conversely, Counterclaimants are presently
7 suffering immediate and ongoing irreparable harm, because they are unable to complete the
8 Project. In light of those circumstances, if this Court grants the instant request for injunctive
9 relief and requires the posting of a bond, Counterclaimants respectfully request that such a bond
10 be *de minimus* and reasonable.

11 **E. IN THE ALTERNATIVE OF MANDATORY INJUNCTION, PLAINTIFFS**
12 **SHOULD SHOW CAUSE WHY A WRIT OF POSSESSION SHOULD NOT**
13 **ISSUE FOR THE CODES**

14 If the Court is not inclined to issue a mandatory injunction, Counterclaimants seek delivery
15 of the codes pursuant to NRS 31.840 *et seq.* NRS 31.840 provides that Counterclaimants may
16 claim the delivery of the subject property by applying for an order to show cause.

17 **NRS 31.840 Delivery may be claimed before answer.** Except as
18 provided in NRS 179.1171, the plaintiff in an action to recover the
19 possession of personal property may, at the time of issuing the
20 summons, or at any time before answer, claim the delivery of such
21 property to him as provided in this chapter.

22 NRS 31.850 requires Counterclaimants to file an affidavit with certain information before
23 the Court can issue the order to show cause. Counterclaimants have filed the Declaration of
24 Brian Bugni as Exhibit "A" in Support of Application which contains the information required
25 by NRS 31.850.⁶ Once the Court is satisfied that the declaration meets the requirements of NRS

26 ⁶ **NRS 31.850 Requisites of affidavit by plaintiff.** Where a delivery is claimed, an affidavit shall be made by the
27 plaintiff, or by someone in his behalf, and filed with the court showing:

28 1. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the
29 possession thereof.

30 2. That the property is wrongfully detained by the defendant.

31 3. The alleged cause of the detention thereof according to his best knowledge, information and belief.

32 4. That the same has not been taken for a tax, assessment or fine pursuant to a statute, or seized under an
33 execution or an attachment against the property of the plaintiff, or, if so seized, that it is by statute exempt from such
34 seizure.

35 5. The actual value of the property.

1 31.850, the Court shall issue an order directed to Cashman to show cause why the property
2 should not be taken from Cashman and delivered to the Counterclaimants. The contents of the
3 order to show cause are set forth in NRS 31.853.

4 At the hearing upon the order to show cause, NRS 31.863 states that the Court "shall
5 consider the showing made by the parties appearing, and shall make a preliminary determination
6 which party, with reasonable probability, is entitled to possession, use, and disposition of the
7 property pending final adjudication of the claims of the parties." If the Court determines, with
8 reasonable probability, that the Counterclaimants are entitled to possession of the property, the
9 Court may then issue a writ of possession. NRS 31.863.

10 As indicated in the Declaration of Brian Bugni, Counterclaimants have a security interest
11 in the subject equipment and are entitled to possession thereof because Mojave has issued full
12 payment for the equipment, and has further bonded around Cashman's mechanic's lien.
13 Counterclaimants believe the subject equipment is being wrongfully detained by Cashman, likely
14 somewhere on its premises. Counterclaimants would request the Court order Cashman to appear
15 at a hearing to show cause why a prejudgment writ of possession should not issue. The clear
16 language of NRS 31.840-853, in combination with the Declaration of Brian Bugni, provides
17 ample grounds upon which the Court may issue the order to show cause and, after the hearing,
18 the prejudgment writ of possession directing the delivery of the codes.

19 **F. CONCLUSION**

20 Cashman is in breach of its Agreement, and Counterclaimants are being held hostage
21 from completion of the City Hall Project. Counterclaimants respectfully request a mandatory
22 injunction on shortened time enjoining further delay of the Project and mandating procurement
23 of the switchgear codes in order to complete the Building Automated System and complete the
24 City Hall. In the alternative, if the Court is not comfortable with an injunction, Counterclaimants
25 have met the requisites of NRS Chapter 31 and submit an application for writ of possession to
26 obtain the codes. The Project has been bonded by Mojave, and there are no grounds for Cashman


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to hold the codes going forward.

Dated this 16th day of July, 2012.

**COTTON, DRIGGS, WALCH,
HOLLEY, WOLOSON & THOMPSON**



BRIAN W. BOSCH, ESQ.
Nevada Bar No. 7612
SHEMILLY A. BRISCOE, ESQ.
Nevada Bar No. 9985
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

*Attorneys for Defendants, Counterclaimants and
Crossclaimants*

EXHIBIT A

1 **DECL**

2 **BRIAN W. BOSCHÉE, ESQ.**

3 Nevada Bar No. 7612

4 E-mail: bboschee@nevadafirm.com

5 **SHEMILLY A. BRISCOE, ESQ.**

6 Nevada Bar No. 9985

7 E-mail: Sbriscoe@nevadafirm.com

8 **COTTON, DRIGGS, WALCH,**

9 **HOLLEY, WOLOSON & THOMPSON**

10 400 South Fourth Street, Third Floor

11 Las Vegas, Nevada 89101

12 Telephone: 702/791-0308

13 Facsimile: 702/791-1912

14 *Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The*
15 *Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland,*
16 *Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 **CASHMAN EQUIPMENT COMPANY, a**
20 **Nevada corporation,**

21 **Plaintiff,**

22 **v.**

23 **CAM CONSULTING, INC., a Nevada**
24 **corporation; ANGELO CARVALHO, an**
25 **individual; JANEL RENNIE aka JANEL**
26 **CARVALHO, an individual; WEST EDNA**
27 **ASSOCIATES, LTD. dba MOJAVE**
28 **ELECTRIC, a Nevada corporation; WESTERN**
SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

AND RELATED MATTERS.

DECLARATION OF BRIAN BUGNI IN SUPPORT OF COUNTERCLAIMANTS
MOTION FOR MANDATORY INJUNCTION TO PROCURE CODES OR, IN THE
ALTERNATIVE, APPLICATION FOR WRIT OF POSSESSION

I, Brian Bugni, hereby affirm under penalty of perjury of the laws of the state of Nevada

1 that the following assertions are true to the best of my knowledge:

2 1. I am the Vice President of Defendant WEST EDNA ASSOCIATES, LTD. dba
3 MOJAVE ELECTRIC ("MOJAVE")

4 2. I make this Declaration in support of Counterclaimants' Motion for Mandatory
5 Injunction to Procure Codes or, in the alternative, Application for Writ of Possession.

6 3. On or about February 11, 2010, Mojave entered into a Construction contract with
7 THE WHITING TURNER CONTRACTING COMPANY ("Whiting"), to construct the New
8 Las Vegas City Hall Project ("City Hall").

9 4. The Project includes a Building Automated System which monitors all of the
10 electrical functions of the Hall including the power and HVAC systems.

11 5. In order for the Building Automated System ("BAS") to function, codes are
12 required within the switchgear which allows transfer of information between the equipment and
13 the BAS.

14 6. Mojave subcontracted with CAM CONSULTING INC. ("CAM") on behalf of
15 CASHMAN EQUIPMENT COMPANY, ("Cashman") to provide the codes at the time the
16 overall electrical equipment was obtained for City Hall ("Agreement").

17 7. Mojave paid in full for the Agreement, but a dispute regarding payment arose
18 between CAM and Cashman.

19 8. Cashman refused to complete its work and recorded a mechanic's lien.

20 9. Mojave bonded around the mechanic's lien to secure any payment related to the
21 dispute and release the property where the project was located.

22 10. Cashman is steadfastly refusing to produce the codes based upon the underlying
23 pay dispute with CAM, and thus, Cashman is wrongfully detaining the subject codes to hold
24 Defendants and the City hostage.

25 11. Our counsel requested the codes directly from Cashman, and we have requested
26 the information but Cashman has refused to provide the codes.

27 12. Counsel attempted to subpoena the codes from CAT, a material supplier of
28 Cashman, but was informed that CAT provided the codes to Cashman with the equipment and no

1 longer had possession of the codes.

2 13. Without the codes, the City Hall has an incomplete operating system.

3 14. Further, the City refuses to complete the project until such codes are provided.

4 15. Upon information and belief, the Codes are withheld by Cashman, likely
5 somewhere on the premises.

6 16. Upon information and belief, the subject Codes have not been taken for tax,
7 assessment or fine pursuant to a statute, or seized under an execution or an attachment against the
8 property of Cashman.

9 17. Upon information and belief, the actual value of the subject codes are an
10 estimated \$20,000, but the subject codes are difficult to quantify because they are unique to the
11 City Hall equipment and the entire system fails to work properly without the codes. The cost of
12 the system is approximately \$200,000.

13 18. Cashman's conduct will result in irreparable harm to City Hall, because there is
14 no other way to obtain the unique codes and the project remains incomplete.

15 19. I state under penalty of perjury under the laws of the State of Nevada that the
16 foregoing is true and correct.

17 Dated this 10th day of July, 2012.

18
19 Brian Bugni VP-Finance
20 Brian Bugni
21
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23
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25
26
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28

EXHIBIT B

1 **DECL**

2 **BRIAN W. BOSCHKEE, ESQ.**

3 Nevada Bar No. 7612

4 E-mail: bboschke@nevadafirm.com

5 **SHEMILLY A. BRISCOE, ESQ.**

6 Nevada Bar No. 9985

7 E-mail: sbriscoe@nevadafirm.com

8 **COTTON, DRIGGS, WALCH,**

9 **HOLLEY, WOLOSON & THOMPSON**

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

Facsimile: 702/791-1912

10 *Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The*
11 *Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland,*
12 *Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 **CASHMAN EQUIPMENT COMPANY, a**
16 **Nevada corporation,**

17 **Plaintiff,**

18 **v.**

19 **CAM CONSULTING, INC., a Nevada**
20 **corporation; ANGELO CARVALHO, an**
21 **individual; JANEL RENNIE aka JANEL**
22 **CARVALHO, an individual; WEST EDNA**
23 **ASSOCIATES, LTD. dba MOJAVE**
24 **ELECTRIC, a Nevada corporation; WESTERN**
25 **SURETY COMPANY, a surety; THE WHITING**
26 **TURNER CONTRACTING COMPANY, a**
27 **Maryland corporation; FIDELITY AND**
28 **DEPOSIT COMPANY OF MARYLAND, a**
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

AND RELATED MATTERS.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

DECLARATION OF PAUL SCHMITT IN
SUPPORT OF COUNTERCLAIMANTS
MOTION FOR MANDATORY
INJUNCTION TO PROCURE CODES OR,
IN THE ALTERNATIVE, APPLICATION
FOR WRIT OF POSSESSION

I, Paul Schmitt, hereby affirm under penalty of perjury of the laws of the state of Nevada
that the following assertions are true to the best of my knowledge:

1. I am the Division Vice President of Defendant THE WHITING TURNER

1 CONTRACTING COMPANY ("Whiting").

2 2. I make this Declaration in support of Counterclaimants Motion for Mandatory
3 Injunction to Procure Codes or, in the alternative, Application for Writ of Possession.

4 3. On or about February 11, 2010, Whiting entered into a Construction contract with
5 WEST EDNA ASSOCIATES, LTD. dba MOJAVE ELECTRIC ("MOJAVE"), to construct the
6 New Las Vegas City Hall Project.

7 4. Upon information and belief, Mojave subcontracted with CAM CONSULTING
8 INC. ("CAM") on behalf of CASHMAN EQUIPMENT COMPANY, ("Cashman") to provide
9 the codes at the time the equipment was obtained for City Hall ("Agreement").

10 5. Upon information and belief, Mojave paid in full for the Agreement and the
11 electrical equipment was delivered and installed.

12 6. A dispute regarding payment arose between CAM and Cashman that is the subject
13 matter of this lawsuit.

14 7. Due to the dispute, Cashman refuses to provide the codes that monitor and enable
15 electrical functions of the City Hall, including the power and HVAC systems.

16 8. Without the codes, the New City Hall has an incomplete operating system in
17 accordance with design specifications.

18 9. Despite requests by counsel and Whiting, Cashman has failed to provide the
19 codes.

20 10. Upon information and belief, Cashman's holding the codes hostage in an effort to
21 obtain payment in the dispute.

22 11. The project cannot be deemed "Complete" by the City until such codes are
23 provided.

24 12. I state under penalty of perjury under the laws of the State of Nevada that the
25 foregoing is true and correct.

26 Dated this 10th day of July, 2012.

27 
28 Paul Schmitt

EXHIBIT C



SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

400 SOUTH FOURTH STREET, THIRD FLOOR • LAS VEGAS, NEVADA 89101 • 702.791.0308 • FAX 702.791.1912

800 SOUTH MEADOWS PARKWAY - SUITE 800 - RENO - NEVADA - 89521 - (775) 851 8700 - FAX (775) 851 7681

DENNIS R. HANEY
KENNETH A. WOLOSON
GREGORY J. WALCH
NICHOLAS J. SANTORO
MICHAEL E. KEARNEY
J. DOUGLAS DRIGGS, JR.
RICHARD F. HOLLEY
RONALD J. THOMPSON
JAMES E. WHITMIRE, III

VICTORIA L. NELSON
JEFFREY R. ALBRECHTS
DEAN S. BENNETT
ANDREW J. GLENDON
OLIVER J. PANCHERI
BRIAN W. BOSCHEE
BRYCE K. EARL
ODONNA M. ATANOH

JAMES W. PUZEY
JAMES D. BOYLE
STACY D. HARROP
F. THOMAS EDWARDS

JASON D. SMITH
KIMBERLY J. COOPER
SHEMILLY A. BRISCOE
DONNA M. WITTIG
WILLIAM N. MILLER

CHARLES L. TITUS
(1946 - 2009)

From the desk of: Shemilly A. Briscoe
e-mail: SBriscoe@nevadafirm.com

September 14, 2011

Via U.S. and Certified Mail

Jennifer R. Lloyd-Robinson
PEZZILLO ROBINSON
6750 Via Austi Parkway, Suite 170
Las Vegas, Nevada 89119

RE: Cashman Equipment Company v. CAM Consulting Inc, et al;
District Court Case #A-11-642583

Dear Jennifer:

Attached to this letter is a Western Surety bond recorded September 13, 2011 as Instrument #201109130003721 for release of mechanic's lien. The bond precludes further action against the property and requires release of the lien recorded by Cashman as Instrument No. 201106220002156.

Meanwhile, Mojave Electric received a 24 hour Notice from Whiting-Turner regarding start up of the Emergency Generators for the Las Vegas City Hall Project by October 3, 2011. As you are aware, the equipment cannot be started without Cashman's assistance. Should Cashman refuse to assist with the generators, Mojave must obtain a new subcontractor to perform this work and Mojave reserves its right to pursue Cashman for the amount incurred for performance of its work and warranty obligations under contract.

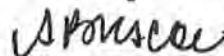
September 14, 2011

Page 2

Please advise our office whether Cashman intends to cooperate and assist with the generators within 24 hours. Otherwise, Mojave must move forward to complete the project.

Thank you,

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON



Shemilly A. Briscoe

SAB:sab
Enclosure

C 3

Inst #: 201109130003721

Fees: \$17.00

N/C Fee: \$25.00

09/13/2011 02:59:40 PM

Receipt #: 911471

Requestor:

SANTORO DRIGGS ETAL

Recorded By: OSA Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN#

139-34-311-021

11-digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrrealprop/owner.aspx>

Bond for Release of

Mechanic's Lien

Type of Document

(Example: Declaration of Homestead, Quit Claim Deed, etc.)

Recording Requested by:

Shemilly A. Briscoe, Esq.

Return Documents To:

Name Shemilly A. Briscoe

Address 460 S. 4th, 3rd FL

City/State/Zip LV, NV 89101

This page added to provide additional information required by NRS 111.312 Section 1-2

(An additional recording fee of \$1.00 will apply)

This cover page must be typed or printed clearly in black ink only.

OR Form 108 - 06/06/2007
Coversheet.pdf

JA 0000354

BOND FOR RELEASE OF MECHANIC'S LIEN

BOND NUMBER: 58685401

KNOW ALL MEN BY THESE PRESENTS, that we, Mojave Electric, 3755 W. Hacienda Avenue Las Vegas, NV 89118, as Principal, and Western Surety Company, a corporation created, organized, and existing under and by virtue of the laws of the State of South Dakota, as Surety, and licensed to do business in the State of Nevada, are held and firmly bound unto Cashman Equipment Company, as Obligee.

WHEREAS, Mojave Electric, as Principal, desires to give a bond for releasing the following described real property owned by OH Las Vegas, LLC from that certain notice of lien in the sum of Seven Hundred Fifty Five Thousand Eight Hundred Ninety Three and 89/100 DOLLARS (\$755,893.89**) recorded, June 22, 2011, in the office of the recorder in Clark County:

See Attached Exhibit "A"

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to the lien claimant named in the notice of lien, Cashman Equipment Company, under the conditions prescribed by NRS 108.2413 to NRS 108.2425, inclusive, in the sum of One Million One Hundred Thirty Three Thousand Eight Hundred Forty and 84/100 DOLLARS (\$1,133,840.84**) from which sum they will pay the claimant such amount as a court of competent jurisdiction may adjudge to have been secured by this lien, including the total amount awarded pursuant to NRS 108.237, but the liability of the surety may not exceed the penal sum of this surety bond.

IN TESTIMONY WHEREOF, the Principal and Surety have executed this bond at Las Vegas, Nevada, on the 8th day of the month of September, 2011.

Mojave Electric

By: _____

Troy Nelson

Western Surety Company

By: _____

Kelly M. Lamb, Attorney-In-Fact

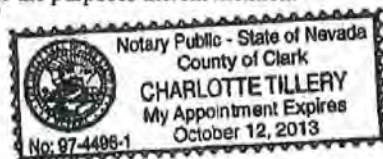
State of Nevada }

County of Clark }

On Sept. 8, 2011, before me, the undersigned, a notary public of this county and state, personally appeared Troy Nelson who acknowledged that he/she executed the foregoing instrument as Principal for the purposes therein mention.

State of Nevada }

County of Clark }

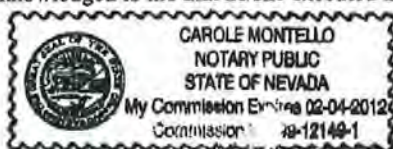


Charlotte Tillery

Notary Public

My Commission Expires: _____

On September 8, 2011, before me, the undersigned, a notary public of this county and state, personally appeared Kelly M. Lamb Attorney-In-Fact, who acknowledged that he/she executed the foregoing instrument and acknowledged to me that he/she executed the same for the purposes stated therein.



Carole Montello

Notary Public

My Commission Expires: February 4, 2012

JA 0000355

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Wendy R Crowell, James A Harris, Gregory J Harris, Kelly M Lamb, Individually

of Las Vegas, NV, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 28th day of January, 2011.



WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

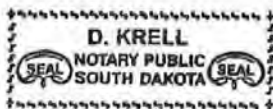
State of South Dakota }
County of Minnehaha }

ss

On this 28th day of January, 2011, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

November 30, 2012



D. Krell, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 8th day of September, 2011.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary



PEZZILLO ROBINSON

Brian J. Pezzillo ^{o†}
Jennifer R. Lloyd-Robinson ^o
George E. Robinson ^{o†}
Marisa L. Maskan ^o
Lance D. Banks ^o

6750 Via Austi Parkway, Suite 170
Las Vegas, Nevada 89119
Tel: (702) 233-4225
Fax: (702) 233-4252
www.pezzillorobinson.com

September 19, 2011

VIA FACSIMILE ONLY – 702-791-1912

Shemilly A. Briscoe, Esq.
Santoro, Driggs, Walch, Kearney, Holley & Thompson
400 S. Fourth St., Third Floor
Las Vegas, Nevada 89101

**Re: Cashman Equipment Company v. Cam Consulting, Inc. et al;
District Court Case No. A-11-642583**

Dear Shemilly:

I am in receipt of your correspondence dated September 14, 2011. I have forwarded the proposed Second Amended Complaint to Brian Boschee of your office. It now includes the claim against the lien release bond.

As for Mojave Electric's request that Cashman Equipment Company ("Cashman") assist with starting up the Emergency Generators, Cashman is unable to do so until it has received payment for the Generators. Cam Consulting, the entity that purchased the Generators, is in breach of its agreement with Cashman by failing to pay Cashman for the Generators relieving Cashman from any further obligation under that agreement, which would include the startup of the Generators. If Mojave Electric pays the amount owed for the Generators, Cashman will immediately work with Mojave Electric to complete the startup of the Generators. Please advise if Mojave Electric would like to tender payment for the Generators.

Mojave Electric has no legal basis for its assertion that it will seek the cost for startup from Cashman should Cashman not accede to Mojave Electric's demands and its position on this issue seems contradictory to that taken earlier. Should Mojave Electric incur costs due to the failure of its subcontractor, Cam Consulting, to perform, it should look to that subcontractor for repayment.

^oLicensed in Nevada
[†]Licensed in New Mexico
^oLicensed in California



PEZZILLO ROBINSON

September 19, 2011

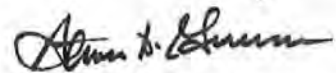
Page 2

As a reminder, unless the Generators and other included equipment are started up by authorized entities, any warranty provided will be void.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer R. Lloyd-Robinson', written over the printed name.

Jennifer R. Lloyd-Robinson, Esq.
PEZZILLO ROBINSON



CLERK OF THE COURT

CCAN

Jennifer R. Lloyd-Robinson, Esq.

Nevada Bar No. 9617

Marisa L. Maskas, Esq.

Nevada Bar No. 10928

PEZZILLO ROBINSON

6725 Via Austi Parkway, Suite 290

Las Vegas, Nevada 89119

Tel: (702) 233-4225

Fax: (702) 233-4252

Attorneys for Plaintiff,

Cashman Equipment Company

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

vs.

CAM CONSULTING INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD., dba MOJAVE
ELECTRIC, a Nevada corporation;
WESTERN SURETY COMPANY, a
surety; THE WHITING TURNER
CONTRACTING COMPANY, a Maryland
corporation; FIDELITY AND DEPOSIT
COMPANY OF MARYLAND, a surety;
DOES 1 - 10, inclusive; and ROE
CORPORATIONS 1 - 10, inclusive;

Defendants.

Case No.: A642583

Dept. No.: 32

**CASHMAN EQUIPMENT COMPANY's
RESPONSE TO WEST EDNA
ASSOCIATES, LTD., dba MOJAVE
ELECTRIC'S COUNTERCLAIM**

///

///

CASHMAN EQUIPMENT COMPANY'S RESPONSE TO WEST EDNA
ASSOCIATES, LTD., dba MOJAVE ELECTRIC'S COUNTERCLAIM

COMES NOW, CASHMAN EQUIPMENT COMPANY ("Cashman" or "Counterdefendant"), by and through its attorneys of record, PEZZILLO ROBINSON, and hereby files its Answer to WEST EDNA ASSOCIATES, LTD. dba MOJAVE ELECTRIC's (hereinafter "Counterclaimant") Counterclaim, and hereby admits, denies and alleges as follows¹:

1. Cashman is without sufficient information to either answer or deny the allegations contained in the following paragraphs of Counterclaimant's Counterclaim: 1, 7, 8, 9, 25 and 31.

2. Cashman admits to the following allegation contained Counterclaimant's Counterclaim: 2.

3. Cashman denies the allegations contained in the following paragraphs of Counterclaimant's Counterclaim: 3, 5, 6, 10, 11, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30, 32, 33, 34 and 35.

4. Cashman repeats, realleges and incorporates its admissions, denials and/or other responses to the allegations set forth in the following paragraphs of Counterclaimant's Counterclaim: 4, 17, 24 and 29.

5. Cashman denies that Counterclaimant is entitled to any of the relief requested in their prayer for relief.

///

///

///

¹ Defendants' Counterclaim did not include Paragraph 12.

AFFIRMATIVE DEFENSES

1. The allegations of the Counterclaim not specifically admitted are hereby denied.

2. The Counterclaim, and each and every allegation thereof, fails to state facts sufficient to constitute a claim against this answering Counterdefendant.

3. There is no contract between Counterclaimant and Counterdefendant.

4. Defendant CAM CONSULTING INC. acted as agent of Counterclaimant.

5. Counterclaimant's claims and damages, if any, are proximately and legally caused by parties over whom Counterdefendant had no control.

6. Counterclaimants' claims are barred under the equitable theory of unclean hands.

7. The Counterclaim is barred by the doctrine of waiver.

8. Counterclaimant's claims are barred under the equitable theory of estoppel.

9. Counterclaimant's claims are barred under the equitable theory of laches.

10. Counterclaimant's claims and damages, if any, have been willfully and intentionally overstated and Counterclaimant's claims are therefore barred by Counterclaimant's own malfeasance and misfeasance.

11. Counterclaimant's damages, if any, are caused by their own actions, errors or omissions, thereby releasing and discharging Counterdefendant from any liability whatsoever to Counterclaimant.

12. Counterclaimant is not entitled to the damages that it is seeking.

13. Counterclaimant's damages, if any, are subject to offset.

14. Counterclaimant's pursuit of its claims against Counterdefendant, under the circumstances of this matter, is a violation of the covenant of good faith and fair dealing implied in all of their agreements, barring it from recovery against them in this action.

Pezzillo Robinson
6750 VIA AUSTI PARKWAY, SUITE 170
LAS VEGAS, NEVADA 89119
TEL 702 233-4225

1 15. Counterclaimant brings forth its claims in bad faith, with an ulterior motive to
2 harass Counterdefendants, abuse the litigation process and raise frivolous and unfounded
3 claims against Counterdefendants causing damage to Counterdefendant.

4 16. This answering Counterdefendant has not had sufficient time to prepare and
5 obtain sufficient facts to determine all potential affirmative defenses pursuant to NRCP 11.
6 Therefore, this answering Counterdefendant reserves the right to amend these affirmative
7 defenses as additional facts are obtained and/or additional affirmative facts are discovered.
8

9 DATED: July 20, 2012

PEZZILLO ROBINSON

10 By: 

Jennifer R. Lloyd-Robinson, Esq.
Nevada State Bar # 9617
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Tel: (702) 233-4225
Attorneys for Plaintiff

Pezzillo Robinson
6750 VIA AUSTIN PARKWAY, SUITE 170
LAS VEGAS, NEVADA 89119
TEL 702 233-4225

CERTIFICATE OF SERVICE

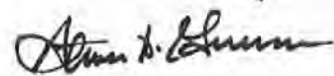
The undersigned, an employee of the law firm of PEZZILLO ROBINSON, hereby certifies that on July 20, 2012, a true and correct copy of the foregoing document, CASHMAN EQUIPMENT COMPANY's RESPONSE TO WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC'S COUNTERCLAIM was served by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

Brian Boschee, Esq.
Shemilly Briscoe, Esq.
SANTORO, DRIGGS, ET AL.
400 S. 4th St., 3rd Fl.
Las Vegas, NV 89101
*Attorneys for Whiting Turner Contracting,
Mojave Electric LV, LLC, Western Surety Company
And Fidelity and Deposit Company of Maryland*

Edward S. Coleman, Esq.
COLEMAN LAW ASSOCIATES
6615 S. Eastern Ave., Ste. 108
Las Vegas, NV 89119
*Attorneys for Janel Rennie aka Janel Carvalho
and Linda Dugan*

Keen L. Ellsworth, Esq.
ELLSWORTH, BENNION & ERICSSON, CHTD.
7881 W. Charleston Blvd. #210
Las Vegas, Nevada 89117
Attorneys for Element Iron and Design


An employee of PEZZILLO ROBINSON



CLERK OF THE COURT

1 **OPP**

2 Brian J. Pezzillo, Esq.

3 Nevada State Bar No. 7136

4 Jennifer R. Lloyd-Robinson, Esq.

5 Nevada Bar No. 9617

6 **PEZZILLO ROBINSON**

7 6725 Via Austi Parkway, Suite 290

8 Las Vegas, Nevada 89119

9 Tel: (702) 233-4225

10 Fax: (702) 233-4252

11 *Attorneys for Plaintiff,*

12 *Cashman Equipment Company*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 CASHMAN EQUIPMENT COMPANY, a
16 Nevada corporation,

17 Plaintiff,

18 vs.

19 CAM CONSULTING INC., a Nevada
20 corporation; ANGELO CARVALHO, an
21 individual; JANEL RENNIE aka JANEL
22 CARVALHO, an individual; WEST EDNA
23 ASSOCIATES, LTD., dba MOJAVE
24 ELECTRIC, a Nevada corporation; WESTERN
25 SURETY COMPANY, a surety; THE
26 WHITING TURNER CONTRACTING
27 COMPANY, a Maryland corporation;
28 FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, a surety; DOES 1 - 10,
inclusive; and ROE CORPORATIONS 1 - 10,
inclusive;

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A642583

DEPT.: 32

Consolidated with Case No.: A653029

**CASHMAN EQUIPMENT
COMPANY'S OPPOSITION TO
MOTION FOR INJUNCTIVE
RELIEF OR WRIT OF POSSESSION**

Date: August 3, 2012

Time: 9:00am

///

1 Comes now, Plaintiff CASHMAN EQUIPMENT COMPANY ("CASHMAN"), by
2 and through the undersigned counsel, and hereby submits its Opposition to Defendants WEST
3 EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC ("MOJAVE"), WESTERN
4 SURETY COMPANY ("Western"), THE WHITING TURNER CONTRACTING
5 COMPANY ("WHITING") and FIDELITY AND DEPOSIT COMPANY OF
6 MARYLAND's ("Fidelity") (hereinafter collectively "Defendants") Motion for Injunctive
7 Relief. This Opposition is based upon the following Memorandum of Points and Authorities,
8 the court's file, and any argument allowed at the hearing.

9
10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I.**

12 **INTRODUCTION**

13 Defendants' Motion for Injunctive Relief and Alternatively the issuance of a Writ of
14 Possession must be denied as the required showings have not been made. The pending
15 motion demonstrates that MOJAVE entered into a business relationship with a subcontractor
16 which absconded with hundreds of thousands of dollars which was rightfully due and owing
17 to CASHMAN. MOJAVE admits this fact but nevertheless requests that the Court issue an
18 injunction which would violate CASHMAN's rights and force it to provide goods and
19 services without payment. Likewise, MOJAVE was in a position to protect itself by insuring
20 payment to CASHMAN but chose not to do so

21 The facts of this case are exceedingly simply. On or about February 11, 2010
22 Defendant MOJAVE entered into a sub-contract with WHITING for work to be performed at
23 the New Las Vegas City Hall Project ("Project"). See Motion, p. 6, lns. 2-3. Mojave
24 subsequently entered into a contract with Cam Consulting ("CAM") for sub-contract work.
25 *Id.* at lns. 5-6. CAM in turn hired CASHMAN to supply electrical equipment. Attached
26 hereto as Exhibit "1" is a true and correct copy of CAM's Credit Application submitted to
27
28

1 CASHMAN. Likewise, attached hereto as Exhibit "2" is a document generated by MOJAVE
2 to CAM ordering the equipment which is subject of this motion. MOJAVE did not enter into
3 an agreement with CASHMAN.

4 Pursuant to CAM's request, CASHMAN provided the electrical equipment requested.
5 Attached hereto as Exhibit "3" are true and correct copies of invoices provided by
6 CASHMAN to CAM for the requested equipment. CAM issued payment to CASHMAN in
7 the form of a check for the equipment supplied. *See* Exhibit "4". On or about May 2, 2010
8 CASHMAN deposited the check into its Wells Fargo Account. On May 4, 2011, CASHMAN
9 was informed that CAM had stopped payment on that check without cause and the check was
10 returned unpaid. *See* Exhibit "5". Defendant, Angelo Carvalho ("Carvalho"), owner of
11 CAM, provided a second check to CASHMAN, which was immediately presented to the bank
12 at which the account was located, Nevada State Bank. *See* Exhibit "6", ¶8. This check was
13 likewise refused as there were insufficient funds in the account. *Id.* It was subsequently
14 learned that the funds intended to pay CASHMAN had been transferred to Defendant
15 CARVALHO's personal bank account from CAM and the money is now missing. *Id.*
16 CASHMAN has yet to be paid for goods and services provided to the Project and is currently
17 due and owed \$755,893.89 plus interest and attorney's fees. *See* Exhibit "6".

18 Due to Defendant CARVALHO's criminal actions in absconding with monies
19 rightfully belonging to CASHMAN, CARVALHO has been criminally charged with drawing
20 and passing a check without sufficient funds with intent to defraud and felony theft. A true
21 and correct copy of the Criminal Complaint and Arrest Warrant are attached hereto as Exhibit
22 "7". It is curious that despite having actual knowledge that its subcontractor, CAM, failed to
23 pay CASHMAN and has stolen over \$750,000, MOJAVE does not include in its motion any
24 mention of any actions it is taking to recover the funds and ensure that CASHMAN is
25 properly paid. Instead, MOJAVE has admitted to wrongfully attempting to procure the access
26 codes to the equipment supplied by CASHMAN by subpoenaing the codes from the
27
28

1 manufacturer. Having failed in its attempt to circumvent CASHMAN, MOJAVE now asks
2 this Court to alter the status quo by ordering CASHMAN to produce codes to machinery for
3 which is has undisputedly not been paid. MOJAVE has shown a complete disregard for the
4 protected property interests of CASHMAN and asks this Court to require CASHMAN to
5 provide valuable services for not payment.

6 7 II.

8 ARGUMENTS AND AUTHORITIES

9 A. Mojave Has Failed to Demonstrate That Injunctive Relief is Warranted

10 "Mandatory injunctions are used to restore the *status quo*, to undo wrongful
11 conditions. A court should exercise restraint and caution in providing this type of equitable
12 relief." *Leonard v. Stoebling*, 102 Nev. 543, 550 – 551, 728 P.2d 1358, 1363 (1986). "A
13 mandatory injunction is a stern remedy." *Id.* "A preliminary injunction is available if an
14 applicant can show a likelihood of success on the merits and a reasonable probability that the
15 on-moving party's conduct, if allowed to continue, will cause irreparable harm for which
16 compensatory damage is an inadequate remedy." *Dangberg Holdings Nevada v. Douglas*
17 *County*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999). In this matter MOJAVE does not seek
18 to maintain the *status quo*, but rather, it seeks to alter the *status quo*.

19 As admitted by MOJAVE, CASHMAN is unpaid for equipment supplied to the
20 Project. As a result of the non-payment CASHMAN has rightfully refused to continue to
21 provide services or equipment. The facts of the case are undisputed and demonstrate a clear
22 breach of contract by CAM, MOJAVE's subcontractor (in addition to other causes of action).
23 The law is well settled in this, as well as all other jurisdictions, that a non-breaching party is
24 relieved of performance when the other party breaches the terms and obligations of a contract.
25 See *LaGrange Construction v. Kent Corporation*, 83 Nev. 277, 278, 429 P.2d 58, 59 (1967)("..
26 .. non-payment of an installment when due may constitute a breach of contract justifying
27
28

1 suspension of performance by the contractor.”). There is no dispute that CASHMAN provided
2 equipment as required and has not been paid for doing so. Thus, the *status quo* is that
3 CASHMAN is not obligated to perform further under its contract with CAM until such time
4 as CAM, or some other party, makes required payment to CASHMAN. MOJAVE seeks to
5 utilize an injunction to alter the *status quo* by forcing CASHMAN to perform under a contract
6 without any assurance of payment and without CASHMAN having been paid for equipment
7 already provided. MOJAVE’s claim that they are seeking to maintain the *status quo* is false
8 and should be rejected by the Court.

9 Despite having admitted that CAM failed to make payment to CASHMAN as
10 required, MOJAVE nevertheless wants a guarantee of performance without payment. Indeed,
11 one can easily imagine that if MOJAVE had been unpaid by WHITING on the job, it would
12 certainly not be agreeable if the owner were to then try and force completion of work by
13 MOJAVE.

14 **B. A Balancing of the Equities Favors Denial of The Issuance of an Injunction**

15 There are no equities presented which would favor the granting of injunctive relief as
16 requested by MOJAVE. MOJAVE has admitted that CASHMAN has not been paid, but
17 continues to argue that CASHMAN should be forced to perform. Having requested equitable
18 relief from the Court it is incumbent upon MOJAVE to act in an equitable fashion. “The
19 unclean hands doctrine generally bars a party from receiving equitable relief because of that
20 party’s own inequitable conduct”. *Las Vegas Fetish & Fantasy Halloween Ball, Inc. v. Ahern*
21 *Rentals, Inc.*, 124 Nev. 272, 275 (Nev. 2008). Requesting that a party be forced to perform a
22 contract when the other party to that contract has breached by failing to make required
23 payment can hardly be considered equitable. Indeed, it is absurd to request that this Court
24 affirmatively harm CASHMAN by requiring it to suffer even greater financial harm than what
25 it has already suffered as it has not been paid on the Project. This is no different than if
26 MOJAVE was unpaid on the Project but was nevertheless ordered to continue working.

1 Simply because MOJAVE claims that it has suffered a harm by CAM having stolen funds it
2 was not entitled to, does not empower MOJAVE to make the matter worse by seeking to
3 punish an innocent and unpaid third-party such as CASHMAN.

4
5 **C. MOJAVE Has no Likelihood of Success on the Merits**

6 MOJAVE claims, without support, that it has a likelihood of success on the merits. In
7 reality, MOJAVE has essentially admitted that this is untrue. There is no dispute that
8 although MOJAVE claims to have made full payment to CAM, no such corresponding
9 payment from CAM has been made to CASHMAN. MOJAVE's position appears to be that
10 CASHMAN should simply remain unpaid and suffer the consequences of MOJAVE's
11 subcontractor stealing funds. CASHMAN cannot be deprived of its property rights¹ to
12 payment simply because it poses an inconvenience for MOJAVE. MOJAVE could have, and
13 should have, protected itself through the use of joint checks² on the project in order to assure
14 that CAM's downstream suppliers and subcontractors were actually receiving payment. The
15 fact MOJAVE chose not to take adequate steps to protect itself is not the fault of CASHMAN
16 and CASHMAN should not be punished for the bad acts of MOJAVE's subcontractor.

17 As set forth above the law is abundantly clear that when a party breaches a contract, as
18 CAM has done, the non-breaching party is relieved of its obligations under the Agreement.
19 MOJAVE asks this Court to ignore this clear legal precedent and force CASHMAN to

20
21 ¹ See *Pressler v. City of Reno*, 118 Nev. 506, 510, 50 P.3d 1096, 1098 (2002) (Contract can form constitutionally
protected property interest).

22 ² A "join check" would have protected MOJAVE as it would guaranteed payment to CASHMAN. The check
23 would not have been negotiable by CAM without CASHMAN's endorsement. Once CASHMAN endorsed the
24 joint check it would be deemed paid regardless of whether CAM released the funds or not. See *Henry Prods.,*
25 *Inc. v. Tarmu*, 114 Nev. 1017, 1019 (Nev. 1998) ("The use of joint checks is well established by custom and
26 practice in the construction industry. When a subcontractor and his materialman are joint payees, and no
agreement exists with the owner or general contractor as to the allocation of proceeds, the materialman by
endorsing the check will be deemed to have received the money due him. Inclusion of the materialman as payee
makes clear that the maker of the check intends to discharge obligations owed to the materialman.").

1 perform despite CAM's breach. There is no legal support for the proposition that a party may
2 have its property rights infringed upon through the use of an injunction simply because a third
3 party to an agreement alleges harm. Even in the event such harm is real, the harm cannot be
4 used to deny CASHMAN is constitutionally protected property interests in its contract with
5 CAM.

6
7 **D. Alternatively, If the Court Were to Issue an Injunction, MOJAVE is Obligated to**
8 **Post Adequate Security in the Form of a Bond**

9 It is beyond argument that NRCP 65(c) mandates the posting of a bond upon the
10 issuance of an injunction. In fact, absent the posting of such a bond, any order of this Court
11 would be void as a matter of law. The Nevada Supreme Court could not have been more clear
12 on this issue:

13 We have previously held that the district court's failure to require the applicant
14 to post security voids an order imposing a preliminary injunction. In *Strickland*
15 *v. Griz Corp.*, 92 Nev. 322, 323, 549 P.2d 1406, 1407 (1976), this court held that
16 "where a bond is required by statute before the issuance of an injunction, it must
17 be exacted or the order will be absolutely void;" (quoting *Shelton v. District*
18 *Court*, 64 Nev. 487, 494, 185 P.2d 320, 323-24 (1947)).

19 *Dangberg Holding Nevada v. Douglas County*, 115 Nev. at 145, 978 P.2d 320 - 21.

20 MOJAVE seeks to violate this mandatory provision based upon the assertion that because it
21 has posted a mechanic's lien release bond it should not be required to post any additional
22 security. This position is false and finds no support in the law. The mechanic's lien release
23 bond posted by MOJAVE was posted pursuant to NRS 108.2413. This bond is of limited
24 effect in that the only thing it offers security for is a mechanic's lien and nothing more. It
25 offers no security for any other causes of action including but not limited to breach of
26 contract, unjust enrichment, etc. Thus, if for some reason the Court found that the mechanic's
27 lien were defective in some fashion, but found that CASHMAN should prevail upon its
28 breach of contract cause of action, CASHMAN would be left with no recovery as the lien

1 release bond surety would not make payment since the breach of contract claim does not fall
2 within the ambit of NRS Ch. 108.

3 CASHMAN would be willing to provide the requested codes to the equipment
4 provided to the Project if, and only if, its rights are fully protected through the posting of a
5 bond securing its claim. Absent such a bond no injunction may issue as a matter of law.
6

7 **E. MOJAVE Has Failed to Make a Showing of Entitlement to a Writ of Possession**

8 The claim for issuance of a Writ of Possession is facially invalid. The Court need look
9 no further than NRS 31.850. First, NRS 31.850(5) requires that the movant show the actual
10 value of the property subject of the requested writ. This information is required to be
11 presented by way of affidavit. *Id.* Neither of the two affidavits address this issue. The only
12 information provided is contained in footnote 5, page 9 of the Motion and states that the
13 replacement value of the equipment is "estimated" at \$200,000. The motion does not even go
14 so far as to state where this estimate was derived nor how it was derived.

15 Additionally, as set forth above, the remaining provisions of NRS 31.850 have not
16 been met. MOJAVE simply assumes that it is entitled to possession of the equipment codes it
17 seeks and ignores the rights of CASHMAN completely. MOJAVE's fatal mistake in the
18 filing of the motion is that it presumes that CAM, its subcontractor, was entitled to possession
19 of the equipment (and codes) and therefore since MOJAVE alleges it has paid CAM, it must
20 necessarily be entitled to possession. The flaw which MOJAVE is aware of, but chooses to
21 ignore, is the fact that CAM was never entitled to possession of the equipment due to its
22 failure to make payment to CASHMAN. MOJAVE's rights are coextensive with those of
23 CAM's and MOJAVE is not entitled to anything greater than CAM is. As CAM was never
24 legally entitled to possession, MOJAVE is likewise not entitled to possession.

25 It is curious that MOJAVE, in passing, states that it has security interest in the
26 equipment. As with its other assertions, MOJAVE offers nothing to support this allegation
27
28

Pezillo Robinson
6725 VIA AUSTI PARKWAY, SUITE 290
LAS VEGAS, NEVADA 89119
TEL: 702 233-4225

1 and it is not known what type of security interest it has, particularly since the equipment has
2 been incorporated into the Project. As CASHMAN held a UCC security interest prior to the
3 equipment's incorporation into the Project CASHMAN would hold a superior interest to the
4 equipment at issue to that of MOJAVE in any event.

5 **IV.**

6 **CONCLUSION**

7 Based on the foregoing, Cashman respectfully requests that Defendants' Motion for
8 Injunctive Relief or alternatively Writ Relief be denied. MOJAVE has done nothing other
9 than offer unsupported assertions and request that this Court essentially rule upon the entirety
10 of the case without addressing CASHMAN's protected property interests. The only facts
11 which MOJAVE has properly put before this Court demonstrate conclusively that MOJAVE's
12 subcontractor, CAM, failed to make payment to CASHMAN and CASHMAN is under no
13 legal duty to produce equipment codes for which it has not been paid. To the extent
14 MOJAVE posts a new bond, in addition to the existing mechanic's lien release bond,
15 CASHMAN would not object to producing the requested codes.

16
17 DATED: July 26, 2012

PEZZILLO ROBINSON

18
19 By: 

Brian J. Pezzillo, Esq.

Nevada State Bar No. 7136

Jennifer R. Lloyd-Robinson, Esq.

Nevada Bar No. 9617

PEZZILLO ROBINSON

6725 Via Austi Parkway, Suite 290

Las Vegas, Nevada 89119

Tel: (702) 233-4225

Fax: (702) 233-4252

Attorneys for Plaintiff,

Cashman Equipment Company

Pezzillo Robinson
6725 VIA AUSTI PARKWAY, SUITE 250
LAS VEGAS, NEVADA 89119
TEL 702 233-4225

CERTIFICATE OF SERVICE

The undersigned, an employee of the law firm of PEZZILLO ROBINSON, hereby certifies that on July 26, 2012, a true and correct copy of the foregoing document, CASHMAN EQUIPMENT COMPANY's OPPOSITION TO MOTION FOR INJUNCTIVE RELIEF OR WRIT OF POSSESSION was served by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

Brian Boschee, Esq.- VIA HAND DELIVERY
Shemilly Briscoe, Esq.
SANTORO, DRIGGS, ET AL.
400 S. 4th St., 3rd Fl.
Las Vegas, NV 89101
*Attorneys for Whiting Turner Contracting,
Mojave Electric LV, LLC, Western Surety Company
And Fidelity and Deposit Company of Maryland*

Edward S. Coleman, Esq.
COLEMAN LAW ASSOCIATES
6615 S. Eastern Ave., Ste. 108
Las Vegas, NV 89119
*Attorneys for Janel Rennie aka Janel Carvalho
and Linda Dugan*

Keen L. Ellsworth, Esq.
ELLSWORTH, BENNION & ERICSSON, CHTD.
7881 W. Charleston Blvd. #210
Las Vegas, Nevada 89117
Attorneys for Element Iron and Design


An employee of PEZZILLO ROBINSON

EXHIBIT 1

SYMBOLS 815

CAT

Credit Dept Fax: (702) 833-4695

GAT
General

Get Access Account

All new applications for a Fire or Civilian Cashless Equipment will be facilitated through Columbia's CAT Access Center. The cost of cashless equipment is indicated here: [Fire](#), [Police](#), [Civilian](#). For more information visit our e-commerce catalog at [columbiaaccess.com](#)

GENERAL INFORMATION

Applicant Name Cam Consulting Inc Trade Name (if different) _____
 Physical Address 3874 Civic Center Dr NU NU 89030 Clark
 Billing Address _____
 Business # 1702 325-9032 Cell # 1702 584-0002 Fax # 1702 895-9661 Business Start Date 2009
 Business Contact Angela Carvalho Title President Phone # (702) 584-0002 Email angelacarvalho@aol.com
 Billing Contact _____ Title _____ Phone # _____ Email _____
 Description of Business Consulting Invoice Method: ☐ Regular Mail ☒ Email angelacarvalho@aol.com
 Type of Business ☐ Sole Proprietorship ☒ Corporation ☐ General Partnership ☐ LLC ☐ Other _____
 Prime Authorized User: Name Angela Carvalho Name Janet Carvalho Name _____
 Has business or any principal ever declared bankruptcy? ☐ Yes ☒ No Are there any outstanding liens or judgments? ☐ Yes ☒ No
 If yes, date filed _____
 Federal ID Number 26-4320692 Sales Tax Exempt? ☐ Yes ☒ No Number of employees 05 Requested limit _____
 If yes, please attach copy of exemption certificate _____
 Bonding Company _____ Contact Name _____ Phone # _____
 Insurance Company Commerce Ind Contact Name Daniel Lee Phone # (702) 798-5700
 When returning mail, please include an envelope addressed to business's required requirements. If unavailable, you will be entered as a second class mailing.

STYANKEPATINE DRYASTION

Bank / Finance Co	Reference	Current balances	Checking	Savings	Loan
(1) Nevada State Bank			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
(2) Wells Fargo Bank			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Trade References	Contact	Address	Phone # (702)		
(1) Maurice Electric	Peter Fungen	3755 W. Harvard	798-2276	Koot	
(2) C&D 54258	Decatur Blvd. 6V	44 89118	South Macdonald	222-821-4108	

WILSON KOWNEER RING PARSY

The undersigned, providing instruction, care, opportunities, and/or resources, authorizing release of letter from local credit union and possibly review in connection with credit collection.

Name/Title (1) Angela Carvajal President Birthdate 24-Sep-67 SSN# 135
Home Address 6316 Little Elm St. NW NW 89031 Phone# (904) 244-4000 Percent of Ownership 100% Time as Owner _____
Net Worth \$ _____ Annual Income \$ _____ Monthly House Payments \$ _____ Signature [Signature]
Name/Title (1) _____ Birthdate _____ SSN# _____
Home Address _____ Phone# _____ Percent of Ownership _____ Time as Owner _____
Net Worth \$ _____ Annual Income \$ _____ Monthly House Payments \$ _____ Signature _____

FINANCIAL ACCOUNTS AND CONDITIONS

[illegible]

CASH001

JA 0000375

QASIMIANEQUIPMENT(CO)CO. Ltd. is a company in the oil and gas industry. It is a subsidiary of the Qasimian Group, which is a leading oil and gas company in the Middle East. The company is based in Dubai, United Arab Emirates. It is a public company listed on the Dubai Stock Exchange. The company's main business is the production and distribution of oil and gas. It also provides services related to the oil and gas industry, such as drilling, exploration, and production. The company has a long history of success and is a major player in the oil and gas industry in the Middle East.

[illegible]

1. OTHER AGREEMENTS: I agree to be bound by the terms and conditions of service for the use of any website operated by OSCO, which in turn may be incorporated into my purchase and receipt of goods or services. I shall also agree to accept the method of dispute resolution set out in the

[illegible][illegible][illegible][illegible][illegible][illegible]

1. All of the information provided in this report was obtained by the author through the public records of CSO, and to the extent of any information owned or controlled by CSO, the author has no knowledge of any other source of information. All of the information provided in this report was obtained by the author through the public records of CSO, and to the extent of any information owned or controlled by CSO, the author has no knowledge of any other source of information. All of the information provided in this report was obtained by the author through the public records of CSO, and to the extent of any information owned or controlled by CSO, the author has no knowledge of any other source of information.

[illegible]

TERMS OF SALE: The terms and conditions of Apple's online store, located at www.apple.com/online, apply to all purchases made through the Apple Store online.

[illegible][illegible][illegible][illegible]

Signed: [Signature] Print name: Wendy Carrillo Title: President Date: 1-31-11

[illegible]

Signed _____ Signed _____ Date _____

Signed _____ Signed _____ Date _____

EXHIBIT 2



"GENERATOR"
"TRANSFER SWITCH"
TERMS AND CONDITIONS

PURCHASE ORDER
787810 GEN 10010

TO: CAM Consulting c/o Cashman Equipment
ATTN: Angelo Carvalho / Keith Lozeau
PHONE: 702-326-9032 / 702-830-5018

April 23, 2010
3 of 4
SHIP VIA: DELIVER

JOB: City of Las Vegas New City Hall
SHIP TO: SHOP ATTN# 730101
CITY: LAS VEGAS

P.O. # AND JOB # MUST APPEAR ON ALL INVOICES, DELIVERY TICKETS AND BILLS OF LADING. SELLER'S INVOICES MUST COINCIDE WITH MOJAVE PURCHASE ORDER ITEM NUMBER, DESCRIPTION, UNIT PRICE BREAKDOWN

- 1 The bill of material as shown above is for reference only and the supplier guarantees a complete bill of material per plans, specifications and addenda.
- 2 Generator to include generator plant and all controls, batteries, battery charger, mounting base, control panel, auto required.
- 3 Retention of 10% will be held on purchase order until job is complete and we have received retention from owner.
- 4 This purchase order includes all fuel tanks, antifreeze and all other necessary items required for initial start up.
- 5 Seller agrees further to furnish personnel and necessary equipment to test and check out equipment and material as required by specifications at no extra cost to Mojave Electric, Inc.
- 6 Seller agrees to furnish warranties in duplicate.
- 7 Seller shall furnish the service of a qualified representative who shall instruct specific personnel as designated by the owner, in the operation and maintenance of the system on this purchase order.
- 8 Instructions shall be made as indicated when this system is complete and shall be the number of hours as indicated by the specifications and/or the time requested by the owner.
- 9 Manufacturer shall include certification of suitability for operation at the altitude of the jobsite.
- 10 Guarantees, warranties and maintenance manuals shall be per plans and specifications.
- 11 Testing and supervision per plans and specifications and addenda.
- 12 Testing shall be per all local requirements of the Fire Department, Building Department and Electrical Inspectors, including load bank tests on the jobsite or factory if required.
- 13 Lifting angles with eye bolts shall be furnished if required by Project Manager. This is vendors responsibility to meet with the Project Manager.
- 14 Time is of the essence. Should Mojave Electric, Inc. incur additional costs due to negligence on the part of the vendor, these additional costs will be recovered from the vendor's accounts.
- 16 Include all automatic transfer switch per plans and specs, including all aux. contacts, verify all coil voltages with Mojave Electric's Project Manager.

MOJ00033

JA 0000378

- 16 All terminals on all breakers, switches, transformers, starters, panels, switchboards, etc., to have lugs suitable for copper or aluminum and shall be stamped AL/CU. All panel back boxes to be adequately sized to provide sufficient space for feeder and branch circuit conductors. All switchboards, transformers, motor control centers and panelboards to be supplied with size, type, quantity and location of lugs as noted in approved shop drawings. All breakers are to have adequate space provided in the lugs for the use of "pin terminals" as "Mec adaptor" style cable terminators for use with aluminum wire. It is the responsibility of the vendor to set up a meeting with Mojave Electric's Project Manager to establish the correct cable size of both copper and aluminum wire.
- 17 All generators and automatic transfer switches are to be shipped on an open type of truck and rigged for as required by Project Manager at time of release. This is the vendors responsibility.
- 18 All panels to have identification plate of black Bakelite with 1/2" white letters unless noted otherwise.
- 19 Provide all additional equipment groundbars and equipment grounding lugs as required by control specifications and plans. All neutral and ground lugs are to be factory mounted.
- 20 Provide all auxiliary contacts, relays, thermostats, control devices, pilot lights, push buttons, HQA switches, etc. and interlocking for automatic transfer switches if required by approved shop drawings and plans and specifications.
- 21 Provide vibration dampers for the generator.
- 22 All automatic transfer switches and generators to be supplied with all lugs as required by approved shop drawings.
- 23 All invoices must be rendered in triplicate.
- 24 This purchase order number shall appear on all packages and all items shipped by vendor on this purchase order, plus on all invoices, shipping papers and all other correspondence.
- 25 Call 24 hours before delivery to 702-798-2970.

F.O.B. jobsite with full freight allowed, unloaded by Mojave Electric, Inc.

All material on this P.O. to ship to shop. Call 24 Hours before delivery to 702-798-2970.

☒ FREIGHT INCLUDED
☐ FREIGHT EXCLUDED

SUB TOTAL: \$ 600,106.00

TAX 6.10%: \$ 48,616.00

SUB TOTAL: \$ 648,611.00

☐ % CASH DISCOUNT:

TOTAL: \$ 648,611.00

ACCEPTED FOR VENDOR

BY:

Angelo Garza / Keith Lozano
 CVM Consulting c/o Cashman Equipment

MOJAVE ELECTRIC, INC.

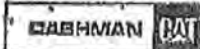
BY:

Peter Fargen, VP Project Development

Terms: SEE PAGE 2 Invoices received after 20th considered next months business.

MOJ00034

EXHIBIT 3



INVOICE

1.800.937.2926
www.cashmanequipment.com

CAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV 89030-7524

PLEASE REMIT TO:
Cashman Equipment Company
File # 59751
Los Angeles, CA 90074-8751

81236701	02-01-11	109502

THANK YOU!

To ensure proper credit, please detach this portion and retain with equipment.

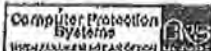
81236701	02-01-11	109502	767010-GEN10019	00	B	815	4	1
812367	02-01-11		10					206227
AA	C32	J8J01016				0		10-081
CUSTOMER CONTACT: ANGELO CARVALHO								
1.0	EQUIPMENT SALE		CATERPILLAR INC. MODEL C32					
	900 KW, 480/277V, 4P, 4W, N3R ENCLOSED GENERATOR		ID NO: 10-081 SERIAL NO: J8J01016				152849.91	
1.0	EQUIPMENT SALE		CATERPILLAR INC. MODEL C32					
	900 KW, 480/277V, 4P, 4W, N3R ENCLOSED GENERATOR		ID NO: 10-082 SERIAL NO: J8J01013				152849.91	
1.0	EQUIPMENT SALE		CATERPILLAR INC. MODEL C32					
	900 KW, 480/277V, 4P, 4W, N3R ENCLOSED GENERATOR		ID NO: 10-037 SERIAL NO: J8J03509				7672.45	
1.0	EQUIPMENT SALE		CATERPILLAR INC. MODEL TRANSWITCH					
	900 KW, 480/277V, 4P, 4W, N3R ENCLOSED GENERATOR		ID NO: 10-038 SERIAL NO: T8G03510				10215.66	
1.0	EQUIPMENT SALE		CATERPILLAR INC. MODEL TRANSWITCH					
	900 KW, 480/277V, 4P, 4W, N3R ENCLOSED GENERATOR		ID NO: 10-039 SERIAL NO: T8G03511				10812.66	
1.0	EQUIPMENT SALE		CATERPILLAR INC. MODEL SWITCHGEAR					
	900 KW, 480/277V, 3P, 4W, N3R ENCLOSED GENERATOR		ID NO: 10-040 SERIAL NO: S8G03627				244859.50	

SOLD TO:

CAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV 89030-7524

SHIP TO/REFERENCE:

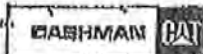
CITY OF LAS VEGAS NEW CITY
MOJAVE ELECTRIC INC
3755 W HACIENDA AVE
LAS VEGAS NV 89118



TERMS: DUE UPON RECEIPT OF INVOICE. A 1% PER MONTH LATE CHARGE WILL BE ASSESSED ON PAYMENT INVOICES.

CASH003

JA 0000381



INVOICE

1,800.937.2328
www.cashmanequipment.com

CAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV 89080-7524

PLEASE REMIT TO:
Cashman Equipment Company
File # 58761
Los Angeles, CA 90074-8761

81236701	02-01-11	109802
598936.26		

THANK YOU!

*** To ensure proper credit, please detach this portion and return with remittance. ***

81236701	02-01-11	109802	767810-GEN10010	00	12	815	4	2
812367	02-01-11		10					206227
AA	C32	JB701016				0	10-081	
FUEL SPARE PARTS SHORT TRIP STATION TRUCK LAY OVER CUST SRV AGMT								7611.78 2353.17 497.50 1741.25 7462.50
COD								598936.26

SOLD TO:

CAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV 89080-7524

SHIP TO/REFERENCE:

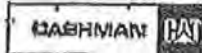
CITY OF LAS VEGAS NEW CITY
MOJAVE ELECTRIC INC
3755 W HACIENDA AVE
LAS VEGAS NV 89118



YES: DUE UPON RECEIPT OF INVOICE, A 1%
PER MONTH LATE CHARGE WILL BE ASSESSED ON
PAST DUE INVOICES.

CASH004

JA 0000382



INVOICE

1.800.037.2320
www.cashmanequipment.com

CAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV 89030-7524

PLEASE REMIT TO:
Cashman Equipment Company
File # 58751
Los Angeles, CA 90074-8761

81236601	02-01-11	109802
156627.92		

THANK YOU!

To ensure proper credit, please detach this portion and return with remittance.

81236601	02-01-11	109802	767810-GEN10010	00	E	815	4	3
812366	02-01-11		10					206228
XX	98AE500244	10-71N73354-01					0	10-504

CUSTOMER CONTACT: ANGLO CARVALHO

EQUIPMENT SALE
MISC
UPS
ID NO: 10-504 SERIAL NO: 10-71N73354-01
400 KW 277/480V, 3 PHASE W/BATTERIES
MGE M...
SHUN...
COD

156627.92

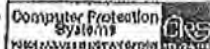
156627.92

SOLD TO:

CAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV 89030-7524

SHIP TO REFERENCE:

CITY OF LAS VEGAS NEW CITY
NOUAVE ELECTRIC INC
3755 W HACIENDA AVE
LAS VEGAS, NV 89110




TERMS: DUE UPON RECEIPT OF INVOICE. A 1.5%
PER MONTH LATE CHARGE WILL BE ASSESSED ON
PAST DUE INVOICES.

CASH005

JA 0000383

EXHIBIT 4

CASH CONSULTING INC <small>3074 OMOCEHTEN DR PHOENIX 850032 NORTH LAS VEGAS, NV 89102</small>		1030
PAY TO THE ORDER OF <u>Cashman Equipment</u>		DATE <u>29 April 11</u>
<u>Seven Thousand Eight Hundred Three</u>		\$ <u>7558.93</u>
NEVADA STATE BANK <small>1000 1036 11 12 21 00 77 91 0 25 20 3 10 3 20</small>		 For invoice # <u>61445 & 61446</u>
<div style="text-align: right;"> CASHMAN EQUIPMENT COMPANY 4114 S 43RD ST FARGO ND 58103 701.785.4444 </div>		

Date: 05/02/11 Sequence Number: 94249092 Account: 262031032 Serial: 1036 Amount: \$755,893.89 Dep Seq#: -

EXHIBIT 5

091000014
05/04/2013
3351153946

This is a LEGAL COPY
of your check. You can
use it the same way
you would use the
original check.

RETURN REASON-C
STOP PAYMENT

1095 02

STOP PAYMENT
Do Not Re-deposit

1102/20/50 1122004213
2506452045650000

CASH CONSULTING INC
1036
DATE 29-April-11
PAY TO THE ORDER OF Cashman Equipment \$755893.29
Seven Fifty Five Thousand Eight Hundred and Ninety Three and 29/100
Nevada State Bank
For invoice # 61445 1 51446
1102/20/50 1122004213

1102/20/50 1122004213

1102/20/50 1122004213

1102/20/50 1122004213

1102/20/50 1122004213

091000014
05/04/2013
3351153946

CASHMAN EQUIPMENT COMPANY
FOR DEPOSIT ONLY
NEVADA STATE BANK
2100246

1102/20/50 1122004213
1102/20/50 1122004213
1102/20/50 1122004213
1102/20/50 1122004213
1102/20/50 1122004213
1102/20/50 1122004213
1102/20/50 1122004213
1102/20/50 1122004213
1102/20/50 1122004213
1102/20/50 1122004213

Do not endorse or write below this line

CASH014

JA 0000387

WELLS FARGO BANK N.A.
P.O. BOX 5169
SIOUX FALLS, SD 57104

102



CASHMAN EQUIPMENT COMPANY
3300 SAINT ROSE PKWY
HENDERSON NV 89052-8988

ITEMS ENCLOSED: 1

PAGE 1 OF 1 ACCOUNT CHARGED 4121484596 DATE: 05-04-2011

YOUR ACCOUNT HAS BEEN CHARGED FOR THE FOLLOWING ITEM(S) RETURNED UNPAID.

	REASON FOR NON-PAYMENT	SEQUENCE #	AMOUNT
DEPOSITORY ACCOUNT NUMBER:	4121484596		
CHARGES FOR PAPER RETURNS:			
	Stop Pay	3351153946	755,893.89
TOTAL CHARGES FOR PAPER RETURNS			755,893.89

TOTAL CHARGES FOR PAPER RETURNS 755,893.89

SHOULD YOU HAVE ANY QUESTIONS OR REQUIRE ADDITIONAL INFORMATION, PLEASE CALL THE
PHONE NUMBER THAT IS LISTED ON YOUR BANK STATEMENT;

CASH015

JA 0000388

EXHIBIT 6

AFFIDAVIT OF SHANE NORMAN

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Shane Norman, having been duly sworn and under the penalty of perjury do hereby state:

1. I am personally knowledgeable about the facts contained herein and am competent to testify.
2. I am the Credit Manager at CASHMAN EQUIPMENT COMPANY ("Cashman") and am authorized to make this Affidavit in support of Cashman's Application for a Prejudgment Writ of Attachment against Defendants CAM CONSULTING, INC. ("Cam") and ANGELO CARVALHO ("Carvalho").
3. Cashman is a Nevada corporation authorized to conduct business in Clark County, Nevada.
4. Cashman has brought claims for breach of contract, breach of the implied covenant of good faith and fair dealing, fraud and unjust enrichment against Defendants Cam and Carvalho. Cashman has asserted related claims against other parties that are not relevant to Cashman's Application for a Prejudgment Writ of Attachment against Defendants Cam and Carvalho.
5. Cashman sold equipment to Defendant Cam, as set forth in Exhibit "3" of this Application.
6. Cam received payment for the equipment Cashman sold to Cam from WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC (the "Mojave Payment").
7. Cam issued payment to Cashman, but subsequently stopped payment on that check; a copy of that check and the notice received from the bank are attached to this Application as Exhibit "15".
8. After demand, Carvalho provided a second check made payable to Cashman which was presented to the bank at which the account was located, Nevada State Bank. Nevada State Bank refused to cash the check as there were insufficient funds in that account.

9. In my last contact with Carvalho he indicated that the funds that were to pay Cashman had been transferred to an account at Wells Fargo Bank.
10. Cam now owes the principal amount of \$755,893.89 for the equipment, plus interest from the time the amount came due.
11. Cashman is informed and believes and based thereon alleges that Cam is no longer operating.
12. Cashman has been unable to locate Cam and Carvalho and the telephone numbers Cashman had for Cam and Carvalho have been disconnected.
13. Cashman applied to this Court to issue subpoenas to Cam and Carvalho's banking institutions in order to attempt to locate the funds from the Mojave payment that were to be paid to Cashman.
14. After review of the records from the banking institutions, it appears that instead of using these funds to pay Cashman as required, Carvalho converted these funds and used them for various purposes including the purchase of some of the assets that Cashman seeks to attach with this Writ.
15. Two checks from Mojave totaling \$956,530.75 were deposited in the Cam checking account on or about April 26, 2011. *See Exhibit "4"*.
16. Another check from Mojave totaling \$81,119.18 was deposited in the Cam checking account on or about April 28, 2011. *See Exhibit "5"*.
17. A check in the amount of \$38,939.65 was written out of the Cam checking account and made payable to Findlay Honda on April 27, 2011 with the notation "company car." *See Exhibit "6"*.
18. Two withdrawals were made in the form of cash or cashier's check from the Cam checking account on April 27, 2011; one in the amount of \$20,008.00 and the second in the amount of \$600,000.00, both appear to be signed by Angelo Carvalho. *See Exhibit "7"*, copies of the withdrawal slips.
19. Given that Cam issued payment that was returned for insufficient funds, Cam is no longer operating and Carvalho cannot be located, Cashman seeks to attach the

1 following assets now as there may be no recovery after judgment is rendered in this
2 matter.

3 20. Cashman seeks to attach the following property:

- 4 a. 2011 Honda Pilot EXL, VIN # 5FNYP3H54BB019450;
5 b. 2011 TIOGA 30 Foot Motorhome, VIN # 1FDXEFS6BDA48951;
6 c. 2002 Lexus GS430, VIN # JT8BL69S720009139;
7 d. 2011 Kawasaki ZX1400C Motorcycle, VIN # JKBZXNC16BA026996;
8 e. 2011 Honda VTX1800S Motorcycle, VIN # 1HFSC49303A100009;
9 f. 2011 Interstate Enclosed Utility Trailer, VIN # 4RACS1215BK040890; and,
10 g. El Camino, VIN # unknown.

11 21. An estimate of the value of this property is as follows:

- 12 a. 2011 Honda Pilot - \$29,473.00 (See Exhibit "8");
13 b. 2011 TIOGA 30 Foot Motorhome - \$89,132.00 brand new, but given that this
14 vehicle is used, that amount should be adjusted down (See Exhibit "9");
15 c. 2002 Lexus GS430 - \$9,559.00 (See Exhibit "10");
16 d. 2011 Kawasaki ZX1400C - \$7,610.00 (See Exhibit "11");
17 e. 2011 Honda VT1300CX - \$7,790.00, the description does not match the listed
18 property exactly but was the closest match that could be located (See Exhibit
19 "12");
20 f. 2011 Interstate Enclosed Utility Trailer, value unknown as size has not yet been
21 determined; and,
22 g. El Camino - records indicate that \$32,500.00 was paid for the El Camino (See
23 Exhibit "13").

24 22. It is not believed that a writ of garnishment will need to be served on any other person.

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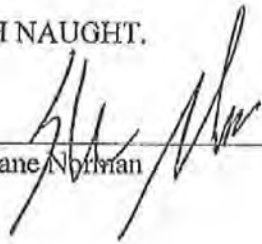
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Pezzano Robinson
6750 Via Rusti Pkwy, Suite 170
Las Vegas, Nevada 89119

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23. To the best of my knowledge, the property sought to be attached is not exempt from execution.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


Shane Norman

12/5/11
Date

Subscribed and sworn to before me
this 5th day of December, 2011.

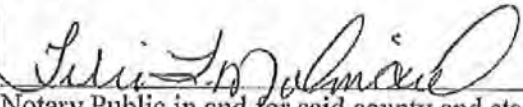

Notary Public in and for said county and state



EXHIBIT 7

WARRANT ELECTRONICALLY GENERATED AND ENTERED INTO NCJIS
*** DO NOT MANUALLY ENTER INTO NCJIS ***

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

THE STATE OF NEVADA
PLAINTIFF
VS.
CARVALHO, ANGELO
ID# 01172324
DEFENDANT

CASE NO: 11F14075X
DEPT. NO: 3
AGENCY: DA BAD CHECK UNIT

ARREST WARRANT

THE STATE OF NEVADA,

TO: ANY SHERIFF, CONSTABLE, MARSHALL, POLICEMAN, OR PEACE OFFICER
IN THIS STATE:

A COMPLAINT AND AN AFFIDAVIT UPON OATH HAS THIS DAY BEEN LAID
BEFORE ME ACCUSING CARVALHO, ANGELO, OF THE CRIME(S):

COUNTS	CHARGE	BAIL: CASH	SURETY	PROPERTY
1	NON SUFFICIENT FUNDS/C	831,558.28	8,315,582.80	
1	THEFT (PELONY)	3,000.00	30,000.00	

YOU ARE, THEREFORE, COMMANDED FORTHWITH TO ARREST THE ABOVE NAMED
DEFENDANT AND BRING HIM BEFORE ME AT MY OFFICE IN LAS VEGAS TOWNSHIP,
COUNTY OF CLARK, STATE OF NEVADA, OR IN MY ABSENCE OR INABILITY TO
ACT, BEFORE THE NEAREST AND MOST ACCESSIBLE MAGISTRATE IN THIS COUNTY.

THIS WARRANT MAY BE SERVED AT ANY HOUR OF THE DAY OR NIGHT.

GIVEN UNDER MY HAND THIS 23RD DAY OF AUGUST, 2011.

JUSTICE OF THE PEACE IN AND FOR SAID TOWNSHIP
JANIECE MARSHALL

SHERIFF'S RETURN

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT
ON THE _____ DAY OF _____, AND SERVED THE SAME BY
ARRESTING AND BRINGING DEFENDANT, _____, INTO COU
THIS _____ DAY OF _____.

DOUGLAS C. GILLESPIE, SHERIFF, CLARK COUNTY, NEV
BY: _____, DEPUTY

11F14075X
992452



JA 0000395

FILED
JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ANGELO CARVALHO, ID#1172324,

Defendant.

CASE NO. 11F14075X

DEPT. NO. 3

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of DRAWING AND PASSING A CHECK WITHOUT SUFFICIENT FUNDS IN DRAWEE BANK WITH INTENT TO DEFRAUD, PRESUMPTIONS OF INTENT TO DEFRAUD, (Felony - NRS 205.130, 205.132), and THEFT, (Felony - NRS 205.0832, 205.0835, 205.132, 205.380), in the manner following, to-wit: That the said Defendant, on or about the 29th day of April, 2011, at and within the County of Clark, State of Nevada,

COUNT 1 DRAWING AND PASSING A CHECK WITHOUT SUFFICIENT FUNDS IN DRAWEE BANK WITH INTENT TO DEFRAUD, PRESUMPTIONS OF INTENT TO DEFRAUD

did willfully, unlawfully, and with intent to defraud, draw and pass a check to obtain merchandise, drawn upon Nevada State Bank, Account No. 262031032, made payable to CASHMAN EQUIPMENT, and passed at 3755 West Hacienda Avenue, Las Vegas, Clark County, Nevada, in the amount of \$755,893.89, check no. 1036, when the said Defendant had insufficient money, property, or credit with the drawee of the instrument to pay it in full upon its presentation.

COUNT 2 THEFT

did then and there knowingly, feloniously, and without lawful authority, commit theft by obtaining personal property in the amount of \$250.00, or more, lawful money of the United States of CASHMAN EQUIPMENT, and passed at 3755 West Hacienda Avenue, Las Vegas, Clark County, Nevada, by a material misrepresentation with intent to deprive that person of the property, in the following manner, to-wit: by the Defendant, a patron of CASHMAN EQUIPMENT, receiving the

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988450



RC

JA 0000396

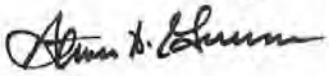
1 sum of \$755,893.89 merchandise in exchange for check no. 1036, drawn upon Nevada State Bank,
2 Account No. 262031032, while falsely representing said check would clear his bank account,
3 thereby obtaining the personal property of CASHMAN EQUIPMENT by a material
4 misrepresentation with intent to deprive them of the lawful money of the United States.

5 All of which is contrary to the form, force and effect of Statutes in such cases made and
6 provided and against the peace and dignity of the State of Nevada. Said Complainant makes this
7 declaration subject to the penalty of perjury.

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11 8/16/2011

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26 DA#11F14075X/mn
27 DAO EV#1108018093
28 D & P NSF CHECKS and THEFT - F
(TK3)



CLERK OF THE COURT

RPLY

BRIAN W. BOSCHKEE, ESQ.

Nevada Bar No. 7612

E-mail: bboschkee@nevadafirm.com

SHEMILLY A. BRISCOE, ESQ.

Nevada Bar No. 9985

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COTTON, DRIGGS, WALCH,

HOLLEY, WOLOSON & THOMPSON

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

Facsimile: 702/791-1912

Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland, Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

CAM CONSULTING, INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD. dba MOJAVE
ELECTRIC, a Nevada corporation; WESTERN
SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

AND RELATED MATTERS.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

**REPLY TO CASHMAN EQUIPMENT COMPANY'S OPPOSITION TO MOTION FOR
INJUNCTIVE RELIEF OR WRIT OF POSSESSION**

Counterclaimants WEST EDNA ASSOCIATES, LTD. dba MOJAVE ELECTRIC, a
Nevada corporation ("Mojave"), WESTERN SURETY COMPANY, ("Western"), a surety,

1 THE WHITING TURNER CONTRACTING COMPANY, ("Whiting"), TRAVELERS
2 CASUALTY AND SURETY COMPANY OF AMERICA, ("Travelers") a surety, and
3 FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ("Fidelity") (Collectively
4 "Counterclaimants"), by and through their attorneys of record, Brian W. Boschee, Esq., and
5 Shemilly A. Briscoe, Esq. of the law firm COTTON, DRIGGS, WALCH, WOLOSON,
6 HOLLEY & THOMPSON, file this Reply to Cashman Equipment Company's Opposition to
7 Motion for Injunctive Relief or Writ of Possession ("Reply") based upon:

- 8 ▪ Cashman's admission that it wrongfully retains the codes as security despite
9 Mojave's payment extorting Counterclaimants;
- 10 • Cashman's disruption to the status quo by refusing to produce the codes; and
- 11 • The hardship on the City and Counterclaimants due to an incomplete system
12 which prevents the project completion and renders the system ineffective.

13 Therefore, this Court should enter an order requiring Cashman to provide and reinstall the
14 codes for the parallel Switchgear that interfaces with the Building Automated System ("BAS")
15 as their Agreement requires.

16 This Reply is made and based on the pleadings and papers on file with this Court, the
17 attached Memorandum of Points and Authorities, and any oral argument the Court may entertain
18 on the matter.

19 Dated this 31st day of July, 2012.

20 **COTTON, DRIGGS, WALCH,**
21 **HOLLEY, WOLOSON & THOMPSON**

22 *Brian W. Boschee*

23 BRIAN W. BOSCHEE, ESQ.

24 Nevada Bar No. 7612

25 SHEMILLY A. BRISCOE, ESQ.

26 Nevada Bar No. 9985

27 400 South Fourth Street, Third Floor

28 Las Vegas, Nevada 89101

*Attorneys for Defendants West Edna, Ltd., dba
Mojave Electric, Western Surety Company, The
Whiting Turner Contracting Company and
Fidelity and Deposit Company of Maryland,
Travelers Casualty and Surety Company of
America, Counterclaimant and Crossclaimant*

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Cashman Equipment Company ("Cashman") attempts to distract the Court with red
4 herring arguments and unsupported accusations when the issues at hand are exceedingly simple.
5 First, Counterclaimants seek to maintain status quo with completion of the Project and utilization
6 of the City's Building Automated System. The equipment from Cashman was already installed
7 and the work fully performed at the City Hall. Cashman admits that it has withheld the last key
8 element, the codes, intentionally for leverage even though Mojave fully paid for the equipment
9 and received an unconditional release from Cashman. Further, Mojave bonded around the lien
10 securing Cashman's claims in this case. Mojave is not the bad actor in this case, and no evidence
11 demonstrates that additional damages exist. Moreover, the full amount sought from Carvalho by
12 Cashman is unknown, but should be significantly reduced due to Cashman's collection efforts.
13 Accordingly, Counterclaimants' Motion should be granted in its entirety, and Cashman should
14 produce the codes.

15 II. LEGAL ARGUMENT

16 A. The Relief Requested is Reasonable and Permits Completion of the City Hall

17
18 Granting of injunctive relief at this time is both proper and necessary. Replacement of the
19 City's Building Automated System will cost hundreds of thousands of dollars, and Cashman
20 plainly disrupts the status quo of the City Hall Project by holding the codes necessary to
21 complete as security for its payment. Cashman is the SOLE party who can provide the codes to
22 the City. Meanwhile, Counterclaimants seek an extraordinary injunction in name only, because
23 there is no other option when Cashman admits to having the codes, but refuses to provide them.

24 Essentially, Cashman seeks a prejudgment writ of attachment without merit. Importantly,
25 the electrical equipment installation on City Hall was performed by Cashman and Mojave issued
26 full payment for the work. Despite Cashman's hard efforts to paint Counterclaimants with
27
28

1 allegations of unclean hands, inequitable conduct, and lack of diligence,¹ the fact remains that
2 Mojave is not the bad actor here and no evidence demonstrates that Mojave has acted unfairly.
3 Cashman's contorted conspiracy theories would have Mojave in a conspiracy to harm itself and
4 this position does not pass the smell test. Mojave has made full payment for equipment that
5 doesn't function properly, and Mojave has paid an additional amount in excess of \$100,000 to
6 complete work on the project and attempt to obtain the necessary codes for the City. Finally,
7 Mojave has been forced to pay to bond the mechanic's lien on the project. Cashman's
8 overinflated allegations against Mojave are unfounded and unsupported.

9 On the other hand, Cashman knowingly accepted a postdated check from Carvalho, and
10 waited to deposit that check until after it issued an unconditional release. Then, Cashman failed
11 to provide 100% of their contracted work (Batteries, Warranty and PLC Codes). Cashman owes
12 a duty to complete the Project under its contract and ordering the codes turned over in this case
13 will not be a hardship on Cashman. Cashman has no use for the codes outside of the City Hall.

14 Furthermore, Cashman still has the ability to pursue any monetary claims it may have in
15 this matter without affecting the closure of the Project. Counterclaimants recognize that NRCP
16 65 requires posting of a bond, but a bond has already been issued in this case. While the existing
17 bond with Western Surety is limited to the mechanic's lien, there is proof of no other damages in
18 this matter: Cashman has provided no evidence or made any showing in support of additional
19 claims and pie in the sky allegations related to Mojave's knowledge of Carvalho's actions is a
20 farfetched and desperate attempt to get a second bite when full payment was made by Mojave.
21 Like Cashman, Mojave had no reason to distrust Carvalho, but should not be forced to suffer
22 perpetual inability to close the City's work due to Carvalho's independent acts.

23 Moreover, the amount due and owing to Cashman under the lien should have been
24 reduced by Cashman's collection efforts and will likely be even reduced further once the formal
25 judgment is entered against Carvalho. Consequently, the requirement for an additional bond by
26 Counterclaimants is grossly overstated and unnecessary. Cashman will be made whole by the

27
28 ¹ *Opposition* at pp. 5, 6, 7.

1 wrongdoer in this action and should not be permitted to obtain double payments and double
2 security from every party.

3 Accordingly, Cashman has no justification for withholding the codes and the codes
4 should be issued to the City for Project completion.

5 **B. A Writ of Possession is Equitable and Counterclaimants Provide Proof**

6 A writ of possession is simply an additional remedy for this issue if the Court was
7 reluctant to enter an injunction. See NRS 31.840 *et seq.* Admittedly, quantifying a value for the
8 codes is difficult in this instance, because the codes themselves are only valuable with the
9 equipment already installed and partially in use by the City. On the other hand, the equipment
10 becomes valueless and cannot fully perform without the codes. Cashman knows this and is using
11 that position to hold the project hostage. Therefore, the subjective worth of the codes is not
12 outcome determinative. Also, nitpicking estimates serves no purpose when the full amount of the
13 claim has already been bonded by Mojave.

14 Cashman relies heavily on Carvalho's bad actions in an attempt to justify its ongoing
15 breach when in reality its actions are nothing less than extortion. Carvalho may not be entitled to
16 possession of the codes, but Mojave made full payment to Carvalho as the agent of Cashman in
17 the underlying transaction. Mojave has rights because it paid for them, a fact that Cashman
18 conveniently ignores. Mojave's Declaration of Brian Bugni, provides grounds upon which the
19 Court may issue the prejudgment writ of possession directing the delivery of the codes.
20 Therefore, relief should be granted.

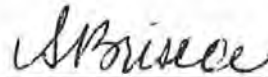
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22 **III. CONCLUSION**

23 The City Hall Project should be completed as it has nothing to do with the underlying
24 payment dispute in this case. Mojave already issued a bond in this matter, and Plaintiff's actions
25 are akin to a prejudgment writ of attachment when there is no showing of evidence to support
26 additional damages outside of the lien amount. Counterclaimants respectfully request that this
27 Honorable Court enter an order requiring Cashman to provide and reinstall the codes for the
28 parallel Switchgear that interface with the Building Automated System ("BAS") as their

1 Agreement provides and restraining Cashman, their employees, agents, and affiliated companies
2 from re-entering the Project and tampering any further with the equipment and codes.

3 Dated this 31st day of July, 2012.

4 **COTTON, DRIGGS, WALCH,**
5 **HOLLEY, WOLOSON & THOMPSON**

6 

7 BRIAN W. BOSCH, ESQ.
8 Nevada Bar No. 7612
9 SHELLEY A. BRISCOE, ESQ.
10 Nevada Bar No. 9985
11 400 South Fourth Street, Third Floor
12 Las Vegas, Nevada 89101

13 *Attorneys for Defendants West Edna, Ltd., dba*
14 *Mojave Electric, Western Surety Company, The*
15 *Whiting Turner Contracting Company and*
16 *Fidelity and Deposit Company of Maryland,*
17 *Travelers Casualty and Surety Company of*
18 *America, Counterclaimant and Crossclaimant*

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 31st day of July, 2012 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **REPLY TO CASHMAN EQUIPMENT COMPANY'S OPPOSITION TO MOTION FOR INJUNCTIVE RELIEF OR WRIT OF POSSESSION**, via electronic mail and postage prepaid and addressed to:

Jennifer R. Lloyd-Robinson, Esq.
Marisa L. Maskas, Esq.
PEZZILLO ROBINSON
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Attorneys for Plaintiff

Edward Coleman, Esq.
COLEMAN LAW ASSOCIATES
8275 S. Eastern, Suite 200
Las Vegas, Nevada 89123
*Attorneys for Defendant Janel Rennie
aka Janel Carvalho*

Keen L. Ellsworth, Esq.
ELLSWORTH & BENNION, CHTD.
777 N. Rainbow Blvd., Suite 270
Las Vegas, Nevada 89107
Attorneys for Element Iron and Design


An employee of Cotton, Briggs, Walch,
Holley, Woloson & Thompson

DISTRICT COURT
CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

CAM CONSULTING, INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD. dba MOJAVE
ELECTRIC, a Nevada corporation; WESTERN
SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

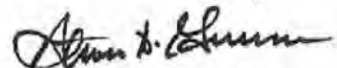
AND RELATED MATTERS.

Case No.

A642583

Dept No.

32 Electronically Filed
08/06/2012 11:48:16 AM



CLERK OF THE COURT

ORDER SETTING CIVIL NON-JURY TRIAL, PRE-TRIAL/CALENDAR CALL

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried on a five week stack to begin, on **Monday, May 20, 2013, at 1:30 P.M.**

B. A Pre-Trial/Calendar Call with the designated attorney and/or parties in proper person will be held on **Friday, May 3, 2013, at 11:00 A.M.** As a courtesy to counsel and parties, please note that Calendar Call for Department 32 is scheduled to be held in courtroom 11C, however, please check courthouse monitors for any change in location.

C. The Pre-trial Memorandum must be filed prior to the Pre-Trial/Calendar Call, with a courtesy copy delivered to Department 32 Chambers. All parties, (Attorneys and parties in Proper Person) must comply with EDCR 2.67.

RECEIVED

AUG 06 2012

CLERK OF THE COURT

JA 0000405

1 D. All discovery deadlines, deadlines for filing dispositive motions and motions to
2 amend the pleadings or add parties are controlled by the previously issued Scheduling Order.

3 E. Pursuant to EDCR 2.35, a motion to continue trial due to any discovery issues or
4 deadlines must be made before the Discovery Commissioner.

5 F. Pursuant to EDCR 2.47, all motions in limine to exclude or admit evidence must be
6 in writing and filed not less than **45 days** prior to the date set for trial and must be heard not less than
7 **14 days** prior to trial.

8 Orders shortening time will not be signed except in extreme emergencies and an upcoming
9 trial date is not considered an extreme emergency in this context.

10 Failure of the designated trial attorney or any party appearing in proper person to
11 appear for any court appearances or to comply with this Order shall result in any of
12 the following: (1) dismissal of the action (2) default judgment; (3) monetary
sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.

13 Counsel must advise the Court immediately when the case settles or is otherwise resolved
14 prior to trial. A Stipulation which terminates a case by dismissal shall also indicate whether a
15 Scheduling Order has been filed and if a trial date has been set, and the date of that trial. A copy
16 should be given to Chambers.

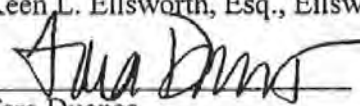
17 DATED: August 3, 2012


18 
19 Rob Bare
20 Judge, District Court, Department 32

21 CERTIFICATE OF SERVICE

22 I hereby certify that on or about the date e-filed, this document was mailed or a copy of this Order
23 was placed in the attorney's folder in the clerk's Office or mailed to the proper person as follows:

24 Jennifer R. Lloyd-Robinson, Esq., Pezzillo Robinson
25 Brian W. Boschee, Esq., Cotton, Driggs, et al.
26 Edward S. Coleman, Esq., Coleman Law Associates
27 Keen L. Ellsworth, Esq., Ellsworth, Bennion & Ericsson

28 
Tara Duenas
Judicial Executive Assistant



CLERK OF THE COURT

NOTC

BRIAN W. BOSCHKEE, ESQ.

Nevada Bar No. 7612

E-mail: bboschkee@nevadafirm.com

SHEMILLY A. BRISCOE, ESQ.

Nevada Bar No. 9985

E-mail: SBriscoe@nevadafirm.com

COTTON, DRIGGS, WALCH,

HOLLEY, WOLOSON & THOMPSON

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

Facsimile: 702/791-1912

*Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The
Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland,
Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant*

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

CAM CONSULTING, INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD. dba MOJAVE
ELECTRIC, a Nevada corporation; WESTERN
SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

AND RELATED MATTERS.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

NOTICE OF POSTING SECURITY BOND

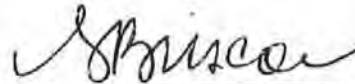
PLEASE TAKE NOTICE, Defendant West Edna, Ltd., dba Mojave Electric,
Counterclaimant and Crossclaimant, has herewith posted a security bond in the amount of

1 \$200,000 pursuant to the Court's Order dated August 3, 2012.

2 Original Bond No. 58690045 is attached hereto as Exhibit "A."

3 Dated this 9th day of August, 2012.

4 **COTTON DRIGGS, WALCH,**
5 **HOLLEY, WOLOSON & THOMPSON**

6 

7 BRIAN W. BOSCH, ESQ.
8 Nevada Bar No. 7612
9 SHEMILLY A. BRISCOE, ESQ.
10 Nevada Bar No. 9985
11 400 South Fourth Street, Third Floor
12 Las Vegas, Nevada 89101

13 *Attorneys for Defendants West Edna, Ltd., dba*
14 *Mojave Electric, Western Surety Company, The*
15 *Whiting Turner Contracting Company and*
16 *Fidelity and Deposit Company of Maryland,*
17 *Travelers Casualty and Surety Company of*
18 *America, Counterclaimant and Crossclaimant*

EXHIBIT A

STATE OF NEVADA

County of Clark

IN THE District COURT

vs.

Plaintiff(s)

Defendant(s)

INJUNCTION BOND

KNOW ALL PERSONS BY THESE PRESENTS:

Bond No. 58690045

That we, the above named Plaintiff(s), as Principal, and WESTERN SURETY COMPANY, a corporation duly licensed to do business in the State of Nevada, as Surety, are held and firmly bound unto the above entitled Court in the sum of Two Hundred Thousand Only DOLLARS (\$ 200,000.00), for the payment of which well and truly to be made, we bind ourselves and our legal representatives, jointly and severally by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas, the Plaintiff(s) seeks an Injunction or Restraining Order in the above action and is required to give bond by virtue of N.R.C.P. 65 (c).

NOW, THEREFORE, if the said Plaintiff(s) shall pay such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained, then this obligation to be void, otherwise to remain in full force and effect, provided, however, that the total liability of the Surety shall not exceed the above amount.

Dated this 6th day of August, 2012.

Countersigned

By [Signature]
Nevada Resident Agent

West Edna, Ltd., dba Mojave Electric

Principal

Principal

WESTERN SURETY COMPANY

By [Signature]
Gregory J. Harris, Attorney-in-Fact

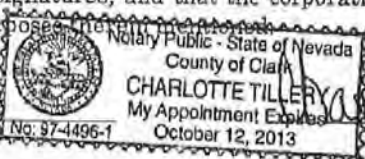
ACKNOWLEDGMENT OF PRINCIPAL
(Corporate Officer)

STATE OF NEVADA

County of Clark

On this 6th day of August, 2012, personally appeared before me, a Notary Public in and for the above County, Tray Nelson, known (or proved) to me to be the President, executing the same on behalf of the corporation that executed the foregoing instrument, and on oath did depose that he is the officer of the corporation as above designated; that he is acquainted with the seal of the corporation and that the seal affixed to the instrument is the corporate seal of the corporation; that the signatures to the instrument were made by officers of the corporation as indicated after the signatures; and that the corporation executed the instrument freely and voluntarily and for the uses and purposes therein mentioned.

My commission expires 10-12-13



Charlotte Tillery
Notary Public, Nevada

ACKNOWLEDGMENT OF PRINCIPAL
(Individual or Firm)

STATE OF NEVADA

County of _____

On this _____ day of _____, _____, personally appeared before me, a Notary Public in and for the above County, _____, known (or proved) to me to be the person _____ described in and who executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

My commission expires _____

Notary Public, Nevada

ACKNOWLEDGMENT OF SURETY
(Attorney-in-Fact)

STATE OF Nevada

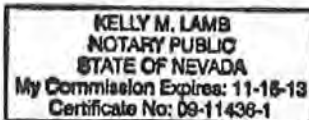
County of Clark

On this 6th day of August, 2012, before me, a notary public in and for said State, personally appeared Gregory J. Harris to me personally known and being by me duly sworn, did say that he is the Attorney-in-Fact of WESTERN SURETY COMPANY, a corporation of Sioux Falls, South Dakota, created, organized and existing under and by virtue of the laws of the State of South Dakota, that the said instrument was executed on behalf of the said corporation by authority of its Board of Directors and that the said Attorney-in-Fact acknowledges said instrument to be the free act and deed of said corporation and that he has authority to sign said instrument.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Las Vegas, Nevada, the day and year last above written.

My commission expires

November 15, 2013



Kelly M. Lamb

Notary Public

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Gregory J Harris, Kelly M Lamb, Chris V Summers, Individually

of Las Vegas, NV, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 8th day of September, 2011.



WESTERN SURETY COMPANY

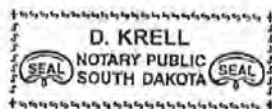
Paul T. Bruffat, Senior Vice President

State of South Dakota } ss
County of Minnehaha }

On this 8th day of September, 2011, before me personally came Paul T. Bruffat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

November 30, 2012



CERTIFICATE

D. Krell, Notary Public

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 14th day of August, 2012.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that, on the 9th day of August, 2012 and pursuant to NRCP
3 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing NOTICE
4 OF POSTING SECURITY BOND, postage prepaid and addressed to:

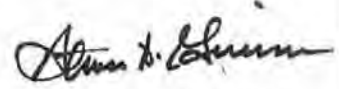
5 Jennifer R. Lloyd-Robinson, Esq.
6 Marisa L. Maskas, Esq.
7 PEZZILLO ROBINSON
8 6725 Via Austi Parkway, Suite 290
9 Las Vegas, Nevada 89119
10 *Attorneys for Plaintiff*

11 Edward Coleman, Esq.
12 COLEMAN LAW ASSOCIATES
13 8275 S. Eastern, Suite 200
14 Las Vegas, Nevada 89123
15 *Attorneys for Defendant Janel Rennie aka Janel Carvalho*

16 Keen L. Ellsworth, Esq.
17 ELLSWORTH & BENNION, CHTD.
18 777 N. Rainbow Blvd., Suite 270
19 Las Vegas, Nevada 89107
20 *Attorneys for Element Iron and Design*

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An employee of Cotton, Driggs, Walch,
Holley, Woloson & Thompson



CLERK OF THE COURT

ORDR

BRIAN W. BOSCHEE, ESQ.
Nevada Bar No. 7612
E-mail: bboschec@nevadafirm.com
SHEMILLY A. BRISCOE, ESQ.
Nevada Bar No. 9985
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HOLLEY, WOLOSON & THOMPSON
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Telephone: 702/791-0308
Facsimile: 702/791-1912

*Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The
Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland,
Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant*

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

CAM CONSULTING, INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD. dba MOJAVE
ELECTRIC, a Nevada corporation; WESTERN
SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW BASED UPON
COUNTERCLAIMANTS MOTION TO
TO PROCURE CODES**

AND RELATED MATTERS.

Counterclaimants' Motion for Mandatory Injunction to Procure Codes on Order
Shortening Time or in the Alternative Application for Writ of Possession, having been heard by
the Court on August 3, 2012 at 9:00 a.m.; Brian Boschee, Esq. and Shemilly Briscoe, Esq.,
appearing on behalf of Counterclaimants WEST EDNA ASSOCIATES, LTD., dba MOJAVE

1 ELECTRIC("Mojave"), WESTERN SURETY COMPANY, THE WHITING TURNER
2 CONTRACTING COMPANY ("Whiting") and FIDELITY AND DEPOSIT COMPANY OF
3 MAYRLAND's (hereinafter collectively Counterclaimants); Jennifer Lloyd-Robinson, Esq.,
4 appearing on behalf of Plaintiff, CASHMAN EQUIPMENT COMPANY("Cashman"). The
5 Court having reviewed the Motion, Opposition and Reply briefs, and having heard argument and
6 being fully advised, the Court concludes as follows:

7 **FINDINGS OF FACT**

8 1. On or about February 11, 2010, Mojave entered into a Construction contract with
9 Whiting to construct the New Las Vegas City Hall Project.

10 2. The scope of Mojave's work partially included bringing power to the Project and
11 obtaining the equipment to consolidate the different electrical systems.

12 3. The equipment was delivered by Cashman and was installed on the Project, but
13 the accompanying codes for the switchgear were not provided.

14 4. The Building Automated System for City Hall is not fully functional without the
15 codes.

16 5. Cashman refused to produce the code information based upon the underlying pay
17 dispute with CAM, as CAM failed to pay Cashman for the equipment.

18 6. Without the codes, the City Hall has an incomplete operating system which
19 prevents the City from completion of the project.

20 **CONCLUSIONS OF LAW**

21 **THE COURT FINDS:**

22 1. Counterclaimants have shown, through declarations and other evidence, that
23 potential immediate and irreparable injury, loss and/or damage will occur to the City without an
24 injunction;

25 2. The instant Order is appropriate considering public policy issues to protect City
26 from future equipment issues;

27 3. The City will suffer irreparable harm if Plaintiffs are not mandated in this Order
28 as requested by the Plaintiffs.

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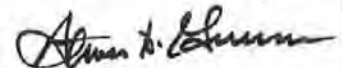
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CLERK OF THE COURT

NOTC

BRIAN W. BOSCHKEE, ESQ.

Nevada Bar No. 7612

E-mail: bboschkee@nevadafirm.com

SHEMILLY A. BRISCOE, ESQ.

Nevada Bar No. 9985

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400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

Facsimile: 702/791-1912

Attorney for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland, Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

CAM CONSULTING, INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD. dba MOJAVE
ELECTRIC, a Nevada corporation; WESTERN
SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

AND RELATED MATTERS.

Case No: A642583
Dept. No.: 32

NOTICE OF ENTRY OF ORDER

YOU, and each of you, will please take notice that an Order Granting Counterclaimants' Motion to Procure Codes in the above entitled matter was filed and entered by the Clerk of the above-entitled Court on the 10th day of August, 2012, a copy of which is attached hereto

1 Dated this 13th day of August, 2012.

2 COTTON, DRIGGS, WALCH,
3 HOLLEY, WOLOSÓN & THOMPSON

4 *Mista*

5 BRIAN W. BOSCHÉE, ESQ.
6 Nevada Bar No. 7612
7 SHEMILLY A. BRISCOE, ESQ.
8 Nevada Bar No. 9985
9 400 South Fourth Street, Third Floor
10 Las Vegas, Nevada 89101

11 *Attorneys for Defendants West Edna, Ltd., dba*
12 *Mojave Electric, Western Surety Company, The*
13 *Whiting Turner Contracting Company and*
14 *Fidelity and Deposit Company of Maryland,*
15 *Travelers Casualty and Surety Company of*
16 *America, Counterclaimant and Crossclaimant*

EXHIBIT 9

PAY TO THE ORDER OF NEVADA STATE
BANK LAS VEGAS, NV 89125-122400779
FOR DEPOSIT ONLY WEST EDNA
ASSOCIATES LTD/MOLAVE ELECTRIC
" " " " 692005634

Date:04/27/11 Sequence Num:94373639 Account:262031032 Serial:1032 Amount:\$139,367.70 Dep Seq#:94373636

934410

51445 6,047.55

51651 130,221.45

CAM CONSULTING INC *CamCo3*

6974 ONTO CENTER DR PH 702-225-0012

NORTH LAS VEGAS, NV 89130-7621

DATE 28 April 11

1033

PAY TO THE ORDER OF *Mojave Electric*

\$136,269.00

One hundred thirty six thousand two hundred sixty nine and 00/100 DOLLARS

NEVADA STATE BANK

FOR DEPOSIT ONLY

FOR *Invoice # 51446*

100010330 1122400779102620310320

PAY TO THE ORDER OF NEVADA STATE
BANK LAS VEGAS, NV 89125 122400779
FOR DEPOSIT ONLY WEST EDNA
ASSOCIATES LTD MOJAVE ELECTRIC
892005334

Date: 04/28/11 Sequence Num: 94315536 Account: 262031032 Serial: 1033 Amount: \$136,269.00 Dep Seq#: 94315534

http://ut2kap70/afswbproxy/afswb.dll?MfcISAPICommand=Process&_application=eVis... 6/22/2011

CASH480

JA 0000253

EXHIBIT 10

NEVADA STATE BANK

THE DOOR TO YOUR FUTURE

P.O. Box 990 • Las Vegas, NV 89125-0990 | www.nsbank.com

Statement of Accounts

Page 1 of 5

This Statement: April 29, 2011

Last Statement: March 31, 2011

Primary Account 262031032

0021496

2220-06-0000158-FC0011-00010

CAM CONSULTING INC
9874 CIVIC CENTER DR
NORTH LAS VEGAS NV 89030-7524

DIRECT INQUIRIES TO:

Reddi Response

24-hour Account Information:

Las Vegas: 471-5800

Reno: 337-2811

1 (800) 482-3555 (outside local areas)

Loan By Phone

Las Vegas: 399-Loan (6826)

Reno: 851-8811

1 (800) 789-4871 (outside local areas)

SUMMARY OF ACCOUNT BALANCE

Account Type	Account Number	Checking/Savings Ending Balance	Outstanding Balances Owed
Enterprise Checking	262031032	\$101,466.38	

ENTERPRISE CHECKING 262031032

Previous Balance	Deposits/Credits	Charges/Debits	Checks Processed	Ending Balance
3,569.89	1,043,515.98	4,635.12	941,084.35	101,466.38

3 DEPOSITS/CREDITS

Date	Amount	Description
04/06	6,868.03	DEPOSIT 9494588862
04/26	958,630.75	DEPOSIT 9494449858
04/28	81,118.18	DEPOSIT 9494523547

18 CHARGES/DEBITS

Date	Amount	Description
04/01	500.00	0015 ATM WITHDRAWAL 3688 S. JONES LAS VEGAS NV 1400542088
04/04	201.00	0015 ATM WITHDRAWAL 6891 RICKENBACKER NELLIS AFB NV 1400644988
04/04	88.70	24138292X9HHY05PH 6015 NELLIS AFB EXCHANGE NELLIS AFB NV 1200727427
04/04	1.50	0015 ATM TRANSACTION FEE 6891 RICKENBACKER NELLIS AFB NV 1400844987
04/11	403.00	0015 ATM WITHDRAWAL 4309 W. CRAIG RD. LAS VEGAS NV 1400541762
04/11	200.00	0015 ATM WITHDRAWAL 2660 WEST CENTENNIAL NO LAS VEG 1400800807
04/11	1.50	0015 ATM TRANSACTION FEE 4309 W. CRAIG RD. LAS VEGAS NV 1400541761
04/12	402.50	0015 ATM WITHDRAWAL 7009 ALIANTE PARKWAY NORTH LAS N 1400712074
04/12	1.50	0015 ATM TRANSACTION FEE 7009 ALIANTE PARKWAY NORTH LAS N 1400712073
04/14	203.00	0015 ATM WITHDRAWAL 1500 WEST BONANZA ROAD LAS VEGAS 1400512899
04/14	39.00	0015 P.O.S. PURCHASE SHELL Sory SHELL NORTH LAS NV 1400512898
04/14	1.50	0015 ATM TRANSACTION FEE 1500 WEST BONANZA ROAD LAS VEGAS 1400512897
04/15	605.89	2427074388YRNTPTB 8015 ANN ROAD ANIMAL HOSPITN LAS VEGAS NV 1201122431
04/25	28.52	0015 P.O.S. PURCHASE THE HOME D 881 S RAINB LAS VEGAS NV 1400842049
04/25	4.00	0015 P.O.S. PURCHASE TARGET T25 6371 N DECA AS VEGAS NV 1400842048
04/28	1,873.71	24133933MEHM6YJSL 8015 USAA P&G PREMIUM 800-531-8111 TX 1200723121



MEMBER FDIC

0021496-0000001-0011731

CASH465

JA 0000255

NEVADA STATE BANK

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Page 3 of 6
April 29, 2011
CAM CONSULTING INC
262031032

7 CHECKS PROCESSED

Number	Date	Amount	Number	Date	Amount	Number	Date	Amount
0	04/08	5,000.00	1	04/27	38,939.65	1032*	04/27	139,367.70
0*	04/27	20,008.00	1029*	04/01	1,500.00	1033	04/28	136,269.00
0*	04/27	600,000.00						

* Not in check sequence

AGGREGATE OVERDRAFT AND RETURNED ITEM FEES

	Total for This Period	Total Year-to-Date
Total Overdraft Fees	\$0.00	\$215.00
Total Returned Item Fees	\$0.00	\$0.00

DAILY BALANCES

Date	Balance	Date	Balance	Date	Balance
04/01	1,589.89	04/11	1,580.22	04/25	274.61
04/04	1,298.69	04/12	1,169.22	04/26	958,805.28
04/06	7,164.72	04/14	912.72	04/27	168,489.91
04/08	2,164.72	04/15	307.03	04/28	101,468.38





MEMBER FDIC

0021496-0000002-0011732

CASH466

JA 0000256

NEVADA STATE BANK  CHECKING ACCOUNT /
MONEY MARKET WITHDRAWAL  WITHDRAWALS ARE PERMITTED ONLY
THROUGH PAYMENT TO THE PERSON
AUTHORIZED ON THE ACCOUNT

TO BE CHARGED TO MY ACCOUNT

NAME (PLEASE PRINT) Angela Carvallo DATE 27-Apr-11

AMOUNT Six hundred thousand dollars DOLLARS

CLIENT SIGNATURE [Signature] AMOUNT 600,000.00

ACCOUNT NUMBER 262031032 \$ 600,000.00

⑆122400779⑆ 750

NSB000A-0003 (Rev. 07/09)

CC DDA W/D 04/27/11 C
Account Number: 26203-1032
W/D Amt: \$600,000.00
094 01 5944 11106

Date: 04/27/11 Sequence Num: 94541907 Account: 262031032 Serial: - Amount: \$600,000.00 Dep Seq#: 94541906

EXHIBIT 11



Interest summary

Interest paid this statement	\$1.07
Average collected balance	\$134,360.32
Annual percentage yield earned	0.01%
Interest earned this statement period	\$1.07
Interest paid this year	\$1.08

Transaction history

Date	Check Number	Description	Deposits/ Additions	Withdrawals/ Subtractions	Ending daily balance
4/11		ATM Withdrawal - 04/10 Mach ID 9952U 6976 Allante Parkway N. Las Vegas NV 2045 0006209		200.00	
4/11		ATM Withdrawal - 04/10 Mach ID 9562G 6976 Allante Parkway N. Las Vegas NV 2045 0001454		100.00	
4/11		Check Crd Purchase 04/08 Chevron 00090581 Las Vegas NV 434267xxxxxx2045 100140028613337 ?McC=5542 90		68.00	
4/11		POS Purchase - 04/09 Mach ID 000000 Smiths 6584 Gam Las Vegas NV 2045 00301099788081452 ?McC=5411		24.03	123.11
4/12		Non-WF ATM Bal Inquiry Fee - 04/12 Mach ID Td227810 7009 Allante Pkwy Stop North Las Vegnv 2045		2.00	121.11
4/14		Overdraft Transfer Fee Rev	10.00		
4/14		ATM Check Deposit - 04/14 Mach ID 9962U 6976 Allante Parkway N. Las Vegas NV 2045 0007692	1,000.00		
4/14		Deposit Made In A Branch/Store	300.00		1,431.11
4/15		Recurring Transfer Ref #0pe2Bdsc9 to Savings xxxxxx6226		75.00	1,356.11
4/18		Recurring Transfer Ref #OpelanjHQ From Savings xxxxxx6226	75.00		
4/18		Check Crd Purchase 04/18 Hawaiian Al Honolulu HI 434267xxxxxx2045 107140012766401 ?McC=3188 90		10.00	1,421.11
4/19		Check Crd Purchase 04/18 Air & Sea Travel Cento Honolulu HI 434267xxxxxx2045 109140008127643 ?McC=4722 01		380.00	
4/19		POS Purchase - 04/19 Mach ID 000000 Boardriders Clu Lahaina HI 2045 00581109835863932 ?McC=5531		44.79	896.82
4/20		ATM Withdrawal - 04/20 Mach ID H1900076 2265 Kuhio Ave 2265 Kulihonolulu HI 2045 00461110814692030		302.75	
4/20		Non-Wells Fargo ATM Transaction Fee		2.50	591.07
4/22		Check Crd Purchase 04/20 NA Mea Laha'Ole Wahiawa HI 434267xxxxxx2045 112140006427205 ?McC=5947 90		203.14	
4/22		Check Crd Purchase 04/20 Coach 00041004 Waipahu HI 434267xxxxxx2045 112140004486141 ?McC=5631 90		96.43	
4/22		Check Crd Purchase 04/20 Seaside Bar and Grill Honolulu HI 434267xxxxxx2045 112140006259660 ?McC=5813 90		63.65	337.82
4/25		ATM Withdrawal - 04/24 Mach ID 8481K 4016 S. Rainbow Blvd Las Vegas NV 2045 0009895		100.00	
4/25		Check Crd Purchase 04/21 Hawaiian Al Honolulu HI 434267xxxxxx2045 114140022413882 ?McC=3188 90		5.00	232.82
4/27		Deposit Made In A Branch/Store	600,000.00		
4/27		ATM Withdrawal - 04/27 Mach ID 9952U 6976 Allante Parkway N. Las Vegas NV 2045 0001458		40.00	600,192.82
4/28		POS Purchase - 04/28 Mach ID 000000 Shell Service S North Las Vegnv 2045 00581118802735539 ?McC=5542		49.00	600,143.82
4/29		Check Crd Purchase 04/28 Progressive Ins 800-838-7764 OH 434267xxxxxx2045 119140009363210 ?McC=6300 01		628.00	
4/29	147	Cashed Check		25,000.00	674,616.82
5/2		POS Purchase - 05/01 Mach ID 000000 Gex* Texas Stat No Las Vegas NV 2045 00481122084145741 ?McC=4829		3,122.95	
5/2		Check Crd Purchase 04/28 Gex* Allante Station North Las Veg NV 434267xxxxxx2045 120140012884032 ?McC=4829 90		2,600.99	
5/2		Check Crd Purchase 04/30 Main Entrance - Dir Anaheim CA 434267xxxxxx2045 122140011482749 ?McC=7998 90		198.00	



Transaction history (continued)

Date	Check Number	Description	Deposits/ Additions	Withdrawals/ Subtractions	Ending daily balance
5/2		POS Purchase - 05/02 Mach ID 000000 Shell Service S North Las Vegas 2045 00581122613972377 ?McC-5542		50.00	
5/2		POS Purchase - 04/20 Mach ID 000000 Shell Service S North Las Vegas 2045 00461120085951633 ?McC-5542		9.60	
5/2	146	Check		1,000.00	
5/2		Withdrawal Made In A Branch/Store		69,661.23	
5/2	148	Capital One Auto Check Pymt 110502 148 7629106112267660709233		22.47	
5/2	149	Check		2,500.00	485,160.58
5/3		Check Crd Purchase 05/01 Embassy Suites Anthem Go Garden Grove CA 434267xxxxxx2045 123140008023997 ?McC-5595 00		383.30	
5/3		Withdrawal Made In A Branch/Store		5,000.00	
5/3	153	Check		5,000.00	454,767.28
5/4		Check Crd Purchase 05/03 Progressive Ins 800-888-7764 OH 434267xxxxxx2045 12414000962471 ?McC-6300 01		1,662.00	
5/4		Check Crd Purchase 05/02 Findlay RV Henderson NV 434267xxxxxx2045 124140006726074 ?McC-5511 90		1,000.00	
5/4		ATM Withdrawal - 05/03 Mach ID 78766353 Gca* Texas Stalgca* Texasno Las Vegas NV 2045 00301124110268508		303.75	
5/4		Non-Wells Fargo ATM Transaction Fee		2.50	
5/4		Check Crd Purchase 05/02 Sunglass Hut 60076535 Las Vegas NV 434267xxxxxx2045 124140003702803 ?McC-6999 80		162.15	451,736.88
5/5		Check Crd Pur Rtn 05/03 Progressive Ins 800-888-7764 OH 434267xxxxxx2045 125140009555723 ?McC-6300 02	52.00		
5/5		POS Purchase - 05/05 Mach ID 000000 Shell Service S North Las Vegas 2045 00581125703427024 ?McC-5542		70.00	
5/5	154	Check		50,000.00	401,718.88
5/5		ATM Withdrawal - 05/05 Mach ID 9952U 6975 Alante Parkway N, Las Vegas NV 2045 0004705		300.00	
5/5		Withdrawal Made In A Branch/Store		8,970.00	
5/5		Withdrawal Made In A Branch/Store		5,000.00	
5/5		Interest Payment	1.07		387,449.95
Ending balance on 5/5					387,449.95
Totals			\$801,438.07	\$214,601.26	

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

* Converted check: Check converted to an electronic format by your payee or designated representative. Checks converted to electronic format cannot be returned, copied or imaged.

Summary of checks written (checks listed are also displayed in the preceding Transaction history)

Number	Date	Amount	Number	Date	Amount	Number	Date	Amount
146	5/2	1,000.00	148	5/2	22.47	153 *	5/3	5,000.00
147	4/29	25,000.00	149	5/2	2,500.00	154	5/5	50,000.00

* Gap in check sequence.

Summary of Overdraft and Returned Item fee(s)

	Total this statement period	Total year-to-date †
Total Overdraft Fees	\$0.00	\$0.00
Total Returned Item Fees	\$0.00	\$35.00

† Year-to-date total reflects fees assessed or reversed since first full statement period of current calendar year.

WELLS
FARGO

Legal Order Processing
P.O. BOX 29728 MAC# S3928-020
Phoenix, AZ 85038-9728
Voice: (480) 724-2000

DECLARATION FOR RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITY

Re: Subpoena	Our Reference #1 1310290
Agency Case #1 A642583	Date Served: 07/07/11
Banking Entity: Wells Fargo Bank, N.A. (the "Bank")	

I, Shirley Kauffold, declare that I am employed by Wells Fargo Bank, N.A., in the Subpoena Processing Department and the Bank's designated duly authorized Custodian of Records for documents and/or information produced under the above referenced legal order. The Bank reserves its right to designate another Custodian as it deems appropriate in the event an actual appearance is required concerning the records produced herein. I certify the authenticity of the records produced herewith and that they were:

- A) Made at or near the time of the occurrence, condition or event of the matters set forth by, or from information transmitted by, a person with knowledge of those matters.
- B) Kept in the course of regularly conducted activity.
- C) Made by the regularly conducted activity as a regular practice, by the personnel of the business.

The enclosed records are true copies of bank records. This submission constitutes only part of the records in the custodian's possession as described in the above referenced legal order. Compliance with the above referenced legal order was limited to the following: ☐ Signature Card(s) and ☒ Account Statement(s) and/or ☐ Other:

☐ The Bank is unable to provide the following records as described in the above referenced legal order:

I am familiar with the mode of preparation of the enclosed records. They were prepared as follows:

- ☐ Signature Card(s): The customer(s) whose name appears on the signature card/account application and agreement form submitted the form to the Bank requesting checking and/or savings account(s). The customer(s) submitted personal and financial information which were relied upon by the Bank. The customer(s) signed the form. The Bank opened the savings and/or checking account(s) listed on the signature card. The signature card was stored at and retrieved from the Bank's designated retention site(s).
- ☒ Statement(s): Each monthly statement was prepared immediately after the closing date of the monthly account cycle as indicated on the statement(s). The statement(s) accurately reflects all debit entries (checks, point of sale, ATM, teller withdrawals, fees, etc.) and credits (deposits, etc.) which occurred on the account(s) during the monthly account cycle.
- ☐ Credit Card Statement(s): Each monthly statement was prepared immediately after the closing date of the monthly cycle as indicated on the statement(s). The statement(s) accurately reflects all charges/debit entries and credit/payment entries which occurred on the account(s) during the monthly cycle. Statements are not generated if there is no activity during the monthly cycle.


I declare under penalty of perjury under the law(s) of the state of Nevada that the foregoing is true and correct. Executed on this 28th day of July, 2011, in the City of Chandler, State of Arizona.


Subpoena Processing Representative (480) 724-2035

Microfilm copies of requested transactions may be missing for the following reasons: Item (a) not on film, film fogged, blank, black, damaged, destroyed or not available, item (b) plugg-backed on film, electronic transaction(s), or other reasons that may prevent the Bank from completing a thorough search of records. The Bank, generally and routinely, destroys records in accordance with its standards for records retention and destruction. The Bank's Legal Group will direct compliance for various types of loan information, and other non-depository information subject to the above referenced legal order.

ND00111B-A2110120_110_Microfilm/Record Documents/Record Documents/Record Documents
Rev. 03/11

JA 0000261


CLERK OF THE COURT

1 **AOS**

2 Jennifer R. Lloyd-Robinson, Esq.

3 Nevada State Bar # 9716

4 Marisa L. Maskas, Esq.

5 Nevada State Bar #10928

6 **PEZZILLO ROBINSON**

7 6725 Via Austi Parkway, Suite 290

8 Las Vegas, Nevada 89119

9 Tel: 702 233-4225

10 Fax: 702 233-4252

11 *Attorneys for Plaintiff*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 CASHMAN EQUIPMENT COMPANY, a
15 Nevada corporation,

16 Plaintiff,

17 vs.

Case No.: A642583

Dept. No.: 32

Consolidated with Case No.: A653029

18 CAM CONSULTING INC., a Nevada
19 corporation; ANGELO CARVALHO, an
20 individual; JANEL RENNIE aka JANEL
21 CARVALHO, an individual; WEST EDNA
22 ASSOCIATES, LTD., dba MOJAVE
23 ELECTRIC, a Nevada corporation; WESTERN
24 SURETY COMPANY, a surety; THE
25 WHITING TURNER CONTRACTING
26 COMPANY, a Maryland corporation;
27 FIDELITY AND DEPOSIT COMPANY OF
28 MARYLAND, a surety; DOES 1 - 10, inclusive;
and ROE CORPORATIONS 1 - 10, inclusive;

Defendants.

AND ALL RELATED MATTERS.

AFFIDAVIT OF SERVICE

Pezzillo Robinson
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Tel. 702 233-4225

AFFIDAVIT OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Marie A. Scheib, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made.

That affiant, Marie A. Scheib, on April 13, 2012 received:

SUMMONS, COMPLAINT, LETTER; \$10.00 CHECK

and served the same on April 18, 2012 at 8:58 a.m., to the Nevada Secretary of State at 555 E. Washington Ave, #5200, Las Vegas, Nevada 89101, on behalf of:

CAM CONSULTING, INC., a Nevada Corporation

by leaving copies with Roxanna Sanchez, Administrative Assistant II.

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LEGAL FAVOR, LLC
PROCESS LICENSE #389
LAS VEGAS, NV
(702)384-0305

1 That affiant, Tina J. Sanchez, posted one copy of said documents at the Clerk's
2 Office located at 200 Lewis Ave, 3rd floor, Las Vegas, Nevada 89101, on April 18,
3 2012 at 9:43 a.m.

4
5 Marie Scheib

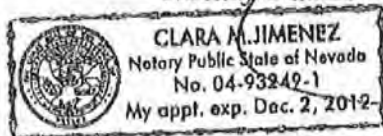
6 Marie A. Scheib
7 Registration Work Card #R-002901

8 Tina J. Sanchez

9 Tina J. Sanchez
10 Registration Work Card #R-038221

11
12 Subscribed and Sworn to Before me
13 this 13, day of April, 2012.

14
15 Notary Public



STATE OF NEVADA

ROSS MILLER
Secretary of State

SCOTT W. ANDERSON
Deputy Secretary
for Commercial Recordings

OFFICE OF THE
SECRETARY OF STATE

Commercial Recordings Division
202 N. Carson Street
Carson City, NV 89701-4069
Telephone (775) 684-5708
Fax (775) 684-7138

Rezzillo Robinson
6750 Via Austi Parkway Suite 170
Las Vegas, NV 89119

Job: C20120418-0518
April 18, 2012

Special Handling Instructions:

Entity Being Served: Cam Consulting, Inc
Case #: A653029
Authority(ies) Cited: NRCP 4(d)(1)
Description: Cashman Equipment Company vs. Cam Consulting, Inc
Documents Rec'd: Complaint and Affidavit of Due Diligence
Method Rec'd: Walk-In
Date & Time Rec'd: 04/18/12 @ 8:57 am
Receipt Return Method: Faxed to 702.233.4252
Service of Process Accepted by: Roxanna Sanchez

R. Sanchez

A handwritten signature in black ink, appearing to read "R. Sanchez".

Charges

Description	Document Number	Filing Date/Time	Qty	Price	Amount
Service of Process Summons and complaints fee			1	\$10.00	\$10.00
Total					\$10.00

Payments

Type	Description	Amount
Check	Check #7997	\$10.00
Total		\$10.00

Credit Balance: \$0.00

Job Contents:

Rezzillo Robinson
6750 Via Austi Parkway Suite 170
Las Vegas, NV 89119


CLERK OF THE COURT

RPLY

BRIAN W. BOSCHKEE, ESQ.
Nevada Bar No. 7612
SHEMILLY A. BRISCOE, ESQ.
Nevada Bar No. 9985
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Attorneys for Defendants, Counterclaimants and Crossclaimants

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

CAM CONSULTING, INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD. dba MOJAVE
ELECTRIC, a Nevada corporation; WESTERN
SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

Case No.: A642583
Dept. No.: 32

(Consolidated with Case No. A653029)

Hearing Date: May 7, 2012
Hearing Time: 9:00 a.m.

AND RELATED MATTERS.

**DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Defendants, counterclaimants, and crossclaimants, WEST EDNA ASSOCIATES, LTD.
d/b/a MOJAVE ELECTRIC, a Nevada corporation ("Mojave"); WESTERN SURETY
COMPANY, a surety ("Western"); THE WHITING TURNER CONTRACTING COMPANY, a
Maryland corporation; ("Whiting") and FIDELTY AND DEPOSIT COMPANY OF

1 MARYLAND ("Fidelity") (collectively "Defendants"), by and through their attorneys of record,
2 hereby file their Reply to Plaintiff's Opposition to Defendants' Motion for Summary Judgment.
3 This Reply is based upon the papers and pleadings on file herein, the Points and Authorities set
4 forth below and any argument of counsel the Court entertains on the instant Motion.

5 POINTS AND AUTHORITIES

6 I. INTRODUCTION

7 Three important facts are not in dispute in this case. First, there is no dispute that Mojave
8 paid CAM. Second, there is no dispute that Cashman provided an unconditional, final release of
9 lien immediately upon Mojave's payment. Third, CAM, not Mojave, tendered a bad check not
10 once but twice to Cashman *after* Mojave had paid CAM with sufficient funds to cover the check
11 to Cashman and *after* Cashman had issued the unconditional, final release of lien. Additionally,
12 there is also no dispute that Cashman has hindered the project in question, and specifically
13 Defendants' ability to complete the project, by improperly refusing to start up the necessary
14 equipment and withholding information needed for another contractor to adequately start up the
15 equipment. Cashman does not deny that it has refused to start up the equipment and refused to
16 provide said information, but instead argues that it is justified in its actions because Cashman
17 was never paid by CAM, even though nobody disputes that Mojave tendered sufficient funds to
18 CAM.

19 When the instant Motion was filed, Cashman had submitted discovery requests to Mojave
20 that constitutes the majority of the "additional discovery" it claims is necessary prior to entry of
21 summary judgment. That discovery has now been answered, and the facts noted above have not
22 changed, nor will they change in the coming months. Cashman did not have to provide an
23 unconditional, final lien release upon Mojave's payment to CAM, but it did. Cashman's
24 argument that the release is void due to the insufficient funds received from CAM is irrelevant to
25 the instant Motion because the funds tendered by Mojave were good, and Mojave's check did not
26 bounce. The protection of the lien statutes exist to protect contractors who provide lien releases
27 upon tendering of checks that ultimately do not have sufficient funds to ensure party tendering
28 the insufficient funds does not receive a windfall (i.e. a lien release without payment). That is

1 not the case here. Mojave tendered the necessary funds, Cashman signed the unconditional lien
2 release, and any remaining payment issues are between Cashman and CAM, not the other
3 Defendants. Thus, Defendants' Motion for Summary Judgment is both proper and timely, and
4 Defendants respectfully request that the Court grant the same.

5 **II. LEGAL ARGUMENT**

6 **A. CASHMAN MISSTATES DEFENDANTS' MOTION REGARDING THE POST- DATED CHECK FROM CAM**

7 Defendants are not arguing whether the post-dated check provided to Cashman was a
8 check or a draft.¹ The implicit agreement that Cashman entered into with CAM upon receipt of a
9 post-dated check was that Cashman would not take the draft to a bank until the date denoted on
10 the check. Whether the Court wants to then treat the draft as a promissory note, which it
11 essentially becomes, pursuant to the cited authority, because it is **not** a demand that a party can
12 immediately take to a bank for payment, or simply as an agreement between CAM and Cashman
13 to hold off on cashing the check for a day or two, the simple reality is that Cashman accepted the
14 post-dated check knowing that it would not be able to take it to the bank for some period of time.
15 Cashman also knew, at that point, that Mojave had tendered full payment to CAM. Based upon
16 that knowledge, Cashman issued the unconditional lien release for the materials.

17 Instead of taking responsibility for its poor decision to accept a post-dated check and
18 pursuing relief against the real "bad guy" in this situation, CAM, Cashman has lumped the rest of
19 the Defendants into its dispute with CAM essentially asking this Court to make Mojave pay for
20 the supplies twice. Defendants should not, and legally cannot, be held accountable for
21 Cashman's questionable decision to accept a post-dated check from CAM, and aside from the
22 substantial authority cited in the Motion, the equities of the case dictate that it would be patently
23 unfair for Mojave to have to pay for the same equipment **twice** when an unconditional lien
24 release has been provided and there is no dispute that Mojave actually tendered the funds for the
25 equipment. The real dispute is between CAM and Cashman relating to CAM's outright theft of
26

27 ¹ Cashman also makes an evidentiary argument with respect to Defendants' failure to produce a check that was
28 tendered by CAM to Cashman and forms the basis of this entire lawsuit. Given the absurdity of this argument, the
Defendants will not substantively address it in this Reply.

1 the money tendered by Mojave, and thus the Court should limit this dispute to those parties and
2 grant Defendants' Motion.

3 **B. THE UNCONDITIONAL LIEN RELEASE IS VALID BECAUSE MOJAVE'S**
4 **CHECK DID CLEAR THE BANK**

5 The undisputed facts are that Mojave tendered payment for the materials supplied by
6 CAM and Cashman issued an unconditional lien release. Cashman chose to issue an
7 unconditional release upon Mojave's payment to CAM. Cashman could have waited until it
8 actually got the check from CAM, but it didn't, and that was Cashman's choice. All of the
9 authority cited by Cashman in the Opposition speaks to the protection of a contractor who issues
10 a release in exchange for a check that ultimately does not have sufficient funds. Obviously, the
11 intent behind the statutes, as the courts of this state have accurately noted in the decisions
12 interpreting those statutes, is to protect a party who exchanges a check for a lien release from
13 releasing lien rights when the money is not actually tendered.

14 The problem Cashman has in this case is that the money **was** tendered by Mojave. This
15 is not a case of a subcontractor obtaining a lien release for a bounced check. Mojave tendered
16 the funds, and Cashman issued a lien release. Cashman could have held out for a joint check to
17 itself and CAM prior to giving the lien release, but it didn't. Simply stated, the materials were
18 paid for, and a full, unconditional lien release was provided, but CAM and its principals simply
19 stole the money that it owed Cashman. This is not to say that Cashman is not a victim, which it
20 clearly is, but Cashman does not get to hide behind the protections of NRS 108.2457 or NRS
21 108.2453 and claim that the Defendants, and specifically Mojave, must pay for the same supplies
22 **twice**. This is no different than if Mojave had paid for the materials, and then CAM stole the
23 money from Cashman, which is essentially what happened here. Allowing Cashman to proceed
24 with these claims against the Defendants would essentially be saying that a party that pays for
25 supplies and obtains an unconditional lien release is still subject to claims after the fact if the
26 payee loses the money paid for the materials. Not only is this clearly not what the statutes
27 provide for, it's also clearly contrary to the spirit of the lien statutes.

28 For purposes of analogy, assume the situation was reversed. Instead of CAM absconding

1 with the tendered funds, assume CAM had instead run off with the equipment supplied by
2 Cashman. Would the Court really be inclined to make Cashman supply this equipment for a
3 second time? Such a result would be absurd. The Court would tell Mojave that it needed to
4 pursue its claims for the equipment with CAM, which is exactly what the Court should tell
5 Cashman to do in this case with respect to the money ostensibly stolen by CAM from Cashman.
6 Thus, summary judgment is proper in favor of the Defendants.

7 **C. CAM HAD AT WORST APPARENT AUTHORITY TO ACCEPT FUNDS ON**
8 **BEHALF OF CASHMAN AS SHOWN BY THE CONDUCT OF THE PARTIES**

9 The most compelling fact demonstrating that Mojave was justified in believing that CAM
10 was Cashman's agent with respect to the Project is that when Mojave tendered payment for the
11 supplied equipment to CAM, Cashman immediately tendered an unconditional, final lien release
12 without even waiting for CAM to issue a check to Cashman for the money Mojave had just paid.
13 Based upon the terminology of CAM's contract with Mojave, which stated "c/o Cashman
14 Equipment" immediately after CAM's name, as well as the fact that Cashman issued the lien
15 release immediately upon payment to CAM, Mojave had no reason to doubt that payment to
16 CAM was akin to payment to Cashman.

17 Further supporting the idea that CAM was Cashman's agent for legal purposes on this
18 Project, Cashman was **always** going to be the party supplying the equipment and bearing the
19 responsibility for starting-up the equipment once it was supplied. CAM was little more than an
20 intermediary on this Project, in place at the request of the owner and with the knowledge of all
21 parties for purposes of obtaining minority owner benefits, and CAM was **never** going to be
22 responsible for anything other than being an intermediary between Mojave and Cashman. Thus,
23 based upon the authority cited in the Motion, CAM qualifies as a legal agent of Cashman, and
24 summary judgment is proper.

25 **D. PLAINTIFF MISSTATES THE BURDEN WITH RESPECT TO ITS**
26 **FRAUDULENT TRANSFER CLAIM**

27 Somehow, Cashman has come before this Court claiming that Defendants' Motion for
28 Summary Judgment must be denied as to the fraudulent transfer claims because *Mojave* has not
presented evidence that the money paid to it by CAM, on a completely different job, were *not*

1 fraudulent transfers. Mojave submitted the Affidavit of Brian Bugni setting forth why the
2 \$275,636.70 payments were made by CAM to Mojave for another job, and simply stated, it is not
3 Mojave's burden to present evidence proving a negative. Conversely, Cashman has no evidence,
4 which is clearly reflected in the Opposition, that the transfers from CAM to Mojave were
5 fraudulent. The burden, both for summary judgment and ultimately at trial, is on Cashman to
6 demonstrate that the monetary payments from CAM to Mojave were fraudulent transfers, and
7 ultimately, Cashman has no such evidence.

8 Here, Plaintiffs have no evidence that a fraudulent transfer occurred under NRS
9 112.180(1)(a), and further have no evidence that Mojave did not act in good faith. Cashman has
10 a lot of unsavory allegations, but not one piece of evidence showing that Mojave was some type
11 of "insider" with knowledge of any of CAM's activities, particularly any activities intended to
12 defraud Cashman. Mojave was paid by Cashman pursuant to legitimate contracts on other jobs,
13 and the Plaintiffs have absolutely no evidence to the contrary.

14 NRS 112.180(1)(a) plainly provides that, for the district court to enter judgment in favor
15 of a creditor under that statute, it must first determine whether the debtor "*actual[ly] inten[ded]*
16 *to hinder, delay or defraud any creditor of the debtor.*" (Emphasis added.). Cashman has no
17 evidence to support a determination along those lines. Angelo Carvalho was approved for use by
18 the owner of the Project and had no prior bad history with any of the parties. Further, all
19 transactions were completed with written agreements that contained specific terms. Therefore,
20 Mojave had no "reason to know of the transferors fraudulent purposes."

21 Given that Cashman has no evidence to support its claims with respect to Mojave's
22 knowledge of intent with respect to the actions ultimately undertaken by CAM, Cashman resorts
23 to arguments that there was no value received for the work between CAM and Mojave. To the
24 contrary, Mojave submitted evidence that it had entered into legitimate contracts with CAM for
25 other projects.² Indeed, the payments between the parties referenced in the Complaint
26 specifically relate to the scope and price of the contracted work and the Plaintiffs have supplied

27 ² See Contract for NV Energy project attached to Defendants' Motion as Exhibit A-5, as well as the Affidavit of
28 Brian Bugni generally, attached to the Motion as Exhibit A.

1 this Court with no evidence that Mojave had any intent to defraud.³

2 The contracts and circumstances at issue demonstrate that Mojave acted in objective
3 good faith in its business transactions and that CAM paid reasonably equivalent value for the
4 work, and the Plaintiffs have presented no evidence to the Court to the contrary.⁴ There is no
5 evidence in this matter of any questionable tactics by CAM or anything odd occurring until the
6 acts that gave rise to the Complaint by Cashman. In fact, by Cashman's own admission, it
7 accepted a second payment from CAM without accompanying CAM to the financial institution
8 or demanding another direct form of payment such as a cashier's check. Clearly, Cashman was
9 not alarmed or suspicious of CAM, because there was no history of bad acts with CAM or Mr.
10 Carvalho individually. Similarly, Mojave had no reason to suspect CAM's financial transactions
11 were fraudulent or that CAM was about to ostensibly steal money from Cashman, and thus
12 Mojave cannot now be held liable under NRS 112 for standard business transactions with CAM.

13 The burden on summary judgment is upon the Plaintiffs to come forward with **some**
14 evidence supporting the claim for fraudulent transfer. However, there is no evidence of any
15 knowledge or ill intent on behalf of the Defendants, there is no evidence of any improper actions
16 by CAM prior to the acts giving rise to this Complaint, and there is no evidence that the
17 payments from CAM to Mojave were not legitimate payments pursuant to legitimate contracts.
18 Quite the contrary, Mojave has presented evidence that the payments in question **were** legitimate
19 payments pursuant to legitimate contract. Therefore, summary judgment should be granted.

20 **E. CASHMAN DOES NOT EVEN BOTHER TO DENY MOJAVE'S ALLEGATIONS**
21 **WITH RESPECT TO THE CLAIMS AGAINST CASHMAN**

22 The Counterclaim is clear as to the fact that the agreement in question relates to the
23 purchase order between Mojave and CAM "c/o Cashman." So, Cashman's allegation that
24 Defendants, and specifically Mojave, have not identified the contract that was breached is simply
25 a red herring to distract this Court from Cashman's failure to perform, none of which has been

26 ³ *Id.*

27 ⁴ Herup v. First Boston Financial, LLC 123 Nev. 228, 231-237, 162 P.3d 870, 872 - 876 (Nev.,2007)

1 denied. All of the parties, including Cashman, CAM and Mojave, knew and agreed that CAM
2 was essentially an intermediary, insisted upon by the owner, and that Cashman was responsible
3 for supplying and operating the equipment and Mojave was responsible for paying for the
4 equipment. Mojave lived up to its obligations, Cashman did not.

5 Cashman made a decision to issue an unconditional, final lien release upon Mojave's
6 payment to CAM, and the subsequent issues that arose between CAM and Cashman have
7 nothing to do with Mojave. Despite that, Cashman has refused to proceed with the start-up of
8 the equipment at the Project and also withheld vital information that would allow the Defendants
9 to start-up the equipment. None of this is denied in the Opposition, nor does Cashman provide
10 any basis for not complying with its obligations and deliberately sabotaging the Project, causing
11 the Defendants to incur \$137,253.20 for the diagnosis of the equipment, start up, and additional
12 materials from other contractors. Nor does Cashman deny that it was always aware that the
13 responsibility for the delivery and start-up of the equipment was its responsibility.

14 Instead, Cashman argues that there is no "agreement" between Cashman and Mojave, and
15 thus summary judgment should be put off. The agreement is defined in the counterclaim and the
16 Motion, and Cashman has offered no disputed facts or evidence to preclude summary judgment
17 as to the allegations of Cashman's misconduct with respect to the equipment and the Project.
18 Thus, summary judgment is proper.

19 **F. CASHMAN'S RULE 56(F) ARGUMENT IS ANOTHER RED HERRING**

20 As most parties facing summary judgment are inclined to do, Cashman also throws in the
21 56(f) defense that it needs more discovery prior to the Court making a decision on summary
22 judgment. What Cashman does not inform the Court is that it tendered Mojave substantial
23 written discovery, all of which has been answered and provided to Cashman. Cashman also
24 neglects to inform the Court how discovery is going to change the undisputed facts that Mojave
25 paid for the equipment, with funds that cleared CAM's bank account, and that Cashman issued
26 an unconditional, final lien release with respect to the equipment due to Mojave's payment.
27 Cashman is the Plaintiff, and if it does not have any evidence to support the fraudulent transfer
28 claims now, it isn't going to find that evidence in additional discovery, and Cashman has not

1 even offered *denials*, much less evidence, to rebut Mojave's counterclaims, so additional
2 discovery is not going to somehow magically absolve Cashman of the bad facts it has created for
3 itself with respect to the failure to start up the equipment and withholding of information for the
4 other parties to start up the same.

5 Therefore, NRCP 56(f) provides no real basis for denial of the instant Motion, and
6 Summary Judgment should be entered on behalf of the Defendants.

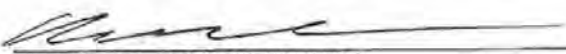
7 **CONCLUSION**

8 Cashman throws a lot of legal arguments at the Court in the hope of creating a Rule 56(f)
9 issue or muddying the water sufficiently to avoid what is an inevitable outcome in this case,
10 judgment in favor of the Defendants. There is no dispute that Mojave tendered funds for the
11 equipment at issue, there is no dispute that Mojave's funds cleared the bank, there is no dispute
12 that Cashman provided an unconditional, final lien release, and there is no dispute that the real
13 villain, CAM, essentially stole the money from Cashman. There is no evidence of a fraudulent
14 transfer, and certainly no evidence of intent or knowledge by Mojave with respect to CAM's
15 actions. Finally, Cashman has not denied that it has engaged in the wrongful conduct with
16 respect to the start-up information regarding the equipment provided for the Project.

17 Therefore, Defendants respectfully submit that the instant Motion should be granted.

18 Dated this 2 day of May, 2012.

19 **COTTON, DRIGGS, WALCH,**
20 **HOLLEY, WOLOSON & THOMPSON**

21 
22 **BRIAN W. BOSCH, ESQ.**
23 Nevada Bar No. 7612
24 **SHEMILLY A. BRISCOE, ESQ.**
25 Nevada Bar No. 9985
26 400 South Fourth Street, Third Floor
27 Las Vegas, Nevada 89101

28 *Attorneys for Defendants, Counterclaimants and
Crossclaimants*

CERTIFICATE OF MAILING

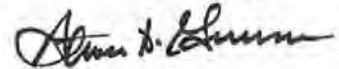
I HEREBY CERTIFY that, on the 2nd day of May, 2012, and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**, postage prepaid and addressed to:

Jennifer R. Lloyd-Robinson, Esq.
Marisa L. Maskas, Esq.
PEZZILLO ROBINSON
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Attorneys for Plaintiff

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CLERK OF THE COURT

ACOMP

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Cashman Equipment Company

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

vs.

CAM CONSULTING INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD., dba MOJAVE
ELECTRIC, a Nevada corporation;
WESTERN SURETY COMPANY, a
surety; THE WHITING TURNER
CONTRACTING COMPANY, a Maryland
corporation; FIDELITY AND DEPOSIT
COMPANY OF MARYLAND, a surety;
TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, a surety;
DOES 1 - 10, inclusive; and ROE
CORPORATIONS 1 - 10, inclusive;

Defendants.

Case No.: A642583
Dept. No.: 32

Consolidated with Case No.: A653029

THIRD AMENDED COMPLAINT

Pezzillo Robinson
6725 VIA AUSTI PARKWAY, SUITE 290
LAS VEGAS, NEVADA 89119
TEL 702 233-4225

1 COMES NOW, Plaintiff, CASHMAN EQUIPMENT COMPANY, (hereinafter
2 "Cashman" or "Plaintiff") by and through its attorneys of record, Pezzillo Robinson, in
3 support of its Third Amended Complaint against the Defendants named herein and alleges as
4 follows:

5 **PARTIES, JURISDICTION AND VENUE**

6 1. Plaintiff, Cashman, is a Nevada corporation duly authorized to conduct
7 business and conducting business within the State of Nevada.

8 2. Plaintiff is informed and believes and based thereon alleges that Defendant
9 CAM CONSULTING INC. ("CAM"), is or was at all times relevant to this action, a Nevada
10 corporation authorized to conduct business in the State of Nevada.

11 3. Plaintiff is informed and believes and based thereon alleges that Defendant
12 ANGELO CARVALHO ("CARVALHO") is a resident of Clark County, Nevada and an
13 owner of Defendant CAM.

14 4. Plaintiff is informed and believes and based thereon alleges that Defendant
15 JANEL RENNIE aka JANEL CARVALHO ("RENNIE") is a resident of Clark County,
16 Nevada, an owner of Defendant CAM and the owner of the property located at 6321 Little
17 Elem St., North Las Vegas, Nevada, 89031 and more particularly identified by Assessor's
18 Parcel Number 124-29-110-099 (the "Property"), which is subject of Plaintiff's claim to quiet
19 title contained herein.
20

21 5. Plaintiff is informed and believes and based thereon alleges that Defendant
22 WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC ("MOJAVE") is or was at
23 all times relevant to this action, a Nevada limited liability company authorized to conduct
24 business in the State of Nevada as a licensed contractor, license numbers 38571, 37380 and
25 19512 and is the principal on the Mechanics Lien Release Bond, issued by WESTERN
26 SURETY COMPANY (Bond Number 58685401).
27
28

1 6. Plaintiff is informed and believes and based thereon alleges that Defendant
2 WESTERN SURETY COMPANY ("WESTERN") is authorized to conduct business within
3 the State of Nevada as a contractor's bond surety, and in that capacity issued two contractor's
4 license bonds to Defendant MOJAVE, Bond Number 929452545 in the amount of \$5,000.00
5 and Bond Number 929444674 in the amount of \$2,000.00. Said bond was issued for the
6 benefit of various public members injured by Defendant MOJAVE's actions as a contractor,
7 including Plaintiff. Additionally, WESTERN also issued a Mechanics Lien Release Bond to
8 Defendant MOJAVE (Bond Number 58685401) in the amount of \$1,133,840.84, for the
9 benefit of Plaintiff.

10 7. Plaintiff is informed and believes and based thereon alleges that Defendant
11 THE WHITING TURNER CONTRACTING COMPANY ("WHITING TURNER") is or was
12 at all times relevant to this action, a Maryland limited liability company authorized to conduct
13 business in the State of Nevada as a licensed contractor, license nos. 33400, 68086, and 68079
14 and is the general contractor on the Project.

15 8. Plaintiff is informed and believes and based thereon alleges that Defendant
16 FIDELITY AND DEPOSIT COMPANY OF MARYLAND ("FIDELITY") is authorized to
17 conduct business within the State of Nevada as a contractor's bond surety, and in that capacity
18 issued a contractor's license bond to Defendant WHITING TURNER, Bond Number 9045603
19 in the amount of \$50,000.00 for license number 33400, and issued a payment bond, Bond
20 Number 8997023. Said bonds were issued for the benefit of various public members injured
21 by Defendant WHITING TURNER's actions as a contractor, including Plaintiff.

22 9. Plaintiff is informed and believes and based thereon alleges that Defendant
23 TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA ("TRAVELERS")
24 is a surety that issued a payment bond, Bond No. 105375118, for the benefit of various public
25 members injured by Defendant WHITING TURNER's actions as a contractor, including
26 Plaintiff.
27
28

10. Defendants sued herein under the fictitious names of DOES 1 through 10, inclusive, are presently unknown to Plaintiff but are believed to reside in the State of Nevada and are in some respect liable for the acts and omissions, whether intentional, negligent or otherwise, alleged herein.

11. Defendants sued herein under the fictitious names of ROE CORPORATIONS 1 through 10, inclusive, are presently unknown to Plaintiff but are believed to be corporations authorized to conduct business in the State of Nevada and are in some respect liable for the acts and omissions, whether intentional, negligent or otherwise, alleged herein.

12. The obligations sued upon herein were performed in Clark County, Nevada.

**FIRST CAUSE OF ACTION
(BREACH OF CONTRACT AGAINST CAM,
DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)**

13. Plaintiff repeats with the same force and effect paragraphs 1 through 12, as if set forth in full.

14. Plaintiff and Defendant entered into an agreement whereby Plaintiff agreed to sell equipment to Defendant ("the Contract") for the total price of \$755,893.89. The equipment was to be incorporated into the Project commonly referred to as the New Las Vegas City Hall.

15. Plaintiff provided the equipment to Defendant and as required by the Contract. Defendant agreed to pay Plaintiff for the equipment pursuant to the terms of the Contract.

16. Defendant has breached the terms of the Contract by failing and refusing to pay for the equipment provided by Plaintiff, and now owes a sum in excess of \$10,000.00.

17. Plaintiff has performed all conditions and promises required on its part to be performed under the Contract, except as said performance has been waived, excused or prevented by Defendant's breach of the Contract.

1 18. Based upon Defendant's breach of the Contract as described above, Plaintiff
2 has been damaged in a sum in excess of \$10,000.00, together with fees, costs, and interest
3 thereon as provided in the Contract until paid in full and other such damage according to
4 proof.

5
6 **SECOND CAUSE OF ACTION**
7 **(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
8 **AGAINST CAM, DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)**

9 19. Plaintiff repeats with the same force and effect paragraphs 1 through 18, as if
10 set forth in full.

11 20. All contracts entered into in the state of Nevada contain the implied covenant
12 of good faith and fair dealing.

13 21. Defendant's intentional failure to pay Plaintiff for the equipment after
14 receiving the funds to pay Plaintiff from MOJAVE, the electrical subcontractor on the Project,
15 and according to the terms of the Contract constitutes a breach of the implied covenant of
16 good faith and fair dealing.

17 22. Based on Defendant's breach of the Contract as described above, Plaintiff has
18 been damaged in a sum in excess of \$10,000.00, together with fees, costs, and interest thereon
19 as provided in the Contract until paid in full and other such damage according to proof.

20 **THIRD CAUSE OF ACTION**
21 **(FORECLOSURE OF SECURITY INTEREST AGAINST CAM, MOJAVE,**
22 **DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)**

23 23. Plaintiff repeats with the same force and effect paragraphs 1 through 22, as if
24 set forth in full.

25 24. Plaintiff holds a valid security interest in the equipment sold to CAM as
26 provided for in the credit agreement executed by CARVALHO on behalf of CAM, which
27 were pledged in writing in order to secure payment for the equipment.

28 25. Plaintiff perfected its security interest in the equipment.

1 26. Plaintiff properly filed its security agreement in accordance with the pertinent
2 provisions of the Nevada Uniform Commercial Code.

3 27. Plaintiff is entitled to execute upon its security agreement and take possession
4 of all assets or proceeds subject of the security agreement and seeks a judgment and order
5 from this Court allowing such execution.

6 28. Plaintiff is entitled to an award of its interest, costs and attorneys' fees incurred
7 herein.

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9 **FOURTH CAUSE OF ACTION**
10 **(ALTER EGO AGAINST CAM, CARVALHO, RENNIE**
11 **DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)**

12 29. Plaintiff repeats with the same force and effect paragraphs 1 through 28, as if
13 set forth in full.

14 30. Plaintiff is informed and believes and based thereon alleges that Defendant
15 CAM is not and was not adequately funded.

16 31. Plaintiff is informed and believes and based thereon alleges that Defendant
17 CAM is solely owned by Defendants CARVALHO and RENNIE, and that CAM is
18 influenced and governed by CARVALHO and RENNIE.

19 32. Plaintiff is informed and believes and based thereon alleges that CAM received
20 payment from MOJAVE, the electrical subcontractor on the Project, for the equipment it
21 purchased from Plaintiff and instead of paying Plaintiff for the equipment, CARVALHO and
22 RENNIE diverted the funds from CAM and used the funds for their own benefit.

23 33. Plaintiff is informed and believes and based thereon alleges that CARVALHO
24 and RENNIE used the corporate assets as their own, withdrawing \$600,000.00 from the
25 corporate banking account even though those funds were to be used to pay Plaintiff.

26 34. As set forth herein, a unity of interest and ownership exists between the
27 Defendant CAM and Defendants CARVALHO and RENNIE such that one is inseparable
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1 from the other and the facts of this matter demonstrate that adherence to the fiction of a
2 separate entity would, under the circumstances, sanction a fraud or promote injustice and
3 would therefore be inequitable.

4 35. Therefore, as CARVALHO and RENNIE are the alter ego of CAM,
5 CARVALHO and RENNIE are liable for the damages suffered by Plaintiff, in an amount in
6 excess of \$10,000.00, together with fees, costs, and interest thereon pursuant to the terms of
7 the Contract until paid in full and other such damage according to proof.

8
9 **FIFTH CAUSE OF ACTION**
10 **(CONVERSION AGAINST CARVALHO,**
11 **DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)**

12 36. Plaintiff repeats with the same force and effect paragraphs 1 through 35 as if
13 set forth in full.

14 37. Plaintiff is informed and believes and based thereon alleges that Defendant
15 CARVALHO received payment from MOJAVE, the electrical subcontractor on the Project,
16 for the equipment provided to Defendant CAM by Plaintiff.

17 38. Defendant CARVALHO then issued payment to Plaintiff in the form of a
18 check in the amount of \$755,893.89.

19 39. Plaintiff deposited the check, but it was returned by the bank.

20 40. Plaintiff is informed and believes and based thereon alleges that Defendant
21 CARVALHO stopped payment on the check.

22 41. Plaintiff is informed and believes and based thereon alleges that Defendant
23 CARVALHO personally withdrew \$600,000.00 from the corporate bank account even though
24 CARVALHO knew that money was received for Plaintiff and was to be used to pay Plaintiff
25 for the equipment Plaintiff sold to CAM.

26 42. Plaintiff subsequently contacted Defendant CARVALHO to request that
27 payment be reissued to Plaintiff for the equipment Plaintiff sold Defendant.
28

1 43. Defendant CARVALHO then again issued payment to Plaintiff in the form of
2 a check in the amount of \$755,893.89.

3 44. Plaintiff is informed and believes and based thereon alleges that Defendant
4 CARVALHO issued the second check knowing there were no funds in the bank account to
5 pay Plaintiff, as CARVALHO had previously withdrawn \$600,000.00 from the account and
6 had paid other expenses with the money to be paid to Plaintiff.

7 45. Plaintiff presented the second check to the bank upon which it was drawn,
8 Nevada State Bank, and was informed that the account did not have sufficient funds to cover
9 the check.

10 46. Plaintiff has attempted to contact Defendant CARVALHO numerous times and
11 CARVALHO is not responding and has not issued payment.

12 47. As evidenced by Defendant CARVALHO twice purporting to make payment
13 to Plaintiff for the equipment purchased, the money in CARVALHO's possession belongs to
14 Plaintiff and Plaintiff has the right to possession of the money.

15 48. Defendant CARVALHO is wrongfully and intentionally exercising dominion
16 and control over Plaintiff's property interfering with Plaintiff's right to the property.

17 49. In keeping Plaintiff's money, Defendant CARVALHO is depriving Plaintiff of
18 its use of the property.

19 50. Defendant CARVALHO's failure to pay Plaintiff has caused damages to
20 Plaintiff in an amount in excess of \$10,000.00, together with fees, costs, and interest thereon
21 pursuant to the terms of the Contract until paid in full and other such damage according to
22 proof.
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24 **SIXTH CAUSE OF ACTION**
25 **(FRAUD AGAINST CAM, CARVALHO**
26 **DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)**

27 51. Plaintiff repeats with the same force and effect paragraphs 1 through 50, as if
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1 set forth in full.

2 52. Defendant CAM and Defendant CARVALHO represented to Plaintiff that they
3 would pay for the equipment purchased with the monies received from MOJAVE, the
4 electrical subcontractor on the Project, knowing that the money was to be held in trust for
5 Plaintiff and paid to Plaintiff.

6 53. Defendant CAM and Defendant CARVALHO presented a check to Plaintiff
7 purporting to pay Plaintiff for the equipment.

8 54. Plaintiff is informed and believes and based thereon alleges that Defendants
9 did not intend to pay Plaintiff for the equipment.

10 55. Plaintiff is informed and believes and based there on alleges Defendants
11 requested that the bank stop payment on the check and diverted the funds for their own use.

12 56. Plaintiff subsequently discovered that there were not sufficient funds to pay
13 Plaintiff in Defendants' bank account.

14 57. Plaintiff relied to its detriment upon Defendants' false representations by
15 supplying the equipment to the Project and executing a release.

16 58. Due to Defendant's intentional Fraud upon Plaintiff as described above,
17 Plaintiff has been damaged in a sum in excess of \$10,000.00, together with fees, costs, and
18 interest thereon until paid in full and other such damage according to proof.

19 59. Plaintiff is also entitled to punitive damages as a result of Defendant's tortious
20 conduct.

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22 **SEVENTH CAUSE OF ACTION**
23 **(NEGLIGENT MISREPRESENTATION AGAINST CAM, CARVALHO**
24 **DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)**

25 60. Plaintiff repeats with the same force and effect paragraphs 1 through 59, as if
26 set forth in full.

27 61. Defendant CAM and Defendant CARVALHO represented to Plaintiff that they
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1 would pay for the equipment purchased with the monies received from MOJAVE, the
2 electrical subcontractor on the Project, knowing that the money received was to be held in
3 trust for Plaintiff and paid to Plaintiff.

4 62. Defendant CAM and Defendant CARVALHO presented a check to Plaintiff
5 purporting to pay Plaintiff for the equipment.

6 63. Plaintiff is informed and believes and based thereon alleges that Defendants
7 did not intend to pay Plaintiff for the equipment or did not insure that they had sufficient
8 funds to pay Plaintiff.

9 64. Plaintiff is informed and believes and based thereon alleges, Defendants
10 requested that the bank stop payment on the check.

11 65. Plaintiff subsequently discovered that there were not sufficient funds to pay
12 Plaintiff in Defendants' bank account.

13 66. Plaintiff relied to its detriment upon Defendants' false representations by
14 supplying the equipment to the Project and executing a release and has suffered damage as a
15 result.

16 67. Defendants intended for Plaintiff to act on its representations and are
17 therefore liable to Plaintiff for the damages Plaintiff suffered in reliance thereon.

18 68. Due to Defendants' Negligent Misrepresentation, Plaintiff has been damaged
19 in a sum in excess of \$10,000.00, together with fees, costs, and interest thereon until paid in
20 full and other such damage according to proof.
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23 **EIGHTH CAUSE OF ACTION**
24 **(QUIET TITLE AGAINST CARVALHO, RENNIE,**
25 **DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)**

26 69. Plaintiff repeats with the same force and effect paragraphs 1 through 68, as if
27 set forth in full.

28 70. Plaintiff is informed and believes and based thereon alleges that Defendants

1 CARVALHO and RENNIE converted funds that were to be paid to Plaintiff as set forth
2 herein.

3 71. Plaintiff is informed and believes and based thereon alleges that those funds
4 were used by Defendants to purchase the Property on or about May 11, 2011, less than two
5 weeks after CARVALHO withdrew \$600,000.00 from the corporate bank account.

6 72. Plaintiff is informed and believes and based thereon alleges that Defendants
7 titled the Property to RENNIE only, using her maiden name, so as to conceal the property
8 purchase.

9 73. Plaintiff is informed and believes and based thereon alleges that because
10 Defendants used Plaintiff's money to purchase the Property, Plaintiff has a claim to
11 ownership of the Property.

12 74. Plaintiff's claim to quiet title is brought pursuant to NRS 40.010.

13 75. Plaintiff is entitled to an order of this Court declaring it the owner of the
14 Property.
15

16 **NINTH CAUSE OF ACTION**
17 **(ENFORCEMENT OF MECHANIC'S LIEN RELEASE BOND AGAINST MOJAVE,**
18 **WESTERN, DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)**

19 76. Plaintiff repeats with the same force and effect paragraphs 1 through 75, as if
20 set forth in full.

21 77. Plaintiff supplied equipment to the Project at the request of and pursuant to the
22 Contract with CAM.

23 78. Plaintiff is informed and believes and based thereon alleges that said
24 equipment was used in or for the construction, alteration or repair of an improvement on the
25 Property.

26 79. Plaintiff is entitled to hold a lien on the Property as Plaintiff is a lien claimant,
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1 as set forth in NRS 108.2214.

2 80. Plaintiff served via certified mail, return receipt requested, a certain Notice to
3 Owner of Right to Lien upon Defendants or their successors in interest, as required by NRS
4 108.245, or was exempt from the obligation to serve said Notice.

5 81. Within the time required by NRS Chapter 108, Plaintiff caused to be recorded
6 a mechanic's lien on the Project in the amount of \$755,893.89, Instrument No.
7 201106220002156, in compliance with the requirements of NRS 108.226 and served upon the
8 record owner in compliance with the provisions of NRS 108.227.

9 82. Plaintiff's lien is a valid lien upon the Property.

10 83. On or about September 8, 2011, Mojave, as principal, and Western, as surety,
11 caused a Bond for Release of Mechanic's Lien Pursuant to Section 108.221 seq. of Nevada
12 Revised Statutes to be recorded to release Plaintiff's mechanic's lien.

13 84. Pursuant to NRS 108.2415(5), the surety bond recorded to release Plaintiff's
14 mechanic's lien replaces the property as security for the lien and pursuant to NRS 108.2421.
15 Plaintiff is entitled to bring an action against the principal and surety on the bond.

16 85. Plaintiff was required to retain the undersigned firm of attorneys to prosecute
17 this action, and as a result has incurred and will continue to incur costs and attorneys fees in
18 preparing, recording and foreclosing its lien, which Plaintiff is entitled to recover from said
19 Defendants.
20

21 **TENTH CAUSE OF ACTION**
22 **(UNJUST ENRICHMENT AGAINST MOJAVE, DOES 1-10, and**
23 **ROE CORPORATIONS 1-10, inclusive)**

24 86. Plaintiff repeats with the same force and effect paragraphs 1 through 854, as if
25 set forth in full.

26 87. Plaintiff supplied equipment to the Project at the request of and pursuant to its
27 Contract with CAM.
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1 88. Plaintiff is informed and believes and based thereon alleges that said
2 equipment was used in or for the construction, alteration or repair of an improvement on the
3 Property.

4 89. Plaintiff is informed and believes and based thereon alleges that MOJAVE
5 contracted with CAM to purchase the equipment Plaintiff sold to CAM.

6 90. Plaintiff is informed and believes and based thereon alleges that MOJAVE
7 knew that Plaintiff was selling the equipment to CAM that MOJAVE would later purchase.

8 91. Plaintiff is informed and believes and based thereon alleges that MOJAVE
9 refused to issue a joint check payable to both CAM and Plaintiff to pay for the equipment
10 Plaintiff supplied to the Project.

11 92. Plaintiff is informed and believes and based thereon alleges that MOJAVE
12 issued payment for the equipment to CAM.

13 93. Plaintiff is informed and believes and based thereon alleges that after receiving
14 said payment CAM then issued two checks made payable to MOJAVE in the amounts of
15 \$139,367.70 and \$136,269.00, respectively.

16 94. Plaintiff is informed and believes and based thereon alleges that the payments
17 MOJAVE received from CAM were funds that were to be used to pay Plaintiff for the
18 equipment.

19 95. Plaintiff is informed and believes and based thereon alleges that MOJAVE, by
20 virtue of those payments from CAM has retained monies that rightfully belong to Plaintiff.

21 96. Plaintiff is informed and believes and based thereon alleges that MOJAVE
22 may not have paid the entire amount due for the equipment.

23 97. As MOJAVE has in its possession monies that should have been used to pay
24 Plaintiff for the equipment, MOJAVE has been unjustly enriched to the detriment of Plaintiff,
25 causing Plaintiff damages in a sum in excess of \$10,000.00 and other such damage according
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1 to proof.

2 98. Plaintiff has retained the services of an attorney to prosecute this action and is
3 entitled to an award of attorney's fees and costs incurred.
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5 **ELEVENTH CAUSE OF ACTION**
6 **(CONTRACTOR'S LICENSE BOND CLAIM AGAINST MOJAVE, WESTERN**
7 **DOES 1-10, and ROE CORPORATIONS 1-10, inclusive)**

8 99. Plaintiff repeats with the same force and effect paragraphs 1 through 98, as if
9 set forth in full.

10 100. Plaintiff is informed and believes and based thereon alleges that Defendant
11 MOJAVE, as principal, and Defendant WESTERN, as surety, caused to be issued two
12 contractor's license bonds in accordance with the provisions of Chapter 624 of the Nevada
13 Revised Statutes. Said bonds are identified as Bond Number 929452545 in the amount of
14 \$5,000.00 and Bond Number 929444674 in the amount of \$2,000.00, were conditioned upon
15 full compliance by MOJAVE with all of the provisions of Chapter 624 of the Nevada Revised
16 Statutes and inures to the benefit of all persons, including Plaintiff, damaged as a result of a
17 violation of any requirements of said chapter by MOJAVE.

18 101. Plaintiff is informed and believes and based thereon alleges that the damages it
19 has suffered are a direct and proximate result of violations of one or more of the following
20 sections of Chapter 624 of Nevada Revised Statutes by Defendant MOJAVE:

21 (a) Section 624.3012(1) in that MOJAVE diverted funds which were
22 received for a specific purpose in the prosecution of construction contracts and thereby
23 deprived Plaintiff of payment to which it was entitled;

24 (b) Section 624.3012(2) in that MOJAVE willfully and deliberately failed
25 to pay money due for labor and materials rendered in connection with its operation as
26 a contractor, when it had the capacity to pay, or when it had received sufficient funds
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1 therefore as payment, in the prosecution of construction contracts for which the
2 equipment was provided.

3 102. In light of MOJAVE's willful and deliberate failure to ensure that Plaintiff was
4 paid for the equipment Plaintiff provided to the Project and as it has been unjustly enriched by
5 retaining monies owed to Plaintiff for the equipment MOJAVE violated Chapter 624 of the
6 Nevada Revised Statutes and Plaintiff is entitled to recover against the license bond issued by
7 Defendant WESTERN.

8 **TWELFTH CAUSE OF ACTION**
9 **(UNJUST ENRICHMENT AGAINST WHITING TURNER,**
10 **DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)**

11 103. Plaintiff repeats with the same force and effect paragraphs 1 through 102, as if
12 set forth in full.

13 104. Plaintiff is informed and believes and based thereon alleges that Defendants
14 WHITING TURNER, FC/LW VEGAS, LLC and L W T I C SUCCESSOR LLC, and each of
15 them, have been unjustly enriched by the wrongful act of retaining the equipment that was
16 provided to the Project by Plaintiff, and failing to pay for said equipment.

17 105. As such, said Defendants have been unjustly enriched to the detriment and
18 damage of Plaintiff in a sum in excess of \$10,000.00.

19 106. Plaintiff has retained the services of an attorney to prosecute this action and is
20 entitled to an award of attorney's fees and costs incurred.

21 **THIRTEENTH CAUSE OF ACTION**
22 **(CONTRACTOR'S LICENSE BOND CLAIM AGAINST WHITING TURNER,**
23 **FIDELITY, DOES 1-10, and ROE CORPORATIONS 1-10, inclusive)**

24 107. Plaintiff repeats with the same force and effect paragraphs 1 through 106, as if
25 set forth in full.

26 108. Plaintiff is informed and believes and based thereon alleges that Defendant
27 WHITING TURNER, as principal, and Defendant FIDELITY, as surety, caused to be issued a
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1 contractor's license bond in accordance with the provisions of Chapter 624 of the Nevada
2 Revised Statutes. Said bond is identified as Bond Number 9045603, issued in the amount of
3 \$50,000.00, was conditioned upon full compliance by WHITING TURNER with all of the
4 provisions of Chapter 624 of the Nevada Revised Statutes and inures to the benefit of all
5 persons, including Plaintiff, damaged as a result of a violation of any requirements of said
6 chapter by WHITING TURNER.

7 109. Plaintiff is informed and believes and based thereon alleges that the damages it
8 has suffered are a direct and proximate result of violations of one or more of the following
9 sections of Chapter 624 of Nevada Revised Statutes by Defendant WHITING TURNER:

10 (a) Section 624.3012(1) in that WHITING TURNER diverted funds which
11 were received for a specific purpose in the prosecution of construction contracts and
12 thereby deprived Plaintiff of payment to which it was entitled;

13 (b) Section 624.3012(2) in that WHITING TURNER willfully and
14 deliberately failed to pay money due for labor and materials rendered in connection
15 with its operation as a contractor, when it had the capacity to pay, or when it had
16 received sufficient funds therefore as payment, in the prosecution of construction
17 contracts for which the equipment was provided.

18 110. In light of WHITING TURNER's willful and deliberate failure to ensure that
19 Plaintiff was paid for the equipment Plaintiff provided to the Project and as it has been
20 unjustly enriched by retaining monies owed to Plaintiff for the equipment WHITING
21 TURNER violated Chapter 624 of the Nevada Revised Statutes and Plaintiff is entitled to
22 recover against the license bond issued by Defendant FIDELITY.
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FOURTEENTH CAUSE OF ACTION
(Claim on Payment Bond against WHITING TURNER, FIDELITY, TRAVELERS,
DOES 1-10, and ROE CORPORATIONS 1-10, inclusive)

111. Plaintiff repeats with the same force and effect paragraphs 1 through 110, as if set forth in full.

112. Plaintiff agreed to supply equipment to the Project.

113. Plaintiff supplied the materials to the Project; however Plaintiff has not been paid as required for the equipment supplied and incorporated into the Project.

114. Upon information and belief, WHITING TURNER contracted with FIDELITY and TRAVELERS to obtain a payment bond for the protection of unpaid claimants on the Project.

115. Upon information and belief, FIDELITY and TRAVELERS executed a payment bond for the protection of unpaid claimants on the Project.

116. Upon information and belief, Plaintiff has fulfilled all of the requirements to maintain an action against WHITING TURNER, FIDELITY and TRAVELERS on the payment bond for the amount which remains unpaid to Plaintiff for equipment supplied to the Project.

117. Plaintiff has been damaged in an amount in excess of 10,000.00, together with fees, costs, and interest and other damages allowed pursuant to statute thereon as provided until paid in full and other such damage according to proof.

WHEREFORE, Plaintiff prays for relief as follows:

1. For compensatory damages for an amount in excess of \$10,000.00, together with interest thereon at the contractual rate until paid in full and other such damage according to proof;

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1 2. For punitive damages against Defendants CAM, CARVALHO and RENNIE;

2 3. For judgment declaring that Plaintiff has a valid security interest in the
3 property subject of the UCC filing for an amount in excess of \$10,000.00, plus interest from
4 the date the amounts became due until paid in full, costs and fees and that Plaintiff's security
5 interest has priority over every other lien or claim of interest in the property;

6 4. For judgment declaring that Plaintiff is the owner of the Property subject to the
7 Quiet Title claim alleged herein;

8 5. For judgment declaring that Plaintiff has a claim in a sum in excess of
9 \$10,000.00 against MOJAVE's lien release bond, issued by WESTERN, plus interest from
10 the date the amounts became due until paid in full, costs and fees;

11 6. For judgment declaring that Plaintiff has a claim in excess of \$10,000.00
12 against MOJAVE's contractor's license bond, issued by WESTERN, plus interest thereon
13 from the date the amounts became due until paid in full, and that Plaintiff's claim has priority
14 over every other claim of interest on the bond;

15 7. For judgment declaring that Plaintiff has a claim in excess of \$10,000.00
16 against WHITING TURNER's contractor's license bond, issued by FIDELITY; plus interest
17 thereon from the date the amounts became due until paid in full, and that Plaintiff's claim has
18 priority over every other claim of interest on the bond;

19 8. For judgment declaring that Plaintiff has a claim in excess of \$10,000.00
20 against WHITING TURNER's payment bond, issued by FIDELITY and TRAVELERS, plus
21 interest thereon from the date the amounts became due until paid in full, and that Plaintiff's
22 claim has priority over every other claim of interest on the bond;

23 9. For reasonable attorneys fees and costs; and


24 10. For such other and further relief as this Court deems just and proper.
25
26
27
28

Pezzillo Robinson
6725 VIA AUSTI PARKWAY, SUITE 290
LAS VEGAS, NEVADA 89119
TEL. 702 233-4225

1 DATED: May 24, 2012

PEZZILLO ROBINSON

2
3 By:


Jennifer R. Lloyd-Robinson, Esq.

Nevada State Bar No. 9617

Marisa L. Maskas, Esq.

Nevada State Bar No. 10928

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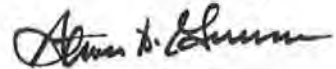
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jrobinson@pezzillorobinson.com

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Attorneys for Plaintiff,

Cashman Equipment Company



CLERK OF THE COURT

1 **NOE**

2 Jennifer R. Lloyd-Robinson, Esq.

3 Nevada Bar No. 9617

4 Marisa L. Maskas, Esq.

5 Nevada Bar No. 10928

6 **PEZZILLO ROBINSON**

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8 Las Vegas, Nevada 89119

9 Tel: (702) 233-4225

10 Fax: (702) 233-4252

11 *Attorneys for Plaintiff,*

12 *Cashman Equipment Company*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 CASHMAN EQUIPMENT COMPANY, a
16 Nevada corporation,

17 Plaintiff,

18 vs.

19 CAM CONSULTING INC., a Nevada
20 corporation; ANGELO CARVALHO, an
21 individual; JANEL RENNIE aka JANEL
22 CARVALHO, an individual; WEST EDNA
23 ASSOCIATES, LTD., dba MOJAVE
24 ELECTRIC, a Nevada corporation; WESTERN
25 SURETY COMPANY, a surety; THE
26 WHITING TURNER CONTRACTING
27 COMPANY, a Maryland corporation;
28 FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, a surety; DOES 1 - 10,
inclusive; and ROE CORPORATIONS 1 - 10,
inclusive;

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A642583
DEPT.: 32

Consolidated with Case No: A653029

**NOTICE OF ENTRY OF ORDER
GRANTING CASHMAN
EQUIPMENT COMPANY'S
MOTION TO AMEND COMPLAINT**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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LAS VEGAS, NEVADA 89119
TEL 702 233-4225

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TEL 702 233-4225

1 PLEASE TAKE NOTICE that the ORDER GRANTING CASHMAN EQUIPMENT
2 COMPANY'S MOTION TO AMEND COMPLAINT was entered in the above entitled
3 matter and filed on May 23, 2012, a copy of which is attached hereto.

4 DATED: May 24, 2012

PEZZILLO ROBINSON

5
6
7 By: 

Jennifer R. Lloyd-Robinson, Esq.

Nevada Bar No. 9617

Marisa L. Maskas, Esq.

Nevada Bar No. 10928

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Attorneys for Plaintiff,

Cashman Equipment Company

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CERTIFICATE OF SERVICE

The undersigned, an employee of the law firm of PEZZILLO ROBINSON, hereby certifies that on the 21st day of May, 2012, a true and correct copy of the foregoing document, **NOTICE OF ENTRY OF ORDER GRANTING CASHMAN EQUIPMENT COMPANY'S MOTION TO AMEND COMPLAINT**, was served by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

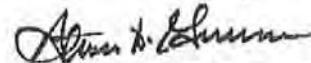
Brian Boschee, Esq.
Shemilly Briscoe, Esq.
SANTORO, DRIGGS, ET AL.
400 S. 4th St., 3rd Fl.
Las Vegas, NV 89101
*Attorneys for Whiting Turner Contracting,
Mojave Electric LV, LLC, Western Surety Company
And Fidelity and Deposit Company of Maryland*

Edward S. Coleman, Esq.
COLEMAN LAW ASSOCIATES
6615 S. Eastern Ave., Ste. 108
Las Vegas, NV 89119
Attorneys for Janel Rennie aka Janel Carvalho

Keen L. Ellsworth, Esq.
ELLSWORTH BENNION & ERICSSON
7881 W. Charleston Blvd., #210
Las Vegas, NV 89117
Attorneys for Element Iron & Design, LLC.


An employee of PEZZILLO ROBINSON

ORIGINAL



CLERK OF THE COURT

ORDER

Jennifer R. Lloyd-Robinson, Esq.

Nevada Bar No. 9617

Marisa L. Maskas, Esq.

Nevada Bar No. 10928

PEZZILLO ROBINSON

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Tel: (702) 233-4225

Fax: (702) 233-4252

Attorneys for Plaintiff,

Cashman Equipment Company

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

vs.

CAM CONSULTING INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD., dba MOJAVE ELECTRIC,
a Nevada corporation; WESTERN SURETY
COMPANY, a surety; THE WHITING TURNER
CONTRACTING COMPANY, a Maryland
corporation; FIDELITY AND DEPOSIT
COMPANY OF MARYLAND, a surety; DOES 1
- 10, inclusive; and ROE CORPORATIONS 1 -
10, inclusive;

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A642583

DEPT.: 32

Consolidated with Case No: A653029

**ORDER GRANTING CASHMAN
EQUIPMENT COMPANY'S
MOTION TO AMEND COMPLAINT**

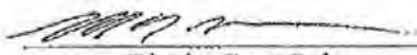
Plaintiff, CASHMAN EQUIPMENT COMPANY's Motion to Amend Complaint,
having been heard by the Court on May 7, 2012 at 9:00a.m.; Jennifer Lloyd-Robinson, Esq.,
appearing on behalf of Plaintiff, CASHMAN EQUIPMENT COMPANY; Brian Boschee,

Pezzillo Robinson
6725 VIA AUSTI PARKWAY, SUITE 290
LAS VEGAS, NEVADA 89119
TEL 702 233-4225

1 Esq. and Shemilly Briscoe, Esq. appearing on behalf of Defendants, WEST EDNA
2 ASSOCIATES, LTD., dba MOJAVE ELECTRIC, WESTERN SURETY COMPANY, THE
3 WHITING TURNER CONTRACTING COMPANY and FIDELITY AND DEPOSIT
4 COMPANY OF MARYLAND; and Edward Coleman, Esq. appearing on behalf of Defendants
5 JANEL RENNIE aka JANEL CARVALHO and LINDA DUGAN. The Court having reviewed
6 the Motion, with no Opposition having been filed, and having heard argument and being fully
7 advised finds as follows:
8

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that CASHMAN
10 EQUIPMENT COMPANY's Motion to Amend Complaint is GRANTED.

11 Dated this 2nd day of May, 2012.


12
13 
District Court Judge

14 ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

15 Respectfully submitted by:

16 PEZZILLO ROBINSON

17 
18 Jennifer R. Lloyd-Robinson, Esq.
19 Nevada Bar No. 9617
20 Marisa L. Maskas, Esq.
21 Nevada State Bar No. 10928
22 6725 Via Austi Parkway, Suite 290
23 Las Vegas, Nevada 89119
24 Tel: 702 233-4225
Attorneys for Plaintiff,
Cashman Equipment Company



CLERK OF THE COURT

1 **NOE**

2 Jennifer R. Lloyd-Robinson, Esq.

3 Nevada Bar No. 9617

4 Marisa L. Maskas, Esq.

5 Nevada Bar No. 10928

6 **PEZZILLO ROBINSON**

7 6725 Via Austi Parkway, Suite 290

8 Las Vegas, Nevada 89119

9 Tel: (702) 233-4225

10 Fax: (702) 233-4252

11 Attorneys for Plaintiff,

12 Cashman Equipment Company

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 CASHMAN EQUIPMENT COMPANY, a

16 Nevada corporation,

17 Plaintiff,

18 vs.

19 CAM CONSULTING INC., a Nevada
20 corporation; ANGELO CARVALHO, an
21 individual; JANEL RENNIE aka JANEL
22 CARVALHO, an individual; WEST EDNA
23 ASSOCIATES, LTD., dba MOJAVE
24 ELECTRIC, a Nevada corporation; WESTERN
25 SURETY COMPANY, a surety; THE
26 WHITING TURNER CONTRACTING
27 COMPANY, a Maryland corporation;
28 FIDELITY AND DEPOSIT COMPANY OF
MARYLAND, a surety; DOES 1 - 10,
inclusive; and ROE CORPORATIONS 1 - 10,
inclusive;

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A642583

DEPT.: 32

Consolidated with Case No: A653029

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT
WITHOUT PREJUDICE**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pezillo Robinson
6725 VIA AUSTI PARKWAY, SUITE 290
LAS VEGAS, NEVADA 89119
TEL 702 233-4225

Pezzillo Robinson
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TEL 702 233-4225

1 PLEASE TAKE NOTICE that the ORDER DENYING DEFENDANTS' MOTION FOR
2 SUMMARY JUDGMENT WITHOUT PREJUDICE was entered in the above entitled matter
3 and filed on May 23, 2012, a copy of which is attached hereto.

4 DATED: May 24, 2012

PEZZILLO ROBINSON

5
6
7 By: 

Jennifer R. Lloyd-Robinson, Esq.

Nevada Bar No. 9617

Marisa L. Maskas, Esq.

Nevada Bar No. 10928

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Attorneys for Plaintiff,

Cashman Equipment Company

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CERTIFICATE OF SERVICE

The undersigned, an employee of the law firm of PEZZILLO ROBINSON, hereby certifies that on the 24th day of May, 2012, a true and correct copy of the foregoing document, **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITHOUT PREJUDICE**, was served by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

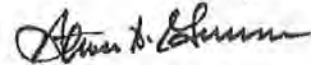
Brian Boschee, Esq.
Shemilly Briscoe, Esq.
SANTORO, DRIGGS, ET AL.
400 S. 4th St., 3rd Fl.
Las Vegas, NV 89101
*Attorneys for Whiting Turner Contracting,
Mojave Electric LV, LLC, Western Surety Company
And Fidelity and Deposit Company of Maryland*

Edward S. Coleman, Esq.
COLEMAN LAW ASSOCIATES
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Las Vegas, NV 89119
Attorneys for Janel Rennie aka Janel Carvalho

Keen L. Ellsworth, Esq.
ELLSWORTH BENNION & ERICSSON
7881 W. Charleston Blvd., #210
Las Vegas, NV 89117
Attorneys for Element Iron & Design, LLC.


An employee of PEZZILLO ROBINSON

ORIGINAL



CLERK OF THE COURT

1 **ORDR**

2 Jennifer R. Lloyd-Robinson, Esq.

3 Nevada Bar No. 9617

4 Marisa L. Maskas, Esq.

5 Nevada Bar No. 10928

6 **PEZZILLO ROBINSON**

7 6725 Via Austi Parkway, Suite 290

8 Las Vegas, Nevada 89119

9 Tel: (702) 233-4225

10 Fax: (702) 233-4252

11 *Attorneys for Plaintiff,*

12 *Cashman Equipment Company*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 CASHMAN EQUIPMENT COMPANY, a

16 Nevada corporation,

17 Plaintiff,

18 vs.

19 CAM CONSULTING INC., a Nevada
20 corporation; ANGELO CARVALHO, an
21 individual; JANEL BENNIE aka JANEL
22 CARVALHO, an individual; WEST EDNA
23 ASSOCIATES, LTD., dba MOJAVE ELECTRIC,
24 a Nevada corporation; WESTERN SURETY
25 COMPANY, a surety; THE WHITING TURNER
26 CONTRACTING COMPANY, a Maryland
27 corporation; FIDELITY AND DEPOSIT
28 COMPANY OF MARYLAND, a surety; DOBS 1
- 10, inclusive; and ROE CORPORATIONS 1 -
10, inclusive;

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A642583

DEPT.: 32

Consolidated with Case No: A653029

**ORDER DENYING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT WITHOUT PREJUDICE**

Defendants, WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC,
WESTERN SURETY COMPANY, THE WHITING TURNER CONTRACTING COMPANY
and FIDELITY AND DEPOSIT COMPANY OF MARYLAND's (hereinafter collectively

05-10-12 P03:03 RCYD


Pezzillo Robinson
6725 VIA AUSTI PARKWAY, SUITE 290
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TEL: 702 233-4225

Pezillo Robinson
6725 VIA AUSTI PARKWAY, SUITE 290
LAS VEGAS, NEVADA 89119
TEL. 702 233-4225

1 Defendants) Motion for Summary Judgment, having been heard by the Court on May 7, 2012
2 at 9:00a.m.; Brian Boschee, Esq. and Shemilly Briscoe, Esq. appearing on behalf of
3 Defendants; Jennifer Lloyd-Robinson, Esq., appearing on behalf of Plaintiff, CASHMAN
4 EQUIPMENT COMPANY; and Edward Coleman, Esq. appearing on behalf of Defendants
5 JANEL RBNNIE aka JANEL CARVALHO and LINDA DUGAN. The Court having reviewed
6 the Motion, Opposition and Reply briefs, and having heard argument and being fully advised
7 finds as follows:

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motion
10 for Summary Judgment is DENIED without Prejudice.

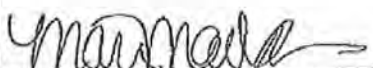
11 Dated this 22 day of May, 2012.

12
13 
14 District Court Judge

15 ROB BARE
16 JUDGE, DISTRICT COURT, DEPARTMENT 32

17 Respectfully submitted by:

18 PEZZILLO ROBINSON

19 

20 Jennifer R. Lloyd-Robinson, Esq.

21 Nevada Bar No. 9617

22 Marisa L. Maskas, Esq.

23 Nevada State Bar No. 10928

24 6725 Via Austi Parkway, Suite 290

25 Las Vegas, Nevada 89119

26 Tel: 702 233-4225

27 *Attorneys for Plaintiff,*

28 *Cashman Equipment Company*

1 **ANS**
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5 SHEMILLY A. BRISCOE, ESQ.
6 Nevada Bar No. 9985
7 E-mail: sbriscoe@nevadafirm.com
8 COTTON, DRIGGS, WALCH,
9 HOLLEY, WOLOSON & THOMPSON
10 400 South Fourth Street, Third Floor
11 Las Vegas, Nevada 89101
12 Telephone: 702/791-0308
13 Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The
14 Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland,
15 Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 CASHMAN EQUIPMENT COMPANY, a
19 Nevada corporation,

20 Plaintiff,

21 v.

22 CAM CONSULTING, INC., a Nevada
23 corporation; ANGELO CARVALHO, an
24 individual; JANEL RENNIE aka JANEL
25 CARVALHO, an individual; WEST EDNA
26 ASSOCIATES, LTD. dba MOJAVE
27 ELECTRIC, a Nevada corporation; WESTERN
28 SURETY COMPANY, a surety; THE WHITING
29 TURNER CONTRACTING COMPANY, a
30 Maryland corporation; FIDELITY AND
31 DEPOSIT COMPANY OF MARYLAND, a
32 surety; TRAVELERS CASUALTY AND
33 SURETY COMPANY OF AMERICA, a surety;
34 DOES 1-10, inclusive; and ROE
35 CORPORATIONS 1-10 inclusive;

36 Defendants.

37 WEST EDNA ASSOCIATES, LTD. dba
38 MOJAVE ELECTRIC, a Nevada corporation,

39 Counterclaimant.

40 v.

41 CASHMAN EQUIPMENT COMPANY, a
42 Nevada corporation,

43 Counterdefendant.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

**ANSWER TO THIRD AMENDED
COMPLAINT, COUNTERCLAIM
AGAINST CASHMAN EQUIPMENT
COMPANY AND CROSSCLAIM
AGAINST CAM CONSULTING, INC.
AND ANGELO CARVALHO**

1 WEST EDNA ASSOCIATES, LTD. dba
2 MOJAVE ELECTRIC, a Nevada corporation,

3 Crossclaimant,

4 v.

5 CAM CONSULTING, INC., a Nevada
6 corporation; ANGELO CARVALHO, an
7 individual,

8 Crossdefendants.

9 Defendants WEST EDNA ASSOCIATES, LTD. d/b/a MOJAVE ELECTRIC, a Nevada
10 corporation ("Mojave"); WESTERN SURETY COMPANY, a surety ("Western"); THE
11 WHITING TURNER CONTRACTING COMPANY, a Maryland corporation, ("Whiting");
12 TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a surety,
13 ("Travelers") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND ("Fidelity"), a
14 surety (collectively "Defendants"), through their attorneys of record, the law firm of COTTON,
15 DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON, hereby file their Answer to the
16 Third Amended Complaint ("Complaint"), Counterclaim against Cashman Equipment Company
17 and Crossclaim against CAM Consulting, Inc. and Angelo Carvalo.

18 **PARTIES, JURISDICTION AND VENUE**

19 1. Defendants Mojave and Whiting admit the allegations contained in Paragraph 1 of
20 the Complaint. The remaining Defendants are without sufficient information or knowledge to
21 form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and,
22 therefore, deny the allegations contained therein.

23 2. Defendants Mojave and Whiting admit the allegations contained in Paragraph 2 of
24 the Complaint. The remaining Defendants are without sufficient information or knowledge to
25 form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and,
26 therefore, deny the allegations contained therein.

27 3. Defendants Mojave and Whiting admit the allegations contained in Paragraph 3 of
28 the Complaint. The remaining Defendants are without sufficient information or knowledge to
form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint and,

1 therefore, deny the allegations contained therein.

2 4. Defendants Mojave and Whiting admit the allegations contained in Paragraph 4 of
3 the Complaint. The remaining Defendants are without sufficient information or knowledge to
4 form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint and,
5 therefore, deny the allegations contained therein.

6 5. Defendants admit the allegations contained in Paragraph 5 of the Complaint.

7 6. Defendants admit the allegations that Defendant Western is authorized to conduct
8 business within the State of Nevada as a contractor's bond surety, and in that capacity issued two
9 contractor's license bonds to Defendant Mojave, Bond Number 929452545 in the amount of
10 \$5,000.00 and Bond Number 929444674 in the amount of \$2,000.00, but deny the remaining
11 allegations contained in Paragraph 6 of the Complaint.

12 7. Defendants admit the allegations contained in Paragraph 7 of the Complaint.

13 8. Defendants admit the allegations that Defendant Fidelity is authorized to conduct
14 business within the State of Nevada as a contractor's bond surety, and in that capacity issued a
15 contractor's bond with Co-surety Travelers to Defendant Whiting, Bond Number 9045603 in the
16 amount of \$50,000.00 for license number 33400, and issued a payment bond, Bond Number
17 8997023, but deny the remaining allegations contained in Paragraph 8 of the Complaint.

18 9. Defendant Travelers, as co-surety with Defendant Fidelity, admit it is authorized
19 to conduct business within the State of Nevada and that it issued payment bond, but denies the
20 remaining allegations contained in Paragraph 9.

21 10. The allegation contained in Paragraph 10 of the Complaint constitutes a
22 nonfactual allegation against Defendants and, therefore, requires no response. To the extent that
23 a response is required, Defendants are without sufficient information or knowledge to form a
24 belief as to the truth of the allegations contained in Paragraph 10 of the Complaint and, therefore,
25 deny the allegations contained therein.

26 11. The allegation contained in Paragraph 11 of the Complaint constitutes a
27 nonfactual allegation against Defendants and, therefore, requires no response. To the extent that
28 a response is required, Defendants are without sufficient information or knowledge to form a

1 belief as to the truth of the allegations contained in Paragraph 11 of the Complaint and, therefore,
2 deny the allegations contained therein.

3 12. Defendants admit the allegations contained in Paragraph 12 of the Complaint.

4 **FIRST CAUSE OF ACTION**
5 **(BREACH OF CONTRACT AGAINST CAM, DOES 1-10, AND ROE**
6 **CORPORATIONS, 1-10, INCLUSIVE)**

7 13. Defendants incorporate by reference all responses to Paragraphs 1 through 12 of
8 the Complaint as though fully set forth herein.

9 14. Defendants Mojave and Whiting admit the allegations contained in Paragraph 14
10 of the Complaint. The remaining Defendants are without sufficient information or knowledge to
11 form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint and,
12 therefore, deny the allegations contained therein.

13 15. Defendants Mojave and Whiting admit the allegations contained in Paragraph 15
14 of the Complaint. The remaining Defendants are without sufficient information or knowledge to
15 form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint and,
16 therefore, deny the allegations contained therein.

17 16. Defendants Mojave and Whiting admit the allegations contained in Paragraph 16
18 of the Complaint. The remaining Defendants are without sufficient information or knowledge to
19 form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint and,
20 therefore, deny the allegations contained therein.

21 17. Defendants are without sufficient information or knowledge to form a belief as to
22 the truth of the allegations contained in Paragraph 17 of the Complaint and, therefore, deny the
23 allegations contained therein.

24 18. Defendants are without sufficient information or knowledge to form a belief as to
25 the truth of the allegations contained in Paragraph 18 of the Complaint and, therefore, deny the
26 allegations contained therein.

27 **SECOND CAUSE OF ACTION**
28 **(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
29 **AGAINST CAM, DOES 1-10 AND ROE CORPORATIONS 1-10, INCLUSIVE)**

30 19. Defendants incorporate by reference all responses to Paragraphs 1 through 18 of

1 the Complaint as though fully set forth herein.

2 20. The allegation contained in Paragraph 20 of the Complaint constitutes a statement
3 of the law rather than a factual allegation against Defendants and, therefore, requires no
4 response. To the extent that a response is required, Defendants deny the allegations contained
5 therein.

6 21. The allegation contained in Paragraph 21 of the Complaint constitutes a statement
7 of the law rather than a factual allegation against Defendants and, therefore, requires no
8 response. To the extent that a response is required, Defendants deny the allegations contained
9 therein.

10 22. Defendants are without sufficient information or knowledge to form a belief as to
11 the truth of the allegations contained in Paragraph 22 of the Complaint and, therefore, deny the
12 allegations contained therein.

13 **THIRD CAUSE OF ACTION**
14 **(FORECLOSURE OF SECURITY INTEREST AGAINST CAM, MOJAVE, DOES 1-10,**
AND ROE CORPORATIONS 1-10, INCLUSIVE)

15 23. Defendants incorporate by reference all responses to Paragraphs 1 through 22 of
16 the Complaint as though fully set forth herein.

17 24. Defendants are without sufficient information or knowledge to form a belief as to
18 the truth of the allegations contained in Paragraph 24 of the Complaint and, therefore, deny the
19 allegations contained therein.

20 25. Defendants are without sufficient information or knowledge to form a belief as to
21 the truth of the allegations contained in Paragraph 25 of the Complaint and, therefore, deny the
22 allegations contained therein.

23 26. Defendants are without sufficient information or knowledge to form a belief as to
24 the truth of the allegations contained in Paragraph 26 of the Complaint and, therefore, deny the
25 allegations contained therein.

26 27. The allegation contained in Paragraph 27 of the Complaint constitutes a statement
27 of the law rather than a factual allegation against Defendants and, therefore, requires no
28 response. To the extent that a response is required, Defendants deny the allegations.

1 28. Defendants deny the allegation contained in Paragraph 28 of the Complaint.

2 **FOURTH CAUSE OF ACTION**
3 **(ALTER EGO AGAINST CAM, CARVALHO, RENNIE, DOES 1-10, AND ROE**
4 **CORPORATIONS 1-10, INCLUSIVE)**

5 29. Defendants incorporate by reference all responses to Paragraphs 1 through 28 of
6 the Complaint as though fully set forth herein.

7 30. Defendants are without sufficient information or knowledge to form a belief as to
8 the truth of the allegations contained in Paragraph 30 of the Complaint and, therefore, deny the
9 allegations contained therein.

10 31. Defendants are without sufficient information or knowledge to form a belief as to
11 the truth of the allegations contained in Paragraph 31 of the Complaint and, therefore, deny the
12 allegations contained therein.

13 32. Defendants admit that CAM received payment from Mojave for the equipment
14 purchased from Plaintiff, but Defendants deny the remaining allegations contained in Paragraph
15 32 of the Complaint.

16 33. Defendants are without sufficient information or knowledge to form a belief as to
17 the truth of the allegations contained in Paragraph 33 of the Complaint and, therefore, deny the
18 allegations contained therein.

19 34. The allegation contained in Paragraph 34 of the Complaint constitutes a statement
20 of the law rather than a factual allegation against Defendants and, therefore, requires no
21 response. To the extent that a response is required, Defendants deny the allegations set forth.

22 35. The allegation contained in Paragraph 35 of the Complaint constitutes a statement
23 of the law rather than a factual allegation against Defendants and, therefore, requires no
24 response. To the extent that a response is required, Defendants deny the allegations set forth.

25 **FIFTH CAUSE OF ACTION**
26 **(CONVERSION AGAINST CARVALHO, DOES 1-10, AND ROE**
27 **CORPORATIONS 1-10, INCLUSIVE)**

28 36. Defendants incorporate by reference all responses to Paragraphs 1 through 35 of
29 the Complaint as though fully set forth herein.

30 37. Defendants Mojave and Whiting admit the allegations contained in Paragraph 37

1 of the Complaint. The remaining Defendants are without sufficient information or knowledge to
2 form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint and,
3 therefore, deny the allegations contained therein.

4 38. Defendants Mojave and Whiting admit the allegations contained in Paragraph 38
5 of the Complaint. The remaining Defendants are without sufficient information or knowledge to
6 form a belief as to the truth of the allegations contained in Paragraph 38 of the Complaint and,
7 therefore, deny the allegations contained therein.

8 39. Defendants Mojave and Whiting admit the allegations contained in Paragraph 39
9 of the Complaint. The remaining Defendants are without sufficient information or knowledge to
10 form a belief as to the truth of the allegations contained in Paragraph 39 of the Complaint and,
11 therefore, deny the allegations contained therein.

12 40. Defendants are without sufficient information or knowledge to form a belief as to
13 the truth of the allegations contained in Paragraph 40 of the Complaint and, therefore, deny the
14 allegations contained therein.

15 41. Defendants are without sufficient information or knowledge to form a belief as to
16 the truth of the allegations contained in Paragraph 41 of the Complaint and, therefore, deny the
17 allegations contained therein.

18 42. Defendants are without sufficient information or knowledge to form a belief as to
19 the truth of the allegations contained in Paragraph 42 of the Complaint and, therefore, deny the
20 allegations contained therein.

21 43. Defendants are without sufficient information or knowledge to form a belief as to
22 the truth of the allegations contained in Paragraph 43 of the Complaint and, therefore, deny the
23 allegations contained therein.

24 44. Defendants are without sufficient information or knowledge to form a belief as to
25 the truth of the allegations contained in Paragraph 44 of the Complaint and, therefore, deny the
26 allegations contained therein.

27 45. Defendants are without sufficient information or knowledge to form a belief as to
28 the truth of the allegations contained in Paragraph 45 of the Complaint and, therefore, deny the

1 allegations contained therein.

2 46. Defendants are without sufficient information or knowledge to form a belief as to
3 the truth of the allegations contained in Paragraph 46 of the Complaint and, therefore, deny the
4 allegations contained therein.

5 47. The allegation contained in Paragraph 47 of the Complaint constitutes a statement
6 of the law rather than a factual allegation against Defendants and, therefore, requires no
7 response. To the extent a response is required, Defendants are without sufficient information or
8 knowledge to form a belief as to the truth of the allegations contained in Paragraph 47 of the
9 Complaint and, therefore, deny the allegations contained therein.

10 48. The allegation contained in Paragraph 48 of the Complaint constitutes a statement
11 of the law rather than a factual allegation against Defendants and, therefore, requires no
12 response. To the extent a response is required, Defendants are without sufficient information or
13 knowledge to form a belief as to the truth of the allegations contained in Paragraph 48 of the
14 Complaint and, therefore, deny the allegations contained therein.

15 49. The allegation contained in Paragraph 49 of the Complaint constitutes a statement
16 of the law rather than a factual allegation against Defendants and, therefore, requires no
17 response. To the extent a response is required, Defendants are without sufficient information or
18 knowledge to form a belief as to the truth of the allegations contained in Paragraph 49 of the
19 Complaint and, therefore, deny the allegations contained therein.

20 50. The allegation contained in Paragraph 50 of the Complaint constitutes a statement
21 of the law rather than a factual allegation against Defendants and, therefore, requires no
22 response. To the extent a response is required, Defendants are without sufficient information or
23 knowledge to form a belief as to the truth of the allegations contained in Paragraph 50 of the
24 Complaint and, therefore, deny the allegations contained therein.

25 **SIXTH CAUSE OF ACTION**
26 **(FRAUD AGAINST CAM, CARVALHO, DOES 1-10, AND ROE**
CORPORATIONS 1-10, INCLUSIVE)

27 51. Defendants incorporate by reference all responses to Paragraphs 1 through 50 of
28 the Complaint as though fully set forth herein

1 52. Defendants are without sufficient information or knowledge to form a belief as to
2 the truth of the allegations contained in Paragraph 52 of the Complaint and, therefore, deny the
3 allegations contained therein.

4 53. Defendants admit that CAM and Defendant Carvalho presented a check to
5 Plaintiff, but deny the remaining allegations contained in Paragraph 53 of the Complaint.

6 54. Defendants are without sufficient information or knowledge to form a belief as to
7 the truth of the allegations contained in Paragraph 54 of the Complaint and, therefore, deny the
8 allegations contained therein.

9 55. Defendants are without sufficient information or knowledge to form a belief as to
10 the truth of the allegations contained in Paragraph 55 of the Complaint and, therefore, deny the
11 allegations contained therein.

12 56. Defendants are without sufficient information or knowledge to form a belief as to
13 the truth of the allegations contained in Paragraph 56 of the Complaint and, therefore, deny the
14 allegations contained therein.

15 57. Defendants are without sufficient information or knowledge to form a belief as to
16 the truth of the allegations contained in Paragraph 57 of the Complaint and, therefore, deny the
17 allegations contained therein.

18 58. Defendants are without sufficient information or knowledge to form a belief as to
19 the truth of the allegations contained in Paragraph 58 of the Complaint and, therefore, deny the
20 allegations contained therein.

21 59. The allegation contained in Paragraph 59 of the Complaint constitutes a statement
22 of the law rather than a factual allegation against Defendants and, therefore, requires no
23 response. To the extent a response is required, Defendants are without sufficient information or
24 knowledge to form a belief as to the truth of the allegations contained in Paragraph 59 of the
25 Complaint and, therefore, deny the allegations contained therein.

26 **SEVENTH CAUSE OF ACTION**
27 **(NEGLIGENT MISREPRESENTATION AGAINST CAM, CARVALHO,**
28 **DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)**

60. Defendants incorporate by reference all responses to Paragraphs 1 through 59 of

1 the Complaint as though fully set forth herein.

2 61. Defendants are without sufficient information or knowledge to form a belief as to
3 the truth of the allegations contained in Paragraph 61 of the Complaint and, therefore, deny the
4 allegations contained therein.

5 62. Defendants are without sufficient information or knowledge to form a belief as to
6 the truth of the allegations contained in Paragraph 62 of the Complaint and, therefore, deny the
7 allegations contained therein.

8 63. Defendants are without sufficient information or knowledge to form a belief as to
9 the truth of the allegations contained in Paragraph 63 of the Complaint and, therefore, deny the
10 allegations contained therein.

11 64. Defendants are without sufficient information or knowledge to form a belief as to
12 the truth of the allegations contained in Paragraph 64 of the Complaint and, therefore, deny the
13 allegations contained therein.

14 65. Defendants are without sufficient information or knowledge to form a belief as to
15 the truth of the allegations contained in Paragraph 65 of the Complaint and, therefore, deny the
16 allegations contained therein.

17 66. Defendants are without sufficient information or knowledge to form a belief as to
18 the truth of the allegations contained in Paragraph 66 of the Complaint and, therefore, deny the
19 allegations contained therein.

20 67. The allegation contained in Paragraph 67 of the Complaint constitutes a statement
21 of the law rather than a factual allegation against Defendants and, therefore, requires no
22 response. To the extent a response is required, Defendants are without sufficient information or
23 knowledge to form a belief as to the truth of the allegations contained in Paragraph 67 of the
24 Complaint and, therefore, deny the allegations contained therein.

25 68. The allegation contained in Paragraph 68 of the Complaint constitutes a statement
26 of the law rather than a factual allegation against Defendants and, therefore, requires no
27 response. To the extent a response is required, Defendants are without sufficient information or
28 knowledge to form a belief as to the truth of the allegations contained in Paragraph 68 of the

1 Complaint and, therefore, deny the allegations contained therein.

2 **EIGHTH CAUSE OF ACTION**
3 **(QUIET TITLE AGAINST CAM, CARVALHO, RENNIE, DOES 1-10, AND**
4 **ROE CORPORATIONS 1-10, INCLUSIVE)**

5 69. Defendants incorporate by reference all responses to Paragraphs 1 through 68 of
6 the Complaint as though fully set forth herein.

7 70. Defendants are without sufficient information or knowledge to form a belief as to
8 the truth of the allegations contained in Paragraph 70 of the Complaint and, therefore, deny the
9 allegations contained therein.

10 71. Defendants are without sufficient information or knowledge to form a belief as to
11 the truth of the allegations contained in Paragraph 71 of the Complaint and, therefore, deny the
12 allegations contained therein.

13 72. Defendants are without sufficient information or knowledge to form a belief as to
14 the truth of the allegations contained in Paragraph 72 of the Complaint and, therefore, deny the
15 allegations contained therein.

16 73. Defendants are without sufficient information or knowledge to form a belief as to
17 the truth of the allegations contained in Paragraph 73 of the Complaint and, therefore, deny the
18 allegations contained therein.

19 74. The allegation contained in Paragraph 74 of the Complaint constitutes a statement
20 of the law rather than a factual allegation against Defendants and, therefore, requires no
21 response. To the extent a response is required, Defendants are without sufficient information or
22 knowledge to form a belief as to the truth of the allegations contained in Paragraph 74 of the
23 Complaint and, therefore, deny the allegations contained therein.

24 75. The allegation contained in Paragraph 75 of the Complaint constitutes a statement
25 of the law rather than a factual allegation against Defendants and, therefore, requires no
26 response. To the extent a response is required, Defendants are without sufficient information or
27 knowledge to form a belief as to the truth of the allegations contained in Paragraph 75 of the
28 Complaint and, therefore, deny the allegations contained therein.

NINTH CAUSE OF ACTION

**(ENFORCEMENT OF MECHANIC'S LIEN RELEASE BOND AGAINST MOJAVE,
WESTERN, DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)**

76. Defendants incorporate by reference all responses to Paragraphs 1 through 75 of the Complaint as though fully set forth herein.

77. Defendants Mojave and Whiting admit the allegations contained in Paragraph 77 of the Complaint. The remaining Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 77 of the Complaint and, therefore, deny the allegations contained therein.

78. Defendants Mojave and Whiting admit the allegations contained in Paragraph 78 of the Complaint. The remaining Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 78 of the Complaint and, therefore, deny the allegations contained therein.

79. The allegation contained in Paragraph 79 of the Complaint constitutes a statement of the law rather than a factual allegation against Defendants and, therefore, requires no response. To the extent a response is required, Defendants deny the allegations contained therein.

80. Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 80 of the Complaint and, therefore, deny the allegations contained therein.

81. Defendants Mojave and Whiting admit that a mechanic's lien was recorded on the Project in the amount of \$755,893.89 as Instrument No. 201106220002156, but deny the remaining allegations and legal conclusions contained in Paragraph 81. The remaining Defendants are without sufficient information or knowledge to form a belief as to the truth of the allegations contained in Paragraph 81 of the Complaint and, therefore, deny the allegations contained therein.

82. The allegation contained in Paragraph 82 of the Complaint constitutes a statement of the law rather than a factual allegation against Defendants and, therefore, requires no response. To the extent a response is required, Defendants deny the allegations contained therein.

83. Defendants Mojave and Whiting admit the allegations contained in Paragraph 83

1 of the Complaint. The remaining Defendants are without sufficient information or knowledge to
2 form a belief as to the truth of the allegations contained in Paragraph 83 of the Complaint and,
3 therefore, deny the allegations contained therein.

4 84. The allegation contained in Paragraph 84 of the Complaint constitutes a statement
5 of the law rather than a factual allegation against Defendants and, therefore, requires no
6 response. To the extent a response is required, Defendants deny the allegations contained therein.

7 85. Defendants deny the allegations contained in Paragraph 85 of the Complaint.

8 **TENTH CAUSE OF ACTION**
9 **(UNJUST ENRICHMENT AGAINST MOJAVE, DOES 1-10, AND ROE**
10 **CORPORATIONS 1-10, INCLUSIVE)**

11 86. Defendants incorporate by reference all responses to Paragraphs 1 through 85 of
12 the Complaint as though fully set forth herein.

13 87. Defendants Mojave and Whiting admit the allegations contained in Paragraph 87
14 of the Complaint. The remaining Defendants are without sufficient information or knowledge to
15 form a belief as to the truth of the allegations contained in Paragraph 87 of the Complaint and,
16 therefore, deny the allegations contained therein.

17 88. Defendants Mojave and Whiting admit the allegations contained in Paragraph 88
18 of the Complaint. The remaining Defendants are without sufficient information or knowledge to
19 form a belief as to the truth of the allegations contained in Paragraph 88 of the Complaint and,
20 therefore, deny the allegations contained therein.

21 89. Defendants Mojave and Whiting admit the allegations contained in Paragraph 89
22 of the Complaint. The remaining Defendants are without sufficient information or knowledge to
23 form a belief as to the truth of the allegations contained in Paragraph 89 of the Complaint and,
24 therefore, deny the allegations contained therein.

25 90. Defendants Mojave and Whiting admit the allegations contained in Paragraph 90
26 of the Complaint. The remaining Defendants are without sufficient information or knowledge to
27 form a belief as to the truth of the allegations contained in Paragraph 90 of the Complaint and,
28 therefore, deny the allegations contained therein.

91. Defendants Mojave and Whiting admit the allegations contained in Paragraph 91

1 of the Complaint. The remaining Defendants are without sufficient information or knowledge to
2 form a belief as to the truth of the allegations contained in Paragraph 91 of the Complaint and,
3 therefore, deny the allegations contained therein.

4 92. Defendants Mojave and Whiting admit the allegations contained in Paragraph 92
5 of the Complaint. The remaining Defendants are without sufficient information or knowledge to
6 form a belief as to the truth of the allegations contained in Paragraph 92 of the Complaint and,
7 therefore, deny the allegations contained therein.

8 93. Defendant Mojave admits that checks were received in the amounts of
9 \$139,367.70 and \$136,269.00 for other unrelated projects, but deny the remaining allegations
10 contained in Paragraph 93 of the Complaint. The remaining Defendants are without sufficient
11 information or knowledge to form a belief as to the truth of the allegations contained in
12 Paragraph 93 of the Complaint and, therefore, deny the allegations contained therein.

13 94. Defendants deny the allegations contained in Paragraph 94 of the Complaint.

14 95. Defendants deny the allegations contained in Paragraph 95 of the Complaint.

15 96. Defendants deny the allegations contained in Paragraph 96 of the Complaint.

16 97. Defendants deny the allegations contained in Paragraph 97 of the Complaint.

17 98. Defendants deny the allegations contained in Paragraph 98 of the Complaint.

18 **ELEVENTH CAUSE OF ACTION**
19 **(CONTRACTOR'S LICENSE BOND AGAINST MOJAVE, WESTERN, DOES 1-10,**
20 **AND ROE CORPORATIONS 1-10, INCLUSIVE)**

21 99. Defendants incorporate by reference all responses to Paragraphs 1 through 98 of
22 the Complaint as though fully set forth herein.

23 100. Defendants admit that Mojave, as principal, and Defendant Western, as surety,
24 caused to be issued two contractor's license bonds in accordance with the provisions of Chapter
25 624 and said bonds are identified as Bond Number 929452545 in the amount of \$5,000.00 and
26 Bond Number 929444674 in the amount of \$2,000.00. Defendants deny all remaining allegations
27 contained in Paragraph 100 of the Complaint.

28 101. Defendants deny the allegations contained in Paragraph 101, including sections
(a) and (b) in Paragraph 101 of the Complaint.

102. Defendants deny the allegations contained in Paragraph 102 of the Complaint.

TWELFTH CAUSE OF ACTION
(UNJUST ENRICHMENT AGAINST WHITING TURNER, DOES 1-10, AND ROE
CORPORATIONS 1-10, INCLUSIVE)

103. Defendants incorporate by reference all responses to Paragraphs 1 through 102 of the Complaint as though fully set forth herein.

104. Defendants deny the allegations contained in Paragraph 104 of the Complaint.

105. Defendants deny the allegations contained in Paragraph 105 of the Complaint.

106. Defendants deny the allegations contained in Paragraph 106 of the Complaint.

THIRTEENTH CAUSE OF ACTION
(CONTRACTORS LICENSE BOND CLAIM AGAINST WHITING TURNER,
FIDELITY, DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)

107. Defendants incorporate by reference all responses to Paragraphs 1 through 106 of the Complaint as though fully set forth herein.

108. Defendants admit that Whiting Turner, as principal, and Defendant Fidelity, as surety, caused to be issued a contractor's license bond in accordance with the provisions of Chapter 624 and said bond is identified as Bond Number 9045603 in the amount of \$50,000.00. Defendants deny all remaining allegations contained in Paragraph 108 of the Complaint.

109. Defendants deny the allegations contained in Paragraph 109, including sections (a) and (b) in Paragraph 109 of the Complaint.

110. Defendants deny the allegations contained in Paragraph 110 of the Complaint.

FOURTEENTH CAUSE OF ACTION
(PAYMENT BOND CLAIM AGAINST WHITING TURNER, FIDELITY, TRAVELERS,
DOES 1-10, AND ROE CORPORATIONS 1-10, INCLUSIVE)

111. Defendants incorporate by reference all responses to Paragraphs 1 through 110 of the Complaint as though fully set forth herein.

112. Defendants admit the allegations contained in Paragraph 112 of the Complaint.

113. Defendants deny the allegations contained in Paragraph 113 of the Complaint.

114. Answering Paragraph 114 of the Complaint, Defendants admit a payment bond was issued for the Project and as to the terms of the bond, it speaks for itself and is the best evidence of the terms contained therein.

1 115. Defendants admit executing a payment bond for the Project, but deny the
2 remaining allegations contained in Paragraph 115 of the Complaint.

3 116. Defendants are without sufficient information or knowledge to form a belief as to
4 the truth of the allegations contained in Paragraph 116 of the Complaint and, therefore, deny the
5 allegations contained therein.

6 117. Defendants deny the allegations contained in Paragraph 117 of the Complaint.

7 **AFFIRMATIVE DEFENSES**

8 Defendants assert the following defenses to this action. These defenses have been
9 labeled as "affirmative" defenses regardless of whether, as a matter of law, such defenses are
10 truly affirmative defenses. Such designation should in no way be construed to constitute a
11 concession on the part of Defendants or that it bears the burden of proof to establish such
12 defense(s).

13 1. All allegations of the Complaint not specifically admitted are hereby denied.

14 2. Plaintiff fails to state a claim for relief against Defendants upon which relief can
15 be granted.

16 3. At all material times, Defendants acted in good faith and exercised lawful rights
17 in dealing with Plaintiff.

18 4. Plaintiff, by its own conduct or otherwise, is estopped from making any claim
19 against Defendants.

20 5. Plaintiff has waived, by conduct or otherwise, any claim against Defendants.

21 6. The loss, injuries, damages, costs and attorneys' fees, if any, suffered by Plaintiff
22 are the result of its own acts, omissions, or wrongdoing.

23 7. Defendants relied upon representations by the Plaintiff as to the Unconditional
24 Release for payment and would not have made payment to Plaintiff's agent absent such
25 representations.

26 8. Plaintiff is barred from obtaining any relief from any claim by operation of the
27 doctrine of accord and satisfaction.

28 9. Plaintiff has failed to mitigate its damages, if any exist or were incurred, the

- 1 existence of which is expressly denied by Defendant.
- 2 10. By virtue of the acts, conduct, mismanagement and/or omissions to act of the
3 Plaintiff under the circumstances, Defendants are released and discharged from any liability
4 whatsoever to Plaintiff, which liability is expressly denied.
- 5 11. Plaintiff ratified, approved, or acquiesced in the actions of Defendants.
- 6 12. Defendant CAM Consulting, Inc. acted as agent for Plaintiff.
- 7 13. Plaintiff has failed to satisfy conditions precedent to bringing any action against
8 Defendants.
- 9 14. Plaintiff's claims are barred by the Doctrines of Mutual Mistake, Impossibility or
10 Impracticability.
- 11 15. Any damages which Plaintiffs may have sustained by reason of the allegations of
12 the Complaint were proximately caused, in whole or in part, by sets of persons other than
13 Defendants and, therefore, Plaintiffs are not entitled to any relief from Defendant.
- 14 16. To the extent Plaintiff's claims are based in whole or in part on alleged oral
15 promises or statements, such claims are barred by the lack of acceptance, lack of mutuality, and
16 failure of consideration.
- 17 17. Plaintiff is not entitled to the damages that it is seeking.
- 18 18. The claims of Plaintiff fail for want or lack of consideration.
- 19 19. Plaintiff's pursuit of these claims against Defendant under the circumstances
20 presented in this case is, in and of itself, a violation of the covenant of good faith and fair dealing
21 implied in all of their agreements, barring it from any recovery against them in this action.
- 22 20. Damages and injuries suffered by Plaintiff, if any, are not attributable to any act,
23 conduct, or omission on the part of Defendants.
- 24 21. Plaintiff's alleged damages, if any, should be offset by monies due and owing by
25 CAM to Plaintiff.
- 26 22. The conduct of Defendants alleged to be wrongful was induced by Plaintiff's own
27 wrongful conduct.
- 28 23. Plaintiff's claims for relief are barred on the grounds that Defendants have a valid

1 justification for any alleged nonperformance of the alleged agreement.

2 24. Plaintiff materially breached the agreement between the parties, thereby excusing
3 the future performance thereof by Defendants.

4 25. Defendants Mojave and Whiting Turner only hereby state Plaintiff brings its
5 claims in bad faith, with an ulterior motive to harass Defendants, abuse the litigation process, and
6 otherwise raise frivolous and unfounded claims against Defendants causing Defendants to incur
7 damages. Remaining Defendants do not raise this defense.

8 26. Plaintiff is barred from recovery by virtue of its unclean hands.

9 27. Defendants have been forced to retain counsel to defend against Plaintiff's
10 Complaint, and Defendants are entitled to an award of reasonable attorneys' fees.

11 28. Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not
12 have been alleged herein insofar as sufficient facts were not available after reasonable inquiry
13 upon the filing of this Answer. Therefore, Defendants reserve the right to amend this Answer,
14 including adding affirmative defenses, based upon discovery, review of document, and
15 development of evidence in this case.

16 **WHEREFORE**, Defendants pray:

17 1. That Plaintiff takes nothing by way of its Complaint from Defendants Mojave,
18 Western, Whiting Turner and Fidelity and that the Complaint be dismissed against those
19 Defendants in its entirety with prejudice;

20 2. For an award of reasonable attorneys' fees and costs of suit incurred in the
21 defense of Plaintiff's Complaint; and

22 3. For such other and further relief as this Court deems just and proper.

23 **COUNTERCLAIM**

24 Counterclaimant WEST EDNA ASSOCIATES, LTD. d/b/a MOJAVE ELECTRIC, a
25 Nevada corporation ("Mojave" or "Counterclaimant") by and through its attorneys of record, the
26 law firm of COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON, and as for
27 a counterclaim against Counterdefendant CASHMAN EQUIPMENT COMPANY ("Cashman"
28 or "Counterdefendant"), hereby alleges as follows:

1 **PARTIES, JURISDICTION AND VENUE**

2 1. Counterclaimant Mojave is a Nevada limited liability company authorized to
3 conduct business in Clark County, Nevada as a licensed contractor.

4 2. Upon information and belief, Counterdefendant is a corporation duly authorized
5 to conduct business within the state of Nevada.

6 3. This Court has jurisdiction over the instant dispute, and venue is proper in this
7 Court, because the dispute involves a construction project located in Clark County, Nevada and
8 the wrongful conduct complained of herein occurred in Clark County, Nevada.

9 **INTRODUCTORY ALLEGATIONS**

10 4. Counterclaimant hereby alleges and incorporate as though fully set forth herein all
11 of the allegations of Plaintiff's Complaint which Counterclaimants have admitted hereinabove.

12 5. Counterclaimant Mojave entered into a purchase order ("Purchase Order") dated
13 April 23, 2010 with Cam Consulting, Inc. c/o Cashman Equipment to purchase certain
14 equipment at issue for the City Hall Project.

15 6. Cam Consulting, Inc. acted as agent for Counterdefendant Cashman in the
16 transaction between the parties.

17 7. Counterclaimant Mojave made payment to Cam Consulting, Inc. in the amount of
18 \$820,261.75 ("Payment") in accordance with its Purchase Order and in exchange for the
19 equipment.

20 8. On or about April 27, 2010, Counterdefendant entered into Unconditional Release
21 Upon Final Payment with respect to the sale of the equipment by Counterclaimants (the
22 "Release").

23 9. Counterdefendant provided the executed Release to Counterclaimant Mojave for
24 the full amount of payment.

25 10. Upon information and belief, Counterdefendant, failed to obtain final payment
26 from its agent CAM Consulting, Inc. prior to issuing the Release to Counterclaimant Mojave.

27 11. Pursuant to the Release, Counterdefendant is not entitled to payment from
28 Counterclaimant.

- 1 13. Counterclaimant Mojave requested Counterdefendant's completion of its contract
2 and assistance with start up of the equipment at issue on the project.
3 14. Counterdefendant refused to complete the start up and further refused to handle
4 any warranty issues related to the equipment.
5 15. Counterdefendant further refused to provide the battery power source in
6 accordance with the Purchase Order.
7 16. Counterclaimant Mojave employed a licensed contractor to complete the contract
8 work and start the equipment at Counterclaimant's expense.

9 **FIRST CLAIM FOR RELIEF**
10 **(BREACH OF CONTRACT)**

- 11 17. Counterclaimant hereby restates, realleges and incorporates by reference the
12 allegations contained in paragraphs 1 through 14 of the Counterclaim, inclusive,
13 as if fully set forth herein.
14 18. The Purchase Order constitutes a valid, binding and enforceable contract between
15 Counterclaimant and Counterdefendant.
16 19. Through its actions described above, including, without limitation,
17 Counterdefendant's failure and/or refusal to participate in the start up of the
18 equipment is in material default of its obligations.
19 20. Counterclaimant has performed all conditions, covenants, obligations and
20 promises on its part to be performed.
21 21. Counterclaimant has also placed demand upon Counterdefendant for
22 performance, but Counterdefendant has failed or refused to perform, and
23 continues to fail or refuse to perform, its obligations.
24 22. As a result of Counterdefendant's breach described herein, and as a direct and
25 proximate result thereof, Counterclaimant has been damaged in an amount in
26 excess of \$10,000.
27 23. As a result of Counterdefendant's breach described herein, and as a direct and
28 proximate result thereof, Counterclaimant has been forced to engage the services

1 of an attorney and is entitled to an award of reasonable attorney's fees and costs.

2 **SECOND CLAIM FOR RELIEF**
3 **(BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)**

4 24. Counterclaimant hereby restates, realleges and incorporates by reference the
5 allegations contained in paragraphs 1 through 21 of the Counterclaim, inclusive,
6 as if fully set forth herein.

7 25. Under Nevada law, every contract imposes upon the contracting parties the duty
8 of good faith and fair dealing.

9 26. Counterdefendant breached its duty to Counterclaimant by performing in a
10 manner that was unfaithful to the purpose of the agreement, including, among
11 other things, failing to use its best efforts to start up the equipment as requested by
12 Counterclaimant.

13 27. As a result of Counterdefendant's breach of the implied covenant of good faith
14 and fair dealing described herein, and as a direct and proximate result thereof,
15 Counterclaimant has been damaged in an amount in excess of \$10,000.

16 28. As a result of Counterdefendant's breach of the implied covenant of good faith
17 and fair dealing described herein, and as a direct and proximate result thereof,
18 Counterclaimant Mojave has been forced to engage the services of an attorney
19 and is entitled to an award of reasonable attorney's fees and costs.

20 **THIRD CLAIM FOR RELIEF**
21 **(MISREPRESENTATION)**

22 29. Counterclaimant hereby restates, realleges and incorporates by reference the
23 allegations contained in paragraphs 1 through 26 of the Counterclaim, inclusive,
24 as if fully set forth herein.

25 30. Counterdefendant made various and numerous representations to Counterclaimant
26 with respect to its Final Unconditional Release entered for the payment amount of
27 \$755,893.89.

28 31. The Release provides that Counterdefendant has been paid in full for all work and
materials and further provides that the "document is enforceable against you if

you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.”

32. Counterclaimant Mojave detrimentally relied on these promises and representations of Counterdefendant and was unaware whether Counterdefendant had obtained actual payment from its agent CAM Consulting, Inc.

33. As a consequence of Counterclaimants relying on the promises and representations of Counterdefendant, Counterdefendant misrepresented its position and is estopped from pursuing this action against Counterclaimants.

34. As a result of Counterdefendant's conduct described herein, and as a direct and proximate result thereof, Counterclaimant has been damaged in an amount in excess of \$10,000.

35. As a result of Counterdefendant's conduct described herein, and as a direct and proximate result thereof, Counterclaimant has been forced to engage the services of an attorney and is entitled to an award of reasonable attorneys' fees and costs.

PRAYER

WHEREFORE, Counterclaimant hereby prays for judgment as follows:

1. That Plaintiff take nothing by reason of its Second Amended Complaint and that same be dismissed with prejudice;

2. For damages in excess of \$10,000.00;

3. For interest, cost and attorneys' fees;

4. For attorneys' fees plus costs for the suit incurred herein; and

5. For such other and further relief as the Court deems just and proper in the premises.

CROSSCLAIM

Crossclaimant WEST EDNA ASSOCIATES, LTD. d/b/a MOJAVE ELECTRIC, a Nevada corporation ("Mojave" or "Crossclaimant") by and through its attorneys of record, the law firm of COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON, and as for

1 a crossclaim against Crossdefendants CAM CONSULTING, INC. ("CAM") and ANGELO
2 CARVALHO ("Carvalho")(collectively "Crossdefendants"), hereby alleges as follows:

3 **PARTIES, JURISDICTION AND VENUE**

4 1. Crossclaimant Mojave is a Nevada limited liability company authorized to
5 conduct business in Clark County, Nevada as a licensed contractor.

6 2. Upon information and belief, Crossdefendant CAM is a corporation duly
7 authorized to conduct business within the state of Nevada.

8 3. Upon information and belief, Crossdefendant Carvalho is a resident of Clark
9 County, Nevada, and an owner of CAM.

10 4. This Court has jurisdiction over the instant dispute, and venue is proper in this
11 Court, because the dispute involves a construction project located in Clark County, Nevada and
12 the wrongful conduct complained of herein occurred in Clark County, Nevada.

13 **FIRST CAUSE OF ACTION**
14 **(CONVERSION AGAINST CAM CONSULTING INC. and ANGELO**
15 **CARVALHO, as an INDIVIDUAL)**

16 5. Crossclaimant hereby alleges and incorporates as though fully set forth herein all
17 of the allegations admitted in the Answer, all of the Counterclaim allegations against
18 Counterdefendant Cashman which are hereinabove set forth.

19 6. Crossclaimant Mojave issued payment to Crossdefendants in the amount of
20 \$820,261.75 in exchange for equipment for use in the City Hall Project.

21 7. Upon information and belief, Crossdefendants failed to issue payment to
22 Cashman, although Crossdefendants obtained a Release for the payment.

23 8. Each of Mojave and Cashman has made demands upon Crossdefendants for the
24 payment without response.

25 9. By failing or refusing to make payment to Cashman, Crossdefendant has
26 wrongfully exerted dominion over Cashman's property and interfering with Cashman's right to
27 the property.

28 10. Crossdefendants has no title or rights to the property and in keeping the property,
deprives Cashman of its use in the property.

1 11. Cashman has refused to complete its work on the Project and start up the
2 equipment for Mojave due to Crossdefendants' wrongful deprivation of property.

3 12. Crossdefendants' failure to pay Cashman has caused damages to Crossclaimant in
4 an amount in excess of \$10,000, together with fees, costs, and interest thereon, until paid in full
5 and other such damage according to proof.

6 **SECOND CAUSE OF ACTION**
7 **(INDEMNIFICATION)**

8 13. Crossclaimant repeats, realleges, and incorporates by reference Paragraphs 1
9 through 12 of this Crossclaim as though fully set forth herein.

10 14. It is alleged in Cashman's Second Amended Complaint that Cashman has
11 incurred recoverable damages as a result of the alleged acts of Defendants Mojave, Western,
12 Whiting and Fidelity.

13 15. Crossclaimant contends that they are in no way responsible for the events giving
14 rise to Cashman's causes of actions or legally responsible in any other manner for the damages
15 allegedly sustained by Cashman. If contrary to the foregoing allegations, Crossclaimant is held to
16 be liable for damages as alleged in Cashman's Second Amended Complaint, such damages were
17 proximately caused by the acts and/or omissions of Crossdefendants. Therefore, Crossclaimant
18 is entitled to be indemnified by Crossdefendant should such liability arise.

19 16. If Crossclaimant is held liable to Cashman for damages, said liability will be the
20 direct and proximate result of the affirmative conduct on the part of the Crossdefendants.

21 17. Crossclaimant is entitled to complete indemnification by Crossdefendants for
22 any such sums for which they may be adjudicated to Crossclaimant, together with costs of
23 defense, costs of suit, and reasonable attorney's fees there from.

24 **THIRD CAUSE OF ACTION**
25 **(CONTRIBUTION)**

26 18. Crossclaimant repeats, realleges and incorporates by reference Paragraphs 1
27 through 17 of this Crossclaim as though fully set forth herein.

28 19. It is alleged in Cashman's Second Amended Complaint that Cashman incurred

recoverable damages as a result of the alleged acts of Crossclaimant and Crossdefendants.

20. Crossclaimant contends that they are in no way responsible for the events giving rise to Cashman's causes of actions or legally responsible in any other manner for the damages allegedly sustained by Cashman. If, contrary to the foregoing allegations, Crossclaimant is held to be liable for all or any part of the claim for damages asserted, Crossdefendants, to the extent that its fault is determined by the Court, is obligated to reimburse Crossclaimant and is also liable to Crossclaimant for all or any liability so assessed by way of contribution. Therefore, Crossclaimant accordingly asserts their rights to contribution.

PRAYER

WHEREFORE, Crossclaimants hereby pray for judgment as follows:

1. That Plaintiff Cashman take nothing from Crossclaimant by reason of its Second Amended Complaint;

2. That Crossdefendants be required to indemnify Crossclaimant for any and all amounts that Crossclaimant is found to be due and owing to Plaintiff Cashman;

3. That Crossdefendants be required to contribute to the payment of any and all amounts adjudged by this Court to be due and owing to Plaintiff Cashman herein from Crossclaimant;

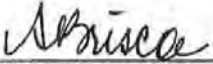
4. For return of the property converted from Plaintiff Cashman;

5. For all costs and expenses, including reasonable attorneys' fees, incurred by Crossclaimant in connection with the commencement and prosecution of this action; and

1 6. For such other and further relief as the Court deems just and proper.

2 Dated this _____ day of June, 2012.

3 **COTTON DRIGGS, WALCH,**
4 **HOLLEY, WOLOSON & THOMPSON**

5 
6 _____
7 BRIAN W. BOSCH, ESQ.
8 Nevada Bar No. 7612
9 SHEMILLY A. BRISCOE, ESQ.
10 Nevada Bar No. 9985
11 400 South Fourth Street, Third Floor
12 Las Vegas, Nevada 89101

13 *Attorneys for Defendants West Edna, Ltd., dba*
14 *Mojave Electric, Western Surety Company, The*
15 *Whiting Turner Contracting Company and*
16 *Fidelity and Deposit Company of Maryland,*
17 *Travelers Casualty and Surety Company of*
18 *America, Counterclaimant and Crossclaimant*

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 28 day of June, 2012 and pursuant to NRCP 5(b),
I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **ANSWER TO
THIRD AMENDED COMPLAINT, COUNTERCLAIM AGAINST CASHMAN
EQUIPMENT COMPANY AND CROSSCLAIM AGAINST CAM CONSULTING, INC.
AND ANGELO CARVALHO**, postage prepaid and addressed to:

Jennifer R. Lloyd-Robinson, Esq.
Marisa L. Maskas, Esq.
PEZZILLO ROBINSON
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119

Attorneys for Plaintiff

Edward Coleman, Esq.
COLEMAN LAW ASSOCIATES
6615 S. Eastern Avenue, Suite 108
Las Vegas, Nevada 89119

*Attorneys for Defendant Janel Rennie
aka Janel Carvalho*

Keen L. Ellsworth, Esq.
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Las Vegas, Nevada 89117

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An employee of Cotton, Driggs, Walch,
Holley, Woloson & Thompson


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0008
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*Attorneys for Defendants West Edna, Ltd., dba Mojave Electric, Western Surety Company, The
Whiting Turner Contracting Company and Fidelity and Deposit Company of Maryland,
Travelers Casualty and Surety Company of America, Counterclaimant and Crossclaimant*

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

CAM CONSULTING, INC., a Nevada
corporation; ANGELO CARVALHO, an
individual; JANEL RENNIE aka JANEL
CARVALHO, an individual; WEST EDNA
ASSOCIATES, LTD. dba MOJAVE
ELECTRIC, a Nevada corporation; WESTERN
SURETY COMPANY, a surety; THE WHITING
TURNER CONTRACTING COMPANY, a
Maryland corporation; FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
surety; TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA, a surety;
DOES 1-10, inclusive; and ROE
CORPORATIONS 1-10 inclusive;

Defendants.

AND RELATED MATTERS.

Case No.: A642583
Dept. No.: 32
(Consolidated with Case No. A653029)

**COUNTERCLAIMANTS' MOTION FOR
MANDATORY INJUNCTION TO
PROCURE CODES ON ORDER
SHORTENING TIME OR IN THE
ALTERNATIVE APPLICATION FOR
WRIT OF POSESSION**

COMES NOW, Counterclaimants WEST EDNA ASSOCIATES, LTD. dba MOJAVE
ELECTRIC, a Nevada corporation ("Mojave"), WESTERN SURETY COMPANY,
("Western"), a surety, THE WHITING TURNER CONTRACTING COMPANY, ("Whiting"),

1 TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, ("Travelers") a
2 surety, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ("Fidelity")
3 (Collectively "Counterclaimants") , by and through their attorneys of record, Brian W. Boschee,
4 Esq., and Shemilly A. Briscoe, Esq. of the law firm COTTON, DRIGGS, WALCH, WOLOSON,
5 HOLLEY & THOMPSON, move this Honorable Court, pursuant to NRCP 65(b) for a
6 Mandatory Injunction ("Motion") against Plaintiff CASHMAN EQUIPMENT COMPANY
7 ("Cashman") to procure codes related to the switchgear equipment or, in the alternative, apply to
8 the Court for a Writ of Possession.

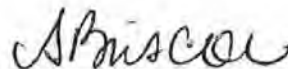
9 Specifically, the Plaintiffs request that this Court enter an order requiring Cashman to:

- 10 1. Provide and reinstall the codes for the parallel Switchgear that interface with the
11 Building Automated System ("BAS") as their Agreement provides; and
- 12 2. Restraining Cashman, their employees, agents, and affiliated companies from re-
13 entering the Project and tampering any further with the equipment and codes.

14 Counterclaimants request that the Court enter an Order Shortening Time for a hearing on
15 the instant Motion on the grounds that immediate relief is required to prevent further irreparable
16 harm to the Counterclaimants and the City of Las Vegas. The City will not deem the project
17 complete until the codes are entered; thus the project is paralyzed. This Motion and Request for
18 an Order Shortening Time is made based on NRCP 65, EDCR 2.26, NRS 31.850, the pleadings
19 on file herein, the Declarations attached hereto, and the Points and Authorities set forth below.

20 Dated this 16th day of July 2012.

21 COTTON, DRIGGS, WALCH,
22 HOLLEY, WOLOSON & THOMPSON

23 

24 BRIAN W. BOSCHEE, ESQ.
25 Nevada Bar No. 7612
26 SHEMILLY A. BRISCOE, ESQ.
27 Nevada Bar No. 9985
28 400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

1 ORDER SHORTENING TIME

2 Good cause appearing therefore:

3 IT IS HEREBY ORDERED that the foregoing Counterclaimants' Motion for Mandatory
4 Injunction to Procure Codes on Order Shortening Time or, In The Alternative, Application for
5 Writ of Possession shall be heard on the 3rd day of August, 2012 at the hour of 9:00 a.m.
6 in Department 32 of the above-entitled Court. Any opposition shall be filed by
July 26, 2012, with a courtesy copy to chambers at the time

7 DATED: July 17th, 2012. Any reply shall
8 be filed by July 31, 2012,
9 with a courtesy copy to chambers at the time of filing. ©
10 AFFIDAVIT OF SHEMILLY A. BRISCOE, ESQ., PURSUANT TO EDCR 2.26
11 ROB BARE
12 JUDGE, DISTRICT COURT, DEPARTMENT 32
13 DISTRICT COURT JUDGE

14 STATE OF NEVADA)
15) ss:
16 COUNTY OF CLARK)

17 SHEMILLY A. BRISCOE, ESQ., having been duly sworn and under all penalties of
18 perjury, deposes and says:

19 1. I am an attorney duly licensed to practice law in the State of Nevada. I am a
20 member of the law firm of Cotton, Driggs, Walch, Holley, Woloson & Thompson, counsel for
21 the Counterclaimants in the above-entitled matter. I have personal knowledge of all matters
22 contained herein and am competent to testify thereto.

23 2. The Counterclaimants bring this Motion for Mandatory Injunction to Procure
24 Codes on Order Shortening Time or, in the alternative, Application for Writ of Possession (the
25 "Motion"). The Motion is based upon the declarations of the factual assertions of Mojave
26 (Exhibit "A") and Whiting (Exhibit "B"), as well as the attached exhibits.

27 3. As set forth in the Motion, Cashman has intentionally withheld vital codes that
28 have rendered the BAS at the City Hall Project useless. Cashman's actions have halted
completion on the City Hall Project, due to the potential failure to diagnose utility issues without
the codes.

4. As set forth in the Motion, Cashman is in breach of their agreement and are
holding the codes hostage. These codes are unique and cannot be acquired any other way.

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3
4 CASHMAN EQUIPMENT COMPANY,
5 a Nevada corporation,

6 Appellant,

7 vs.

8
9 WEST EDNA ASSOCIATES, LTD., dba
10 MOJAVE ELECTRIC, a Nevada
11 corporation; WESTERN SURETY
12 COMPANY, a surety; THE WHITING
13 TURNER CONTRACTING
14 COMPANY, a Maryland corporation;
15 FIDELITY AND DEPOSIT COMPANY
16 OF MARYLAND, a surety;
17 TRAVELERS CASUALTY AND
18 SURETY COMPANY OF AMERICA, a
19 surety; QH LAS VEGAS LLC, a foreign
20 limited liability company; PQ LAS
21 VEGAS, LLC, a foreign limited liability
22 company; L W T I C SUCCESSOR LLC,
23 an unknown limited liability company;
24 FC/LW VEGAS, a foreign limited
25 liability company;

26 Respondents.

 Electronically Filed
Case No: 66452 Jun 17 2015 10:21 a.m.
Case No: 61715 Tracie K. Lindeman
Case No: 65819 Clerk of Supreme Court

District Court Case Nos.: **A642583 &
 A653029**

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