

1 A As far as I know, yes.

2 Q Okay. And so if this case goes against the
3 defendants, Mojave's going to have to pay that all over again,
4 aren't they?

5 A I guess. I don't know if it comes from the bond
6 or from them. I don't know the answer to that.

7 MR. BOSCHEE: Okay. I don't have anything further
8 for this witness.

9 THE COURT: All right. Mr. Pezzillo, any follow-up?

10 MS. LLOYD-ROBINSON: Your Honor, may we take a break
11 for just a little bit?

12 THE COURT: All right. You want 10, 15 minutes, 20
13 minutes?

14 MS. LLOYD-ROBINSON: If I could do 20 minutes, I
15 would appreciate it.

16 THE COURT: All right. We'll have a 20 minute break.
17 We'll be back in 20 minutes.

18 (Court recessed at 2:27 p.m. until 2:52 p.m.)

19 THE COURT: Okay. Mr. Lozeau --

20 THE WITNESS: Yes, sir.

21 THE COURT: -- we're still with you. And
22 Mr. Pezzillo.

23 MR. PEZZILLO: Thank you, Your Honor.

24 REDIRECT EXAMINATION

25

1 BY MR. PEZZILLO:

2 Q A few follow-up questions for you. In your
3 experience on behalf of Cashman when dealing on prior projects
4 with Mojave, was there ever anybody, to use the judge's term,
5 a contract place or holder between Cashman and Mojave?

6 A I believe this is the only time with Mojave.

7 Q Typically you would contract directly with
8 Mojave?

9 A Correct.

10 Q And with regard -- you've testified quite a bit
11 about DBEs. Was it Cashman's idea to use a DBE in this
12 project?

13 A No.

14 Q Whose idea was it?

15 A We were asked by Mojave.

16 Q And did they indicate that they had been asked
17 by anybody?

18 A Yes.

19 Q And I believe you testified you weren't sure
20 perhaps on their side who it was that was requiring that?

21 A Yeah. My assumption was the City of Las Vegas,
22 but I don't know that.

23 Q Based on your knowledge of this case, are you
24 aware of Cashman having recovered any assets in this case
25 against any of the defendants?

1 A Physically not yet. I mean, it's my
2 understanding that there's judgments in place, but they
3 haven't physically gotten anything.

4 Q And I believe your testimony was, and I just
5 wanted to make sure I understood it correctly, that without
6 the codes the generator can still function; is that --

7 A Yes.

8 Q Okay. It just doesn't function the way that it
9 was originally designed?

10 A Correct.

11 Q Any life safety issues with the way that it's
12 set up right now?

13 A Without being there and actually being able to
14 see the load on the system, I can't say absolutely no, but
15 it's pretty unlikely.

16 Q And in this case, and I don't want to be overly
17 redundant, Mojave and Cashman did not have a contract with
18 each other, correct? Cashman's contract was not with Mojave?

19 A It was with CAM.

20 Q Okay. And with whom did CAM have a contract?

21 A Mojave.

22 Q Now, this probably goes without saying, but let
23 me ask you, you're not a lawyer, are you?

24 A No.

25 Q So when you were asked questions about lien

1 amounts, is it safe to say you wouldn't be qualified to
2 testify about what you can and cannot lien for under Nevada
3 law?

4 A Yes.

5 Q Are you aware of any facts within your knowledge
6 that would prevent Mojave from pursuing CAM to recover money
7 in this case?

8 A No.

9 Q Are you aware of whether Mojave has done so?

10 A I'm not aware of it.

11 Q Now, do you have joint Exhibit 14 in one of
12 those binders in front of you?

13 A I do.

14 Q Could you turn to that? It's two pages long.

15 A [Complies.]

16 Q Do you recognize the copies of the checks that
17 are on pages 1 and 2 of that exhibit?

18 A These are checks from CAM Consulting to Mojave
19 Electric.

20 Q And prior to today had you seen those checks?

21 A No.

22 Q Were you aware of whether CAM had ever written
23 checks to Mojave?

24 A I was not aware.

25 Q Was there ever any discussions when you met with

1 Mojave after what was referred to as the check debacle
2 involving Cashman, was there ever any discussion with any
3 representatives of Mojave in terms of their having received
4 money from CAM?

5 A Not until we had -- I think we subpoenaed his
6 checking account records, and that was when we found that I
7 think he had cut checks to Mojave directly, if I remember
8 correctly.

9 Q So you're talking about you subpoenaed CAM's
10 checking?

11 A CAM's, yes. Sorry. CAM, yes.

12 Q And you discovered money had been -- well, you
13 tell me what you saw.

14 A I didn't physically see it. I was only told
15 that he had written checks to Mojave.

16 Q Did that ever come up in a discussion with
17 Mojave between yourself when you were meeting that hadn't been
18 discussed?

19 A Not prior to that, no.

20 Q Well, after that was it ever discussed?

21 A After that we went to the meeting that we had
22 with Troy and Brian and, I guess it was Joel and myself and
23 Mike Pack, and it was brought up in that meeting. That was
24 the first I knew of it.

25 Q What was discussed? What was it about the

1 checks?

2 A In that whole meeting?

3 Q Yes.

4 A I mean, it was basically, you know, we've been
5 in some pretty tough spots with Mojave before, there's got to
6 be a better way of handling this situation, for something that
7 we can brainstorm a little bit and work something about. And
8 so we all kind of sat in the room to see if we could figure
9 something out that would make -- take some of the sting out of
10 all this, some sort of solution.

11 Q And when that means -- was it Cashman's intent
12 at that time to try to find a resolution to finish the
13 project?

14 A Absolutely.

15 Q And obviously we're sitting in a courtroom, so
16 that didn't transpire.

17 A It didn't.

18 Q Were any specific questions asked of Mojave with
19 regards to checks having been cut from CAM to them?

20 A Yes. Yes.

21 Q What was asked?

22 A I think there was a -- and I really don't
23 remember. I think it was Mike Pack that asked and I don't
24 remember his exact wording, but he said something to the
25 effect of, you know, what do you know about these checks that

1 he cut that were cleared through your bank.

2 Q Did you receive a response from Mojave?

3 A I don't think they ever did respond to the
4 question.

5 Q Did they say anything like, hey, we just don't
6 want to answer, we don't want to talk about it, or was there
7 just silence?

8 A Silence.

9 Q Did you have any joint check agreements in place
10 with CAM, between Cashman and CAM?

11 A No.

12 Q Was there any sort of contractual arrangement
13 between, or any agreements between Cashman and CAM that would
14 have allowed Cashman to order CAM to turn over the check they
15 received from Mojave?

16 A Nothing to compel them, no.

17 MR. PEZZILLO: Nothing further, Your Honor.

18 THE COURT: All right. Mr. Boschee.

19 RECROSS-EXAMINATION

20 BY MR. BOSCHEE:

21 Q But the generators at city hall don't work as
22 efficiently as they would if the codes were installed, do
23 they?

24 A They don't work as designed.

25 Q I mean, the whole — the whole — what's that?

1 A They don't work as designed, no.

2 Q Right. The whole thing would be a lot more
3 efficient if the codes were turned on [unintelligible], right?

4 A I really don't know how to answer that question.
5 It depends on how much load there is in the building. They
6 might be perfectly fine. I don't know.

7 Q And those codes, now we're going on a couple
8 years that they just haven't been turned on, correct? So if
9 there is an efficiency problem, it's been going on for quite a
10 while; is that right?

11 A If there's an efficiency problem or --

12 Q Yeah.

13 A -- a deficiency problem?

14 Q Well, I would say a deficiency problem is
15 probably a better word for it.

16 A Whatever has been in place is still in place.

17 Q Sitting here right now, do you have any
18 knowledge as to whether Mojave or any defendants have brought
19 a claim in this case against Angelo Carvalho and CAM
20 Consulting?

21 A I'm not aware of any.

22 Q You're not aware of any, or you're not aware of
23 whether there is one or not?

24 A I'm not aware if there is one or not.

25 Q Okay. And if there is such a claim that has

1 been alleged or asserted, fair to say that it's kind of hard
2 to know how much Mojave is owed by CAM until the outcome of
3 this dispute to know how much, if anything, the defendants owe
4 Cashman, isn't it?

5 MR. PEZZILLO: Object. Calls for a legal conclusion.

6 MR. BOSCHEE: Well, he asked. I think the door's
7 open.

8 THE COURT: I think it's a fair question. It's a
9 fair question. Go ahead.

10 THE WITNESS: Ask it again, please.

11 BY MR. BOSCHEE:

12 Q If there is a claim, and we'll assume for a
13 moment that there is a claim pending, because I will represent
14 to you as an officer of the court that there is, if there are
15 claims pending by the defendants against CAM Consulting and
16 Angelo Carvalho, there's no way for a final determination to
17 be made by the defendants as to how much money CAM owes them
18 until this case is resolved one way or the other, because we
19 don't how much if anything is going to be owed to Cashman, do
20 we?

21 A I think it's pretty clear what's owed to
22 Cashman.

23 Q Well, you have an opinion as to that, but until
24 the Court decides what is--

25 A I think we have a document that says that.

1 Q -- owed to Cashman --

2 A It's not an opinion. It's a fact. We have a
3 document. It's an invoice and it's not paid.

4 Q Well, we have an invoice that shows that Cashman
5 was paid for batteries as well, and supplied those to --

6 A Okay. So we have two documents. So clearly, if
7 you take one and subtract the other, Cashman certainly hasn't
8 been paid for the balance.

9 Q And you were asked on, I guess, redirect if you
10 had any independent knowledge of whether there was any assets
11 recovered from the defendants. You talked about the judgment.
12 Are you aware of a court order issued by this Court awarding
13 Cashman title to a house and a car that at one point belonged
14 to one of their defendants?

15 A A car that no longer exists and a house that who
16 knows what condition it's going to be in when they get it.

17 Q I understand. But those were --

18 A Yes.

19 Q Those were awarded, correct?

20 A I'm not sure if it applies if the car no longer
21 exists. They have a judgment.

22 Q Well, the house --

23 A They're not going to get the car. They have a
24 judgment. They're not going to get the car.

25 Q But the house certainly exists, doesn't it?

1 A I'm assuming yes. I haven't heard of any fires.

2 Q All right. And for purposes of what we're
3 talking about, when you went back and looked at bank records
4 and what Mr. Carvalho spent his money on, he actually paid
5 cash for that house, didn't he?

6 A Let me be clear. I did not see the bank
7 records. So I don't know what he paid for or what he didn't
8 pay for. I only know what I was told verbally.

9 Q Okay. What were you told verbally and by whom?

10 A That he had -- by Shane -- well, Shane and, I
11 think, Joel, that he had paid some money to Mojave for
12 something else. We didn't know what it was.

13 Q Okay. But you don't have any independent
14 knowledge as to whether he -- as to how much or if anything he
15 paid cash for that house, do you?

16 A No.

17 Q And nobody at that meeting you talked to that
18 you can recall, Mr. Bugni and Mr. Nelson, neither of them said
19 that the money that was tendered to them was for other jobs
20 that CAM was working on?

21 A They didn't address it.

22 Q But you were aware at that meeting that CAM had
23 been working on other jobs with Mojave; is that right?

24 A Actually, I was not.

25 Q Pete Fergen didn't tell you that when he made

1 the introduction?

2 A He did not.

3 Q How did he tell you that he knew about CAM
4 Consulting?

5 A Maybe — I assumed, maybe. I can't tell you.
6 The impression that I had was in the very recent past Angelo
7 had come in and introduced himself to them and offered his
8 services. I actually didn't know that he had a prior
9 relationship with Mojave until yesterday.

10 Q So I want to be very clear about this, because
11 we may hear different testimony later on. It's your
12 recollection, you don't have any recollection of Pete Fergen
13 specifically telling you that Mojave was at that time working
14 on other projects with CAM?

15 A If he said it, I don't recall it.

16 MR. BOSCHEE: Okay. I have nothing further, Your
17 Honor.

18 THE COURT: All right. Thank you. Mr. Pezzillo.

19 MR. PEZZILLO: Nothing further, Your Honor.

20 THE COURT: All right. Mr. Lozeau, have a nice trip
21 back to Chicago.

22 THE WITNESS: Thank you, sir.

23 THE COURT: And go ahead and call your next witness.

24 MS. LLOYD-ROBINSON: Plaintiff calls Shane Norman.

25 SHANE NORMAN, PLAINTIFF'S WITNESS, SWORN

1 THE CLERK: Would you state and spell your first and
2 last name for the record, please.

3 THE WITNESS: Yes. Shane Norman. S-h-a-n-e,
4 N-o-r-m-a-n.

5 THE COURT: Mr. Norman, there is some water if you'd
6 like to take advantage of that.

7 Ms. Lloyd.

8 MS. LLOYD-ROBINSON: Thank you.

9 DIRECT EXAMINATION

10 BY MS. LLOYD-ROBINSON:

11 Q Good afternoon, Shane.

12 A Good afternoon.

13 Q Can you tell me where you're currently employed?

14 A Wheeler Machinery.

15 Q And how long have you been with Wheeler?

16 A About two months.

17 Q And prior to being employed by Wheeler where
18 were you employed?

19 A Cashman Equipment.

20 Q And what was your position at Cashman?

21 A Credit manager.

22 Q And can you just describe briefly your duties as
23 credit manager?

24 A Yes. I approved the extension of trade credit.
25 I also made sure that our customers paid us on a timely basis.

1 And I also helped arrange outside financing for machine
2 purchases.

3 Q Okay. And how long did you have that position
4 with Cashman?

5 A Eight years.

6 Q And can you give us a brief overview of your
7 educational background?

8 A Yes. High school graduate. I graduated from
9 college with a finance degree. I also graduated from the
10 graduate school of credit financial management at Dartmouth
11 university -- or Dartmouth College back in New Hampshire. And
12 I am also a CCE, certified credit executive, with the National
13 Association of Credit Managers.

14 Q And as part of your job duties, was it your
15 responsibility to assist Cashman in perfecting lien or bond
16 rights where applicable?

17 A Yes.

18 Q And so were you personally familiar with the
19 process?

20 A Yes.

21 Q Okay. Can you tell me how you would determine
22 when Cashman needed to serve a preliminary notice on a
23 project?

24 A When goods or products were supplied to a
25 project or job, and that's what triggers a preliminary notice.

1 Q So how would you get notified of a job that
2 needed a preliminary notice, or could need a preliminary
3 notice?

4 A Right. I received a report, a spreadsheet of
5 items that had been sent out or contracts that had been
6 generated, and based on that spreadsheet I filtered that out,
7 and for that -- to our main service to have those notices
8 filed.

9 Q So was there a period in time where you were
10 preparing the notices in house to be sent out?

11 A Yes, indeed there were -- there was a portion of
12 time where we were doing that in house. I had a staff member
13 who did that on our behalf internally, and then later we
14 outsourced that.

15 Q Do you recall when that switch was made?

16 A Yes. Around January 2011.

17 Q So prior to January 2011, you were issuing the
18 preliminary notices in house and sending them out?

19 A Yes.

20 Q And then after that you had a lien service do
21 that for you?

22 A Correct.

23 Q And what lien service did you use?

24 A CMA, which was Credit Management Association.

25 Q So during your time at Cashman did you become

1 familiar with the new Las Vegas City Hall project?

2 A I did.

3 Q And what was your understanding of Cashman's
4 role on that project?

5 A That we were to supply backup power, a backup
6 power system to the project.

7 Q And then you know why we're here today?

8 A I do indeed.

9 Q Why is that?

10 A To resolve payment on those -- on that project
11 for the equipment that we sold to that project.

12 Q So when you refer to those items, you're
13 referring to the generators, the switch gear and the UPS
14 system?

15 A Indeed, yes.

16 Q And did you understand that the materials were
17 going to be supplied to Mojave directly?

18 A Initially, yes.

19 Q And then when did your understanding of that
20 change?

21 A When CAM Consulting was introduced to me in the
22 form of a credit application, and that's how we found out
23 that -- I found out that there was an intermediary.

24 Q Okay. Let's go to exhibit -- joint Exhibit 1.
25 I'm not sure which binder it is.

1 A One through 43? Okay. Yeah, that's easy.
2 Q Are you familiar with this document?
3 A Yes.
4 Q And can you tell me what it is?
5 A This is an application for credit for Cashman

6 Equipment.

7 Q And this was filled out by CAM Consulting?

8 A Yes.

9 Q And did you -- does he fill this out in your
10 office, or was it sent to you? How did you receive this
11 application?

12 A No, he did not fill it out in our office. I
13 don't know that we received it via fax or that someone dropped
14 it off, but did not fill it out in our presence.

15 Q And so when you received this credit
16 application, what action did you take?

17 A I did a credit investigation.

18 Q And what does that entail?

19 A Pulling credit bureaus' credit reports,
20 information on the customer based off the credit application,
21 so we can get a clear picture of the credit capacity of our
22 potential customer.

23 Q And so what were your conclusions after doing
24 that and reviewing what you just described?

25 A My action was I did not grant them a charge

1 account because of the lack of, you know, considerable credit.

2 There was -- there wasn't enough to grant a charge account.

3 Q And so then were they still opened, I guess, as
4 a customer at Cashman?

5 A Yes. We still gave them a customer number and,
6 yes.

7 Q Do you know who prepared this application on
8 behalf of CAM Consulting?

9 A Angelo Carvalho.

10 Q And that's noted on page 2 of the document?

11 A Yes.

12 Q And this document's dated January 31, 2011?

13 A Yes.

14 Q So prior to the city hall project had Cashman
15 ever had any dealings with CAM?

16 A No, not to my knowledge.

17 Q Okay. And is this a document that Cashman
18 typically has its customers fill out?

19 A Yes.

20 Q And that's just for purposes of evaluating
21 credit worthiness?

22 A Yes.

23 Q Let's go to page 2 of the credit application. I
24 would direct you to paragraph 8 there. It's a little bit
25 difficult to read, but can you describe to me what that

1 entails, paragraph 8?

2 A Yes. I think I can probably read it.

3 Q Okay. Do you want to go ahead and do that?

4 A Let me try. "Security interest to assure
5 payment and performance of obligation, applicant hereby grants
6 CECO," which is short for Cashman Equipment Company,
7 "continuing security interest in all, including but not
8 limited to all assets, inventory, equipment, machinery,
9 attachments," I'm not sure what that one is, "chattel paper,
10 copyrights and proceeds for furniture, fixtures and any other
11 goods or accessories distributed by CECO to or for the benefit
12 of the applicant."

13 Q So with this provision, what was your
14 understanding that Cashman could do?

15 A File a UCC to perfect its security interest in
16 any equipment sold to a customer.

17 Q Okay. And did you take that action in this
18 case?

19 A Yes.

20 Q If you want to turn to joint Exhibit 5, are you
21 familiar with this document?

22 A I am.

23 Q And can you tell me what it is?

24 A Yes. This is a UCC-1 financing statement filed
25 with the secretary of state to verify, or to put on notice the

1 rest of the world that we have a -- or Cashman Equipment had a
2 lien on this power system unit -- units.

3 Q And did you cause this document to be prepared?

4 A I did.

5 Q And this was prepared in your offices by your
6 staff?

7 A Yes.

8 Q And does this document identify any equipment
9 that was sold to CAM?

10 A Yes.

11 Q And can you describe to me how that is
12 identified?

13 A Yes. I can read it on the financing statement.
14 It's a UPS Model 98AE. Well, that's the model, but and then
15 there's a serial number. And then there's two Caterpillar
16 Model C32 900 kW generators, three Caterpillar tran switches,
17 and one Caterpillar switch gear, all with its respective
18 serial numbers listed, unless you want me to read those.

19 Q No, that's okay. So that specifically
20 identifies that particular equipment that was being sold to
21 CAM --

22 A Yes.

23 Q -- by serial number --

24 A Yes.

25 Q -- which is very specific?

1 And then it includes the typical language, together
2 with substitutions and proceeds thereof?

3 A Yes.

4 Q Yeah. And you had testified, I think
5 previously, that this was filed with the secretary of state?

6 A Yeah. It appears February 16, 2011.

7 Q And that file number references the file, filing
8 that was done?

9 A Yeah. The file number, that's a secretary of
10 state generated number, so yes.

11 Q And have you ever executed a release of this
12 UCC?

13 A No.

14 Q And has anyone ever asked you to execute a
15 release of the UCC?

16 A No.

17 Q Let's turn to joint Exhibit 19. I'm sorry.
18 Eighteen. Are you familiar with this document?

19 A I am.

20 Q Can you describe to me what it is?

21 A This is the preliminary notice notifying anyone
22 of either a general contractor, a project owner or lender
23 notice that Cashman Equipment is supplied either equipment or
24 goods or services to that project.

25 Q And did you cause this preliminary notice to be

1 served?

2 A I did.

3 Q And it was -- can you tell me who it was served
4 on?

5 A This one appears that it was served to -- well,
6 the customer contracting for set is Mojave, but it also
7 indicates for city as the owner.

8 Q And does this identify the project on this
9 preliminary notice?

10 A It does at the top right. It states under
11 customer name Mojave, the project job, and there is a J1771
12 number, and then it says Las Vegas City Hall.

13 Q So it actually specifies it again in the middle
14 of the page?

15 A Yes, indeed.

16 Q And do you know when this notice was served?

17 A It states here April 29 of 2010.

18 Q And did you cause this notice to be served by
19 certified mail?

20 A Yes.

21 Q And is there a notation of record that you can
22 tell it was served by certified mail?

23 A Yeah. At the top section right above that dark
24 line there's a "Cert No.", cert number, and that's the
25 certified mail number sticker that we throw on there.

1 Q And then there's another one above the owner
2 name?

3 A Yes. Yes.

4 Q So your process was to serve the notice and take
5 the certified mail records and attach them to the copy you
6 kept of the notice?

7 A Right.

8 Q Okay. Let's go to exhibit -- joint Exhibit 21.
9 And can you describe to me what this document is, or are you
10 familiar with it?

11 A I am. This is a job information sheet similar
12 to what many customers do for us in supplying us project
13 information upon our request.

14 Q And would you request this information?

15 A Yes.

16 Q And what do you use this information for?

17 A To file a preliminary notice with the respective
18 parties on the project or job.

19 Q And can you tell on this document when this
20 information sheet was received?

21 A It appears from the fax tracks at the top that
22 it was November 27, 2010, at 8:42 a.m.

23 Q And if you want to turn to joint Exhibit 20.
24 Are you familiar with this document?

25 A Yes. This is another preliminary notice.

1 Q Okay. And can you identify the parties this
2 preliminary notice was served on?

3 A Yeah. Mojave Electric was the customer, the
4 general was Whiting Turner, and the owner was OH Las Vegas
5 LLC.

6 Q Okay. And again there's a notation that it was
7 served by certified mail?

8 A Yes, in those several places that you see
9 certified mail. The first one was above that, that hard line
10 up there. And then of course to Whiting Turner there was
11 another one, and then to the owner there's another one.

12 Q And when was this preliminary notice served?

13 A December 7, 2010.

14 Q And let's go to joint Exhibit 16. I'm sorry,
15 six.

16 A Six?

17 Q Mm-hmm. Are you familiar with this document?

18 A Yes.

19 THE COURT: Is this six?

20 MS. LLOYD-ROBINSON: Six.

21 THE WITNESS: Six.

22 THE COURT: Six. You can go ahead.

23 THE WITNESS: I am familiar with this document. It
24 is, as it states, a notice of right to lien.
25

1 BY MS. LLOYD-ROBINSON:

2 Q So another preliminary notice?

3 A Yes.

4 Q And can you describe who this was served on?

5 A Yeah. This -- the previous ones that we've been
6 going over were the ones that were filed by us internally, and
7 this one was filed with our lien service that we outsourced.

8 Q So this is after you had outsourced that --

9 A Right.

10 Q -- particular service?

11 A Right.

12 Q And this one was served -- can you tell me who
13 it was served on?

14 A Yeah. So Mojave Electric, and the owner was a
15 PO -- or this one says, I'm not sure what that says right
16 there, but Las Vegas LLC in Cleveland.

17 Q And this identifies the project there in the
18 following -- the paragraph following the owner address?

19 A Yes.

20 Q The City of Las Vegas new city hall?

21 A Yes.

22 Q And what date was this notice served on?

23 A This one appears -- I don't see the date on this
24 one.

25 Q At the bottom it appears dated April 20, 2011,

1 right above --

2 A Yeah. Right there right above the -- yeah.
3 April 20, 2011.

4 Q So the preliminary notices that we just went
5 over, those were served for the work Cashman was performing on
6 the new Las Vegas City Hall project?

7 A Yes.

8 Q So can you tell me a little bit of what your
9 understanding was of CAM's role on this project?

10 A Yes. My understanding is that he was to be an
11 intermediary as a disadvantaged business owner as necessary,
12 as Mojave had requested that we put some -- that we sell this
13 product to them through CAM Consulting.

14 Q And were you concerned that CAM did not have the
15 means to pay for this equipment?

16 A I did not give them a line of credit as a result
17 of that, but being that Mojave Electric was behind it, I
18 wasn't. I wasn't worried at the time.

19 Q So you thought Mojave's getting the materials,
20 ultimately they would be issuing the payment for the
21 materials?

22 A Right.

23 Q So you weren't concerned that there was CAM
24 because you were dealing with Mojave still?

25 A Right.

1 Q And so during your time at Cashman, how many
2 dealings do you think that you had with Mojave Electric?

3 A Well, since the time I started up until the case
4 started, we probably dealt with them on a monthly basis —

5 Q And so — I apologize.

6 A — easily several times a month.

7 Q And so did you ever have payment issues before
8 in selling to Mojave directly?

9 A We had always been paid by Mojave not
10 necessarily timely, but we had always been paid.

11 Q And so again, you understood the end customer
12 for these materials that you were supplying was Mojave?

13 A Yes.

14 Q And so that's why they were sold to CAM, because
15 Mojave required you to sell to this DBE?

16 A Yes.

17 Q So it's safe to say that without Mojave's
18 involvement, Cashman would not have sold these materials to
19 CAM?

20 A True.

21 Q Let's turn to joint Exhibit 2. Are you familiar
22 with these documents?

23 A Yeah. This appears to be a Cashman invoice to
24 CAM Consulting for a portion of the power generation sale.

25 Q So if you want to look through the three

1 documents that are included here, this is the invoices that
2 were issued related to the gen sets, the switch gear and the
3 UPS system?

4 A Yes.

5 Q And these documents describe those materials?

6 A Yes.

7 Q And then these were the invoices that remain
8 unpaid on the project as of now?

9 A Yes.

10 Q And I'm going to represent they total
11 \$755,893.89. Does that sound correct to you?

12 A It sounds correct, yes.

13 Q So that was the amount that was being claimed by
14 Cashman on this project for these materials?

15 A Yes.

16 Q And is that amount still due and owing to the
17 best of your knowledge?

18 A Yes. We did receive some payment. It was about
19 \$5200, if I'm not mistaken, from -- from a couple of our
20 other --

21 Q Other defendants in this matter that you had
22 settled with --

23 A Yes.

24 Q -- on other claims?

25 A Yep.

1 Q So there was a credit, I think 200, for that
2 amount. And then are you aware of any issue with a UPS
3 battery?

4 A Yes. That what — the battery was not delivered
5 and other than that, that's all I know.

6 Q So was that battery not delivered because it
7 wasn't due to be delivered until after the payment issue
8 occurred?

9 A Well, we -- when we found out about -- when the
10 problem occurred, the nonpayment occurred, we held all, you
11 know, subsequent deliveries. So yes, we withheld delivery of
12 any further work or product until we were paid.

13 Q So there would be a credit to the amount owed
14 for the battery that was not supplied?

15 A Yes.

16 Q And can you tell me, when did Cashman expect to
17 receive payment for these materials?

18 A Generally Mojave paid us anywhere between 30 and
19 60 days, so our expectation was 30 to 60 days, although our
20 terms generally stating in machine sales are net 10 days.

21 Q So with a product like this though, a large
22 project, in a typical -- what's the typical timeline for
23 payment?

24 A Anywhere between immediately and 90 days.

25 Q Did Mojave have a policy of only paying Cashman

1 when it received payment from the owner or the general
2 contractor for the materials?

3 A Yes.

4 Q So you were aware that they were typically
5 waiting to receive payment before paying Cashman?

6 A Yes.

7 Q Which can cause delay, additional delays in
8 payment?

9 A Yes.

10 Q So even though it was slow here, you weren't too
11 concerned given that it was Mojave issuing the payment,
12 correct?

13 A Correct.

14 Q Okay. So what actions did you take to collect
15 the payment for these materials?

16 A Well, we made several calls to Mojave because
17 CAM was unavailable, and from what we understand he was out of
18 the country. So our contact was Frances Combs [phonetic], I
19 believe, is her last name, at Mojave, and she was helping us
20 coordinate getting this payment from Angelo, but Angelo could
21 not make the payment until Mojave paid him. So our focus was
22 with Frances in making sure that we coordinated with her once
23 Mojave was paid, so that way we could get paid.

24 Q So Mojave knew that CAM wasn't going to pay you
25 independent of Mojave's funds?

1 A Yes.

2 Q And when you were speaking with Frances over
3 these months between, I suppose, did the collection calls
4 occur between delivery and then the issuance of the check by
5 CAM?

6 A Yes. Primarily once it was invoiced, that's
7 when the collection effort started, although not in earnest
8 until after a certain time frame, and that time frame being we
9 usually give it a little while until we start to worry, I
10 guess.

11 Q So in your dealings with Frances, was a joint
12 check requested from Mojave for these materials to be issued
13 to CAM and Cashman?

14 A Yes.

15 Q And did you explain why you were requesting a
16 joint check?

17 A Yes.

18 Q Can you tell me what and why?

19 A Well, the -- it's fairly simple. When we
20 couldn't get ahold of Angelo and then we found out that he was
21 out of the country and that he'd only be coming back into the
22 country to provide us with this check, our concern was
23 increased and therefore we wanted to make sure that there
24 weren't any issues given his nature of leaving the country and
25 serving in the military.

1 Q So just so I'm clear, how did you come to
2 understand that Angelo was out of the country?

3 A Frances.

4 Q What did Frances tell you?

5 A Frances told us that he was out of the country
6 serving in Afghanistan as an Army Ranger.

7 Q Now, subsequently you learned that was false?

8 A Yes.

9 Q But at the time you thought she was trying to
10 coordinate the payment because Angelo was out of the country
11 serving?

12 A Right.

13 Q And then when you requested the joint check,
14 what was the response from Mojave?

15 A Frances refused to issue us a joint check.

16 Q And was there a reason given?

17 A Not that I can recall.

18 Q Did you subsequently understand why they were
19 refusing to issue the joint check?

20 A I did. It had something to do with negating
21 the -- you know, doing business with a disadvantaged business,
22 and therefore negating the whole transaction evidently.

23 Q And had you had any independent awareness of
24 such a requirement, that if they issued a joint check it would
25 negate the use of a DBE on this project?

1 A I'm not familiar with those rules and laws, and
2 but I've never had -- I've never had a reason to be, I guess.

3 Q So in your experience, how many transactions did
4 you have where you sold to a DBE who then sold to who used to
5 be your old time customer?

6 A Not a common occurrence. Not a common
7 occurrence for Cashman.

8 Q So can you recall prior to this transaction
9 another transaction that you had handled like this?

10 A No, actually. I know that it did happen, but
11 not -- not with as many zeros as this that I would have been
12 involved directly.

13 Q So we go through, Mojave refuses to issue the
14 joint check, then how are you notified that payment's going to
15 be forthcoming?

16 A Can you restate that again?

17 Q How did you learn that there was going to be a
18 payment made, what were the circumstances around that?

19 A Frances called us and said that CAM was going to
20 be in the country and helped us arrange a time and meeting to
21 swap checks and releases.

22 Q So you -- where was the meeting to take place
23 at?

24 A At Mojave Electric's office.

25 Q And who was in the meeting that day?

1 A Frances Combs, Angelo Carvalho and myself. They
2 were already there having a previous meeting and I came in for
3 my part.

4 Q Let's go ahead and turn to joint Exhibit 7. Are
5 you familiar with this document?

6 A Yes.

7 Q Or these two documents, I guess. Can you
8 describe to me what it is?

9 A Well, yes. The top document is a copy of the
10 check from our bank stating that this check was -- had a stop
11 payment on it and did not clear the bank.

12 Q And then what's the following page?

13 A Just details of the same.

14 Q So this check, is this a check that you
15 exchanged for payment from CAM at Mojave's offices --

16 A Yes.

17 Q -- that day?

18 A Yes, it is.

19 Q And is this check written in the full amount
20 that was owed to Cashman on those invoices we looked at?

21 A Yes.

22 Q So this check would have satisfied those
23 invoices in full?

24 A Yes.

25 Q And so CAM provided a check that would have

1 satisfied the invoices in full, but he subsequently stops
2 payment on that check?

3 A Yes.

4 Q And when were you informed of the stop payment?

5 A Well, this -- this document here is dated 5/4.

6 I believe that's when our first word was, was that we got this
7 notice.

8 Q So how did you deposit the check that you
9 received from CAM?

10 A We have a desktop deposit, so it's just scanned
11 in and it goes directly into our bank account on a daily
12 basis.

13 Q And do you recall when you did the deposit?

14 A I believe it was -- so I met with him on, I
15 believe it was the 26th, and I believe that this check was
16 deposited on the 29th of April.

17 Q And just going back for a second to the meeting
18 at Mojave, Frances arranged it. When you exchanged the check
19 for the unconditional release we're going to talk about in a
20 minute, Frances was there when that happened?

21 A Yes.

22 Q And you had said previously that they had a
23 meeting before you arrived, but was CAM also receiving payment
24 that day?

25 A Yes. That was the reason why he was cutting us

1 a check.

2 Q Can you describe to me how you know that was
3 occurring?

4 A Well, he stated as much, that his check -- I
5 mean, his check -- Mojave's check would need to be deposited
6 into his account before the check that he was writing to us
7 would be any good, and that he anticipated that there would be
8 a hold on it, so he asked me to hold the check to deposit it
9 until that bank hold came off. He said it'd be best to give
10 it a couple days before that happened.

11 Q And so he stated that in the meeting that you
12 had with him and Frances?

13 A Yeah. All of us were around the table. I mean,
14 it was a -- like a 2-foot round table, so.

15 Q Okay. So we talked a little bit about you
16 providing a release in exchange for the check, but had Cashman
17 been requested to provide a release previous to that meeting?

18 A Yes. Frances had called several times insisting
19 that we give her a release prior to us being paid, which that
20 was -- I don't know how much you want me to say, but that was
21 fairly normal for her with a lot of her projects. She was
22 always urging us to sign off on things before we received
23 payment.

24 Q Was she asking for unconditional releases prior
25 to you receiving payment?

1 A Yes.

2 Q And is that a normal occurrence in the industry,
3 to ask for unconditional releases prior to issuing payment?

4 A That's not normal, but for Frances that was par
5 for the course.

6 Q And what was your response when she would
7 request that unconditional release prior to your receiving
8 payment?

9 A I said no.

10 Q And why did you say no?

11 A Well, we hadn't been paid.

12 Q So typically when does Cashman issue an
13 unconditional release?

14 A Once we've been paid.

15 Q So in exchange for the payment you're receiving,
16 the check you're receiving --

17 A Yes.

18 Q -- you would provide the unconditional release?

19 A Right.

20 Q And did you inform --

21 A So that's why we met in person that day, is
22 because I wanted to be in person to provide them with the
23 release so I could obtain the check, therefore satisfy both
24 our expectations.

25 Q So let's turn to joint Exhibit 4. Are you

1 familiar with this document?

2 A Yes.

3 Q And can you describe what this document is?

4 A This is the waiver and the release that we're
5 speaking of. This is the one that was signed that I swapped
6 for the check.

7 Q And you provided an unconditional final payment
8 release at that point?

9 A Yes.

10 Q And you -- like you said, you exchanged it
11 directly for the check you were receiving from CAM?

12 A Right.

13 Q And you provided the unconditional because
14 Mojave had requested it?

15 A Right.

16 Q Okay. And so would CAM have provided Cashman
17 with a check in exchange for a conditional release at that
18 meeting?

19 A Restate that again.

20 Q Would CAM have provided you the check in
21 exchange for a conditional release at that meeting that day?

22 MR. BOSCHEE: Objection. Calls for speculation.

23 THE COURT: What's your position on that?

24 MS. LLOYD-ROBINSON: Just that he was being required
25 to provide this, what his knowledge was as to what CAM was

1 requiring for him to obtain the payment that day.

2 THE COURT: Okay. Well, I think it's a fair question
3 and I'll allow it in that it's apparent to me that Mr. Norman
4 had these dealings and was motivated and was involved and had
5 understanding as to Mr. Carvalho and CAM, or it was the same
6 thing. He is CAM. So I think it's a fair question.

7 THE WITNESS: I would not -- or he -- they
8 wouldn't -- he wouldn't have -- or rather Frances would have
9 not accepted a conditional release from me in order to give me
10 the check.

11 BY MS. LLOYD-ROBINSON:

12 Q So you understood that day you had to provide an
13 unconditional release in exchange for the payment --

14 A Yes.

15 Q -- the check you were given?

16 A Yeah. I mean, she was the one that requested
17 it. In fact, she sent us over an unconditional form on her
18 own and then this, I believe, is our own format that we signed
19 on her behalf -- I mean, on our behalf. But so she had sent
20 us a form of her own that was unconditional release.

21 Q So in order to get paid you understood you had
22 to provide an unconditional, you didn't have an option?

23 A No. That's correct.

24 Q And so did you feel comfortable providing the
25 unconditional release in exchange for the check that day?

1 A Yeah.

2 Q And can you tell me why?

3 A Well, I think the point you're getting to is why
4 would you sign off and give a release when taking a paper
5 check that you don't know that it's good or not. And from my
6 expertise, I understand with Nevada NRS guidelines and
7 statutes, if you provide a release in good faith with a check
8 and that check does not clear, then the release is null and
9 void. So that's why I felt comfortable accepting the release.

10 Q As long as you were getting the check in
11 exchange for the release that day?

12 A Right.

13 Q So after you returned to your office after you
14 had that meeting in Mojave, did you notice anything unusual
15 about the check?

16 A Well, yes. I think you're referring to the fact
17 that he post-dated the check until what was it, the 29th, I
18 believe.

19 Q We can refer back to that exhibit.

20 A Was it six?

21 Q I think it was.

22 A No. Seven? Yeah, the 29th.

23 Q So you didn't realize the check was post dated
24 until you returned back to your office that day?

25 A No. He didn't bring that up. He didn't bring

1 that up, so.

2 Q He didn't ask you to accept a post-dated check
3 as payment?

4 A No.

5 Q But he did ask you to take some action in
6 relation to the check, right? I think you already described
7 it.

8 A Yeah. So he stated that there was not any money
9 in his account and that the check he was -- this check here in
10 front of me here, this joint 07, would only be good once the
11 funds had cleared and been released by his bank. And he said
12 historically it would take a couple of days for them to
13 release this money, and so that way if I had deposited the
14 check the same day or the next day, that it would not clear.

15 So he said he needed a day or two to make sure that
16 that happened. Which is, considering the size of this check,
17 is -- and the fact that he said his bank account was at zero
18 is not completely unheard of.

19 Q And so you said previously that Frances was
20 present during this entire meeting while Angelo was telling
21 you --

22 A Yeah.

23 Q -- and asking you to hold the check for a few
24 days --

25 A Yeah.

1 Q — because he didn't have the funds and he
2 needed Mojave's check?

3 A Yeah.

4 Q So then Mojave knew that the unconditional
5 release Cashman was providing was in exchange for CAM's check,
6 and that CAM needed Mojave's funds to pay Cashman?

7 A Yeah. Which is a fairly common occurrence.

8 Q Describe what you mean, fairly common.

9 A Well, as the general gets paid, then they pay
10 the subs, or in this case the DBE, and then they'll pay us,
11 because they don't generally have enough money to pay for
12 these things without having received the check themselves.

13 Q Which we described previously Mojave waiting
14 until it got paid before it issued the payments and so forth?

15 A Right.

16 Q So after you got the stop payment notice, this
17 is the first notice you had that there was an issue with the
18 check?

19 A Yes.

20 Q And what action did you take when you received
21 this notice?

22 A It certainly wasn't our best day. Well, first
23 of all we tried to get ahold of Angelo. But having in that
24 same meeting, which I haven't disclosed, but in that same
25 meeting Angelo ahead of time already stated that he was going

1 to be leaving again for Afghanistan within the next, and, you
2 know, I don't recall how soon it was, but it was very short.
3 I'm thinking it was a day or so that he was going to be
4 leaving again for Afghanistan and would not be in contact, or
5 able to contact us.

6 So when we received that notice we were very
7 concerned. Of course our first instincts were try to get
8 ahold of Angelo, which did not help, and then we obviously
9 spoke with -- well, not obviously, but we spoke with Frances
10 to let her know the situation. And in turn, you know, we
11 notified as many people as we could.

12 Q When you say you notified as many people as you
13 could, who did you notify --

14 A Well, I notified our internal people. I made
15 sure that Brian Bugni was notified at some point thereafter
16 and, you know, we obviously reached out, even though we knew
17 it was in vain, to Angelo to try and make sure that he was
18 aware of the situation.

19 Q So at some point though, did you -- were you
20 provided with any address for Angelo or did you come across
21 additional contact information for Angelo?

22 A Yeah. Well, there had been a period of time
23 between the time this check bounced and the time that we were
24 able to get ahold of him. So in my -- I finally got some
25 research sorted out and had found that he had formed a new

1 entity or a new company in California with a glazer, a glass
2 guy that, you know, that does glass on the sides of casinos
3 and stuff.

4 And I got ahold of several folks in his company and
5 finally was able to speak with him directly. And he informed
6 me that earlier that morning he had -- he was here in Vegas.
7 He's from California. His company's based in California, but
8 he was here in Vegas and had breakfast with Angelo. And --

9 Q You were surprised to hear that?

10 A I was. That's probably an understatement. So
11 when you say address, we did have an address. I'm not sure
12 that it was off the credit application, but I believe that's
13 where it was. And so I showed up at his home the next morning
14 and knocked on his door incessantly until he answered the door
15 about 8:00 in the morning. I waited until 8:00, or close
16 to 8:00.

17 And he finally did open the door in his boxers and
18 then closed the door, went back and finished getting dressed
19 and came out, and he stated to me that he had just barely got
20 back that night about 11:00 or so from another trip to
21 Afghanistan, and had just gotten in late and that's why he was
22 sleeping in. And that's when I requested another check to be
23 written so we could obtain our funds.

24 Q So you talked to him about him issuing stop
25 payments?

1 A I did.

2 Q And what did he say?

3 A He said that he -- Keith, who obviously was just
4 here, had called him subsequent to me picking up that check
5 because I hadn't had a chance to coordinate with him, and was
6 asking him for his check. And so he was concerned about us
7 having -- or me having lost the check and so he put a stop
8 payment on it was what he said.

9 Q But you subsequently came to find out that he
10 had actually withdrawn the majority of those funds --

11 A Oh, yes.

12 Q -- prior to the learning from Keith anything
13 about the check or the payment?

14 A Yes. Painfully so.

15 Q So after you told him, you know, you put a stop
16 payment, I want you to make good on it, what happened?

17 A Well, he wrote me another check. And so I
18 immediately went down to the nearest Nevada State Bank to
19 convert it to a cashier's check. Which the first Nevada State
20 Bank said they could not do it because he didn't write out --
21 he didn't write out the amount right, you know, he'd have to
22 have seven hundred and fifty-five thousand, eight hundred and
23 thirty-nine dollars and eighty-nine cents. But he forgot some
24 of the hundreds and the thousands.

25 And so then I decided to try another Nevada State

1 Bank to see if I could get a better answer, and the second
2 Nevada State Bank stated that there was non-sufficient funds.
3 So therefore -- if you'd like me to continue, I can continue.

4 Q Yeah. Keep going.

5 A So therefore I went back to his house and he was
6 not there, but a fellow in a van who I understand is a painter
7 across the street happened to flag me down and said that the
8 boss is in this house, which was directly across the street
9 from where I met him earlier that morning. And they went into
10 that house and got him and that's indeed where he was and he
11 came out.

12 And my intent was -- so my intent was to have him
13 write a check for whatever was in the account, assuming that
14 it was just off by a couple hundred dollars, maybe a couple
15 thousand dollars and he hadn't done his arithmetic correct in
16 balancing his checkbook kind of thing, and we could deal with
17 the rest later.

18 But so he in my presence called his bank, or so he
19 led me to believe, and stated that there were some
20 complications and some issues and that he was going to go to
21 the bank and find out. I told him that I would follow him,
22 but he refused to consent to that and said that it might be a
23 little more complicated to do that.

24 So then I ended up going around the corner and having
25 a late breakfast waiting for his committed call, that he said

1 he would call me after he'd had a chance to meet with his
2 banker.

3 Q And so did you give him that second check, the
4 one you had taken to Nevada State Bank to try and convert?

5 A Yeah.

6 Q What happened to that check?

7 A Well, I gave it back to him because I was going
8 to have him write it for the balance that was in the account,
9 you know, less the several thousand I thought it might have
10 been off, and didn't think I needed to keep it at that point
11 in time. I anticipated I was going to get another check.

12 I had not suspected -- well, there was obviously
13 plenty of evidence that there was some fraud going on, but I
14 hadn't really come to the realization that it was going to
15 eventually wind us up where we're at today.

16 Q So then after that did you have anymore
17 communications with Angelo about trying to get paid from
18 Angelo?

19 A Yes. He did call me and I ended up with a voice
20 mail and then he sent me a text, the text of which I kept for
21 several years, so hopefully that's in the log somewhere. It
22 was part of my testimony when I was deposed.

23 Q What was the gist of his communication?

24 A That the money had been taken out of his account
25 and switched over to a Wells Fargo account and it was not my

1 doing, somebody else did it and got into my account and did
2 it.

3 Q And then after that were you able to contact
4 Angelo anymore?

5 THE COURT: Hold on just a second. Every once in
6 awhile on rare occasion, we don't know why, a rather pungent
7 odor comes into our courtroom. It's a rarity. It has to do
8 with some kind of probably piping or whatever. When that
9 happens we light a candle. So when people walk in with a lit
10 flame, I wanted to let you know that we've lit that candle.
11 If it bothers anybody, allergies or otherwise, let me know.
12 But that's what's going on right now. Okay.

13 MS. LLOYD-ROBINSON: Okay. Thank you, Your Honor.
14 I'm sure it's better than a pungent odor.

15 THE WITNESS: I'm glad we cleared that up.

16 THE COURT: Well, when somebody walks in with a
17 candle, you might think we're just like that eclectic around
18 here. Okay.

19 BY MS. LLOYD-ROBINSON:

20 Q So after you didn't receive another check from
21 Angelo, you tried to contact him additional times and then
22 suddenly you couldn't reach him --

23 A True.

24 Q Was his phone number no longer operating, do you
25 recall?

1 A It operated for a time, but shortly thereafter
2 it went into the no service.

3 Q So then, after you had that dealing with Angelo,
4 do you recall about when that was in the timeline? So you
5 exchanged check for payment around April 26, you'd been
6 notified of the stop payment on the check May 4, say. And
7 then do you recall when in that timeline you went and had this
8 meeting with Angelo?

9 A At his house?

10 Q Mm-hmm.

11 A It was probably a couple weeks at least after
12 that, if I had to guess. I have a timeline but I don't have
13 it in front of me. But if I had to guess, it was probably
14 about three weeks after I was -- found out about the stop
15 payment.

16 Q And do you recall if it was before or after you
17 filed the complaint with the bad check unit and sent Angelo a
18 demand related to the bad check?

19 A Oh, it was well prior to that. Not well prior
20 to that, but yeah. My meeting with Angelo at his house was
21 prior to the bad check. Well, wait. Shoot. I'm sorry.
22 Yeah, it was.

23 Q Okay. Let's turn to joint Exhibit 8.

24 A Okay. Look at me. That was a good guess.

25 Q Are you familiar with this document?

1 A I am. This --

2 Q And can you describe to me what it is?

3 A This is a ten-day notice letter that is required
4 by the bad check unit. In order to send something to the bad
5 check unit, they require that a ten-day notice is served on
6 the writer of the check.

7 Q Okay. So you sent this letter just to fulfill
8 that requirement?

9 A Yes.

10 Q And you sent it to CAM Consulting at the address
11 listed on the credit application?

12 A Yes.

13 Q So you recall from your previous testimony that
14 the meeting with Angelo was just prior to this letter?

15 A Well, I don't know about just, but yes, it was
16 prior to this letter.

17 Q And during that time Cashman continued
18 performing on the Las Vegas City Hall project?

19 A Yeah. We hadn't called it quits yet. We were
20 still anticipating that this would all work out.

21 Q Okay. So then let's -- did you receive a
22 response from Angelo on this demand letter?

23 A No.

24 Q Let's turn to joint Exhibit 9. Are you familiar
25 with this document?

1 A Yes. I wrote it.

2 Q And what is it?

3 A It's to the district attorney's office outlining
4 the brief summary of the incident and the bad check with
5 Angelo Carvalho.

6 Q So you submitted basically a complaint to the
7 district attorney?

8 A Yes.

9 Q And is that evidence on the next page there of
10 this exhibit, joint Exhibit 9, page 2?

11 A Yeah. That's the form that you have to fill out
12 to submit it to the -- complaint to the bad check unit
13 downstairs here.

14 Q Do you recall what happened after you submitted
15 this complaint?

16 A I do. Well, this led to the prosecution of
17 Angelo Carvalho on a criminal basis.

18 Q There is an open pending case right now against
19 Mr. Carvalho related to --

20 A Yes. On a criminal basis, yes.

21 Q And do you know the outcome of that at this
22 point?

23 A I think the trial was postponed until later this
24 year, again.

25 Q Then let's turn to joint Exhibit 11. Are you

1 familiar with this document?

2 A Yes. It's a notice of lien prepared by you and
3 signed by me for the -- for the \$755,000, to put a lien claim
4 on the project for --

5 Q Did you direct that this document be prepared?

6 A Yes.

7 Q And did you determine the amount that was to be
8 included in the lien?

9 A I did. It's the same amount as the invoices
10 total.

11 Q So at that time, that was the amount that was
12 owed? This lien was recorded June 26, 2011 -- June 22, 2011.

13 A Yeah. I see that it was June 21 is what it was
14 dated. But up at the top, I guess it probably states June 22.
15 There you go. Yes. That's what it was for.

16 Q So to the best of your knowledge, this amount
17 was accurate at the time that you recorded the lien?

18 A Yes.

19 Q And is that because at that point the delivery
20 of the battery was still pending?

21 A Right.

22 Q And is that your signature on this document? I
23 believe you testified that it was.

24 A Yes.

25 Q Can you tell me if CAM is in any way affiliated

1 with Cashman Equipment Company?

2 A No.

3 Q And so after this project did Cashman have any
4 further dealings with CAM?

5 A No. Nor prior.

6 MS. LLOYD-ROBINSON: I have nothing further at this
7 time.

8 THE COURT: All right. Ms. Lloyd, thanks.

9 MR. BOSCHEE: This would be a great opportunity to
10 take a two-minute break if everybody's okay with that.

11 THE COURT: A two-minute break.

12 MR. BOSCHEE: Great. I just need to run down the
13 hall and --

14 THE COURT: That's a pretty quick break.

15 MR. BOSCHEE: Yeah. That's it.

16 THE COURT: Let's do five minutes.

17 MR. BOSCHEE: Okay. Fair enough.

18 (Court recessed at 3:57 p.m. until 4:01 p.m.)

19 THE COURT: Mr. Boschee.

20 MR. BOSCHEE: And Mr. Norman, you understand you are
21 still under oath?

22 THE WITNESS: I do.

23 CROSS-EXAMINATION

24 BY MR. BOSCHEE:

25 Q You testified earlier you no longer work for

1 Cashman; is that right?

2 A That is correct.

3 Q Are you being compensated your expenses for
4 being here testifying today?

5 A Yes. They flew me down here and hopefully won't
6 have to pay for a hotel, but we'll see.

7 Q You're not being paid anything hourly, are you?

8 A No. I'm not an expert witness.

9 Q Exactly.

10 A Only a novice.

11 Q Prior -- I think you testified earlier prior to
12 the city hall project you had never actually had a payment
13 issue where you weren't paid by Mojave; is that correct?

14 A Correct.

15 Q And that was in approximately seven years as
16 credit manager?

17 A I've been the credit manager for eight, but we
18 kind of shut things off with Mojave obviously due to this
19 issue.

20 Q Which is why I said seven, but yeah. In the
21 seven years you worked with Mojave you hadn't had a payment
22 issue; is that right?

23 A Yeah. I don't know that it was seven, but yeah,
24 up until the point this time happened.

25 Q And just to clarify, prior to this project you

1 had never worked with either CAM Consulting or Angelo
2 Carvalho, correct, in any capacity?

3 A Correct.

4 Q And any other entities that he had been
5 affiliated with?

6 A Correct.

7 Q Now, let's talk about, if you've got joint
8 Exhibit 1 still up there.

9 A I can get there.

10 Q It's the credit application. Now, at this time,
11 at this time and place, and I'm talking January 2011,
12 generally you had a criteria that, and I think you said in
13 your deposition you wouldn't -- you didn't like to do business
14 with anybody that didn't have a set -- a good set of credits
15 to deal with. Do you recall that?

16 A Yeah. I mean, generally that's right, yes.

17 Q And you certainly in this case you didn't extend
18 them credit, but you did ultimately enter into a customer
19 agreement with them; is that right?

20 A Yes. Simply by nature of Mojave inserting them
21 into the middle of our agreement or our purchase -- or our
22 sale to Mojave.

23 Q Well, actually, at this point you really didn't
24 have a choice because the equipment was already pretty much
25 delivered to the project at the end of January 2011, did you?

1 A Yes. You are correct.

2 Q So by the time you were asked or by the time you
3 found out about CAM and ran their credit, for lack of a better
4 word, the die was cast. I mean, the equipment was already
5 delivered and the money was coming due and owing, wasn't it?

6 A Yeah. For the most part the equipment had been
7 delivered.

8 Q Okay. But their lack of credit or the credit
9 information you found did cause you some concern, didn't it?

10 A Yes.

11 Q Which is why you didn't extend them credit?

12 A Exactly.

13 Q Cashman could have worked with other DBEs on
14 this project, couldn't it have? I mean, CAM wasn't the only
15 one out there, was it?

16 A I suppose there's lots of them out there, yes.

17 Q And specifically you don't recall working with
18 any of them in the past?

19 A I don't, no.

20 Q Had you ever worked with a company called NEDCO
21 Supply in the past that you recall?

22 A NEDCO's another supplier. I don't know that we
23 sell to them directly.

24 Q I don't know they're DBE is why I asked the
25 question. How about Codale?

1 A NEDCO's a DBE?

2 Q Yes. That's why I was wondering if you had
3 maybe had dealings with them on another government project or
4 something like that.

5 A Yeah, I don't know that we sell to them
6 directly. I know that they're a supplier, but don't know
7 anything about them being a DBE.

8 Q Now, as I understand it, you weren't directly
9 involved with anything that Cashman was doing with CAM or with
10 Mojave with respect to the delivery of the equipment until
11 towards the end of the delivery, right, until sometime in
12 January, correct?

13 A Yeah. Right around the time -- I believe right
14 around the time we got the app and all this kind of came to
15 light --

16 Q You weren't --

17 A -- on my end.

18 Q Oh, go ahead. I'm sorry.

19 A Well, on my end.

20 Q Right. You weren't part of the delivery or
21 installation or any of the servicing of the generators, were
22 you?

23 A No.

24 Q But eventually comes a time that it's going to
25 be time to get paid, and that's when you got involved; is that

1 right?

2 A Yes.

3 Q Do you recall, was there a specific reason why
4 you ran credit on this entity in particular as opposed to, you
5 know, why you hadn't done it earlier, why you were asked at
6 this point?

7 A Well, the reason I did it at this point is
8 because this is when I came to the authorization and the
9 understanding of who to run it on.

10 Q Did you run --

11 A If that's what --

12 Q I'm sorry. Go ahead.

13 A Is that you're asking?

14 Q Well, did you run a credit on every customer
15 that you worked with?

16 A When someone fills out a credit application and
17 they're a new customer to us, yes, we run a credit
18 investigation. So whether or not you pulled all the same
19 reports, that's kind of a different story.

20 Q Better choice of words. You run a credit
21 investigation on all of your new customers; is that right?

22 A Yes.

23 Q And the reason you didn't do it earlier is
24 because you only learned of CAM's involvement at this
25 juncture, correct?

1 A Correct.

2 Q After the contracts had been entered into?

3 A Well, the reason I didn't do it earlier is I
4 didn't have a credit application earlier than this.

5 Q Okay. Had you asked for one earlier than this?

6 A Not to my knowledge, because like I said, I had
7 just come to the knowledge of it all kind of at the same time.

8 Q Right. And in fact, you didn't know CAM was
9 involved in this entire project until sometime in late January
10 of 2011, correct?

11 A That is a true statement.

12 Q Now let's go to joint Number 5. That's the lien
13 release.

14 A Five?

15 Q Five, I think.

16 A No. That's the UCC.

17 MR. BOSCHÉE: What's the lien release, six, four?
18 Six. No?

19 THE COURT: There's a few of them.

20 MR. BOSCHÉE: No, I'm sorry. It's Number 4. I just
21 wrote it down wrong. Sorry.

22 THE WITNESS: Okay. We're there.

23 BY MR. BOSCHÉE:

24 Q Signed and notarized on April 26, 2011, correct?

25 A Yes.

1 Q Okay. And I will represent to you that that is
2 also the date that is in the trial brief as to the meeting
3 that you guys had at Mojave. Does that refresh your
4 recollection as to --

5 A Yeah. I believe that was on the same date.

6 Q And I will represent to you and perhaps the
7 Court can take judicial notice of it that that was a Tuesday.

8 A Okay.

9 Q Does that comport with your recollection of when
10 the meeting took place?

11 A I know that it wasn't a Friday, so.

12 Q Again, that's just calendar. But it was
13 Tuesday, April 26, 2011 is when you recall having the meeting
14 with, I guess, Frances and Angelo at Mojave's office, correct?

15 A Yeah.

16 Q Now, this lien release was provided, ultimately
17 was provided at Mojave's request, correct?

18 A Yes.

19 Q And it was provided to Mojave before payment in
20 exchange for payment, correct?

21 A Yes.

22 Q And at that time Mojave did tender payment to
23 CAM, correct?

24 A Well, I only assume so, because Angelo told me
25 that he had a check from Frances, so yes.

1 Q Well, flip to J13. Maybe you've seen this
2 before, maybe you haven't. Had you ever seen any of these
3 documents before, or were you just informed that they existed,
4 the documents in J13?

5 A You know --

6 Q The payments back to CAM Consulting.

7 A In looking through the rest of these, I believe
8 these were the ones that once we took action on Angelo and CAM
9 Consulting that the bank provided us. Are these these ones?

10 Q I believe those are the ones that you eventually
11 got from the bank, correct?

12 A Yeah. So this is a portion of them. We got
13 like quite a few more.

14 Q Did you -- when you were in the meeting with
15 CAM, with Angelo and Frances, did Frances tender the check
16 that Mojave had paid to CAM at that point? Did he have it in
17 his hand, or did you just know that he had gotten it at that
18 point?

19 A Yeah. I mean, he had a -- he had it in -- I
20 believe he had it in an envelope.

21 Q And at that point then he cut you a check as
22 well; is that right?

23 A Well, he'd already had it made out, I believe,
24 to us and ready for me because he knew I was coming.

25 Q And but at that time, you didn't have any reason

1 to believe that the money that Mojave was paying to CAM was
2 insufficient for any reason, did you?

3 A No.

4 Q You had never had any payment issues with Mojave
5 before where they had bounced checks or anything like that,
6 had you?

7 A No.

8 Q Okay. So when Mojave tendered funds on that
9 date and was provided an unconditional lien release, sitting
10 here right now you have no reason to believe that that check
11 was no good, do you?

12 A No.

13 Q And the payment that you received from CAM, the
14 check was for full --

15 A Let's clarify payment and check.

16 Q The check is different. You didn't get payment
17 or we wouldn't be here.

18 A Yes.

19 Q The check you got from CAM was full payment for
20 all of Cashman's work and supplies, correct?

21 A Yes.

22 Q But at that point Cashman hadn't completed its
23 work or provided all the supplies for the project, had it?

24 A No. I mean, it was a process. There were -- it
25 was, you know, from start to finish there were things you had

1 to deliver, services you had to provide, and then there was a
2 startup towards the end. So it was a process.

3 Q And the startup hadn't been -- hadn't begun yet,
4 had it at that point?

5 A No. The startup is the very last thing that
6 happens to my knowledge.

7 Q Which makes sense that was the last thing that
8 Cashman was going to do. But you were paid for it in advance
9 anyway; is that right?

10 A Well, when we invoice, we invoice for everything
11 at that point in time, but we invoice when most everything has
12 been delivered and then the customer agrees to that.

13 Q Sure. And I guess that's what I'm getting at.
14 The invoicing that Cashman provided for the 755, that was done
15 pretty much at the time all the equipment was delivered,
16 correct?

17 A Yes.

18 Q And it included all of the startup and all of
19 the additional installation of mufflers and exhaust that was
20 going to happen down the road, you know, in the corresponding
21 weeks but that hadn't transpired yet, correct?

22 A Right. It was all-inclusive of everything that
23 we were -- had already done and that we were to do.

24 Q Sure. And it also included -- well, it also
25 included the PLC codes, it included the UPS batteries that

1 hadn't been delivered yet, correct?

2 A Correct.

3 Q And that was standard operating procedure in
4 terms of how you dealt with Mojave; is that right?

5 A Yes.

6 Q Okay. So when the unconditional final lien
7 release was provided to Mojave, and again, you testified
8 earlier that they requested it prior to the payment being
9 received, they wanted the unconditional final, but when you
10 actually gave it to them, the work wasn't done yet, they paid
11 you in full or they tendered a check for the full amount, but
12 the work wasn't completed yet and yet you still felt
13 comfortable giving them a final lien release, right?

14 A Yes.

15 Q Because of the relationship you had with them?

16 MS. LLOYD-ROBINSON: Objection. Misstates previous
17 testimony. Mr. Norman testified that the release was provided
18 to CAM in exchange for the payment from CAM. And I believe in
19 the question you had indicated it was provided to Mojave.

20 MR. BOSCHKE: I just asked him that five minutes ago
21 and he said it was provided to Mojave. I'm sorry. If I'm
22 misstating his testimony, I don't mean to.

23 MS. LLOYD-ROBINSON: Well, on direct, I believe he
24 indicated that the release was provided to CAM in exchange for
25 CAM's check.

1 MR. BOSCHÉE: And I think I just asked the question
2 if it was provided to Mojave, and I think you said yes. But
3 if we need clarification on that, that's why I asked that
4 question.

5 THE COURT: We can just look at the exhibit. It's
6 Exhibit 5?

7 MR. BOSCHÉE: Four.

8 THE COURT: Exhibit 4.

9 MR. BOSCHÉE: And the unconditional form doesn't
10 actually say who it's provided for. It's an unconditional
11 lien release, which is actually, this is a fairly standard
12 form, I'm guessing, that Cashman has used a thousand times.
13 It's not that different from the form we use.

14 That's why I asked the follow-up question, because
15 it — the questioning was Frances is asking for an
16 unconditional final. They come in. There's a meeting between
17 the three of them. Frances gets her — I mean, it sounds — I
18 mean, again, if I'm misstating the testimony, Frances gets the
19 unconditional final, but only when Shane gets the check is how
20 I understood the process to be. But if that's incorrect, then
21 let me know.

22 I guess I'll be direct to the witness. I mean,
23 that's how I understand that the process actually took place.

24 THE COURT: That's an interesting point, because the
25 document doesn't with specificity talk about who gets released

1 and who's -- you know, with the sort of a tripartite
2 relationship, if you will.

3 MR. BOSCHEE: Well, what it does, I mean, I guess my,
4 again, and it's a legal distinction, but what it does is it
5 releases the undersigned's lien rights really against, I would
6 say anybody, but really --

7 MS. LLOYD-ROBINSON: I would object to the extent
8 that counsel is testifying at this point.

9 THE COURT: Well, I asked a question though, so I'm
10 just -- I'm responsible for that. I mean, I'm looking at the
11 four corners of the two-page exhibit, and to me it purports to
12 release Cashman Equipment from making any claim as long as
13 they're paid. They have to have their final payment.

14 MS. LLOYD-ROBINSON: It releases in exchange for the
15 check they received. The document itself references the
16 invoices that were issued to CAM. You can see where it says
17 invoice payment number on there. It's referencing those
18 invoices. Those invoices were issued only to CAM, and the
19 release was provided to CAM in exchange for its check.

20 THE COURT: Okay. Well, that helps. Those invoices
21 are all just to CAM, right.

22 MR. BOSCHEE: But again --

23 MS. LLOYD-ROBINSON: Correct.

24 MR. BOSCHEE: -- that's a legal -- but that's
25 certainly a legal argument. That's why I asked the witness

1 the question.

2 THE COURT: All right. So I see it, I've reconciled
3 it in my mind. You can go ahead and ask whatever question
4 you'd like.

5 BY MR. BOSCHEE:

6 Q I guess that was -- the Exhibit 4, the
7 unconditional final lien release, that was the document that
8 Frances at Mojave was, for lack of a better word, after you
9 for, wasn't it? That was the document she wanted to get from
10 you?

11 A Yeah. This was the document that I had to
12 provide in order to get a check from CAM.

13 Q Right. And at that meeting did you hand the
14 unconditional final lien release to Angelo Carvalho, or did
15 you give it directly to Frances?

16 A Well, I mean, the table was really small. I
17 mean, quite honestly, if you set it down on the table, one's
18 here and one's here [indicating], so.

19 Q Did Frances walk out of the room with it?

20 A You know, I couldn't say, but I'll bet she was
21 the one that walked out of the room with it if I had to bet.

22 Q Because at the end of the day, Mojave had the
23 unconditional -- per your understanding of how this process
24 works, Mojave had to have the unconditional final lien release
25 to provide upstream, right? That's typically what happens

1 with a sub?

2 A It's a snowball effect, yes.

3 Q Okay. And if you look at again, J7, we looked
4 at this again a little bit earlier, and I'm grabbing my
5 exhibit list to make sure I don't misstate the exhibits again.
6 But J7 is the stop notice that you got from -- and it's also
7 got a copy of the check, correct?

8 A Yes.

9 Q Okay. Now, at that meeting Mr. Carvalho -- I
10 want to make sure I'm very clear on this, because a couple
11 things you said on direct surprised me a little bit. At that
12 time Angelo asked you to hold on to the check for a couple of
13 days because he needed the money to clear his account; that's
14 what he told you?

15 A Yes. His bank -- his bank -- he had to have
16 some time in there for his bank to release the hold on the
17 funds because it was such a large check.

18 Q Okay. And the check that he cut you, the one
19 that we're looking at right now was cut from Nevada State
20 Bank; is that right?

21 A Yes.

22 Q Do you have an understanding -- and we can look
23 at the exhibit if you need to. Do you have an understanding
24 as to where, what bank Mojave cut the check to CAM from?

25 A I couldn't tell you right offhand.

1 Q Well, let's take a look at Exhibit 13. Mojave,
2 I mean, for lack of a better word just generally, you can tell
3 if -- Mojave's bank is Nevada State Bank as well, isn't it?
4 The checks that they cut to CAM, or the check they cut to CAM
5 were from Nevada State Bank, weren't they?

6 A If that's what this is right here, apparently,
7 but I don't know that I'm the best one to answer that.

8 Q I understand, and someone from Mojave is
9 probably better to answer where they bank as opposed to you.
10 But you didn't at that point -- and at that same meeting, when
11 Mr. Carvalho told you -- and I've got to go back and re-read
12 my notes on this.

13 When Mr. Carvalho told you that the bank, that it
14 would take a little bit of time for his money to hit the
15 account, he also told you that his bank account was at zero?

16 A Yes.

17 Q And then he told you he was leaving again for
18 Afghanistan in a day or two?

19 A Yes.

20 Q And against that backdrop, against the backdrop
21 of this company and this guy having absolutely no credit, him
22 leaving for Afghanistan the next day or the day after, and him
23 telling you his bank account was at zero, it didn't concern
24 you at all that he was writing you a check that was dated --
25 or that he was asking you to wait a handful of days to deposit

1 the check?

2 A I've never had a six figure check go bad. Never
3 had any previous experience with any of that in the past. I
4 don't know that anybody else --

5 Q Have you ever done business with a customer,
6 have you ever done a credit check -- well, let me ask it
7 another way.

8 In a typical situation you wouldn't have done
9 business with CAM Consulting, would you, because their credit
10 was so bad?

11 A No, that's not a true statement. The credit
12 wasn't bad. There just wasn't --

13 Q Just insufficient?

14 A Yeah, insufficient. There wasn't any comparable
15 credit to open him up. Now, could we have done business with
16 him on a cash basis, an up front basis? That's how we get,
17 you know, that's how we do business with folks that have
18 insufficient credit, lack of comparable credit.

19 Q But you didn't do business on a cash basis on
20 this deal. You actually agreed to wait a handful of days to
21 deposit the check, didn't you?

22 A I agreed to wait, yes.

23 Q And then he gave you a post-dated check, which
24 you realized shortly after you got back to the office; is that
25 right?

1 A Yes.

2 Q And you didn't ask him to sign Mojave's check
3 over to you and then cut him a corresponding check, did you?

4 A No.

5 Q Okay. You didn't go to the Nevada State Bank
6 branch over on South Jones a few blocks away from Mojave's
7 office with him to get a cashier's check right then and there,
8 did you?

9 A No.

10 Q Okay. And if you had done either of those
11 things the money would have hit Cashman's account right then
12 and there, the 26th of April of 2011, wouldn't it have?

13 A If CAM wouldn't -- I mean, obviously that might
14 have been, but we don't know because that never did happen.

15 Q Well, obviously it didn't happen, but Mojave's
16 money was good?

17 A Mojave's money apparently was good.

18 Q Because CAM went and spent it and bought a house
19 and a bunch of other things, among other things, but...

20 A Yes.

21 Q But if Mojave's money was good and they bank at
22 Nevada State Bank, if you had gone to that bank branch with
23 Carvalho, it stands to reason Nevada State Bank would have
24 been able to cut you a cashier's check for the 755 right then
25 and there, wouldn't it?

1 MS. LLOYD-ROBINSON: Objection. Calls for
2 speculation and assumes facts not in evidence. Mr. Norman did
3 not testify that he knew that Mojave banked at Nevada State
4 Bank at the time he was receiving the payment. So it's
5 assuming knowledge he did not testify that he had at the time.

6 THE COURT: Okay. I think that that's a good
7 objection and I'll sustain it. But there might be a way to
8 ask what you're trying to get to anyway.

9 BY MR. BOSCHEE:

10 Q It didn't -- you didn't -- you could have gone
11 to the Nevada State Bank branch with Mr. Carvalho and asked
12 for a cashier's check, couldn't you have?

13 A I don't know.

14 Q Well, you could have asked, couldn't you? I
15 mean --

16 A I could have asked.

17 Q Yeah. And you didn't ask, did you?

18 A I did not ask.

19 Q And if Mojave did bank at Nevada State Bank and
20 their money and their check to Carvalho was good, and there
21 was sufficient funds on the Mojave check --

22 MS. LLOYD-ROBINSON: Objection. Calls for
23 speculation. Again, I don't know --

24 MR. BOSCHEE: I haven't even finished my question
25 yet.

1 THE COURT: Yeah. Let me hear what the rest of this
2 is and then I'll go from there.

3 BY MR. BOSCHÉE:

4 Q If Mojave had tendered a check from a Nevada
5 State Bank account to CAM, and their check was good, there
6 were sufficient funds in there, it stands to reason that had
7 you gone with Mr. Carvalho to a Nevada State Bank branch right
8 then and there, that that bank would have cut you -- could
9 have cut you a cashier's check for the amount that you were
10 owed on the invoices, doesn't it?

11 MS. LLOYD-ROBINSON: I'm going to object again that
12 it calls for speculation.

13 THE COURT: Well, what it calls for is a factual
14 predicate that I don't have any evidence on, which has to do
15 with the accounting trail of the money from Mojave to CAM and
16 then where it went from there to render it such that CAM's
17 account doesn't have the money in it anymore.

18 MR. BOSCHÉE: Well, right. But I think that -- I
19 think both witnesses now have said that Mojave, the check that
20 they cut to CAM, neither of them have any dispute that there
21 was sufficient funds in that account, in that check.

22 THE COURT: In a check, but --

23 MR. BOSCHÉE: It was more than 755, so --

24 THE COURT: But it's pretty evident that to me that
25 what happened was the money wasn't in CAM's account in any

1 event even if he would go down to the bank.

2 MR. BOSCHÉE: Well, but what I'm saying, I guess what
3 I'm asking is it would have been.

4 BY MR. BOSCHÉE:

5 Q I mean, if Mojave's check has more than \$755,000
6 and it's good and it's drawn from a Nevada State Bank account,
7 at that moment the check hits Carvalho's bank account and he
8 has the 800 and whatever thousand dollars in his account, they
9 would have issued you a cashier's check for 755 like that
10 without question. There would have been no times -- there
11 would have been no delay.

12 A Well, if Mojave would have written us a joint
13 check, you know, woulda, shoulda, coulda, a lot of different
14 things.

15 Q Sure.

16 A I mean, we could go on --

17 THE COURT: Well, I mean, hold on a second. I'm
18 trying to deal with the objection. I think it's a good
19 objection that she's made. Here's why. I mean, if you look
20 at the money trail here, the Mojave money to CAM, it might not
21 coincide perfectly. I mean, some of the checks are from
22 earlier in April. There is this fateful one in here on the
23 same day, the 26th, for 820 grand.

24 MR. BOSCHÉE: Right.

25 THE COURT: Okay.

1 MR. BOSCHÉE: And that's the 820 -- I guess what I'm
2 saying is if --

3 THE COURT: So is it your question that if we look at
4 Exhibit 13, page 4, that, you know, it's a hypothetical that
5 maybe he could have gone down and caught it given that the
6 \$820,000 check is the same day as the Exhibit 7 check?

7 MR. BOSCHÉE: Exactly.

8 THE COURT: Okay.

9 MR. BOSCHÉE: And if that check is drawn from Nevada
10 State Bank, which it appears to be, and you go down there,
11 that \$820,000 should hit CAM's account right then and there
12 and you should be able to get a cashier's check. And then
13 what happens is Mojave's in here with CAM on a different -- on
14 a bounced check that's earlier in Exhibit 13, and we have an
15 entirely different dispute.

16 THE COURT: Okay. So can you restate what your
17 question to the witness is then based upon all this?

18 MR. BOSCHÉE: Sure.

19 BY MR. BOSCHÉE:

20 Q Based upon again, Exhibit 13, whatever page it
21 is, page 4, assuming -- and I think everybody has said that
22 they have no reason to believe that Mojave's check to CAM
23 wasn't good, that there weren't sufficient funds in that
24 check, if you had gone with CAM and that check to a Nevada
25 State Bank branch a few blocks away on South Jones and that

1 money had been deposited into CAM's account right then and
2 there, and you had asked for a cashier's check for \$755,000,
3 it stands to reason that that check could have been cut to you
4 right then and there and you would have been paid in full,
5 doesn't it?

6 MS. LLOYD-ROBINSON: I'm going to object again.

7 THE COURT: Okay. This time I've figured out the
8 better way to do this in my view. Do you want to say
9 something else on that?

10 MS. LLOYD-ROBINSON: I think it's assuming -- it's an
11 incomplete hypothetical. It's assuming that Shane knew that
12 Mojave banked at Nevada State Bank and CAM banked at Nevada
13 State Bank, and that the funds were going to be immediately
14 available.

15 Mr. Norman testified in direct that he was told by
16 CAM that CAM needed a few days for that check to be released
17 into his account, which is the assumption he was operating off
18 of, that CAM was being truthful obviously, and that he was
19 waiting for the funds to clear before he could -- Cashman
20 could deposit its check to receive the payment.

21 So Mr. Boschee's assuming that Mr. Norman knew that
22 the funds would be immediately available to CAM. Mr. Norman
23 didn't have that knowledge according to his testimony.

24 THE COURT: It sounded like he didn't know where the
25 Mojave account was based.

1 MS. LLOYD-ROBINSON: And he did testify that he
2 didn't see the check that day. The check, he believed it was
3 in an envelope sitting on the table.

4 THE COURT: Okay. Here's the situation, Ms. Lloyd.
5 I think that your objection is well grounded and well stated
6 and makes sense. However, I'm going to overrule it at this
7 point now that I've heard more and allow it, because it's a
8 fair hypothetical.

9 If you look at page 4 of Exhibit 13, it's April 26,
10 and Mojave's providing CAM with a check for 820 grand. That's
11 the same day of the meeting. That's the same day of this sort
12 of faithful, you know, release meeting that you see in -- it's
13 that Tuesday meeting. It's in Exhibit 4.

14 MR. BOSCHEE: And I can also add some foundation to
15 this too, I think, that might even clarify it additionally.

16 THE COURT: Okay.

17 BY MR. BOSCHEE:

18 Q We've -- Mr. Norman, you've talked about the
19 numerous projects you've worked on with Mojave, correct?

20 A Yes.

21 Q You've gotten several payment checks, I would
22 assume, from Mojave during that time, have you not?

23 A Yes.

24 Q And you never once looked at any of those checks
25 to see where they banked?

1 A No. They go into a direct deposit.

2 Q Okay. And you never got any notice from Wells
3 Fargo in any of those that it was getting put into a Wells
4 Fargo account from Nevada State Bank? You never saw that at
5 any point?

6 A Mr. Boschee, we have 2,000 active customers that
7 pay us multiple times a month. That's, I mean — no.

8 Q So the answer's no, you had never seen where
9 Mojave banks in all these other projects you've worked on with
10 them?

11 A No. I had no reason to.

12 MR. BOSCHEE: Well, so much for that foundational
13 attempt.

14 THE COURT: Okay. I get it. Ostensibly he could
15 have gone down there if he'd known about the bank, but he was
16 told that there was a need for a three day delay anyway and
17 all these other things that he was told by CAM that we
18 probably now would figure weren't accurate or weren't true.

19 MR. BOSCHEE: Sure.

20 THE COURT: And he did what he did.

21 MR. BOSCHEE: Right.

22 THE COURT: I think it's a fair question though,
23 Ms. Lloyd. I think Mr. Boschee could say, well, why didn't
24 you do that and let him give his answer as to why he didn't go
25 down to the bank and do that.

1 MS. LLOYD-ROBINSON: He was just assuming that he
2 knew that they all banked at the same bank.

3 THE COURT: He might provide that as part of his
4 answer. He might just say I didn't know that, or he might --
5 I don't know what he would say.

6 MR. BOSCHEE: And even if he didn't know that --
7 BY MR. BOSCHEE:

8 Q I mean, you didn't consider going to the bank
9 branch right then and there with Mr. Carvalho, did you?

10 A He said that he needed a few days because his
11 bank would put a hold on it, which that is a very common
12 occurrence when it comes to accepting checks from -- large
13 checks from customers. Banks put a hold on it. That's a
14 standard everyday operating procedure. And even if it was at
15 the same bank, they still could have very well put a hold on
16 that, and that's out of reason knowing banks and the way they
17 work.

18 But no, I did not know that he banked at the same
19 bank and no, I didn't do that simply because he asked me, he
20 needed a day or a couple days to make sure that his bank
21 released the funds. I had no reason not to believe him. I
22 knew that the Mojave check was good. I wasn't as worried.

23 I mean, obviously hindsight's 20/20. We all can see
24 why we should have been, but at the time there wasn't a great
25 cause for alarm. I didn't know everything about Angelo that I

1 now know or found out a few weeks after that.

2 Q Well, but you know he didn't — you know he
3 didn't have any credit from Cashman, right, because that was
4 your decision?

5 A Yes.

6 Q Okay.

7 A It was my decision.

8 Q And you knew that you were on essentially a cash
9 basis with Carvalho and CAM. I mean again, that was your
10 decision, right?

11 A Yes.

12 Q And yet you essentially agreed to extend him a
13 handful of days' worth of credit to let this money hit his
14 account and Lord knows what he might have done with it.
15 Obviously we know now what he did with it. But you agreed to
16 give him that extra time knowing that he had no credit and
17 having absolutely no prior relationship with him. That was
18 your decision, wasn't it?

19 A Well, that was the bank's decision. He said
20 that the bank put a hold on it. I can't tell the bank to take
21 the hold off until it's off.

22 Q But it was your decision to give him the
23 additional time based on his representation?

24 A I don't know that I had a decision at that point
25 in time. What -- I didn't have a decision.

1 Q Well, you could have --

2 A I accepted the check. I gave him the release
3 knowing that if the check did not clear that my release would
4 not be -- would be invalidated and voided.

5 Q Yeah, you said that. You testified about that
6 as well, that you have an understanding of Nevada lien law, if
7 you will, that if a check doesn't clear, and this is -- the
8 statute was actually quoted in Cashman's brief, that that
9 invalidates the unconditional final lien release that was
10 provided. You believed that at the time and probably still
11 believe it today, correct?

12 A Yes.

13 Q Okay. But Mojave's check did clear, didn't it?

14 A This isn't about Mojave's check. This is about
15 CAM's check.

16 Q I understand. I understand Cashman's position
17 in the case. But Mojave's check did clear, didn't it? There
18 was no issue with Mojave's check, was there?

19 A Well, we can deduct that it did, but I'm not in
20 charge of Mojave's bank records. That's probably a better
21 question for Brian.

22 Q Sure. Well --

23 A We can assume that it did.

24 Q Based upon what Carvalho did with the money that
25 it hit his account.

1 A Obvious.

2 Q The other option, let's say you don't want to go
3 to the bank branch. You have -- you're leary about that and
4 you're leary about the two-day notice because this guy doesn't
5 have any credit. Carvalho could have just signed the check
6 that Mojave wrote to him over to Cashman and you could have
7 cut him the check for the difference. That takes all of this
8 out of play, doesn't it?

9 A Yeah. There's a lot of different ways we could
10 have made this go away, but obviously none of them happened.

11 Q But that would have essentially accomplished the
12 same thing as getting a joint check, wouldn't it?

13 A If --

14 Q It takes all the risk out of it.

15 A If -- restate your question. If what? If
16 Angelo signed off on the check that Mojave gave him?

17 Q Yeah. Mojave wrote CAM a check for \$820,000,
18 and had he signed that check over to Cashman and then Cashman
19 cut him the difference plus the \$3700 fee and change, that
20 takes this entire -- that takes all of the risk out of play,
21 doesn't it?

22 A Well, we know that Mojave's funds were good.
23 But CAM had other -- from what we deducted, CAM had some other
24 vendors to pay. So letting us have that check and control his
25 funds was -- is not standard operating procedure.

1 Q Well, but if he had other vendors to pay,
2 presumably the other vendors would have been less than
3 \$65,000, because the 755 that was part of the 820 should have
4 been your money, right?

5 A Again, I didn't know all the accounting until
6 after we saw all that. So for him -- that's not a standard
7 operating procedure.

8 Q Well, I understand that.

9 A Would that have solved it? Who knows.

10 Q But taking a post-dated check and waiting to
11 deposit it for several days isn't standard operating procedure
12 for you either, is it?

13 A I did not know that it was post dated.

14 Q Okay. But that's not something you typically
15 do, is it?

16 A No.

17 Q Okay. And as soon as you got back to the office
18 and realized it was a post-dated check, you didn't pick up the
19 phone and call Angelo and say, hey, what are you doing giving
20 me a post-dated check, we don't accept these? You didn't do
21 that, did you?

22 A No.

23 Q You recall -- you testified earlier that you
24 were pretty sure that you deposited, that you did the desktop
25 deposit of this check on the 29th of April. That's the Friday

1 of that week.

2 A Yeah, I did.

3 Q The reason I ask is if you look at J7, at the
4 bottom of the page, and if you turn it sideways, I'm looking
5 right here. If I can approach it might be easier to show
6 everyone what we're looking at.

7 THE COURT: Okay.

8 MR. BOSCHEE: Right there.

9 THE COURT: Okay.

10 MR. BOSCHEE: And right there.

11 BY MR. BOSCHEE:

12 Q In the middle of the page sideways it has the
13 date, May 2, 2011, and then up above that it's got May 2. And
14 then the May 4 date's when the stop payment was noted by the
15 bank. Does that refresh your recollection as to whether the
16 check actually went through on May 2, that following Monday,
17 as opposed to that Friday the 29th?

18 A Yeah. It appears that it did.

19 Q Now, it could just be --

20 A Yeah. I don't know that this is -- I mean,
21 yeah, it appears that 5/2 was the date there.

22 Q Is that -- would that be consistent with your
23 desktop deposit? Is it possible that it just didn't go
24 through until the following Monday?

25 A No. Usually the day that we deposit it is when

1 it's stamped. But this is a copy from the bank, not our copy.

2 Q Right.

3 A So we could have deposited it on that Friday,
4 but either way, I don't know. I mean, this is the bank's
5 copy. This isn't our copy that we ran through the desktop
6 deposit, so.

7 Q Now, by the time you realized the stop payment
8 had been issued, did someone from Cashman ask Mojave to try to
9 stop payment on their check to CAM?

10 A Yeah. I did.

11 Q And when was that, do you recall?

12 A It was shortly thereafter. I don't remember
13 exactly the date.

14 Q The 4th or the 5th?

15 A Yes. It's somewhere in there.

16 Q But it was too late for them to do that, wasn't
17 it?

18 A Yeah. Brian came back and said that the check
19 had already been cashed.

20 Q And again, when you agreed to wait a few days to
21 deposit the check you got from CAM and it ultimately, you
22 know, you got a post-dated check, did you ask anybody at
23 Mojave if they were okay with that decision? Did you say,
24 hey, I'm taking a post-dated check from this guy, does that
25 concern you?

1 A No. I didn't do that. I mean, Frances at
2 Mojave knew. She was sitting at the table.

3 Q And you didn't tell — and I think we had
4 testimony. Did you tell anybody at Cashman that you'd agreed
5 to wait a few days to deposit the check?

6 A Yeah.

7 Q Who?

8 A My staff. I mean, I came back and informed
9 them, hey, don't deposit the check until Friday.

10 Q Okay. You didn't tell Mr. Lozeau, right?

11 A No. Well, I mean, other than —

12 Q Not that day.

13 A Yeah. I mean, we communicated, but not
14 immediately.

15 Q So with respect to the decision that was made to
16 sit on this check and then obviously once you realized it was
17 post dated to accept the post-dated check and not do anything
18 about it, that was essentially your decision and your decision
19 alone, wasn't it?

20 A Well, I mean, it — you keep stating accepting a
21 post-dated check. Again, when I received the check I did not
22 know that it was post dated. Yes, I did agree to wait a few
23 days because of the bank hold because I didn't want my
24 \$780,000 check, or \$755,000 check bouncing. So I took the
25 liberty of waiting for a day or a couple of days as he

1 requested to do that.

2 The post dated part I wasn't aware of, but ultimately
3 I did hold off on depositing it until that date. So I didn't
4 think that again, obviously hindsight, but that it would be an
5 issue of legal circumstance obviously.

6 Q Well, let me ask the obvious question that I
7 think I probably know the answer to it in retrospect and
8 hindsight. Obviously you would have handled the situation
9 differently, wouldn't you have?

10 A I think all, Mojave and us would have done both.

11 Q Sure. You would have -- you certainly wouldn't
12 have agreed to wait the few days or once you realized it was a
13 post-dated check you would have done something about it at
14 that point, wouldn't you have?

15 A Well, I mean, if we're going in woulda, shoulda,
16 coulda, I don't think that we would have sold the machines at
17 all and even included CAM in anything. So I mean, if we want
18 to go back and do what we shoulda, coulda done, we would have
19 just dealt with Mojave directly --

20 Q I understand.

21 A -- and not let them insert CAM at all.

22 Q Well, but dealing with Mojave directly wasn't
23 really an option, was it, as far as your understanding?

24 A Yeah. I mean, that's what they -- that's what
25 they insisted on.

1 Q There was also some argument and some testimony,
2 argument from your counsel and testimony from both parties in
3 this case about a joint check. You talked about that a few
4 minutes earlier. Have you ever gotten a joint check from
5 Mojave?

6 A I can't say no. I don't know.

7 Q Do you ever recall getting a joint check from
8 Mojave?

9 A Not that I can recall.

10 Q But despite -- I mean, assuming that you never
11 have, but despite not -- you don't -- you didn't get joint
12 checks from Mojave if at all very often, did you?

13 A If we did, it was on a very rare basis, but I
14 don't recall that we did.

15 Q But you asked for one here, right?

16 A Yes.

17 Q Because you had concerns about CAM's credit?

18 A Yes.

19 Q CAM's credit, or lack thereof is the better way
20 to put it. CAM's credit was enough of a concern for you to
21 ask for a joint check, but not enough of a concern for you to
22 ask him to sign Mojave's check over to you?

23 A Well, Mojave's check was more than what we were
24 owed, so again, that's not a standard operating procedure.

25 Q I understand that it's not a standard operating

1 procedure to wait a few days and to sit on a post-dated check
2 either. I mean, this is a unique situation.

3 A Well, you're insisting that it's not. I mean,
4 bank holds happen on a regular basis, so that's not uncommon.

5 Q Oh, I understand. When I talk about accepting
6 the post-dated check, let me just make sure I'm clear about
7 that. It's not so much that you took the post-dated check,
8 looked at it and said it was post dated and then left. It's
9 that when you realized that the check was post dated, you'd
10 agree with me you didn't do anything about it? You just sat
11 on it for three days and waited until that date to deposit it,
12 or maybe the following Monday?

13 A Was it three days or two?

14 Q Three.

15 A Okay.

16 Q If you want to look at the check, it's dated
17 April 29, which is that Friday.

18 A Okay. So yeah. So I did agree to hold the
19 check for a few days and deposit it on Friday like he'd
20 requested. That's the check, not necessarily a post dated
21 check.

22 Q I understand. And again, this is a decision
23 that right then and there you made on behalf of Cashman on
24 your own, correct?

25 A Yes.

1 Q Now, you submitted a complaint to the bad check
2 division as well; is that right?

3 A Yes.

4 Q We talked about that earlier. Okay. And
5 that's, I think it's J9; is that right? Okay. And you said
6 the district attorney has been prosecuting it, but it's --
7 this is just another one of those bad open-ended questions.
8 You're not sure -- nothing has happened with that case, has
9 it, that you're aware of? I mean, it's still set for trial
10 again?

11 A Yeah. It is still set for trial again. They've
12 continued it a couple of times.

13 Q Okay. And you don't know when that's set for
14 trial?

15 A If I'm not mistaken, I think it's in August.
16 But I'm not entirely sure.

17 Q I don't know either, that's why I asked. But
18 the DA has been prosecuting that case going on a couple years
19 now, correct?

20 A Yes.

21 Q Okay. Are you looking at J9, the complaint
22 form, page 2?

23 A I can. Yep. Page --

24 Q Go ahead and take a look at that.

25 A Okay.

1 Q See at the top, the very top of the submission?

2 A Okay. Where are you referring to?

3 Q Where it — there's a stamp there. It's right
4 below the — I can actually point it out.

5 A I can see a stamp, but the date's not readily
6 available, if that's where you're headed.

7 Q Yeah. The file stamp on there is — I'm talking
8 about this area right in here, just for clarification. And
9 the question is asked in that section, Does this complaint
10 involve a post-dated check. Do you see that?

11 A I do.

12 Q And then right beside it over in the box it
13 says, Any yes answer indicates this matter should be handled
14 through the appropriate civil courts. Do you see that?

15 A I do.

16 Q Did you check yes?

17 A I don't see any yeses or noes checked.

18 Q All right. Well, if you would have checked yes,
19 the district attorney wouldn't have prosecuted the claim,
20 would he, according per what that box says?

21 A I don't know that to be true. I mean, obviously
22 they are prosecuting it.

23 Q Right.

24 MS. LLOYD-ROBINSON: Objection. Mr. Norman lacks
25 personal knowledge as to what the district attorney would or

1 wouldn't do in response to this complaint form.

2 THE COURT: I think that's a fair objection and I
3 agree with it.

4 MR. BOSCHÉE: Just based solely on the -- I'm going
5 off the form.

6 BY MR. BOSCHÉE:

7 Q But so sitting here right now you don't recall
8 whether you checked yes or no to that question?

9 A Well, I mean, it's obvious I didn't check
10 either.

11 Q Okay. So you didn't check yes?

12 A And neither no.

13 Q Right. But the issue being you didn't tell the
14 DA on the front of this complaint form that what we were
15 dealing with was a post-dated check, did you?

16 A I left it blank.

17 Q And then you signed it at the bottom. That is
18 your signature, 5/31/11; is that right?

19 A Yes.

20 Q And it says above that, I hereby certify that
21 all information in this complaint is true and accurate to the
22 best of my knowledge, correct?

23 A Yes.

24 Q So the district attorney for the last two years
25 has been prosecuting a bad check claim based on a post-dated

1 check; is that right?

2 A No.

3 Q It's not?

4 A I mean, I'd -- I'm seeing here that I did not
5 check any of those boxes.

6 Q But the check in question was post dated, isn't
7 it?

8 MS. LLOYD-ROBINSON: I would object in that we don't
9 have the charges in front of us for Mr. Carvalho's case to
10 know what he's being prosecuted for, or what the charges that
11 were brought against him, whether it was related to a bad
12 check or different claims that the district attorney chose to
13 bring.

14 THE COURT: Well --

15 MR. BOSCHEE: This is the witness who would know.

16 THE COURT: -- the problem with this line in my view
17 is the definition of what's post dated. I mean, it's post
18 dated certainly from the Tuesday meeting on the 26th, but as
19 far as presenting it to the bank, that could be the mainline
20 concern with this check box scenario on the form.

21 MS. LLOYD-ROBINSON: And we don't even know why --

22 THE COURT: If it's not presented to the bank until
23 after the 29th, then it might not technically be a post-dated
24 check.

25 MR. BOSCHEE: Well, I'm asking the -- I mean, I was

1 asking the witness what he knew or didn't know or what he did
2 or didn't do with respect to this form. And I think he's
3 answered it. I think he's dealt with it.

4 THE COURT: Okay.

5 MR. BOSCHEE: So I don't have anything further to go
6 off.

7 THE COURT: All right.

8 BY MR. BOSCHEE:

9 Q Talked about the lien earlier, correct?

10 A The which lien?

11 Q The lien. The lien that is at subject to this
12 case, the 755, 893, 89.

13 A What joint thing are we looking at? Where is
14 that?

15 Q I've not even gotten to the exhibit yet.

16 That's -- we'll --

17 A How about off of memory then?

18 Q Right.

19 THE COURT: Mr. Boschee, I know you said you want to
20 stop at 5:00.

21 MR. BOSCHEE: We can stop now if -- I mean, I've got
22 about 15 minutes, but --

23 THE COURT: If you're going to finish with him, we'll
24 get him back to Utah instead of having him stay overnight.

25 MR. BOSCHEE: Well, I don't know if they have

1 redirect.

2 MS. LLOYD-ROBINSON: I'm going to have a few redirect
3 not very extensive, depending on --

4 THE COURT: I just wanted to alert you to that,
5 because you indicated you wanted to --

6 MR. BOSCHEE: We'll be -- you know, we'll be quick.

7 THE COURT: I'm not in a hurry, believe me.

8 MR. BOSCHEE: I understand.

9 THE COURT: If you've been around here long enough
10 you'll know we're not in a hurry.

11 MR. BOSCHEE: I'm actually the one with the hurry,
12 but I think --

13 THE COURT: Yeah, that's why I mentioned it to you.

14 MR. BOSCHEE: -- we'll finish. No, I think we'll
15 finish.

16 THE COURT: Okay.

17 BY MR. BOSCHEE:

18 Q Cashman is still claiming 755, 893, 89 in this
19 case, correct?

20 A Yes. But obviously if the batteries were not
21 delivered, then that needs to come off.

22 Q Okay. And you'd agree with me that the work
23 wasn't complete either, you guys didn't do the startup, did
24 you?

25 A Yeah, due to the nonpayment.

1 Q Right. Other contractors had to come in and
2 finish the startup. You wouldn't disagree with me on that,
3 would you?

4 A Well, they didn't have to.

5 Q Well, no. Mojave could have paid for it, could
6 have paid you a second time and then you would have done it
7 happily. But I understand. I understand your position.

8 A Well, now, hold on a second. Mojave could have
9 paid us a second time?

10 Q Well, they could have paid a second time.

11 A Somebody -- somebody could have paid us for the
12 first time.

13 Q All right. I understand. You guys didn't get
14 paid. I'm -- believe me, the facts of this case are not
15 really in dispute with respect to that issue. But you --
16 Cashman wasn't going to do the startup unless it got paid,
17 right?

18 A True.

19 Q And what you, and I say you, what Cashman wanted
20 was for Mojave to pay for the 755, 893. You wanted payment
21 from that from Cashman, and that would have been the second
22 time Mojave had to tender that payment, right?

23 A Brian, let me just clarify. We wanted payment.

24 Q Right.

25 A So whether it was from Mojave, Forest City, the

1 bond, the state, anybody, we would have taken payment from
2 anybody. So if Mojave wanted to tender that, then we would
3 not be here obviously.

4 Q Obviously. And it -- the 755 included the UPS
5 batteries we talked about that were not included, correct?

6 A Right.

7 Q Now, you were here for a lot of the hearings in
8 this case, weren't you?

9 A Yes.

10 Q I remember seeing you here for a lot of the
11 hearings in this case.

12 A I remember seeing you.

13 Q There was -- there's been some testimony on
14 this. There was -- there was about 50, a little over \$5200 of
15 actual money recovered from some of the other defendants by
16 Cashman, correct?

17 A Yes.

18 Q And you were here for the hearing, I believe,
19 when this Court awarded Cashman title to Jenny -- Janel
20 Rennie's house and the automobile that was purchased with the
21 misappropriated funds. You were here for that hearing, right?

22 A I was here at that hearing.

23 Q And so --

24 A But awarded and received are obviously two
25 different things realized.

1 Q Do you have -- sitting here right now, do you
2 have any knowledge that that order from this Court has been
3 appealed?

4 A We have not -- when you say appealed, I don't
5 know that it's been appealed. We have not been able to
6 execute on that house yet because it's a long and drawn out
7 process.

8 Q Even though the Court awarded title to the
9 property to Cashman?

10 A I'm going to defer to my attorney as to what the
11 next step is, but we would have got the money had we been able
12 to, trust me.

13 Q No, I --

14 A It hasn't been from --

15 Q I'm aware of how difficult it is --

16 A -- a lack of trying, that's for sure.

17 Q But the house and the automobile have been
18 awarded to Cashman. It's just a question of actually getting
19 them.

20 A Well, the automobile was awarded. There were
21 several automobiles in the -- but none of them have been
22 found, not that we haven't sent out the constable several
23 times.

24 I went out and located them myself, but by the time
25 the constables went out, the one vehicle that Jen -- that

1 Rennie had she went and traded in for another vehicle, and
2 therefore the constables wouldn't go pick up the new vehicle
3 because that wasn't part of the deal. So we have been making
4 efforts. Unfortunately, Mojave's not helped us with those
5 efforts. Thank you.

6 Q Well, I'll defer to what Mojave has or hasn't
7 done with respect to this lawsuit in a minute. But go to J18.
8 We talked about this exhibit a little earlier. This is the
9 pre-lien notice that you prepared. It's before it went out to
10 the company.

11 A Yeah. This is the internal, one of the
12 internals.

13 Q Okay. It says customer name, Mojave Electric,
14 correct, at the top?

15 A Yes.

16 Q And it's got agreement date 3/9/2010, doesn't
17 it? Am I reading that correctly?

18 A Yes.

19 Q Is there a contract between Mojave and Cashman
20 with respect to this equipment that I'm not aware of that's --
21 that we should know about in this case? Is there an actual
22 agreement dated 3/9/2010?

23 A Obviously, yes.

24 Q Okay. Do you know what that agreement was, or
25 was it written in a contract, was it a --

1 A Well, there's an R16743. That's the number of
2 the contract, so there is indeed a contract.

3 Q So you prepared this document?

4 A I directed it to be prepared. I didn't do it
5 myself.

6 Q And sitting here right now, you believe there is
7 a written contract for this equipment between Mojave Electric
8 and Cashman?

9 A Yeah. It's an agreement number, like I said,
10 R16743. I don't know what that entails without looking at it.

11 Q And you've got a certified -- you certified
12 mailed this along with the other ones that you prepared,
13 correct?

14 A Yes.

15 Q That's the certified number that we saw in the
16 pictures?

17 A Yeah. The 7009, yeah.

18 Q I'm going to look and look and look in all these
19 exhibit binders and I'm not going to find a certified mail
20 receipt for any of these pre-lien notices. Do you -- sitting
21 here right now, do you know why you never got a return receipt
22 for any of these?

23 A I don't know. I mean, all I know is we sent it
24 certified mail and there's the number. So we rely on the
25 United States Postal Service to help us out with that, but...

1 Q Do you recall ever seeing a receipt, a return
2 receipt from these guys?

3 A I couldn't tell you.

4 Q Okay.

5 A I have no idea. All I know is we put down the
6 number to verify that we've sent it certified, and as far as a
7 return receipt, I — I mean —

8 Q That's one of the reasons you send things
9 certified mail though, isn't it, is because you get a receipt
10 back saying, okay, they got it?

11 A Well, you don't always have to have a return
12 receipt to have something sent certified.

13 Q I understand. But I mean, that's one of the
14 purposes of sending certified mail is that you have that, you
15 got that handy receipt when it's received.

16 A Well, there's several different ways of doing
17 that. But the certified is that the U.S. Postal Service
18 certifies that they have sent it to the right place. So
19 whether or not we get it, a notice back, a return receipt back
20 is not always the case. The certification is that it's
21 actually been delivered. The return receipt's just an added
22 bonus, but the certified is what certifies it's been
23 delivered.

24 Q You're not a lawyer, so but you do have a fair
25 amount of experience, per your testimony, in dealing with

1 pre-liens and liens and that aspect of what Cashman was doing.
2 Do you have an understanding as to whether the lien statutes
3 in this state require a return receipt?

4 A I've never understood that they did require a
5 return receipt, only that they were sent certified.

6 Q Okay. But you are familiar with the
7 requirements of a pre-lien notice, of what needs to go out to
8 the owner and relevant parties in the case, correct?

9 A Yeah. I mean, the form that you see in front of
10 you is consistent with that.

11 THE COURT: There's a question that's just burning
12 through my head. And when I do this, I do it for a reason, to
13 clarify. I hope you don't mind.

14 MR. BOSCHEE: Feel free to interrupt at any time,
15 Your Honor. That's fine.

16 THE COURT: Okay. Take a look at the way these fonts
17 are for these certified numbers. They look real consistent
18 with what you see from the post office itself. When you look
19 at the number, the font used for all those numbers, and look
20 at the other numbers in the document, they're not in that
21 font.

22 MR. BOSCHEE: Right.

23 THE COURT: So my question is, is there a reason for
24 that? I mean, is this somehow taken from the certified
25 mailing but in a computer system or somehow? Because I mean,

1 again, there's two certified document references, it's a
2 number longer than a Social Security number. The font used is
3 the same one you see on the certified receipts, if you notice
4 that.

5 THE WITNESS: Your Honor, I can answer that if you'd
6 like.

7 THE COURT: Okay. Yeah.

8 THE WITNESS: Those are stickers.

9 THE COURT: Well, there you go.

10 THE WITNESS: So you have a certified mail receipt
11 and it's just kind of a sticker about this size, and you write
12 in where you're sending it and you put that on the thing --

13 THE COURT: Well, that's why it would look just like
14 the certified --

15 THE WITNESS: So you -- and then we just stick the
16 sticker on this little page.

17 MR. BOSCHEE: That was my assumption, but I'm glad
18 Your Honor asked the question because that was probably a bad
19 assumption for me to make.

20 THE WITNESS: So yeah, that's how we did it when we
21 did it internally.

22 BY MR. BOSCHEE:

23 Q So looking at this, looking at this pre-lien
24 preliminary notice, where on this notice would I find exactly
25 what work or services Cashman was providing for this project?

1 A Under the Agreement No. R16743, it's what it
2 states. You know, it says -- up above it says, Customer
3 contracting for said equipment or labor under that -- under
4 that number.

5 Q Sure. But I guess what I'm asking you is
6 there's nowhere in this document that spells out exactly what
7 equipment, what work Cashman is going to be performing for
8 this project, is there? Am I missing it somewhere in here?

9 A Yeah. I don't see anything where it states a
10 serial number or it states, you know, 1200 yards of dirt or
11 anything, if that's where you're going.

12 Q Sure.

13 A You know, in this case it's referring to a
14 contract and it's telling them that, hey, we're out here and
15 FYI.

16 Q But and there's no amount denoted anywhere in
17 this pre-lien notice, is there?

18 A I'm not seeing one readily, unless I missed it.

19 Q And we can go through all of the pre-lien
20 notices that you sent. I will represent to you that there are
21 no amounts denoted in any of the pre-lien notices that were
22 sent in this case. Does that comport with your recollection?
23 You didn't put any amounts in these pre-liens that you sent
24 out, did you?

25 A Yeah. I mean, from my understanding and

1 knowledge, an amount with the Nevada Statutes is not
2 necessarily required. It's the fact that we're noticing, hey,
3 we're sending stuff out, you know, and FYI, here's some of the
4 corresponding documents if you need to see them and what it
5 is.

6 Q But a general description of the work being
7 performed is required by the Nevada Statutes, isn't it?

8 A Generally, I don't -- I mean, I assume so. I
9 don't know. But that's kind of what we got going on there
10 with that R number is that you can look that up.

11 Q You reference an agreement number, but you don't
12 actually tell the owner in this document what work you're
13 performing or what services you're going to perform, correct?

14 A Yeah. Well, by nature of Cashman Equipment,
15 that's kind of what we offer. We don't sell bunches of dirt.
16 Our stuff generally has, you know, Caterpillar written on it
17 to deliver.

18 Q And we know -- I mean, sitting here right now we
19 all know what was provided, generators [unintelligible]
20 information. But looking at the pre-liens that were sent to
21 the owner, you sent certified mail to the owner, there's
22 nothing in here that would tell the owner exactly what Cashman
23 was providing, is there, what work they were providing?

24 A And yeah --

25 Q Unless they looked at the agreement number?

1 A Unless they requested agreement number.

2 Q And again, this is an agreement that you believe
3 exists between Mojave and Cashman, a contract?

4 A Yeah. I'm not necessarily making it up. I
5 mean, that's what it states, so I mean, it's not that I
6 believe it. It just is. We wouldn't have done it had it not
7 come up.

8 MR. BOSCHEE: One second.

9 (Pause in proceeding.)

10 BY MR. BOSCHEE:

11 Q One question, one final question I had was you
12 used the word earlier, and it's a fair statement, an amount
13 with this many zeros isn't something that you would typically
14 put, I think you said, used the word "risk." But, you know,
15 the concern here is that there is an amount with this many
16 zeros in play and that's why we're here.

17 Let me ask you in retrospect. Obviously there were a
18 lot of things people would have done differently and
19 everything else. Isn't it fair to say that by taking, by
20 agreeing to wait what amounted to six days to deposit this
21 check that Cashman put \$755,000 in jeopardy over a \$3700 fee?
22 Isn't that pretty much what happened here by delaying the
23 deposit of the check?

24 A I don't understand what you're saying. The
25 \$3700 fee, where are you going with that?

1 Q Well, that's approximately. Again, we can do
2 the math. But approximately what Cashman was going to owe CAM
3 for their participation, whatever they did or in this case
4 probably what they didn't do on the project, they were only
5 getting about \$3700 out of this, weren't they, give or take?

6 A Who's they?

7 Q CAM.

8 A CAM. Okay. All right. So they're getting
9 \$3700 out of it.

10 Q They're getting -- yeah. You guys basically owe
11 them \$3700.

12 MS. LLOYD-ROBINSON: Objection.

13 THE WITNESS: So restate your question. I'm
14 confused. What are you trying to say?

15 THE COURT: Hold on. Do you have an objection?

16 MS. LLOYD-ROBINSON: Well, it misstates previous
17 testimony. It was Cashman that was going to be paying CAM at
18 that point the \$3700. That was coming directly from Mojave to
19 CAM. Mojave was paying CAM the fee in Cashman's money, and
20 then CAM was paying -- that's the testimony that's been
21 offered today.

22 MR. BOSCHEE: Okay.

23 THE COURT: Do you accept that?

24 MR. BOSCHEE: I accept that. I'll withdraw that
25 question.

1 THE COURT: All right.

2 BY MR. BOSCHKEE:

3 Q So Mojave was going to owe the half-point fee,
4 even though it was a fee negotiated between Cashman and CAM;
5 is that right? Do you have an understanding as to that, or
6 don't you know?

7 A I have some understanding, but I -- that would
8 be a Keith question. He was the one that negotiated that.

9 Q And as credit manager of Cashman with your
10 experience and truthfully, your very impressive resume -- it
11 is, let's be honest -- and your impressive resume, you would
12 agree with me sitting here today that accepting the agreement,
13 wait the few days, and then not doing anything about having a
14 post-dated check was probably a bad decision on your part?
15 You would agree with that, wouldn't you?

16 A Well, you know, given the circumstances and what
17 I knew at the time, I don't know that it was a bad decision.
18 But, I mean --

19 Q Knowing what you know now?

20 A -- knowing what I know now, I mean, my goodness.

21 Q And had things played out differently we
22 wouldn't be here today, would we?

23 A Yeah. Both Mojave and us would have done a lot
24 of things differently.

25 Q Right.

1 MR. BOSCHEE: I don't think I have anything further
2 at this time, Your Honor, and we're creeping into 5:00.

3 THE COURT: All right. Thank you. Ms. Lloyd, any
4 follow-up?

5 MS. LLOYD-ROBINSON: A few minutes, Brian.

6 REDIRECT EXAMINATION

7 BY MS. LLOYD-ROBINSON:

8 Q Just to clarify, when CAM asked you to wait just
9 a few days before you deposited the check, you did that, I
10 believe you testified, because you were worried that if you
11 deposited it too early it would be returned for insufficient
12 funds?

13 A Yes.

14 Q Because if the bank had a hold on his check and
15 you deposited your check, it wouldn't go through because there
16 weren't funds available in CAM's account to pay Cashman's
17 check?

18 A Yes.

19 Q And I believe we clarified it earlier, but you
20 provided that release to CAM in exchange for CAM's check to
21 Cashman?

22 A Yes.

23 Q And just -- just curious. In your position
24 going to get the payment from CAM at that meeting with Mojave,
25 did Cashman really have the ability to demand different terms

1 or payment in all dollar bills? I mean, I don't know.

2 You know, at that point you're trying to get payment
3 for Cashman and you know that if you provide an unconditional,
4 your understanding is that if the check doesn't clear, the
5 unconditional's not enforceable against Cashman. So the
6 actions you took at that meeting in accepting that check in
7 exchange for this unconditional you considered to be
8 reasonable at that point, correct?

9 A Yeah. Again, there weren't a lot of suspicious
10 circumstances at the time.

11 Q And if you had demanded something different, did
12 you -- just, you know, do you think that you would have
13 received something different at that point given what had
14 transpired with Mojave and CAM and what was going on?

15 A No. I mean, we weren't in a position to
16 negotiate. We wanted our money and we were excited that CAM
17 showed back up in town and that we could get our check.

18 Q And Mojave arranged for you to get the check at
19 Mojave, they were going to pay CAM, CAM was going to pay
20 Cashman, everyone was going to go home and have their money
21 and be happy?

22 A Yeah. There was no indication that anything was
23 going to be -- you know, this is a standard deal. I mean, you
24 go and everybody gets their money and everything just rolls
25 downhill.

1 Q So you couldn't really have demanded CAM to sign
2 over the check from Mojave at the meeting?

3 A You know --

4 MR. BOSCHEE: Objection. That calls for speculation.
5 He didn't ask.

6 THE WITNESS: I did not ask.

7 THE COURT: Hold on. What's your thought about that
8 objection?

9 MS. LLOYD-ROBINSON: I believe we were talking in a
10 bunch of hypotheticals. So if we want to ask what if
11 questions and what if you had demanded it, what would have
12 happened; if I phrase it that way?

13 THE COURT: Yeah. I think it's a bit too
14 speculative, so I'll agree with the -- I'll sustain the
15 objection. Go ahead, Ms. Lloyd.

16 MS. LLOYD-ROBINSON: Okay. Withdrawn.

17 BY MS. LLOYD-ROBINSON:

18 Q And then you testified previously about your
19 dealings with Mojave. In your previous dealings with Mojave
20 with Cashman, there had never been anyone inserted in the
21 middle of that relationship, correct?

22 A Not to my knowledge.

23 Q Right. So there wouldn't have been cause to
24 request a joint check from Mojave if Mojave is your customer
25 and Mojave is paying you?

1 A True.

2 Q So the fact that you hadn't requested a joint
3 check before from Mojave, you wouldn't have had cause to
4 request a joint check if there was no one in the middle of
5 that relationship?

6 MR. BOSCHEE: Why I object to that, I think he -- I
7 don't think he -- that misstates testimony. I think he said
8 they did request joint checks in the past and just hadn't
9 gotten them.

10 MS. LLOYD-ROBINSON: No, that wasn't what he
11 testified to.

12 THE WITNESS: No.

13 BY MS. LLOYD-ROBINSON:

14 Q Shane, have you requested joint checks in the
15 past from Mojave?

16 A Not to my knowledge.

17 Q Because there was --

18 THE COURT: Well, the thing is this has already been
19 asked and answered in that it's pretty obvious to me, and
20 respectfully, I'm the only one that matters, you know, why the
21 joint check request was something that occurred in this
22 situation because of CAM's involvement. So it's really a moot
23 point.

24 BY MS. LLOYD-ROBINSON:

25 Q And then just the last thing I think we need to

1 go over really quickly, if you want to turn to joint Exhibit
2 18. That was the preliminary notice that Mr. Boschee had you
3 take a look at.

4 A Okay.

5 Q And right there in the middle of the page right
6 above that box that identifies the project, you'll notice
7 there's a description there. What does that state?

8 A In the --

9 Q The little writing right above that box in the
10 middle of the page.

11 A "The undersigned notifies you that they have
12 supplied equipment for the improvements of the property
13 identified as --"

14 Q So that right there is a description of what
15 Cashman was doing on the project, correct?

16 A Yeah. I mean, that's -- yeah.

17 Q And that's why it's included there, is to
18 provide notice that Cashman is going to be out there supplying
19 equipment?

20 A Yes.

21 Q Okay. And just real quickly, I think there was
22 a little bit of testimony on it. You understand a difference
23 with the post office between certified mail and certified mail
24 return receipt?

25 A Yeah. I guess there's a distinction, but I

1 mean, as long as we send it certified mail...

2 Q Your understanding was the preliminary notice
3 requires certified mail.. If you sent it certified mail, that
4 satisfies that requirement?

5 A Yes.

6 MS. LLOYD-ROBINSON: I have nothing further.

7 THE COURT: All right. Ms. Lloyd, thanks.

8 Mr. Boschee, any follow-up?

9 MR. BOSCHEE: Stay on -- yeah, this will be
10 [inaudible]. Stay on J18.

11 RE CROSS-EXAMINATION

12 BY MR. BOSCHEE:

13 Q Cashman provided services on that property too,
14 didn't it? It was supposed to, right?

15 A Yes. In related to the equipment, yes.

16 Q They were supposed to start it up and other
17 things?

18 A Right.

19 Q Right. And in looking at that, that language
20 appears to be fairly boilerplate language from a form that you
21 guys used fairly regularly; is that right?

22 A Yes.

23 Q Can you tell me just from looking at that
24 document what equipment was being provided for the project?

25 A Again, it's related to the R16743 agreement.

1 Q So the owner would actually have to, if they got
2 this pre-lien notice, would have to look up that agreement and
3 find it and to figure out what equipment or services you were
4 providing, right?

5 A Right.

6 Q You just testified also that there weren't
7 suspicious circumstances with respect to this dealing, and
8 that's why you really weren't concerned at the time. Do you
9 remember saying that about 30 seconds ago?

10 A I do.

11 Q You mean suspicious circumstances like no money
12 in his bank account, no credit, traveling to and from
13 Afghanistan literally seemingly at the drop of a hat, you
14 don't consider those suspicious circumstances?

15 A Again, at the time that didn't seem suspicious.
16 He was a disabled veteran who'd been called up to go back to
17 Afghanistan, and we live in Vegas and Nellis Air Force is a
18 big part of it, and that's the whole reason he's a DBE is he's
19 affiliated with the military. So no, didn't, not in that
20 case.

21 I mean, where there's some reasons that, you know,
22 were there things I could have deemed suspicious that
23 obviously are very clear now? But at the time, you know,
24 having to wait for a check to clear that their bank puts on
25 hold, that's not an abnormal --

1 Q After you got that second check when you went to
2 his house, Carvalho's house and you got the second check and
3 he asked you not to come -- not to follow him to the bank,
4 didn't that seem suspicious to you?

5 A Well, by that time everything was suspicious. I
6 mean, he'd threatened my life, you know, in so many words and
7 all sorts of things. So suspicion was on high alert by that
8 time.

9 Q Okay. But you didn't follow him to the bank to
10 get this cleared up, did you?

11 A No.

12 MR. BOSCHEE: I have nothing further.

13 THE COURT: Ms. Lloyd, anything further?

14 MS. LLOYD-ROBINSON: I have nothing further, Your
15 Honor.

16 THE COURT: All right. Mr. Norman, you're excused
17 and I take it you're heading back to Utah.

18 THE WITNESS: I plan on it, yes.

19 THE COURT: What time is your airplane?

20 THE WITNESS: 7:00.

21 THE COURT: Well, you better get going. Thanks a
22 lot.

23 THE WITNESS: Thank you.

24 THE COURT: All right. Go ahead, Mr. Norman. Take
25 care.

1 That will be it for today. Anything else anybody
2 needs to do on the record?

3 MS. LLOYD-ROBINSON: No.

4 MR. BOSCHEE: No. No.

5 THE COURT: Okay. We'll go off the record then.

6 (Court recessed at 5:10 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

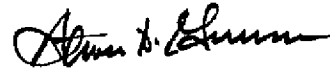
I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CASHMAN EQUIPMENT COMPANY,)
)
Plaintiff,)
vs.)
)
CAM CONSULTING INC.,)
)
Defendant.)
)
_____)
AND RELATED PARTIES)

CASE NO. A-11-642583-C
A-11-653029-C
DEPT NO. XXXII

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ROB BARE, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 2

WEDNESDAY, JANUARY 22, 2014

APPEARANCES:

For the Plaintiff:

JENNIFER LLOYD-ROBINSON, ESQ.
BRIAN J. PEZZILLO, ESQ.

For the Defendant:

BRIAN W. BOSCHEE, ESQ.
WILLIAM MILLER, ESQ.

RECORDED BY CARRIE HANSEN, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

WITNESSES FOR THE PLAINTIFF:

NANCY BRISENO-RIVERA

Direct Examination By Ms. Lloyd-Robinson	4
Cross-Examination By Mr. Boschee	23
Redirect Examination By Ms. Lloyd-Robinson	30

DAVID PHILLIPS

Direct Examination By Ms. Lloyd-Robinson	33
Cross-Examination By Mr. Boschee	43
Redirect Examination By Ms. Lloyd-Robinson	50
Recross Examination By Mr. Boschee	55

BRIAN BUGNI

Direct Examination By Ms. Lloyd-Robinson	65
Cross-Examination By Mr. Boschee	84
Redirect Examination By Ms. Lloyd-Robinson	105
Recross Examination By Mr. Boschee	115

WITNESSES FOR THE DEFENDANT:

CHRIS MEIERS

Direct Examination By Mr. Boschee	128
Cross-Examination By Ms. Lloyd-Robinson	139
Redirect Examination By Mr. Boschee	151
Recross Examination By Ms. Lloyd-Robinson	154
Further Redirect Examination By Mr. Boschee	155

PETER FERGEN

Direct Examination By Mr. Boschee	164
Cross-Examination By Ms. Lloyd-Robinson	176

1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 22, 2014, 1:11 P.M.

2 * * * * *

3 THE COURT: And there's no witness exclusionary rule?

4 MR. BOSCHEE: There is. Chris Meiers just went out
5 in the hallway. He's going to be a witness later this
6 afternoon.

7 THE COURT: Okay.

8 MR. BOSCHEE: David Phillips is here. He's an
9 owners' representative.

10 THE COURT: Okay.

11 MR. BOSCHEE: And will also be a witness this
12 afternoon.

13 THE COURT: All right. Good.

14 MS. LLOYD-ROBINSON: That's correct. Okay.

15 THE COURT: Are you ready to go?

16 MS. LLOYD-ROBINSON: I'm ready.

17 THE COURT: All right. Ms. Lloyd, go ahead.

18 MS. LLOYD-ROBINSON: I'd like to call Nancy Briseno
19 to the stand.

20 NANCY BRISENO-RIVERA, PLAINTIFF'S WITNESS, SWORN

21 THE CLERK: Thank you. Please be seated. Ma'am, can
22 you state and spell your first and last name for the record,
23 please?

24 THE WITNESS: Nancy Briseno-Rivera, N-A-N-C-Y,
25 B-R-I-S-E-N-O hyphen R-I-V-E-R-A.

KARR REPORTING, INC.

1 DIRECT EXAMINATION

2 BY MS. LLOYD-ROBINSON:

3 Q Good morning -- or good afternoon, I guess. Can
4 you tell me where you're currently employed?

5 A Whiting Turner.

6 Q And what's your position with Whiting Turner?

7 A Project manager.

8 Q And how long have you been in that position with
9 Whiting Turner?

10 A For about 13 years.

11 Q And you're familiar with a project referred to
12 as the new Las Vegas City Hall?

13 A Yes.

14 Q Okay. And can you tell me how Whiting Turner
15 was involved on this project?

16 A We were the CMAR for the project -- construction
17 management.

18 Q Okay. And what was your direct involvement on
19 the project?

20 A I was the lease project manager.

21 Q Can you just briefly describe what that entails?

22 A I oversaw the big picture of the project, just
23 making sure that we were within the budget and on schedule.

24 Q You were the one in charge for Whiting Turner of
25 that entire project?

1 A Yes.

2 Q Okay. And Whiting Turner contracted with QH Las
3 Vegas to construct — be the constructing manager at risk on
4 this project?

5 A Yes.

6 Q And the City of Las Vegas was not the owner of
7 this project, correct?

8 A Correct.

9 Q And the owner QH Las Vegas employed Forest City
10 as its owner rep on the project?

11 A That's correct.

12 Q So who did you deal with at Forest City on
13 behalf of the owner?

14 A David Phillips mainly.

15 Q So Whiting Turner contracted with Mojave
16 Electric to perform the entire electrical scope on this
17 project?

18 A Yes.

19 Q And Mojave was selected because it had the
20 lowest bid?

21 A Lowest qualified bid.

22 Q And so you're familiar with the Mojave
23 subcontract?

24 A Yes.

25 Q Okay. Let's go ahead and turn to Joint Exhibit

1 40. Do you have it there in front of you?

2 A Mm-hmm.

3 Q Are you familiar with this document?

4 A Yes.

5 Q And can you just briefly describe what it is?

6 A It's our subcontract that we have with
7 subcontractors, giving them, basically the scope of work that
8 they're responsible for.

9 Q And this is specifically with Mojave on this
10 project that we're talking about?

11 A Yes.

12 Q And if you want to turn to page 19 -- I'm sorry,
13 page 14 of the exhibit, so J40-14, this is where you would
14 find Mojave's scope of work, correct?

15 A Specific scope of work, yes.

16 Q Okay. And that just basically says, All
17 electrical?

18 A I'm sorry?

19 Q It says, All electrical on the project?

20 A Yes.

21 Q Okay. And if we turn to page 8 of the exhibit
22 we would see what Mojave is supposed to be paid for that work?

23 A Yes.

24 Q And Mojave was to be paid \$10,996,669 for the
25 electrical scope on this project?

1 A Actually, not -- \$10,969,669 --

2 Q 669, right. Correct. And then Mojave's scope
3 of work here included the supply and installation of the
4 emergency generators and UPS system?

5 A Yes.

6 Q And those materials were the materials that were
7 supplied by Cashman on this project?

8 A Yes.

9 Q And that's the reason why we're here today is
10 Cashman didn't get paid for those particular materials?

11 A Yes.

12 Q So it was part of Mojave's scope to perform that
13 installation of the generator and the UPS system?

14 A Yes.

15 Q Okay. You're aware that Cashman recorded a lien
16 on the project?

17 A Yes.

18 Q And Whiting Turner required Mojave to obtain a
19 lien release bond to deal with that lien?

20 A Yes.

21 Q And if you want to turn to Joint Exhibit 39.
22 Are you familiar with this document?

23 A Yes.

24 Q You want to look through the pages, can you just
25 describe to me what it is?

**AFFIDAVIT OF CUSTODIAN RECORDS**

P.O. Box 990
Las Vegas, Nevada 89125-0990
www.nsbank.com

Case: Cashman Equipment Company v. Cam Consulting
Case #A642583

I, Kevin Mwangi, being first duly sworn, depose, and say:

1. I am over the age of twenty-one (21) years and fully competent to testify to the statements made in this Affidavit in a court of law.
2. The statements made in this Affidavit are true to the best of my own personal knowledge, except those made upon information and belief, and, as to those statements, I believe them to be true.
3. I am a custodian of records for Nevada State Bank.
4. I hereby certify that the records attached hereto are a true and correct copy of the original records maintained and created in the ordinary course of business of Nevada State Bank responsive to the subpoena issued by Pezzillo Robinson on or about May 3, 2012.
5. I hereby certify that the records attached hereto: (A) were made at or near the time of the occurrence by, or from information transmitted by, a person with knowledge of the matters set forth therein; (B) were kept in the course of regularly conducted activity; and, (C) as a regular practice, such records are made in the regularly conducted activities of Nevada State Bank.

FURTHER your Affiant sayeth naught.

Signature: _____

Kevin Mwangi

State of Nevada

County of Clark

SUBSCRIBED and sworn to before me this

17 day of May, 2012
by Kevin Mwangi.

Caranne Gainley
Notary Public



J60-100

Cash1696

JA 00006501

05-02-2011

0018 NEVADA STATE BANK
00004 THAIN JONES OFFICE

PAGE . 14

DEPOSIT

STOP PAYMENTS AND SUSPECTS

01-016

KEY DATA				RECORD DATA						
BRANCH	TYPE	DESG	ACCOUNT	ITEM-AMOUNT	SERIAL-NBR	TC	EFF-DT	SEQ-NBR	TYPE	
OFFICER		SHORT NAME		ORDER-AMOUNT	ENT-DT	EXP-DT	TY	LO-SER	HIGH-SER	DESCRIPTION

SEQ

00004	104	D	0262031032	755,893.89	1036	0751	5-02-11	9494249092	SERIAL SUSPECT	
		CAM CONSULTING		755,893.83	4-28-11	4-28-12	ST	1036	1036 CASHMANEQUIP/4-29/PPR 755893.	1

J60-101

Cash1697

JA 00006502

Date: June 4, 2008

SPM 968

SECTION: NEW ACCOUNTS/ACCOUNT MAINTENANCE SUBJECT: STOP PAYMENTS/
CAUTIONS/ALERTS

PURPOSE

A stop payment order is a revocation of an order to pay a check or preauthorized transfer. Stop payments are potentially a very high risk area of banking; therefore a transaction performed on an account containing a stop payment will be interrupted with the Host Response Screen alerting the teller and must be handled with strict adherence to the following policy and procedures.

POLICY

Nevada State Bank will honor an order for stop payment from a client on any **unpaid** check drawn on the client's account unless the check was used to purchase any of the following items:

- Official Checks
- Money Orders
- Bank Drafts
- Traveler's Checks
- Wire Transfers
- Checks written for "cash"
- Financial Commitments
- Bank Services

However, if an item inadvertently pays over a stop payment order, the depositor has the burden of proving the extent of loss before receiving any reimbursement (See Nevada Revised Statute 104.4403 at <http://law.onecle.com/nevada/ucc/104.4403.html>). If there is indication that either the maker or payee has benefited unjustly from the payment of an item, the maker may not be entitled to reimbursement from us and **may need to seek restitution from the payee**. All bank service charges resulting from our failure to stop payment should be reversed, including the initial fee.

Stop payment orders on Visa Check Card (debit card), Point of Sale (POS) and Credit Card transactions will not be accepted by Nevada State Bank as these are not written checks. See SPM 161 Reg E-Electronic Funds Transfer for procedures on disputing charges on these types of transactions. For stop payment procedures on Official Checks see SPM 1010-Official Checks.

STOP PAYMENT ORDERS

Orders for Stop Payment are requested by authorized signers only and are:

- Requested through any branch location regardless of where account is housed.
- Requested by any authorized signer regardless of which signer may have signed the check in question or preauthorized the transfer.

Exception: In case of maker's death and in certain circumstances, an executor or administrator of an estate may place a stop payment order after providing a certified copy of the court ordered appointment and death certificate. Contact Branch Administration for further instruction.

- Requested by any one person on two-signature required accounts.
- Assessed a fee which automatically posts to the account same day stop payment is placed (See **Consumer Deposit Account Disclosure and Fee Schedule** for current fee associated with order). If fee is to be waived for client, see SPM 400 General Ledger for policy and procedure.

Orders for Stop Payment may not be:

- Authorized, edited or deleted by previous signers, payees and endorers of an account.
- Honored prior to the following business day order is placed (Assure each client understands the meaning of "business day").

Accepting Stop Payment Orders

The responsibility of accepting a stop payment order must be restricted to employees who have been trained in this procedure. It is advisable to have an informed conversation with a client at the time of stop payment request to determine areas of concern that must be considered before processing a stop payment order.

- Are there enough funds in the account to collect stop payment fee? (If not, do not process.)
- Is client writing NSF checks and requesting stops (i.e., checks written to Payday Loans, etc.)? After processing stop payment order, it may be necessary to consider freezing/closing accounts for mishandling.
- Try to determine how an item will process (Merchants can convert written checks to POP checks or ACH debit items, reducing a client's right to place a stop payment. Suggest the client contact merchant/payee prior to placing a stop payment).
- Has item in question processed previously but sent back NSF causing item to appear as a "suspect match?" If item has been sent back, a **stop payment order may be placed**.
- Determine if stopping payment on a check may still allow same debit to process as an ACH at a later date.

Remember: When a client writes a check it is a written obligation or "promise to pay." Whether the item is presented as a paper item or ACH debit, the "holder" has a legal right to collect. A maker can always place a stop payment but the payee may be able to override the order. Bad Check Writing Laws help individuals and businesses prosecute offenders who abuse these laws. Stop payment requests may be subpoenaed and used to collect monies. See NRS 597.960
<http://www.leg.state.nv.us/NRS/NRS-597.html> for more information.

Stop payment orders may be accepted via:

- In person
- Verbally (telephone)
- Fax
- Mail
- E-mail

Use extreme caution when accepting orders from clients other than "in person." Verify identity with complete certainty using security questions, call backs, and FileNet (when applicable). If Stop

Payment orders are received verbally or by e-mail, client must be advised that written confirmation is required within 14 calendar days or the order will cease to be binding upon the bank in accordance with NRS 104.4403. Written authorizations must be attached to the Stop Payment order.

Processing Stop Payment Orders

Branches will process stop payment orders through Service Desk Top in Zeus. Employees without access to Zeus will process stop payments via Host. Questions regarding this placement of stop payment should be referred to Branch Administration.

- In all cases, the client must be advised that:
 - If the information given to the Bank is not correct or client fails to provide any other information reasonably requested regarding the item, the Bank will not be responsible if it is unable to stop payment.
 - The bank shall have no liability for failure to honor the stop payment order on any check which may be presented to the Bank during the same business day or during the next business day if the stop payment order was received after the close of the business day.
- Obtain **exact and complete** information to complete the request. Stop payment cannot be accepted without the following:
 - Account number
 - Amount
 - Reason for stop payment
 - Payee
 - Check number (For Stop Payments on a series of checks, if amounts are known, place stops individually and not as a series)
 - Date on Item

Note: For stop payments on pre-authorized transfers, request must be at least three days in advance of scheduled transfer. Choose ACH Stop in Service Desktop maintenance and then:

- Choose "Stop Payment" for a one time only. Subsequent debits will not be stopped.
- Choose "Authorization Revoked" if the intention is to ensure that no further debits are paid due to cancellation of arrangement with originator (Ensure client has contacted originator first then have client complete form BK-0005 Affidavit of Improper/Unauthorized ACH Debit Activity).
- For all other ACH stops or disputes, refer to SPM 161 Reg E-Electronic Funds Transfer.
Note: If a processed order for stop payment matches either dollar amount or check number, a screen referencing "suspect match" will appear allowing employee to determine whether or not to continue with uploading of stop payment. **If a processed item matching the check number and amount has paid, stop payment cannot be placed unless item was previously presented and returned NSF.**
- Confirmation of order will print automatically.
- Top portion is for client's records; bottom portion requires client's signature. (If client is not present, i.e., stop payment order is requested other than in person):
 - Retain **copy** of form in branch
 - Send original to client at mailing address on system
 - Be certain to include a return envelope

- Instruct client to sign bank's copy and return within 14 days
- When branch receives signed copy, attach client's original request (if applicable) and continue as follows

Note: If client does not return form, do not remove stop payment from system. Retain client's original request (if applicable) along with branch copy of stop payment form (notate "No Response" on form) in Branch Correspondence file. Retain according to SPM 202 Retention Schedule of Bank Records.

- Forward bottom portion to "Stop Payments" at mail code UT-SLSC-0896 (If stop payment is being placed on a pre-authorized transfer, fax copy of order to ACH Department along with Affidavit of Improper/Unauthorized ACH Debit Activity if applicable).
- Exception Items Department will retain form according to Corporate Retention Schedule.

Note: If computer system is inaccessible, Stop Payment form BK-0114 must be completed, signed and forwarded to UT-SLSC-0896 for retention.

Stop Payment on Post-Dated Check

At times, a client may request a stop payment be placed on a post-dated item. It is not recommended that clients issue post-dated checks as a means of withdrawal. If the bank charges an otherwise properly payable but post-dated item against an account prior to an indicated date, it is not liable unless client has provided:

- Oral or written notification of stop payment to the Bank prior to the item being presented.
- **Complete and exact** information regarding the item.
- Current fee associated with stop payment.

When processing stop payment on a post-dated item, the field titled, "Expiration Date" will need to be changed to reflect one day prior to actual date on item. "Description" field should read "Do not pay until (date of item)."

STOPPED CHECK PRESENTED FOR PAYMENT

When branch is presented with an 'on us' check for encashment or deposit and a stop payment is present on the item, the Host Response Screen will interrupt the transaction with a "Stop Payment" message. View Stop Payment Inquiry screen through Service Desktop (An alert/caution may also be present on the account. See subsection **Teller Alert/Caution System** to review explanation of systems). If it is determined the item is not to be paid, the following procedures will apply:

- Stamp or hand-write "Payment Stopped" on front of the item.
- Punch 2 or 3 holes in MICR line of the item.
- Return item to the presenter.

***If item has been reported as stolen, detain presenter and refer item to a Supervisor/Manager. Do not return item to presenter.**

STOP PAYMENT HITS AND SUSPECTS

If an item is received from a correspondent bank or processed inadvertently (i.e., accepted in a deposit), item should reject and appear on next day's exception (posting reject) report for processing as either Stop Payment Hit or Suspect.

- If both the amount and check number agree with the stop payment order, this will be a MICR match and is considered a "Hit." In this case, the item does not charge to the account. Item will be reviewed and returned if confirmed a match to the stop payment.
- If the item matches on either the amount or check number (not both) the item will post to the client's account and reject as a "Suspect" on the report. The item will be reviewed to determine if it is a match to the stop payment. If item is a match it will be reversed from the account and returned.

If an item is returned as payment stopped, the Stop Payment order will not be removed from the system prior to the expiration date. This provides added protection should the item be presented again at a later date.

DELETION OR RENEWAL OF STOP PAYMENT ORDER

Stop payment orders are scheduled to automatically delete one year from date of placement. Clients can request stop payment deleted or extended at anytime during this period. Request is processed through Service Desktop in Zeus (Departments without access to Zeus will maintenance via Host Screen). Extension/Deletion form will automatically print. **Client must sign for all changes to stop payment order.** Send signed order to UT-SLSC-0896 for retention.

TELLER CAUTION/ALERT SYSTEM

Teller's "warning" system consists of the Stops/Cautions and Teller Alerts, both reviewed and maintained through Service Desktop in Zeus (Departments without access to Zeus will view and maintain both via Host. Contact Branch Administration with questions). When a Caution or an Alert is present on an account, it will:

- Interrupt a transaction's Host Response screen for review of caution/alert.
- Require an override to proceed.
- Serve as a warning to employees for special handling of accounts that may be affected due to lost or stolen checks, stop payments, etc.

Cautions

When placing cautions on the system, if more than one will be required, separate placement screens will be necessary. When a caution is in place on an account:

- Host Response screen will require the teller to access caution inquiry screen for review of details before proceeding.
- Ability to proceed will require teller override only.
- Reports containing cautioned accounts are generated through X-Net and reviewed by Central Operations. Cautions are removed and replaced whenever possible, with Teller Alerts.

Stop/Caution screen should only be used when Teller Alerts cannot completely convey details needed to caution an account.

Teller Alerts

Teller Alert system provides space for six alerts to post to an account with pre-determined override ability for each one. With Teller Alerts in place on an account, Host Response screen will:

- Include reason for interruption of transaction.

- Require highest override to be returned if more than one alert is in place and will clear all overrides (ensure **all** alerts in message area of Host Response screen are reviewed prior to override).

Benefits of Alert Codes

- Eliminates extensive review and maintenance of the Stop/Hold Journal report.
- Allows **bank** to choose the level of authority able to override the alert.
- Teller Alerts have been standardized throughout the corporation bringing consistency to the banks and branches.

Deposit Agreement and Disclosure

May 2011

NEVADA STATE BANK
THE DOOR TO YOUR FUTURE
www.nsbank.com



TABLE OF CONTENTS

	Page
TERMS AND CONDITIONS OF YOUR ACCOUNT	3
AGREEMENT	3
AMENDMENTS AND TERMINATION	3
IMPORTANT ACCOUNT OPENING INFORMATION	3
OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION	3
Individual Account	3
Joint Account - With Survivorship	3
Community Property Account - No Survivorship	3
Revocable Trust or Pay-On-Death Account	4
UTMA Accounts	4
Fiduciary Accounts	4
Business Organization or Proprietorship Account, or Association Account	4
Power of Attorney	4
Death or Incompetence	4
DEPOSITS	4
Direct Deposits	4
Endorsements	5
Remotely Created Checks (Deposited to Your Account)	5
Truncation, Substitute Checks, and Other Check Images	6
YOUR ABILITY TO WITHDRAW FUNDS	6
Longer Delays May Apply	6
Special Rules for New Accounts	6
WITHDRAWALS	7
Generally	7
Notice of Withdrawal	7
Checks and Withdrawal Rules	7
Transfer Limitations	7
Restrictive Legends	7
Facsimile or Scanned Signatures	7
Check Cashing	8
Overdrafts	8
Credits to Your Account and Order of Processing Withdrawals	8
Payment or Refusal of Transaction that Would Overdraw your Account	8
Postdated Checks	8
State-Dated Checks	9
Waivers	9
Multiple Signatures, Electronic Check Conversion, and Similar Transactions	9
Stop Payments	9
Remotely Created Checks (Drawn on Your Account)	9
SUBSTITUTE CHECKS AND YOUR RIGHTS	9
TRUTH-IN-SAVINGS DISCLOSURE	10
Interest Checking Accounts, Money Market Accounts, and Statement Savings Accounts	10
Rate Information	10
Frequency of Rate Changes	10
Determination of Rate	10
Compounding and Crediting Frequency	10
Effect of Closing an Account	11
Computation Method	11
Accrual of Interest on Noncash Deposits	11
Transaction Limitations	11
Time Deposits (Certificates of Deposit)	11
Rate Information	11
Compounding and Crediting Frequency	11
Daily Balance Computation Method	11
Accrual of Interest on Noncash Deposits	11
Transaction Limitations	11
Early Withdrawal Penalties	11
Early Withdrawal Penalties and Involuntary Withdrawals	11
Withdrawal of Interest Prior to Maturity	11
Automatically Renewable Time Accounts	11
Non-automatically Renewable Time Accounts	11
Auctioned Certificates of Deposit	11
ELECTRONIC FUND TRANSFERS - YOUR RIGHTS AND RESPONSIBILITIES	12
Electronic Fund Transfers Initiated by Third Parties	12
Preauthorized Credits	12
Preauthorized Payments	12
Electronic Check Conversion	12
Electronic Returned Check Charge	12
Telephone Transfers - Types of Transfers	12
ATM Transfers - Types of Transfers and Dollar Limitations	12
Types of ATM Card Point-of-Sale Transactions and Dollar Limitations	12
Types of Visa Debit Card Point-of-Sale Transactions and Dollar Limitations	13
Holds on Funds in Deposit Account for Pending Transactions	13
Currency Conversion	13
Advisory Against Illegal Use	13
Non-Visa Debit Transaction Processing	13
Internet Banking Computer Transfers - Types of Transfers	13
Limitations on Frequency of Transfers	14

Fees.....	14
ATM Operator/Network Fees.....	14
Documentation.....	14
Terminal Transfers.....	14
Preauthorized Credits.....	14
Periodic Statements.....	14
Preauthorized Payments - Right to Stop Payment and Procedure for Doing So.....	14
Liability for Failure to Stop Payment of Preauthorized Transfer.....	14
Preauthorized Payments - Notice of Varying Amounts.....	14
Limitation on Liability.....	14
Liability for Failure to Make Electronic Fund Transfers.....	14
Confidentiality.....	14
Unauthorized Transfers.....	15
Consumer Liability.....	15
Additional Limit on Liability for Visa Debit Card.....	15
Contact In Event of Unauthorized Transfer.....	15
Error Resolution Notice.....	15
ACH AND WIRE TRANSFERS.....	15
FUNDS TRANSFERS.....	16
Funds Transfer Definition.....	16
Authorized Account.....	16
Acceptance of Your Payment Order.....	16
Cutoff Time.....	16
Payment of Your Order.....	16
Security Procedure.....	17
Duty to Report Unauthorized or Erroneous Payment.....	17
Identifying Number.....	17
Record of Oral or Telephone Orders.....	17
Notice of Credit.....	17
Provisional Credit.....	17
Refund of Credit.....	17
Amendment of Funds Transfers Agreement.....	17
Cancellation or Amendment of Payment Order.....	17
Intermediaries.....	17
Limit on Liability.....	17
Erroneous Execution.....	17
Objection to Payment.....	17
DISPUTES.....	18
Resolving Account Disputes.....	18
"Dispute" Defined.....	18
Jury Waiver.....	18
Class Action Waiver.....	18
Agreement to Submit to Binding Arbitration.....	18
Survival.....	18
Reliance.....	19
SECURITY.....	20
Account Numbers.....	20
Access Devices.....	20
Blank Checks.....	20
ATM/Night Deposit Facility User Precautions.....	20
OTHER TERMS AND CONDITIONS.....	21
Account Transfers.....	21
Address or Name Changes.....	21
Backup Withholding/TIN Certification.....	21
Cash Transaction Reporting.....	21
Changing Account Products.....	21
Check Processing.....	21
Check Storage and Copies.....	22
Checking Account Organization.....	22
Claim of Loss.....	22
Credit Verification.....	22
Dormant Accounts.....	22
Internet Banking.....	22
Internet Gambling Notice.....	22
Legal Actions Affecting Your Account.....	22
Liability.....	23
Lost, Destroyed, or Stolen Certified, Cashier's or Teller's Checks.....	23
Monitoring and Recording Telephone Calls.....	23
Night Deposit Facilities - Terms of Use; When Deposit Occurs.....	23
Notice of Negative Information.....	24
Pass-Through Insurance.....	24
Pledges.....	24
Setoff and Security Interest.....	24
Statements.....	24
Telephone Communications.....	25
Telephonic Instructions.....	25
Telephone Transfers.....	25
Unclaimed Property.....	25
OVERDRAFT DEPOSIT TRANSFERS.....	25
SAFE DEPOSIT BOX LEASE AGREEMENT.....	26
REDDI RESERVE OVERDRAFT PROTECTION.....	27

TERMS AND CONDITIONS OF YOUR ACCOUNT AGREEMENT

This document, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your account(s) with us. Please read this carefully. If you sign the signature card or open or continue to use the account, you agree to these rules. You will receive a separate schedule of rates, qualifying balances, and fees if they are not included in this document. If you have any questions, please call us.

This agreement shall be governed and interpreted in accordance with applicable federal laws and the laws of the state of Nevada (except to the extent that this agreement can and does vary such rules or laws) regardless of the state in which you reside or where you use the service provided hereunder or conduct any transaction, and regardless of that state's rules for choice of law. The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here. The purpose of this document is to:

- (1) summarize some laws that apply to common transactions;
- (2) establish rules to cover transactions or events which the law does not regulate;
- (3) establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
- (4) give you disclosures of some of our policies to which you may be entitled or in which you may be interested.

If any provision of this document is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. We may permit some variations from our standard agreement, but we must agree to any variation in writing either on the signature card for your account or in some other document.

As used in this document the words "we," "our," and "us" mean the financial institution and the words "you" and "your" mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. The headings in this document are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

AMENDMENTS AND TERMINATION

We may change any term of this agreement. Rules governing changes in interest rates are provided separately in the Truth-in-Savings disclosure or in another document. For other changes, we will generally give you reasonable notice in writing or by any other method permitted by law. Your account may be closed without notice to you when the account balance is zero. We may also close this account at any time upon reasonable notice to you and lender of the account balance personally or by mail. Items presented for payment after the account is closed may be dishonored. Reasonable notice depends on the circumstances, and in some cases it might be reasonable for us to give you notice after the change or account closure becomes effective. For instance, if we suspect fraudulent activity with respect to your account, we might immediately freeze or close your account and then give you notice. You agree to keep us informed of your current address at all times. Notice from us to any one of you is notice to all of you. If we have notified you of a change in any term of your account and you continue to maintain your account after the effective date of the change, you have agreed to the new term(s).

IMPORTANT ACCOUNT OPENING INFORMATION

Federal law requires us to obtain sufficient information to verify your identity. You may be asked several questions and to provide one or more forms of identification to fulfill this requirement. In some instances we may use outside sources to confirm the information. The information you provide is protected by our privacy policy and federal law.

OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION

These rules apply to this account depending on the form of ownership and beneficiary designation, if any, specified on the account records. We reserve the right to refuse some forms of ownership on any or all of our accounts. We may also refuse to open an account for any reason. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds.

Individual Account - is an account in the name of one person.

Joint Account - With Survivorship (And Not As Tenants in Common or Community Property) - is an account in the name of two or more persons. Each of you intend that when you die the balance in the account (subject to any previous pledge to which we have agreed) will belong to the survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. If the account is issued to a husband and wife, they intend that any community property in the account be transmuted (changed) into separate property and that all the property in the account, including earnings, be held jointly with the right of survivorship. Upon the death of either spouse the property will vest in and belong to the surviving spouse.

Community Property Account - No Survivorship - Such an account is issued to a husband and wife who intend that all of the property in the account, including earnings, be held as community property without right of survivorship.

Revocable Trust or Pay-On-Death Account - If two or more of you create this type of account, you own the account jointly with survivorship. Beneficiaries cannot withdraw unless: (1) all persons creating the account die, and (2) the beneficiary is then living. If two or more beneficiaries are named and survive the death of all persons creating the account, beneficiaries will own this account in equal shares, without right of survivorship. The person(s) creating either of these account types may: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the account funds at any time.

UTMA Accounts - Under the Uniform Transfers to Minors Act, the funds in the account are owned by the child who has unconditional use of the account when he or she reaches the age of majority or as determined by applicable state law. Before that time, the account may be accessed only by the custodian (or successor custodian), and the funds must be used for the benefit of the child. We, however, have no duty or agreement whatsoever to monitor or insure that the acts of the custodian (or successor custodian) are for the child's benefit. For this type of account, the child's SSN/TIN is used for the Backup Withholding Certification.

Fiduciary Accounts - Accounts may be opened by a person acting in a fiduciary capacity. This account may be opened and maintained by a person or persons named as a trustee under a written trust agreement, or as executors, administrators, or conservators under court orders. You understand that by merely opening such an account, we are not acting in the capacity of a trustee in connection with the trust nor do we undertake any obligation to monitor or enforce the terms of the trust or wills.

Business, Organization, Proprietorship and Association Accounts - Earnings in the form of interest, dividends, or credits will be paid only on collected funds, unless otherwise provided by law or our policy. We may require the governing body of the entity opening the account to give us a separate authorization telling us who is authorized to act on its behalf. We will honor the authorization until we actually receive written notice of a change from the governing body of the entity. You represent and warrant that any account opened for or in the name of a business organization (including but not limited to a corporation, limited liability company, or partnership), proprietorship, or association is not established, maintained or used for personal, family or household purposes, and shall not otherwise be characterized for any reason as a "consumer" account.

Power of Attorney - You may wish to appoint an agent to conduct transactions on your behalf. (We, however, have no duty or agreement whatsoever to monitor or insure that the acts of the agent are for your benefit.) This may be done by allowing your agent to sign in that capacity on the signature card or by separate form, such as a power of attorney. A power of attorney continues until your death or the death of the person given the power. If the power of attorney is not "durable," it is revoked when you become incompetent. We may continue to honor the transactions of the agent until: (a) we have received written notice or have actual knowledge of the termination of the authority or the death of an owner, and (b) we have had a reasonable opportunity to act on that notice or knowledge. You agree not to hold us responsible for any loss or damage you may incur as a result of our following instructions given by an agent acting under a valid power of attorney. Except as may be required by applicable state or federal law, we may refuse to comply with a power of attorney without cause or prior notice.

Death or Incompetence - You agree to notify us promptly if any person with a right to withdraw funds from your account(s) dies or becomes legally incompetent. We may continue to honor your checks, items, and instructions until: (a) we know of your death or incompetence, and (b) we have had a reasonable opportunity to act on that knowledge. You agree that we may pay or certify checks drawn on or before the date of death or legal incompetence for up to ten (10) days after we know of such death or legal incompetence unless ordered to stop payment by someone claiming an interest in the account.

DEPOSITS

We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn "on us"). Before settlement of any item becomes final, we act only as your agent, regardless of the form of endorsement or lack of endorsement on the item and even though we may provide you provisional credit for the item. We may reverse any provisional credit for items that are lost, stolen, or returned. Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them. We will treat and record all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next business day that we are open. At our option, we may take an item for collection rather than for deposit. If we accept a third-party check for deposit, we may require any third-party endorser to verify or guarantee their endorsements, or endorse in our presence. Any deposit or transfer credited to any account with us that is owned or controlled by you, or applied to any of your indebtedness to us, even if intended by you to be credited or applied to a different account or debt, shall be conclusively deemed to have been received by you and credited to your benefit.

Direct Deposits - If, in connection with a direct deposit plan, we deposit any amount in an account which should have been returned to the Federal

Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

Endorsements - We may accept for deposit any item payable to you or your order, even if they are not endorsed by you. We may give cash back to any one of you. We may supply any missing endorsement(s) for any item we accept for deposit or collection, and you warrant that all endorsements are genuine.

To ensure that your check or share draft is processed without delay, you must endorse it (sign it on the back) in a specific area. Your entire endorsement (whether a signature or a stamp) along with any other endorsement information (e.g. additional endorsements, ID information, driver's license number, etc.) must fall within 1 1/2" of the "trailing edge" of a check.

As you look at the front of a check, the "trailing edge" is the left edge. When you flip the check over, be sure to keep all endorsement information within 1 1/2" of that edge.

Name	7654
Address, City, State	20
Pay to the order of	\$
	dollars
Bank Name and Location	
Memo	
⑆ 1 2 3 4 5 6 7 8 9 ⑆	7654

FRONT OF CHECK

TRAILING EDGE

YOUR ENDORSEMENT MUST BE WITHIN THIS AREA

← 1 1/2" →

Keep your endorsement out of this area.

BACK OF CHECK

It is important that you confine the endorsement information to this area since the remaining blank space will be used by others in the processing of the check to place additional needed endorsements and information. You agree that you will indemnify, defend, and hold us harmless for any loss, liability, damage or expense that occurs because your endorsement, a prior endorsement or information you have printed on the back of the check obscures our endorsement.

These endorsement guidelines apply to both personal and business checks.

Remotely Created Checks (Deposited to Your Account) - We may refuse to receive or process for deposit or collection remotely created checks, without cause or prior notice. Like any standard check or draft, a remotely created check (sometimes called a telecheck, preauthorized draft or demand draft) is a check or draft that can be used to withdraw money from an account. Unlike a typical check or draft, however, a remotely created check is not created by the paying bank and does not contain the signature of the account owner (or a signature purported to be the signature of the account owner). In place of a signature, the check usually has a statement that the owner authorized the check or has the owner's name typed or printed on the signature line. For example, if a person provides an account number in response to a telephone solicitation, the telephone solicitor can use the account number to issue a remotely created check to withdraw money from that account.

If you deposit remotely created checks in your account, you warrant and agree to the following for every remotely created check we receive from you for deposit or collection: (1) you have received express and verifiable authorization to create the check in the amount and to the payee that appears on the check; (2) you will maintain proof of the authorization for at least 2 years from the date of the authorization, and supply us the proof if we ask; and (3) if a check is returned you owe us the amount of the check, regardless of when the check is returned. We may take funds from your account to pay the amount you owe us, and if there are insufficient funds in your account, you still owe us the remaining balance.

Truncation, Substitute Checks, and Other Check Images - If you truncate an original check and create a substitute check, or other paper or electronic image of the original check, you warrant that no one will be asked to make payment on the original check, a substitute check or any other electronic or paper image, if the payment obligation relating to the original check has already been paid. You also warrant that any substitute check you create conforms to the legal requirements and generally accepted specifications for substitute checks. You agree to retain the original check in conformance with our internal policy for retaining original checks. You agree to indemnify us for any loss we may incur as a result of any truncated check transaction you initiate. We can refuse to accept substitute checks that have not previously been warranted by a bank or other financial institution in conformance with the Check 21 Act. Unless specifically stated in a separate agreement between you and us, we do not have to accept any other electronic or paper image of an original check.

YOUR ABILITY TO WITHDRAW FUNDS

Our policy is to ordinarily make funds from your cash and check deposits available to you on the first business day after the business day we receive your deposit. Electronic direct deposits will be available on the business day we receive the deposit. Once the funds are available, you can withdraw them in cash and we will use the funds to pay checks that you have written.

Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit.

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before our business day cut-off time on a business day that we are open, we will consider that business day to be the business day of your deposit. However, if you make a deposit after our business day cut-off time or on a day we are not open, we will consider that the deposit was made on the next business day we are open. Business day cut-off times vary depending on office location. The earliest cut-off time for a deposit made at an office is 2:30 p.m.

If you make a deposit at an ATM before 2:00 p.m. on a business day that we are open, we will consider that business day to be the business day of your deposit. However, if you make a deposit at an ATM after 2:00 p.m. or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

If we cash a check for you that is drawn on another bank, we may withhold the availability of a corresponding amount of funds that are already in your account. Those funds will be available at the time funds from the check we cashed would have been available if you had deposited it.

If we accept for deposit a check that is drawn on another bank, we may make funds from the deposit available for withdrawal immediately but delay your availability to withdraw a corresponding amount of funds that you have on deposit in another account with us. The funds in the other account would then not be available for withdrawal until the time periods that are described elsewhere in this disclosure for the type of check that you deposited.

Longer Delays May Apply

Cash-by-case delays. In some cases, we will not make all of the funds that you deposit by check available to you on the first business day after the business day of your deposit. Depending on the type of check that you deposit, funds may not be available until the second business day after the business day of your deposit. The first \$100 of your deposits, however, will be available on the first business day. (That \$100 amount is scheduled to increase to \$200 as of July 21, 2011, and is at all times subject to further revision to conform to changes that may be made to Regulation CC.)

If we are not going to make all of the funds from your deposit available on the first business day, we will notify you at the time you make your deposit. We will also tell you when the funds will be available. If your deposit is not made directly to one of our employees, or if we decide to take this action after you have left the premises, we will mail you the notice by the day after we receive your deposit.

If you will need the funds from a deposit right away, you should ask us when the funds will be available.

Safeguard exceptions. In addition, funds you deposit by check may be delayed for a longer period under the following circumstances:

We believe a check you deposit will not be paid.

You deposit checks totaling more than \$5,000 on any one day.

You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the business day of your deposit.

Special Rules for New Accounts

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the business day we receive the deposit. Funds from deposits of cash, wire

transfers, and the first \$5,000 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the business day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$5,000 will be available on the ninth business day after the business day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$5,000 will not be available until the second business day after the business day of your deposit.

Funds from all other check deposits will be available on the ninth business day after the business day of your deposit.

WITHDRAWALS

Generally - Any of you, acting alone, who signs to open the account or has authority to make withdrawals may withdraw or transfer all or any part of the account balance at any time. Each of you authorizes each other person who signs or has authority to make withdrawals to endorse any item payable to you or your order for deposit to this account or any other transaction with us.

Notice of withdrawal - We reserve the right to require not less than 7 days' notice in writing before each withdrawal from an interest-bearing account other than a time deposit, or from any other savings account as defined by Regulation D. (The law requires us to reserve this right, but it is not our general policy to use it.) Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your notice of penalty for early withdrawal.

Checks and withdrawal rules - If you do not purchase your check blanks from us, you must be certain that we approve the check blanks you purchase. We may refuse any withdrawal or transfer request which you attempt on forms not approved by us or by any method we do not specifically permit. We may refuse any withdrawal or transfer request which is greater in number than the frequency permitted, or which is for an amount greater or less than any withdrawal limitations. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations. If we are presented with an item drawn against your account that would be a "substitute check," as defined by law, but for an error or defect in the item introduced in the substitute check creation process, you agree that we may pay such item. See the funds availability policy disclosure for information about when you can withdraw funds you deposit. For those accounts to which our funds availability policy disclosure does not apply, you can ask us when you make a deposit when those funds will be available for withdrawal. In addition, we may place limitations on the account until your identity is verified.

Transfer Limitations - For savings and money market accounts you may make up to six transfers or withdrawals by means of a preauthorized, automatic, telephone or Internet transfer to another account of yours or to a third party or by check, debit card, or similar order to a third party during any calendar month (or statement cycle of at least four weeks). A preauthorized transfer includes any arrangement with us to pay a third party from your account at (i) a predetermined time; (ii) on a fixed schedule or (iii) upon oral or written orders including orders received through the automated clearing house (ACH). If the transfer or withdrawal is initiated in person, by mail, or at an ATM then there is no limit on the number of payments that may be made directly to you, directly to us for amounts you owe us, or transfers to other accounts you have with us. Withdrawals by phone are also unlimited if you are requesting that a check be mailed to you. If you continue to exceed any transfer limits on your Account after we have notified you of any such transfer violation, we may close or transfer your Account to another deposit account type selected by us for which you are eligible. We will use the date a transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations.

Restrictive Legends - The automated processing of the large volume of checks we receive prevents us from inspecting or looking for special instructions or "restrictive legends" on every check. Examples of restrictive legends placed on checks are "must be presented within 90 days" or "not valid for more than \$1,000.00." For this reason, we are not required to honor any restrictive legend placed on checks you write.

We can pay any check that bears an authorized signature, regardless of any printed legend or multiple signature lines that indicate you require multiple signatures. Any policy you adopt for multiple signatures on checks is for your internal control purposes only and shall not be binding or impose any duty of care on us. You bear the risk that a check bearing any authorized signature will be paid.

We are not responsible for any losses, claims, damages, or expenses that result from your placement of these or other special instructions on your checks.

Facsimile or Scanned Signatures - Unless you make advance arrangements with us, we have no obligation to honor facsimile or scanned signatures on your checks or other orders. If we honor items containing facsimile or scanned signatures, you authorize us, at any time, to charge you for all checks, drafts, or other orders, for the payment of money, that are drawn on us. You give us this authority regardless of by whom or by what means the facsimile or scanned signature(s) may have been affixed so long as they resemble the facsimile or scanned signature specimen filed with us for this purpose. You must notify us at once if you suspect that your facsimile or scanned signature is being or has been misused.

Check Cashing - We may charge a fee for anyone that does not have an account with us who is cashing a check, draft or other instrument written on your account. We may also require reasonable identification to cash such a check, draft or other instrument. We can decide what identification is reasonable under the circumstances and such identification may be documentary or physical and may include collecting a thumbprint or fingerprint.

Overdrafts - We may, in our discretion, honor checks, debits, payment orders and other withdrawal requests that overdraw the balance of available funds in your account. However, the fact that we may honor withdrawal requests that overdraw the account balance does not obligate us to do so later. Subject to the rules in this Agreement's section entitled "Payment or Refusal of Transaction that Would Overdraw your Account," we may charge insufficient funds fees and overdraft service fees for overdrafts. Overdraft balances are due and payable immediately upon creation. We may use subsequent deposits, including direct deposits of social security or other government benefits, to cover such overdrafts and (if applicable) overdraft service fees.

Credits to Your Account and Order of Processing Withdrawals - To help you manage the balance in your account, we provide the following information on how we process transactions to your account. We process credit and withdrawal transactions overnight. We first post deposits and other credits (other than accrued interest) to your account, and then process certain withdrawals (such as debit card transactions, ATM withdrawals, and checks cashed by a teller) in lowest-to-highest dollar amount order. Then, we post all remaining checks drawn on your account in lowest-to-highest check number order. (For non-consumer accounts, we reserve the right to change the order of posting withdrawals without cause or prior notice. Please be aware that a change in order of posting withdrawals can cause the number of overdrafts or returned items, and resulting service fees, to increase.)

Payment or Refusal of Transaction that Would Overdraw your Account.

(1) **Account with an Overdraft Protection Plan** (such as Reddi Reserve or Account Overdraft Protection). If you have an overdraft protection plan for your account, we will pay any transaction that overdraws the balance of available funds in your account (an "Overdraft Transaction") in accordance with the terms of your plan (subject, however, to limits on amounts available to you under your plan). We will not charge any service fees to your account if they are not allowed under the terms of your plan, but the plan itself may charge you a separate fee.

(2) **Account without an Overdraft Protection Plan.** If you have no overdraft protection plan for your account, we may pay your Overdraft Transactions according to the following rules:

(a) If you have enrolled in our Courtesy Approval® service: we may, in our discretion, pay any Overdraft Transaction. When deciding whether to pay an Overdraft Transaction, we consider factors such as how long your account has been open, the balances you have maintained in the account, your past overdrafts, and the amount your account will be overdrawn if the Overdraft Transaction is paid. This means that (i) we do not promise to pay any Overdraft Transaction and (ii) if we do pay one, we have no obligation to pay any other Overdraft Transaction at any other time. Each time we pay an Overdraft Transaction, we will charge your account (i) an insufficient funds fee and (ii) if your account remains overdrawn a specified number of days, separate overdraft service fees. Overdraft service fees may be imposed daily. (Please see the separately provided fee schedule, as amended from time to time, for the fee amounts and when overdraft service fees begin accruing).

(b) If you have not enrolled in our Courtesy Approval® service: we may, in our discretion, pay any Overdraft Transaction, considering factors such as those described in the preceding paragraph. It is our policy, however, to routinely decline to pay any Overdraft Transaction that is an ATM or point-of-sale debit card transaction. Each time we pay an Overdraft Transaction, we will (except for ATM and point-of-sale debit card transactions in consumer accounts governed by Regulation E) charge your account (i) an insufficient funds fee and (ii) if your account remains overdrawn a specified number of days, separate overdraft service fees. Overdraft service fees may be imposed daily. (Please see the separately provided fee schedule, as amended from time to time, for the fee amounts and when overdraft service fees begin accruing).

(3) **Insufficient Funds Fee on all Accounts, with or without an Overdraft Protection Plan or Courtesy Approval® service.** Whether the Overdraft Transaction is Paid or Refused: We charge an insufficient funds fee to your account for each Overdraft Transaction, regardless of whether we pay or refuse to pay that transaction (unless the transaction was an ATM or point-of-sale debit card transaction in a consumer account governed by Regulation E and we decline payment or you do not have our Courtesy Approval service). For example, we will charge an insufficient funds fee if we return a check unpaid because your account lacked sufficient available funds. We charge the insufficient funds fee for Overdraft Transactions that we refuse to pay, even if you have requested us to not pay transactions that would overdraw your account. When we pay an Overdraft Transaction, our insufficient funds fee is in addition to any overdraft service fee. (Please see the separately provided fee schedule, as amended from time to time, for the fee amounts and when overdraft service fees begin accruing).

We encourage you to keep careful records of your account transactions and practice good account management. You should be aware of the "available" funds in your account, which may not include the full amount of recent deposits (see the section of this Agreement entitled "Your Ability to Withdraw Funds") or any amounts that we have placed on hold (e.g., due to garnishments or account disputes). You should always also be aware of all of the withdrawal transactions that you have initiated but that may not have posted to your account. For example, a check that you write may not post to your account for many days. On point-of-sale debit card transactions, we will place a three-day hold on funds in your account based on preliminary information that we receive electronically from the merchant. The hold lowers the amount of available funds in your account. If we do not promptly receive the final transaction information from the merchant, the hold may expire before the transaction finally posts. In that event, the available funds balance will appear to be higher than it actually is.

These are just examples of different circumstances that could affect the balance of your account. Being aware of how much you spend, and by what method (check, debit card, etc.) will help you to avoid incurring withdrawal transactions that will cause you to incur overdraft service fees. If you would like to receive a copy of our schedule of service fees or if you would like further information on our overdraft protection plan options, please contact us at (800) 462-3555 at your convenience.

Postdated checks - A postdated check is one which bears a date later than the date on which the check is written. We may properly pay and charge your account for a postdated check even though payment was made before the date of the check.

Stale-Dated Checks - We are not obligated to, but may at our option, pay a check, other than a certified check, presented for payment more than six months after its date. If you do not want us to pay a stale-dated check, you must place a stop-payment order on the check in the manner we have described elsewhere.

Waivers - Even if we honor a nonconforming request, we are not required to do so later. We may treat continued abuse of the stated limitations (if any) as your act of closing the account, or we may at our option reclassify your account as a transaction account. If we reclassify your account, your account will be subject to the fees and earnings rules of the new account classification.

Multiple Signatures, Electronic Check Conversion, and Similar Transactions - An electronic check conversion transaction is a transaction where a check or similar item is converted into an electronic fund transfer as defined in the Electronic Fund Transfers regulation. In these types of transactions the check or similar item is either removed from circulation (truncated) or given back to you. As a result, we have no opportunity to review the check to examine the signatures on the item. You agree that, as to these or any items as to which we have no opportunity to examine the signatures, you waive any requirement of multiple signatures.

Stop Payments - You must make any stop-payment order in the manner required by law and we must receive it in time to give us a reasonable opportunity to act on it before our stop-payment cutoff time. To be effective, your stop-payment order must precisely identify the number, date and amount of the item, and the payee.

Any signer or owner on an account may stop payment on any item drawn on your account whether you sign the item or not.

Our stop-payment cutoff time is one hour after the opening of the next banking day after the banking day on which we receive the item. Additional limitations on our obligation to stop payment are provided by law (e.g., we paid the item in cash or we certified the item). If we pay a check against a valid stop payment order we may be liable to you for up to the amount of the check if you had a legal right to stop payment. You must establish, however, that you suffered a loss because of the payment. We will not be liable for any amount(s) in excess of the face amount of the item.

Remotely Created Checks (Drawn on Your Account) - Like any standard check or draft, a remotely created check (sometimes called a telecheck, preauthorized draft or demand draft) is a check or draft that can be used to obtain payment from your account. Unlike a typical check or draft, however, a remotely created check is not signed by you. In place of your signature, the check usually has a statement that you have authorized the check or has your name typed or printed on the signature line. For example, if you provide your account number in response to a telephone solicitation, the telephone solicitor can use the account number to issue a remotely created check to withdraw money from your account.

If you authorize a third party to draw a remotely created check against your account, you may not later change your mind and try to revoke your authorization or rescind payment by claiming that the check was unauthorized. We may honor the remotely created check and, if there are insufficient funds in your account, you still owe us the remaining balance.

We may also refuse to honor any remotely created checks drawn on your account, without cause or prior notice.

SUBSTITUTE CHECKS AND YOUR RIGHTS

What is a substitute check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You

can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

Some or all of the checks that you receive back from us may be substitute checks. This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

What are my rights regarding substitute checks?

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, returned check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

How do I make a claim for a refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at:

Nevada State Bank
Customer Service Center
P.O. Box 990
Las Vegas, NV 89125-0990
1-800-727-4743

You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

Your claim must include —

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check or the following information to help us identify the substitute check: the check number, the amount of the check, the date of the check, and the name of the person to whom you wrote the check.

Substitute Checks - You agree not to deposit substitute checks or checks bearing a substitute check legal equivalence statement (e.g., "This is a legal copy of your check. You can use it the same way you would use the original check.") to your account without our prior written consent. Unless we agree otherwise in writing, our acceptance of such checks shall not obligate us to accept such items at a later time, and we may cease doing so without prior notice. You agree to indemnify, defend, and hold us harmless from all losses, costs, claims, actions, proceedings and attorney's fees that we incur as a result of any such checks that you transfer to or deposit with us, including without limitation, any indemnity or warranty claim that is made against us because: (a) the check fails to meet the requirements for legal equivalence; (b) a claimant makes a duplicate payment based on the original check, the substitute check or paper or electronic copy of either; or (c) a loss is incurred due to the receipt of the substitute check rather than the original check.

Upon our request, you agree to provide us promptly with the original check or a copy that accurately reflects all of the information on the front and back of the original check when it was imaged.

TRUTH-IN-SAVINGS DISCLOSURE

Please refer to the separate fee schedule for a detailed listing of our accounts, minimum balance requirements and service fees. Current interest rates and annual percentage yields may be obtained by calling our Customer Service Center at 1-800-727-4743.

Interest Checking Accounts, Money Market Accounts, and Statement Savings Accounts

Rate information - Your interest rate and annual percentage yield may change.

Frequency of rate changes - We may change the interest rate on your account at any time.

Determination of rate - At our discretion, we may change the interest rate on your account.

Compounding and crediting frequency - The compounding and crediting frequency for your account will be disclosed at account opening or upon request.

Effect of closing an account - If you close your account before interest is credited, you will not receive the accrued interest.

Computation method - The computation method used to determine the account balance for calculating the interest on your account will be disclosed at account opening or upon request.

Accrual of interest on noncash deposits - Interest begins to accrue no later than the business day we receive credit for the deposit of noncash items (for example, checks).

Transaction limitations - Transfers from a savings account or money market account to another account or to third parties by preauthorized, automatic, telephone, or computer transfer or by check, debit card, or similar order to third parties are limited to six per 30-day statement cycle. By law, if the above limits are exceeded three (3) times in a twelve (12)-month period, the account will be closed or changed to a different type of account. For purposes of the transaction limitation, we count Money Market checks as of the date we post them to your account, not as of the date you write them. You may make an unlimited number of withdrawals from your account in person, by ATM, or by mail or messenger. Some account types may have fees for withdrawals that exceed the set number specified in this brochure.

Time Deposits (Certificates of Deposit)

Rate information - You will be paid the disclosed rate until first maturity.

Compounding and crediting frequency - Interest compounding and payment frequency will be disclosed at account opening or upon request.

Daily balance computation method - We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Accrual of interest on noncash deposits - Interest begins to accrue on the business day you deposit noncash items (for example, checks).

Transaction limitations - Withdrawal and deposit limitations will be disclosed at account opening or upon request.

Early withdrawal penalties - A penalty may be imposed for withdrawals before maturity. Specific penalty information will be disclosed at account opening or upon request.

Early withdrawal penalties (and involuntary withdrawals) - We may impose early withdrawal penalties on a withdrawal from a time account even if you don't initiate the withdrawal. For instance, the early withdrawal penalty may be imposed if the withdrawal is caused by our setoff against funds in the account or as a result of an attachment or other legal process. We may close your account and impose the early withdrawal penalty on the entire account balance in the event of a partial early withdrawal. See your notice of penalty for early withdrawals for additional information.

Withdrawal of interest prior to maturity - The annual percentage yield assumes interest will remain on deposit until maturity. A withdrawal will reduce earnings.

Automatically renewable time accounts - Renewable certificates will automatically renew at maturity. You may prevent renewal if you withdraw the funds in the account at maturity (or within the grace period, if any) or we receive written notice from you within the grace period, if any. We can prevent renewal if we mail notice to you at least 30 calendar days before maturity, if either you or we prevent renewal, interest will not accrue after final maturity. The interest rate will be our prevailing rate at that time. You will have a set grace period after maturity to withdraw the funds without a penalty. Specific grace period information will be disclosed at account opening or upon request.

Non-automatically renewable time accounts - Nonrenewable certificates will not automatically renew at maturity. If you do not renew the account, interest will not accrue after maturity.

Auctioned Certificates of Deposit - Auctioned certificates of deposit ("Auctioned CDs"), issued by the Bank, which are certificates of deposit in minimum denominations of \$1,000 are contracted for a specific period of time. The interest rate under annual percentage yield and/or purchase price at the time of opening will be determined by the placing of bids by and through an electronic auction process operated by Zions Direct, the Bank's investment affiliate, as Auction Agent and will be for the duration of the Auctioned CD's term, as specified in the respective deposit confirmation. Funds cannot be withdrawn prior to the maturity date. Auctioned CDs are nonrenewable. Auctioned CDs will not accrue interest after maturity unless transferred to another interest-bearing account. Auctioned CDs may be callable or non-callable as designated in the applicable Term Sheet or the Auctioned Certificate of Deposit Disclosure Statement, including all amendments and supplements thereto (the "Disclosure Statement"), and interest will be paid at maturity for those Auctioned CDs with original maturities of one year or less and semiannually for Auctioned CDs with original maturities of more than one year, unless the applicable Term Sheet or Disclosure Statement for the specific CD issued in connection with a given auction indicates otherwise. At the election of the Bank, Auctioned CDs may be issued in Book-Entry only form through The Depository Trust Company and Clearing Corporation ("DTC"), in which case the issuance, settlement, and payment upon maturity of the Auctioned CDs will conform to procedures established by DTC. Auctioned CDs will be transferable unless the applicable Term Sheet or Disclosure Statement for the specific CD issued in connection with a given auction indicates otherwise. The amount

deposited in Auctioned CDs over applicable limits described in the Disclosure Statement will not be insured by the FDIC, and the amount of each deposit in an Auctioned CD may be aggregated with other deposits maintained with the Bank by the depositor, thus limiting the depositor's effective FDIC insurance to the applicable limits in total for all such deposits. In the event of any discrepancy in terms and conditions provided in this Deposit Agreement and those provided in the Disclosure Statement or applicable Term Sheet, the terms and conditions provided in the Disclosure Statement or applicable Term Sheet shall control.

ELECTRONIC FUND TRANSFERS - YOUR RIGHTS AND RESPONSIBILITIES

This Electronic Fund Transfer disclosure does not apply to any accounts other than consumer accounts, as defined by Regulation E.

Indicated below are types of Electronic Fund Transfers we are capable of handling, some of which may not apply to your account. Please read this disclosure carefully because it tells you your rights and obligations for the transactions listed. You should keep this notice for future reference.

Electronic Fund Transfers Initiated By Third Parties. You may authorize a third party to initiate electronic fund transfers between your account and the third party's account. These transfers to make or receive payment may be one-time occurrences or may recur as directed by you. Those transfers may use the Automated Clearing House (ACH) or other payments network. Your authorization to the third party to make these transfers can occur in a number of ways. For example, your authorization to convert a check to an electronic fund transfer or to electronically pay a returned check charge can occur when a merchant provides you with notice and you go forward with the transaction (typically, at the point of purchase, a merchant will post a sign and print the notice on a receipt). In all cases, those third party transfers will require you to provide the third party with your account number and bank information. This information can be found on your check as well as on a deposit or withdrawal slip. Thus, you should only provide your bank and account information (whether over the phone, the Internet, or via some other method) to trusted third parties whom you have authorized to initiate these electronic fund transfers. Examples of these transfers include, but are not limited to:

- Preauthorized credits. You may make arrangements for certain direct deposits to be accepted into your checking or savings account(s).
- Preauthorized payments. You may make arrangements to pay certain recurring bills from your checking or savings account(s).
- Electronic check conversion. You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to pay for purchases or pay bills.
- Electronic returned check charge. You may authorize a merchant or other payee to initiate an electronic funds transfer to collect a charge in the event a check is returned for insufficient funds.

Please also see Limitations on frequency of transfers section regarding limitations that apply to savings accounts.

Telephone Transfers - types of transfers. You may access your account by telephone 24 hours a day using your personal identification number, a touch tone phone, and your account numbers, to:

- transfer funds between checking and savings
- make payments from checking or savings to loan accounts with us
- get information about:
 - the account balance of checking or savings account(s)
 - deposits to checking or savings accounts
 - withdrawals from checking or savings accounts

Please also see Limitations on frequency of transfers section regarding limitations that apply to telephone transfers.

ATM Transfers - types of transfers and dollar limitations. You may access your account(s) by ATM using your ATM Card and personal identification number or Visa® Debit Card and personal identification number, to:

- make deposits to checking or savings account(s)
- get cash withdrawals from checking or savings account(s)
- you may withdraw no more than \$500.00 per day with an ATM Card unless you are a customer of The Private Bank. Please see the separate Private Bank Card Agreement for limitations
- for security reasons, there are limits on the total dollar volume of transactions allowed daily using your debit card
- transfer funds between checking and savings account(s)
- make payments from checking or savings account(s) to loan accounts with us
- get information about:
 - the account balance of your checking or savings account(s)

Some of these services may not be available at all terminals.

Please also see Limitations on frequency of transfers section regarding limitations that apply to ATM transfers.

Types of ATM Card Point-of-Sale Transactions and Dollar Limitations. You may access your checking account(s) to purchase goods (in person), pay for services (in person), and get cash from a merchant, if the merchant permits, or from a participating financial institution. You may not exceed \$500.00 in transactions per day, unless you are a customer of The Private Bank. Please see the separate Private Bank Card Agreement for limitations.

Types of Visa® Debit Card Point-of-Sale Transactions and Dollar Limitations. You may access your checking account(s) to purchase goods (in person, online, or by phone), pay for services (in person, online, or by phone), get cash from a merchant, if the merchant permits, or from a participating financial institution, and do anything that a participating merchant will accept. For security reasons, there are limits on the total dollar volume of transactions allowed daily using your debit card.

Please also see Limitations on frequency of transfers section regarding limitations that apply to debit card transactions.

Holds on Funds in Deposit Account for Pending Transactions. Pending transactions are authorized transactions that have not yet posted to your deposit account. These transactions may include credits, debits and holds placed by merchants. Merchant-placed holds often involve online and store retailers, restaurants, gas stations, airlines, hotels and car rental agencies. When a merchant places a hold, we freeze that amount in your deposit account, and it is not available to pay checks or for use in other transactions. To ensure available funds for pending transactions, a merchant's pre-authorization hold may differ in amount from the final transaction amount. When the transaction settles, the actual amount posted to your account may be greater or lesser than the pre-authorization hold amount. Merchants determine their own procedures for the amounts and timing of their holds. Certain merchants may take days or weeks to release cancelled transactions. The final transaction amounts will appear on your account statement. (Merchant-placed holds are separate from the 3-day holds that we place on your account for point-of-sale debit card transactions; see the section entitled "Credits to Your Account and Order of Processing Withdrawals.")

Currency Conversion. When you use your Visa® Debit Card at a merchant that sells in currency other than US dollars, the charge will be converted into the US dollar amount. The currency conversion rate used to determine the transaction amount in US dollars is either a rate selected by Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate Visa itself receives, or the government-mandated rate in effect for the applicable central processing date. The conversion rate in effect on the processing date may differ from the rate in effect on the transaction date or posting date.

Advisory Against Illegal Use. You agree not to use your card(s) or make other electronic funds transfers for illegal gambling or other illegal purpose. Display of a payment card logo by, for example, an online merchant does not necessarily mean that transactions are lawful in all jurisdictions in which the cardholder may be located.

Non-Visa Debit Transaction Processing. We have enabled non-Visa debit transaction processing. This means you may use your Visa Debit Card on a PIN-Debit Network* (a non-Visa network) without using a PIN.

The non-Visa debit network(s) for which such transactions are enabled are: STAR Network.

Examples of the types of actions that you may be required to make to initiate a Visa transaction on your Visa Debit Card include signing a receipt, providing a card number over the phone or via the Internet, or swiping the card through a point-of-sale terminal and selecting credit - which produces the receipt to sign.

Examples of the types of actions you may be required to make to initiate a transaction on the STAR Network include initiating a payment directly with the biller, possibly via telephone, Internet, or kiosk locations, and swiping the card at an ATM or swiping the card through a point of sale terminal, selecting debit and entering the PIN. STAR Network billers are required to display the STAR logo. STAR Network billers must also allow you to choose how your payment is directed. Thus, you could see the STAR logo and choose to direct your payment through the STAR Network. In addition, STAR Bill Payments are not authenticated with a PIN; instead the biller authenticates your identity using known information derived from an existing relationship with you.

The provisions of your agreement with us relating only to Visa transactions are not applicable to non-Visa transactions. For example, the additional limits on liability (sometimes referred to as Visa's zero-liability program) and the streamlined error resolution procedures offered on Visa debit card transactions are not applicable to transactions processed on a PIN-Debit Network.

*Visa Rules generally define PIN-Debit Network as a non-Visa debit network that typically authenticates transactions by use of a personal identification number (PIN) but that is not generally known for having a card program.

Internet Banking Computer Transfers - types of transfers. You may access your account(s) by computer through the Internet by logging onto our website at www.nsbank.com and using your Internet password and PIN, to:

- transfer funds between checking and savings
- make payments from checking or savings to loan account(s) with us
- make payments from checking to third parties
- get information about:
 - the account balance of checking or savings account(s)
 - deposits to checking or savings accounts
 - withdrawals from checking or savings accounts

Your Internet banking agreement details the limits to the number and/or amount of those types of transfers through our Internet Banking Service.

Please also see Limitations on frequency of transfers section regarding limitations that apply to computer transfers.

Limitations on frequency of transfers. In addition to those limitations on transfers elsewhere described, if any, transfers from a savings account or money market account to another account or to third parties by preauthorized, automatic, telephone, or computer transfer or by check, debit card, or similar order to third parties are limited to six per 30-day statement cycle.

Fees. We do not charge for direct deposits to any type of account.

Except as indicated elsewhere, we do not charge for these electronic fund transfers.

ATM Operator/Network Fees. When you use an ATM not owned by us, you may be charged a fee by the ATM operator or any network used (and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer).

Documentation

- **Terminal transfers.** You can get a receipt at the time you make a transfer to or from your account using an automated teller machine or point-of-sale terminal. However, you may not get a receipt if the amount of the transfer is \$15 or less.
- **Preauthorized credits.** If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at the phone number on your account statement to find out whether or not the deposit has been made.
- **Periodic statements.**

You will get a monthly account statement from us for your checking accounts. You will get a monthly account statement from us for your savings accounts, unless there are no transfers in a particular month. In any case, you will get a statement at least quarterly.

Preauthorized Payments - Right to stop payment and procedure for doing so. If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here is how:

Call or write us at the telephone number or address listed in this brochure in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call.

Please refer to our separate fee schedule for the amount we will charge you for each stop-payment order you give.

Liability for failure to stop payment of preauthorized transfer. If you order us to stop one of those payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

Preauthorized Payments - Notice of varying amounts. If these regular payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

Limitation on Liability - We are not responsible or liable in any manner for any of the following or for any claim of whatever nature (including without limitation any claim for direct, indirect, incidental, special, consequential or punitive damages) arising from or connected with any of the following: the refusal or delay of any other financial institution, any merchant, or any person to honor your card; any goods or services purchased with your card; any unsuccessful attempt to obtain prior credit authorization for any transaction when the authorization system is not working (except and only to the extent described in the following subparagraph); and any unsuccessful attempt to use your card in an ATM when the ATM or system is not working or is temporarily closed or out of order (except and only to the extent described in the next subparagraph).

Liability for Failure to Make Electronic Fund Transfers - If we do not complete an electronic fund transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages as prescribed by the federal Electronic Fund Transfer Act. However, there are some exceptions to our liability. We will not be liable, for instance: (i) if, through no fault of ours, you do not have enough money in your account to make the transfer, or if the transfer would create an overdraft which would not be covered by or would exceed the credit limit on any overdraft protection account (or exceed funds available in any deposit account that has been linked for overdraft protection) you have with us; (ii) if the funds you are attempting to transfer are subject to legal process or other encumbrance restricting such transfer; (iii) if the ATM where you are making the transfer does not have enough cash; (iv) if the ATM or other electronic terminal or system was not working properly, and you knew about the breakdown when you started the transfer; (v) if circumstances beyond our control prevent the transfer despite reasonable precautions that we have taken; or (vi) if any other exception stated in this Agreement (or our debit card agreement with you) or by law applies.

Confidentiality. We will disclose information to third parties about your account or the transfers you make:

- (1) where it is necessary for completing transfers; or
- (2) in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant; or
- (3) in order to comply with government agency or court orders; or
- (4) as explained in the separate Privacy Notice.

Unauthorized Transfers

(a) Consumer liability. Tell us AT ONCE if you believe your card and/or code has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your card and/or code, you can lose no more than \$50 if someone used your card and/or code without your permission.

If you do NOT tell us within 2 business days after you learn of the loss or theft of your card and/or code, and we can prove we could have stopped someone from using your card and/or code without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was sent or made available to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

Additional Limit on Liability for Visa® Debit Card. Unless you have been grossly negligent or have engaged in fraud, you will not be liable for any unauthorized transactions using your lost or stolen Visa® Debit Card. This additional limit on liability does not apply to ATM transactions or to transactions using your Personal Identification Number which are not processed by VISA®.

(b) Contact in event of unauthorized transfer. If you believe your card and/or code has been lost or stolen, call or write us at the telephone number or address listed in this brochure. You should also call the number or write to the address listed in this brochure if you believe a transfer has been made using the information from your check without your permission.

Error Resolution Notice

In Case of Errors or Questions About Your Electronic Transfers, Call or Write us at the telephone number or address listed in this brochure, as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent or made available the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days (5 business days for Visa® Debit Card point-of-sale transactions processed by Visa and 20 business days if the transfer involved a new account) after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days (60 days if the transfer involved a new account, a point-of-sale transaction, or a foreign-initiated transfer) to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days (5 business days for Visa® Debit Card point-of-sale transactions processed by Visa and 20 business days if the transfer involved a new account) for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account. Your account is considered a new account for the first 30 days after the first deposit is made, unless each of you already has an established account with us before this account is opened.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

NEVADA STATE BANK
CUSTOMER SERVICE CENTER
P.O. BOX 990
LAS VEGAS, NV 89125-0990
Business Days: Monday through Friday
Excluding Federal Holidays
Phone: 1-800-727-4743

MORE DETAILED INFORMATION IS AVAILABLE ON REQUEST

ACH AND WIRE TRANSFERS

This agreement is subject to Article 4A of the Uniform Commercial Code - Fund Transfers as adopted in the state in which you have your account with us. If you originate a fund transfer for which Fedwire is used, and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. You agree to be bound by automated clearing house association rules. These rules

provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code. If we do not receive such payment, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. If we receive a payment order to credit an account you have with us by wire or ACH, we are not required to give you any notice of the payment order or credit.

We reserve the right to reject any payment order without cause or prior notice, and may notify you of the rejection orally, electronically or in writing. You agree to indemnify, defend and hold us harmless for any loss, damage, claim, action, and liability that results, and any charges and costs we incur, in connection with any request by you to amend or cancel a payment order. Our liability for any act or failure to act shall not exceed any direct resulting loss, if any, which you incur and payment of interest. Unless otherwise required by law, we will not be liable for any incidental, indirect, special, consequential or punitive damages that you incur in connection with payment orders, even if we are aware of the possibility of such damages.

Unless we agree otherwise in writing, any authorized signatory on your account shall have authority to request wire and ACH transfers on that account. If you have entered into a specific wire transfer agreement or ACH agreement with us, the provisions of such agreement shall in all respects be deemed applicable to any wire or ACH transfer instructions initiated by an account signatory, even if that account signatory has not been specifically identified in such wire or ACH transfer agreement as a person authorized to request wire or ACH transfers. The provisions contained in this Agreement supplement, but do not supersede, the provisions of any such wire or ACH transfer agreement.

FUNDS TRANSFERS

The terms used in this section have the meaning given to them in Article 4A of the Uniform Commercial Code - Funds Transfers (UCC 4A). This section will generally not apply to you if you are a consumer. However, even if you are a consumer, this section will apply to that part of any funds transfer that is conducted by Fedwire. This section is subject to UCC 4A as adopted in the state in which you have your deposit with us. This agreement is also subject to all clearing house association rules, rules of the Board of Governors of the Federal Reserve System and their operating circulars. If any part of this agreement is determined to be unenforceable, the rest of the agreement remains effective. This agreement controls funds transfers unless supplemented or amended in a separate written agreement signed by us.

Funds transfer definition - A funds transfer is the transaction or series of transactions that begin with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. A funds transfer is completed by the acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's order. Generally, a funds transfer does not include any transaction if any part of the transfer is covered by the Electronic Fund Transfer Act of 1978, as amended from time to time. You may give us a payment order orally, electronically, or in writing, but your order cannot state any condition to payment to the beneficiary other than the time of payment.

Unless the Bank has otherwise agreed in writing, it will notify you of funds credited to your account through your account statement covering the period in which the funds were credited. The bank is under no obligation to provide you with any additional notice or receipt. If a transfer instruction describes the person to receive payment inconsistently by name and account number, payment may be made on the basis of the account number even if the account number identifies a person different from the named person. If a transfer instruction describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution.

Authorized account - An authorized account is a deposit account you have with us that may be designated to pay transfer orders you issue to us. If you have not designated an authorized account, any account you have with us is an authorized account to the extent that payment of the payment order is not inconsistent with the use of the account.

Acceptance of your payment order - We are not obligated to accept any payment order that you give us, although we normally will accept your payment order if you have a withdrawable credit in an authorized account sufficient to cover the order. If we do not execute your payment order, but give you notice of our rejection of your payment order after the execution date or give you no notice, we are not liable to pay you as restitution any interest on a withdrawable credit in a non-interest-bearing account.

Cutoff time - If we do not receive your payment order or communication canceling or amending a payment order before our cutoff time on a funds transfer day for that type of order or communication, the order or communication will be deemed to be received at the opening of our next funds transfer business day.

Payment of your order - If we accept a payment order you give us, we may receive payment by automatically deducting from any authorized account the amount of the payment order plus the amount of any expenses and charges for our services in execution of your payment order. We are entitled to payment on the payment or execution date. The funds transfer is completed upon acceptance by the beneficiary's bank. Your obligation to pay your payment order is excused if the funds transfer is not completed, but you are still responsible to pay us any

expenses and charges for our services. However, if you told us to route the funds transfer through an intermediate bank, and we are unable to obtain a refund because the intermediate bank that you designated has suspended payments, then you are still obligated to pay us for the payment order. You will not be entitled to interest on any refund you receive because the beneficiary's bank does not accept the payment order.

Security procedure - As described more fully in a separate writing, the authenticity of a payment order or communication canceling or amending a payment order issued in your name as sender may be verified by a security procedure. You affirm that you have no circumstances which are relevant to the determination of a commercially reasonable security procedure unless those circumstances are expressly contained in a separate writing signed by us. If you refuse a commercially reasonable security procedure that we have offered you, you agree that you will be bound by any payment order issued in your name, whether or not authorized, that we accept in good faith and in compliance with the security procedure you have chosen.

Duty to report unauthorized or erroneous payment - You must exercise ordinary care to determine that all payment orders or amendments to payment orders that we accept that are issued in your name are authorized, enforceable, in the correct amount, to the correct beneficiary, and not otherwise erroneous. If you discover (or with reasonable care should have discovered) an unauthorized, unenforceable, or erroneously executed payment order or amendment, you must exercise ordinary care to notify us of the relevant facts. The time you have to notify us will depend on the circumstances, but that time will not in any circumstance exceed 30 days from when you are notified of our acceptance or execution of the payment order or amendment or that your account was debited with respect to the order or amendment. If you do not provide us with timely notice you will not be entitled to interest on any refundable amount. If we can prove that you failed to perform either of those duties with respect to an erroneous payment and that we incurred a loss as a result of the failure, you are liable to us for the amount of the loss not exceeding the amount of your order.

Identifying number - If your payment order identifies an intermediate bank, beneficiary bank, or beneficiary by name and number, we and every receiving or beneficiary bank may rely upon the identifying number rather than the name to make payment, even if the number identifies an intermediate bank or person different than the bank or beneficiary identified by name. Neither we nor any receiving or beneficiary bank have any responsibility to determine whether the name and identifying number refer to the same financial institution or person.

Record of oral or telephone orders - You agree that we may, if we choose, record any oral or telephone payment order or communication of amendment or cancellation.

Notice of credit - If we receive a payment order to credit an account you have with us, we are not required to provide you with any notice of the payment order or the credit.

Provisional credit - You agree to be bound by the automated clearing house association operating rules that provide that payments made to you or originated by you by funds transfer through the automated clearing house system are provisional until final settlement is made through a Federal Reserve Bank or otherwise payment is made as provided in Article 4A-403(a) of the Uniform Commercial Code.

Refund of credit - You agree that if we do not receive payment of an amount credited to your account, we are entitled to a refund from you in the amount credited and the party originating such payment will not be considered to have paid the amount so credited.

Amendment of funds transfer agreement - From time to time we may amend any term of this agreement by giving you reasonable notice in writing. We may give notice to anyone who is authorized to send payment orders to us in your name, or to anyone who is authorized to accept service.

Cancellation or amendment of payment order - You may cancel or amend a payment order you give us only if we receive the communication of cancellation or amendment before our cutoff time and in time to have a reasonable opportunity to act on it before we accept the payment order. The communication of cancellation or amendment must be presented in conformity with the same security procedure that has been agreed to for payment orders.

Intermediaries - We are not liable for the actions of any intermediary, regardless of whether or not we selected the intermediary. We are not responsible for acts of nature, outside agencies, or non-salaried agents.

Limit on liability - You waive any claim you may have against us for incidental, indirect, special, consequential or punitive damages, including loss of profit arising out of a payment order or funds transfer, unless this waiver is prohibited by law. We are not responsible for attorney fees you might incur due to erroneous execution of payment order.

Erroneous execution - If we receive an order to pay you, and we erroneously pay you more than the amount of the payment order, we are entitled to recover from you the amount in excess of the amount of the payment order, regardless of whether you may have some claim to the excess amount against the originator of the order.

Objection to payment - If we give you a notice that reasonably identifies a payment order issued in your name as sender that we have accepted and received payment for, you cannot claim that we are not entitled to retain the payment unless you notify us of your objection to the payment within one year of our notice to you.

DISPUTES

Resolving Account Disputes - We may place an administrative hold on the funds in your account (refuse payment or withdrawal of the funds) if (1) your account becomes subject to a claim adverse to your own interest, whether by other signers or others claiming signing authority or an interest, as survivors, beneficiaries, or otherwise, in your account; or (2) your account becomes subject to a claim arising by operation of law; or (3) the Bank, in exercise of its discretion, determines that there is a risk of claim against or loss to the Bank arising from transactions in any account with the Bank that you own or control. This hold may be placed for such period of time as we believe reasonably necessary to allow a legal proceeding to determine the merits of the claim or until we receive evidence satisfactory to us that the dispute has been resolved. We will not be liable for any items that are dishonored as a consequence of placing a hold on funds in your account for these reasons.

In most cases, we will resolve disputes over the telephone or within your branch. Any unresolved disputes shall be governed by the provisions disclosed below in Subsections (1), (2), (3) and (4). **READ THESE PROVISIONS CAREFULLY.** They supersede the "DISPUTES" section governed by the agreements prior to this revision and apply to all relationships heretofore entered into between us regarding the subject matter of this agreement.

(1) "Dispute" Defined. As used herein, the word "Dispute" means any claim by either party against the other party related to or arising out of this Agreement and includes, but is not limited to, matters arising from or relating to an application for or denial of credit, fees, the adequacy of a party's disclosures, enforcement of any and all of the obligations a party hereto may have to another party, compliance with applicable laws and/or regulations, performance or services or products provided under this Agreement, including without limitation disputes based on or arising from any alleged tort or matters involving the employees, officers, agents, affiliates, or assigns of a party hereto. If a third party is a party to a Dispute (such as a credit reporting agency, or the payee or maker of an item paid from or deposited in any deposit account), each party hereto agrees to consent to including that third party in any arbitration for resolving the Dispute with that third party.

The words "Consumer Dispute" mean a Dispute concerning a deposit account or product described in this Agreement provided by Bank to a consumer primarily for personal, family, or household purposes, in which the claim for damages is less than \$75,000. The words "Commercial Dispute" mean any Dispute that is not a Consumer Dispute.

(2) **Jury Waiver.** Each party waives its, his or her respective rights to a trial before a jury in connection with any Dispute. All Disputes shall be decided by a judge sitting without a jury, unless submitted to binding arbitration pursuant to Subsection (4).

(3) **Class Action Waiver.** If permitted by applicable law, each party waives the right to litigate any Dispute as a class action (either as a member of a class or as a representative) or to act as a private attorney general. The waiver in this paragraph applies whether the proceeding is in a court, in an arbitration, or in any judicial reference proceeding.

(4) **Agreement to Submit to Binding Arbitration.** This Subsection (4) is an agreement to submit to binding arbitration of any Dispute between the parties. With regard to any Consumer Dispute, any party hereto shall have the right, but no obligation, to require that any Dispute between the parties be resolved by arbitration. With regard to a Commercial Dispute, if (but only if) a state or federal court determines for any reason that the jury trial waiver provision in Subsection (1) is not enforceable with respect to the Dispute, any party hereto may require that said Dispute be resolved by binding arbitration. Only with regard to arbitration under this Subsection (4), the parties agree that "Dispute" does not include matters regarding: (a) the validity, enforceability, meaning, or scope of this DISPUTES Section; or (b) class action claims brought by either party as a class representative on behalf of others and claims by a class representative on either party's behalf as a class member, which matters may be determined only by a court without a jury. **BY AGREEING TO RESOLVE FUTURE DISPUTES IN ARBITRATION, THE PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT.**

In any lawsuit regarding a Dispute (a "Lawsuit"), and subject to the provisions of the preceding paragraph, following the service of a complaint, third-party complaint, cross-claim or counterclaim or any answer thereto, any amendment to any of the above served in the Lawsuit, or a ruling or entry of an order in the Lawsuit that has the effect of invalidating any jury trial waiver agreement (any of the foregoing, an "Arbitration Event"), then at any time prior to trial of the Dispute, but not later than 30 days after the Arbitration Event, any party shall be entitled to move the court for an order compelling arbitration and staying or dismissing the Lawsuit pending arbitration ("Arbitration Order") under this Subsection (4). Each party agrees that a party that commenced or participated in the Lawsuit may demand arbitration of a Dispute after an Arbitration Event, and that the commencement or participation in the Lawsuit shall not operate as a waiver of the right to compel arbitration. After entry of an Arbitration Order, the non-moving party shall commence arbitration. The moving party shall, at its discretion, also be entitled to commence arbitration but is under no obligation to do so, and the moving party shall not in any way be adversely prejudiced by electing not to commence arbitration.

Arbitration under this provision shall be conducted before a single arbitrator through either the National Arbitration Forum ("NAF") or JAMS, as selected by

the initiating party, in accordance with the rules of NAF or JAMS (the "Administrator"). However, if the parties agree, a licensed attorney may be selected by the parties to conduct the arbitration without an Administrator. If NAF and JAMS both decline to administer arbitration of the Dispute, and if the parties are unable to mutually agree upon a licensed attorney to act as arbitrator without an Administrator, then either party may file a lawsuit and move for an Arbitration Order. The arbitrator, however appointed, shall have expertise in the subject matter of the Dispute. Venue for the arbitration proceeding shall be as stated elsewhere in this Agreement with respect to any judicial proceedings between the parties. Absent such a venue provision, the arbitration shall be conducted at a location determined by mutual agreement of the parties or by the Administrator if no agreement can be reached. The arbitrator shall apply the law of the state specified in the agreement giving rise to the Dispute.

In any arbitration commenced by a consumer regarding a Consumer Dispute, Bank shall pay one half of the Administrator's initial filing fee, up to \$500. If Bank commences arbitration or is the moving party obtaining an Arbitration Order, Bank shall pay all Administrator and arbitrator fees, regardless of whether or not the consumer is the prevailing party in such arbitration, unless such Dispute involves a claim for damages by a consumer and is found by the arbitrator to be frivolous.

The Administrator and the arbitrator shall have the authority, to the extent practicable, to take any reasonable action to require the arbitration proceeding to be completed within 180 days of commencing the arbitration. The arbitrator: (i) will render a decision and any award applying applicable law; (ii) will hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment; (iii) will give effect to any statutory or contractual limitations period (e.g., any statute of limitations) in determining any Dispute or defense; (iv) shall have the authority to impose sanctions on any party that fails to comply with time periods imposed by the Administrator or the arbitrator, including, without limitation, the sanction of entering a final award against the party that fails to comply; (v) shall have authority to award costs and fees (including attorneys' fees and costs, arbitration administration fees and costs, and arbitrator(s)' fees) to the extent permitted by law; (vi) shall recognize and honor claims of privilege recognized at law; and (vii) will regard to motions and the arbitration hearing, shall apply the Federal Rules of Evidence. The doctrines of compulsory counterclaim, res judicata, and collateral estoppel shall apply to any arbitration proceeding hereunder.

Commencement of an arbitration by any party shall not prevent any party from at any time (i) seeking and obtaining from a court of competent jurisdiction (notwithstanding ongoing arbitration) provisional or ancillary remedies including but not limited to injunctive relief, temporary restraining orders, property preservation orders, foreclosure, sequestration, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver; or (ii) availing itself of any self-help remedies such as setoff and repossession rights or non-judicial foreclosure of collateral. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration.

Judgment upon an arbitration award may be entered in any court having jurisdiction except that, if the arbitration award exceeds the "Appeal Threshold," any party shall be entitled to a de novo appeal of the award before a panel of three arbitrators. The "Appeal Threshold" in a Commercial Dispute shall be \$4,000,000 and, in a Consumer Dispute shall be \$200,000. To allow for such appeal, if the award (including Administrator, arbitrator, and attorney's fees and costs) exceeds the Appeal Threshold, the arbitrator will issue a written, reasoned decision supporting the award, including a statement of authority and its application to the Dispute. A request for de novo appeal must be filed with the arbitrator within 30 days following the date of the arbitration award; if such a request is not made within that time period, the arbitration award shall become final and binding. On appeal, the arbitrators shall review the award de novo, meaning that they shall reach their own findings of fact and conclusions of law rather than deferring in any manner to the original arbitrator. Appeal of an arbitration award shall be pursuant to the rules of the Administrator; if the Administrator has no such rules, then the JAMS arbitration appellate rules shall apply.

To request information on how to submit an arbitration claim, or to request a copy of an Administrator's rules or fee schedule, please contact the Administrators as follows: JAMS: 1920 Main St., Suite 300, Irvine, CA 92614, Phone: (949) 224-1810, Fax: (949) 224-1818, E-mail: info@jamsadr.com, Website: www.jamsadr.com; NAF: National Arbitration Forum, P.O. Box 50191, Minneapolis, MN 55405-0191, Phone (800) 474-2371, E-Mail: info@adrforum.com, Website: www.adrforum.com. Arbitration under this provision concerns a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. If the terms of this Subsection (4) vary from the Administrator's rules, this Subsection (4) shall control.

(5) **Survival.** This DISPUTES Section shall survive any termination, amendment, or expiration of this Agreement, or any other relationship between the parties.

(6) **Reliance.** Each party (i) certifies that no one has represented to such party that the other party would not seek to enforce a jury waiver, class action waiver or arbitration provision in the event of suit, and (ii) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, material reliance upon the mutual waivers, agreements, and certifications in this DISPUTES Section.

SECURITY

It is your responsibility to protect the account number(s) and access device(s) (e.g., an ATM card, point-of-sale card and/or PIN) for your account(s). Do not discuss, compare, or share information about your account number(s) or access device(s) with anyone unless you are willing to give them full use of your money. Checks and electronic withdrawals are processed by automated methods, and anyone who obtains your account number or access device could use it to withdraw money from your account, with or without your permission.

Account numbers - Thieves can encode your account number on a check which looks and functions like an authorized check and can be used to withdraw money from your account. Your account number can also be used to issue a "remotely created check." Like a typical check, a remotely created check (sometimes called a telecheck, preauthorized draft or demand draft) is a draft or check that can be used to withdraw money from your account. Unlike a typical check or draft, however, a remotely created check is not issued by the paying bank and does not contain the signature of the account owner (or a signature purported to be the signature of the account owner). For example, if you provide your account number in response to a telephone solicitation, the telephone solicitor can use the account number to issue a remotely created check to withdraw money from your account. If you have truly authorized the remotely created check (to purchase a service or merchandise, for example), it is properly payable. But it can be risky to authorize a remotely created check. A swindler could issue a remotely created check in an amount greater than you authorized, or issue additional remotely created checks that you have not authorized. We will not know if the withdrawal is unauthorized or in an amount greater than the amount you have authorized. Payment can be made from your account even though you did not contact us directly and order the payment.

Access devices - If you furnish your access device and grant actual authority to make transfers to someone who then exceeds that authority, you will be liable for the transfers unless we have been notified that transfers by that person are no longer authorized. Please review the additional information you have received or will receive regarding transfers by access device.

Blank checks - You must also take precaution in safeguarding your blank checks. Notify us at once if you think your blank checks have been lost or stolen. As between you and us, if you are negligent in safeguarding your checks, you must bear the loss entirely yourself.

ATM/Night Deposit Facility User Precautions - As with all financial transactions, please exercise discretion when using an automated teller machine (ATM) or night deposit facility. For your own safety, be careful. The following suggestions may be helpful.

1. Prepare for your transactions at home (for instance, by filling out a deposit slip) to minimize your time at the ATM or night deposit facility.
2. Mark each transaction in your account record, but not while at the ATM or night deposit facility. Always save your ATM receipts. Don't leave them at the ATM or night deposit facility because they may contain important account information.
3. Compare your records with the account statements or account histories that you receive.
4. Don't lend your ATM card to anyone.
5. Remember, do not leave your card at the ATM. Do not leave any documents at a night deposit facility.
6. Protect the secrecy of your Personal Identification Number (PIN). Protect your ATM card as though it were cash. Don't tell anyone your PIN. Don't give anyone information regarding your ATM card or PIN over the telephone. Never enter your PIN in any ATM that does not look genuine, has been modified, has a suspicious device attached, or is operating in a suspicious manner. Don't write your PIN where it can be discovered. For example, don't keep a note of your PIN in your wallet or purse.
7. Prevent others from seeing you enter your PIN by using your body to shield their view.
8. If you lose your ATM card or if it is stolen, promptly notify us. You should consult the other disclosures you have received about electronic fund transfers for additional information about what to do if your card is lost or stolen.
9. When you make a transaction, be aware of your surroundings. Look out for suspicious activity near the ATM or night deposit facility, particularly if it is after sunset. At night, be sure that the facility (including the parking area and walkways) is well lit. Consider having someone accompany you when you use the facility, especially after sunset. If you observe any problem, go to another ATM or night deposit facility.
10. Don't accept assistance from anyone you don't know when using an ATM or night deposit facility.
11. If you notice anything suspicious or if any other problem arises after you have begun an ATM transaction, you may want to cancel the transaction, pocket your card and leave. You might consider using another ATM or coming back later.
12. Don't display your cash; pocket it as soon as the ATM transaction is completed and count the cash later when you are in the safety of your own car, home, or other secure surrounding.

13. At a drive-up facility, make sure all the car doors are locked and all of the windows are rolled up, except the driver's window. Keep the engine running and remain alert to your surroundings.

14. We want the ATM and night deposit facility to be safe and convenient for you. Therefore, please tell us if you know of any problem with a facility. For instance, let us know if a light is not working or there is any damage to a facility. Please report any suspicious activity or crimes to both the operator of the facility and the local law enforcement officials immediately.

OTHER TERMS AND CONDITIONS

Account Transfers - If you attempt to transfer or assign all or a part of your account, we will not be bound by the transfer or assignment until we agree in writing to the transfer or assignment. We are not required to accept or recognize any transfer or assignment. Unless we agree otherwise in writing, any rights of a transferee or assignee will be subject to our right of setoff or prior security interest. We have no obligation to notify you or any other person before debursing any funds from your account in accordance with what we in good faith believe to be the terms of the transfer or assignment.

Address or Name Changes - You are responsible for notifying us of any change in your address or your name. We may require that a change of address or name must be made in writing by at least one of the account owners. Informing us of your address or name change on a check reorder form is not sufficient. We will attempt to communicate with you only by use of the most recent address you have provided to us. If provided elsewhere, we may impose a service fee if we attempt to locate you. You must give us a reasonable period of time to change your address on our records.

Backup Withholding/TIN Certification - Federal tax law requires us to report interest payments we make to you of \$10 or more in a year, and to include your taxpayer identification number (TIN) on the report. Interest includes dividends, interest and bonus payments for purposes of this rule. Therefore, we require you to provide us with your TIN and to certify that it is correct. The TIN is a social security number (SSN), Individual Taxpayer Identification Number (ITIN), or an employer identification number (EIN). For most organization or business accounts other than sole proprietorships, the appropriate TIN is the EIN of the organization or business entity. For sole proprietorships, either the SSN or the EIN is appropriate. However, we must supply the IRS with both the individual owner's name and the business name of the sole proprietorship. The appropriate TINs for various other types of accounts are:

Account type - TIN

Individual - SSN of the individual.

Joint Account - SSN of the owner named first on the account.

Uniform Gift/Transfer to Minor - SSN of the minor.

Grantor's (Revocable) Trust - ordinarily SSN of the trustor, but may have EIN. Irrevocable Trust - EIN.

In some circumstances, federal law requires us to withhold and pay to the IRS a percentage of the interest that is earned on funds in your accounts. This is known as backup withholding. We will not have to withhold interest payments when you open your account if you certify your TIN and certify that you are not subject to backup withholding due to underreporting of interest. We may subsequently be required to begin backup withholding if the IRS informs us that you supplied an incorrect TIN or that you underreported your interest income. If you do not have a TIN, we may defer backup withholding if you certify that you do not have a TIN but have applied for one. However, we must begin backup withholding if you do not supply us with a certified TIN within 90 days. If you do not have a TIN because you are a foreign person (either an individual who is a nonresident alien or a foreign organization) you must certify your foreign status. If you are an exempt payee (receiver of interest payments), you do not need to certify your TIN, but you will have to certify your exempt status and supply us with your TIN. The most common exempt payees are corporations, organizations exempt from tax under Section 601(a), and an individual retirement plan or a custodial account under Section 403(b)(7). If you do not supply us with the appropriate TIN, we may refuse to open your account.

Cash Transaction Reporting - To help law enforcement agencies detect illegal activities, the law requires all financial institutions to gather and report information on some types of cash transactions. If the information we need to complete the report is not provided, we are required to refuse to handle the transaction. If you have any questions regarding these rules, please contact your local Internal Revenue Service office.

Changing Account Products - We may change your account to another product offered by us at any time by giving you notice that your account will be changed to another product on a specified date. If your account is a time account, the change will not occur before the next maturity date of your account. If you do not close your account before the date specified in the notice, we may change your account to that other product on the date specified in the notice.

Check Processing - We may process items mechanically by relying on the information encoded along the bottom of the items. This means that we may not individually examine all of your items to determine if the item is properly completed, signed and endorsed. We may accept items as outlined in the section entitled "Credits to Your Account and Order of Processing Withdrawals." You agree that we have not failed to exercise ordinary care solely because we use an automated system to process items and do not inspect all items processed in

such a manner. We reserve the right not to inspect each item because using an automated process helps us keep costs down for you and all account owners. We may determine the amount of available funds in your account for the purpose of deciding whether to return an item for insufficient funds at any time between the time we receive the item and when we return the item or send a notice in lieu of return. We need only make one determination, but if we choose to make a subsequent determination, the account balance at the subsequent time will determine whether there are insufficient available funds.

Check Storage and Copies - You agree that you will not automatically receive your canceled checks. We will store your canceled checks or copies of them for a reasonable retention period. You may request copies from us in the manner we require.

Checking Account Organization - We have organized your Checking account in a nontraditional way. Your Checking account consists of two subaccounts. One of these is a transaction subaccount (e.g., a checking subaccount). You will transact business on this subaccount. The other is a nontransaction subaccount (e.g., a savings subaccount). You cannot directly access the nontransaction subaccount, but you agree that we may automatically, and without a specific request from you, initiate individual transfers of funds between subaccounts from time to time at no cost to you. This account organization will not change the amount of federal deposit insurance available to you, your available balance, the information on your periodic statements, or the interest calculation, if this is an interest-bearing account. You will not see any difference between the way your Checking account operates and the way a traditionally organized Checking account operates, but this organization makes us more efficient and helps to keep costs down.

Claim of Loss - If you claim a credit or refund because of a forgery, alteration, or any other unauthorized withdrawal, you agree to cooperate with us in the investigation of the loss, including giving us an affidavit containing whatever reasonable information we require concerning your account, the transaction, and the circumstances surrounding the loss. You will notify law enforcement authorities of any criminal act related to the claim of loss, missing, or stolen checks or unauthorized withdrawals. We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. Unless we have acted in bad faith, we will not be liable for indirect, incidental, special, consequential or punitive damages, including loss of profits or opportunity, or for attorneys' fees incurred by you.

You agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure, or otherwise reimburse you for your loss. You will pursue your rights or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover or are entitled to recover from these other sources. In addition, any liability that we may incur for funds transferred to or intercepted by a person other than your intended payee shall be reduced by any amount or benefit ultimately received by your intended payee, directly or indirectly.

Credit Verification - You agree that we may verify credit and employment history by any necessary means, including preparation of a credit report by a credit reporting agency.

Dormant Accounts - We may consider the account dormant if there has been an extended period without any client-initiated activity. The period of inactivity, and any fees if applicable, are set forth in the fee schedule. Interest may not be paid on dormant accounts and we may impose any applicable service charges. We can close any account at any time. It is our policy not to reverse service charges or re-credit interest if a dormant or closed account is subsequently reactivated or reopened.

Internet Banking - Internet banking (also called online banking) is governed by both the general terms of this Deposit Agreement and the specific terms of the Internet banking agreement, as amended from time to time, posted at our Internet banking website. From time to time, additional technologies for banking transactions may be made available for your use, on condition that you agree to the terms of supplemental agreements applicable to those technologies.

Internet Gambling Notice - Restricted transactions as defined in 12 C.F.R. Part 233 (Federal Reserve Regulation GG) are prohibited from being processed through this account or relationship. Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by themselves or others in unlawful Internet gambling. We have elected to not offer accounts to organizations that offer or sponsor Internet gambling. Commercial accounts revolving or processing Internet gambling transactions are subject to closure.

Legal Actions Affecting Your Account - If we are served with a subpoena, restraining order, writ of attachment or execution, levy, garnishment, search warrant, or similar order relating to your account (termed "legal action" in this section) regardless of the method and location of service, we will comply with that legal action (subject to our security interest and offset rights). Or, at our discretion, we may freeze the assets in the account and not allow any payments out of the account until a final court determination regarding the legal action. We may do these things even if the legal action involves less than all of you. In these cases, we will not have any liability to you if there are insufficient funds to pay your loans because we have withdrawn funds from your account or in any way restricted access to your funds in accordance with the legal action. Any fees or

expenses we incur in responding to any legal action (including, without limitation, attorneys' fees, our internal expenses, and any document production or discovery charges incurred and not paid by third parties) may be charged against your account. The list of fees applicable to your account(s) provided elsewhere may specify additional fees that we may charge for certain legal actions.

Liability - You agree, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges. You authorize us to deduct these charges directly from the account balance as accrued. You will pay any additional reasonable charges for services you request which are not covered by this agreement.

Each of you also agrees to be jointly and severally (individually) liable for any account shortage, including accrued interest resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and can be deducted directly from the account balance whenever sufficient funds are available or from any other account you own. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft. You will also be liable for our costs to collect the deficit as well as for our reasonable attorneys' fees, whether incurred as a result of collection or in any other dispute involving your account including, but not limited to, disputes between you and another joint owner; you and an authorized signer or similar party; or a third party claiming an interest in your account.

Lost, Destroyed, or Stolen Certified, Cashier's, or Teller's Checks - Under some circumstances you may be able to assert a claim for the amount of a lost, destroyed, or stolen certified, cashier's or teller's check. To assert the claim: (a) you must be the remitter (or drawer of a certified check) or payee of the check, (b) we must receive notice from you describing the check with reasonable certainty and asking for payment of the amount of the check, (c) we must receive the notice in time for us to have a reasonable opportunity to act on it, and (d) you must give us a declaration (in a form we require) of your loss with respect to the check. You can ask us for a declaration form. Even if all of these conditions are met, your claim may not be immediately enforceable. We may pay the check until the ninetieth (90th) day after the date of the check (or date of acceptance of a certified check). Therefore, your claim is not enforceable until the ninetieth (90th) day after the date of the check or date of acceptance, and the conditions listed above have been met. If we have not already paid the check, on the day your claim is enforceable we become obligated to pay you the amount of the check. We will pay you in cash or issue another certified check.

At our option, we may pay you the amount of the check before your claim becomes enforceable. However, we will require you to agree to indemnify us for any losses we might suffer. This means that if the check is presented after we pay your claim, and we pay the check, you are responsible to cover our losses. We may require you to provide a surety bond to assure that you can pay us if we suffer a loss.

Monitoring and Recording Telephone Calls - We may monitor or record phone calls for security reasons and to ensure that you receive courteous and efficient service. You consent in advance to any such recording. We need not remind you of our recording before each phone conversation.

Night Deposit Facilities - Terms of Use; When "Deposit" Occurs. You assume all risk arising out of or in connection with your use of Bank's night depository facilities. You agree that our night depository facilities are made available as a convenience, and that the Bank does not insure and is not required to maintain insurance on its night depository facilities, contents therein, or property that you place into the night depository facilities. We can at any time, in our discretion and without prior notice, withdraw your permission to use our night depository facilities. If we determine in our discretion that you use our night depository facilities on more than an occasional basis, we may require you to sign a separate night depository agreement with supplementary terms as a condition to permitting your further use.

You must never place any property into our night depository facility other than (i) cash, checks, drafts and similar items that you intend to be deposited to your deposit account with us (collectively "Instruments for Deposit"), and (ii) property reasonably necessary to facilitate that deposit, such as deposit pouches and deposit slips. All Instruments for Deposit must be accompanied by a properly completed deposit slip, and (except for cash) must be duly endorsed for deposit to your account. We may refuse to accept for deposit any or all Instruments for Deposit that are not accompanied by an itemized deposit slip.

You agree that no "deposit" or bailment occurs, and no relationship of debtor (us) and creditor (you) arises, from your use of our night depository facility until an employee of Bank actually removes your Instruments for Deposit from the night depository facility and deposits them to your account during our business hours. If an amount listed on your itemized deposit slip does not agree with the deposit amount calculated by Bank, the Bank's findings and records of the property received and deposited will be conclusive and binding.

You agree to indemnify and hold Bank harmless from and against any and all claims, demands, actions, proceedings, judgments, losses, damages, counsel fees, court costs, payments, expenses and all liabilities whatsoever, which Bank at any time shall or may sustain or incur by reason of use of our night depository facilities by you or your employees or agents, except to the extent that any losses can be attributed to Bank's own gross negligence or willful misconduct. Under no circumstances shall Bank be liable or responsible for any property other than Instruments for Deposit that you place into our night depository facilities.

Notice of Negative Information - Federal law requires us to provide the following notice to customers before any "negative information" may be furnished to a nationwide consumer reporting agency. "Negative information" includes information concerning delinquencies, overdrafts or any form of default.

After providing this notice, additional negative information may be submitted without providing another notice.

We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report.

Pass-Through Insurance - You may wish to consult a professional adviser to determine if your account is properly established and the records are being properly maintained in accordance with FDIC requirements for "pass-through" insurance. The Bank is not responsible for and will not make a determination relative to proper record maintenance of an account seeking eligibility for "pass-through" insurance.

As outlined in 12 CFR 330, certain requirements, including recordkeeping requirements, must be met for certain fiduciary accounts to benefit from pass-through FDIC insurance coverage. For the non-contingent interest of each participant to benefit for any available FDIC insurance coverage, the Bank's records must specifically disclose that the depositor holds the funds deposited in a fiduciary capacity. This means that the details of the fiduciary relationship between the depositor and its participants and the participant's interest in the deposits must be distinguishable.

Pledges - Unless we agree otherwise in writing, each owner of this account may pledge all or any part of the funds in it for any purpose to which we agree. Any pledge of this account must first be satisfied before the rights of any surviving account owner or account beneficiary become effective.

Setoff and Security Interest - We may (without prior notice and when permitted by law) set off the funds in any of your accounts against any debt (whether or not matured, due, payable, in default or accelerated) or obligation that you owe us, now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance due date for which we properly accelerate under the note.

This right of setoff does not apply to this account if: (a) it is an Individual Retirement Account or similar tax-deferred account, or (b) the debt is created by a consumer credit transaction under a credit card plan (but this does not affect our rights under any consensual security interest), or (c) the debtor's right of withdrawal only arises in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff. You also grant us a security interest in each account you own to secure any debt that you owe, or may owe, us now or in the future.

The Bank shall also have the right to place an administrative hold on such funds pending set-off. The Bank may apply all funds in a joint ownership account to satisfy a debt owed to the Bank by any one or more of the joint owners. In addition, the Bank may, after the death of any account owner, setoff against a joint account or an account with POD beneficiaries the debts and obligations of the deceased account owner, up to the full amount in the account at the time of the account owner's death. If the Bank must use principal to satisfy the debt and the account is a time deposit, you are subject to the applicable early withdrawal penalty.

Statements - Statements are a valuable tool to help prevent fraudulent or mistaken transfers. Your statement will show the transactions that occurred in connection with your account during the statement period.

Your Duty to Report Unauthorized Signatures, Alterations and Forgeries - Your statement will provide sufficient information for you to reasonably identify the items paid (item number, amount, and date of payment). You should keep a record of each transaction as it is made so that when we give you the information in the statement, you will have a complete understanding of each transaction listed. You have some responsibilities in connection with your statement. You must examine your statement with "reasonable promptness." Also, if you discover (or reasonably should have discovered) any unauthorized signatures or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you must bear the loss entirely yourself. The loss you might bear, in whole or part, could be not only with respect to items listed on the statement, but also other items with unauthorized signatures or alterations by the same wrongdoer. Of course, an attempt can be made to recover the loss from the thief, but this is often unsuccessful. You agree that the time you have to examine your statement and report to us will depend on the circumstances, but you will not, in any circumstance, have a total of more than 30 days from when we first send or make the statement available to you.

You further agree that if you fail to report any unauthorized signatures, alterations or forgeries in your account within 30 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours. This 30-day limitation is without regard to whether we exercised ordinary care. The limitation in this paragraph is in addition to those contained in the second paragraph of this section.

Contact us if you do not receive your regular statement. If this is a business account, you agree that you will have at least two people review your statements, notices, and returned checks, or in the alternative, the person who reviews these will be someone who does not have authority to transact business on the account.

Your Duty to Report Other Errors - In addition to the Commercial Code and other state law, you agree there is a common law duty to promptly review your statement for errors in addition to unauthorized signatures, alterations or forgeries. Promptly reviewing your statement is valuable to both you and us because it can help identify, correct and prevent future mistakes.

In addition to your duty to review your statements for unauthorized signatures, alterations and forgeries, you agree to examine your statement with reasonable promptness for any other error - such as an encoding error. You agree that the time you have to examine your statement and report to us will depend on the circumstances. However, such time period shall not exceed 60 days. Failure to examine your statement and report any such errors to us within 60 days of when we first send or make the statement available precludes you from asserting a claim against us for any such errors on items identified in that statement and as between you and us the loss will be entirely yours. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the 60 day time period to report other errors.

Errors Relating to Electronic Fund Transfers or Substitute Checks - For information on errors relating to electronic fund transfers (e.g., computer, debit card or ATM transactions) refer to your Electronic Fund Transfers disclosure and the sections on consumer liability and error resolution. For information on errors relating to a substitute check you received, refer to your disclosure entitled Substitute Checks and Your Rights.

Telephone communications - By opening or maintaining an account or safe deposit box with us, you give us and our authorized representatives your express consent to contact you by telephone, whether cellular (mobile) phone or land line, to communicate with you about any aspect of your banking relationship with us, including without limitation debts or other obligations that may arise from time to time under this Agreement or under any agreement referenced herein. You expressly consent to use of pre-recorded or artificial voice messages, text messages, and calls made using an automatic telephone dialing system when we contact you by telephone. Your express consent includes all telephone numbers that you provide to us for any reason, now or in the future, and permits such calls regardless of purpose.

Telephonic Instructions - Unless we have agreed otherwise in writing, we are not required to act upon instructions you give us via telephone or facsimile transmission, or leave by voice mail or on a telephone answering machine.

Telephone Transfers - A telephone transfer of funds from this account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Positive identification may be required before any account information may be released or any transfers can be performed. You agree to hold the Bank harmless for such transfers as long as the Bank acted on instructions from a person reasonably believed to be authorized. Transfer requests between accounts with different titles or owners may need an authorization letter signed by an authorized owner on file with the Bank. The Bank will not process any transfer for which there is insufficient collected funds. Unless a different limitation is disclosed in writing, we restrict the number of transfers from a savings account to another account or to third parties, to a maximum of six per month (less the number of "preauthorized transfers" during the month). Other account transfer restrictions may be described elsewhere.

Unclaimed Property - The law establishes procedures under which unclaimed property must be surrendered to the state. (We may have our own rules regarding dormant accounts, and if we charge a fee for dormant accounts it will be disclosed to you elsewhere.) Generally, the funds in your account are considered unclaimed if you have not had any activity or communication with us regarding your account over a period of years. Ask us if you want further information about the period of time or type of activity that will prevent your account from being unclaimed. If your funds are surrendered to the state, you may be able to reclaim them, but your claim must be presented to the state. Once your funds are surrendered, we no longer have any liability or responsibility with respect to the funds.

OVERDRAFT DEPOSIT TRANSFERS

This section applies to clients who have requested automatic transfers from a designated checking, savings, or money market account (Coverage Accounts) to a designated checking account (Primary Account). The owners of the Primary Account and linked Coverage Accounts must be identical. This Deposit Agreement, the Consumer Deposit Accounts Disclosure and Fee Schedule brochure, and the Overdraft Deposit Transfer Request together constitute your OVERDRAFT DEPOSIT TRANSFER AGREEMENT.

Transfers: When an item(s) is presented against your Primary Account and there are insufficient funds to pay the item(s), a transfer will be made from your Coverage Account to your Primary Account in the exact amount of the overdraft. If you have more than one Coverage Account then the Coverage Account that has the entire overdraft amount available is where the transfer will be made. If the overdraft amount is at or below the minimum transfer amount specified in the Overdraft Deposit Transfer Request, the minimum amount will be transferred. If there are insufficient funds in the Coverage Account(s) to cover the overdraft, no transfer will be made.

Transfer Limitations: Federal regulations limit the number of transfers from savings and money market accounts during each monthly statement cycle including overdraft deposit transfers. Refer to the section entitled "Transfer Limitations" in this Deposit Agreement for additional information.

Fees: An Overdraft Deposit Transfer Fee will be assessed to your Coverage Account for each transfer as disclosed in the Consumer Deposit Accounts Disclosure and Fee Schedule brochure. This fee may overdraw the Coverage Account.

Joint Accounts: If your Coverage Account is owned jointly, any joint owner may elect this service and bind all other joint owners for transfers between the Coverage and Primary accounts.

SAFE DEPOSIT BOX LEASE AGREEMENT

Nevada State Bank ("Bank") leases a safe deposit box (the "Box") to the party or parties signing as lessees ("Lessee" or "Lessees") on the terms of this Safe Deposit Box Lease Agreement (the "Agreement"). Any signature card (the "Signature Card") executed in connection with this Agreement, which identifies the specific Box and the type of Box and contains other information, is governed by this Agreement.

Term. The term of this Agreement is one year, and shall be automatically renewed for successive one-year terms unless it is terminated as set forth herein.

Rent. Lessees shall pay, in advance, annual rent in the amount currently charged by Bank for similar safe deposit boxes at the same location. The initial annual rental amount is specified on the Signature Card. Bank may increase the rent for future renewal terms by sending notice to Lessees before the end of the then current term. If the contents of the Box are not picked up upon the expiration or termination of this Agreement, rent shall continue to accrue as long as the contents of the Box are in Bank's possession. The annual fee may be deducted automatically from the Lessee's designated checking account when due unless Lessee pays the rent in advance. If the annual fee remains unpaid and past due, all Lessee's funds on deposit with Bank are subject to Bank's right of setoff to pay this debt and Bank may exercise this right against any deposit account that you carry with Bank without any court proceeding and without notice to you.

Type of Box. If the Signature Card specifies that the Box is a "Regular Box," (a) access to the vault or room where the Box is located will only be permitted in the presence of an authorized Bank employee, (b) opening the Box will require concurrent action by a Bank employee (e.g. use of a dual key), and (c) Bank shall exercise ordinary care to prevent unauthorized persons from gaining access to the Box. If the Signature Card specifies that the Box is a "Self-service Box," (a) no action by a Bank employee shall be necessary for the Box to be opened, (b) Bank has no obligation to control or limit access to the Box or to the room where the Box is located or to have a Bank employee present when the Box is opened, (c) Bank shall have no liability for any removal of property from the Box by anyone, and (d) Lessees accept the decreased level of security of a Self-service Box.

Keys. If the Box is a Self-service Box, Lessees acknowledge receipt of two keys to the Box. If the Box is a Regular Box, Lessees acknowledge receipt of two keys to the Box. Lessees shall pay to Bank a reasonable key deposit for each key, which shall be refunded when the key(s) are returned to Bank. If a key is lost, Lessees shall notify Bank immediately and shall pay the expense of changing the lock and key(s) and replacing or repairing the Box if it is damaged in opening, with the key deposit applied to such expense. Lessees shall not duplicate any key to the Box. Lessees shall not allow any person to have possession of a key to the Box other than a Lessee or a person who is identified on the Signature Card as being authorized to access the Box ("Authorized Parties"). Lessees shall not leave a key in the lock of the Box while absent from the vault or room in which the Box is located.

Access. Lessees may have access to the Box during such times as Bank's office where the Box is located is open to the public. The right to open the Box is limited to Lessees, Authorized Parties, any other person duly authorized in writing by any Lessee in a form acceptable to Bank (an "Agent"), and any person authorized by law or court order. If the Box is rented in the name of more than one Lessee, any Lessee, any Authorized Party, or any Agent may have access to the Box, may remove and dispose of all or part of the contents of the Box, and may surrender the Box. Notwithstanding the foregoing, Bank may deny all persons access to the Box, and shall incur no liability therefor, where such denial is permitted or required by law or court order or Bank's reasonable interpretation thereof. Lessees shall indemnify, repay and hold harmless Bank with respect to all claims, losses or damages resulting from Bank allowing access to or removal of the contents of the Box as provided in this Agreement.

Restrictions on Use. The Box shall not be used for any illegal purpose or to store any liquids, any explosives, any property that may become a nuisance, or any flammable, perishable, dangerous or illegal property or substance. The Box may not be subleased.

Limitation of Liability. Bank shall not be responsible or liable for (a) any loss of or damage to contents of the Box resulting from fire, theft, burglary, embezzlement, vandalism, or use by anyone of a key Bank has delivered to any Lessee, (b) any personal injury or damage resulting from any negligent or wrongful act committed at or near the location of the Box, except for those of Bank's agents or employees, (c) losses or damages resulting from Lessees' or their agents' or Authorized Parties' failure to comply with this Agreement, (d) indirect, incidental, special, consequential or punitive damages, or (e) property left in the vicinity of the Box (which Bank may dispose of in its discretion, without liability). Bank is not required to provide additional equipment or security measures other than those Bank now

has for protection against any of the risks described herein. No unauthorized access shall be inferred from any loss of property contained in the Box. Lessees assume all risk in connection with the contents of the Box.

Death. In the event of the death of any Lessee, the other Lessees shall notify Bank in writing of such death before accessing the Box, and access to the Box shall be limited to the extent required by law or legal process. Bank may allow a close relative, an executor, or administrator of the estate of a deceased Lessee to enter the Box for the sole purpose of searching for a will, trust agreement, or burial instructions, and Lessees shall hold Bank harmless against all losses and damages for allowing such access. Upon the death of the last surviving Lessee, the Lessees' legal representatives may access the Box.

Security Interest. Lessees grant Bank a security interest in the contents of the Box to secure all obligations of Lessees to Bank, including their obligations under this Agreement.

Termination. Bank may terminate the lease of the Box immediately if a Lessee breaches any term of this Agreement, and may terminate for any other reason after thirty (30) days notice to a Lessee. If Bank moves or materially changes the location of the Box or Bank's hours of operations, any Lessee may terminate the lease of the Box by giving Bank notice within fifteen (15) days after notice of such relocation or change. Any Lessee may give Bank notice of nonrenewal at any time prior to the end of the then current term, and this Agreement will terminate at the end thereof. If Bank has given any Lessee notice of a rent increase or of an amendment hereto less than fifteen (15) days prior to the end of then current term, any Lessee may terminate this Agreement by giving Bank notice within twenty (20) days after Bank gave notice. Upon termination, Lessees shall surrender the Box and the key(s), and Bank will refund to Lessees a pro rata portion of the rent paid for the remainder of any unexpired term, or if rent has not been paid for the then current term, Lessees will pay a prorated amount of rent for the period from the beginning of such term through the date of termination. If a refund is due, a refund to any Lessee shall be sufficient.

Amendment. The terms of this Agreement may be amended at any time by Bank, and such amendment shall be deemed accepted by Lessees unless any Lessee terminates this Agreement by giving Bank notice of termination within fifteen (15) days after Bank's notice of the amendment to any Lessee.

Condition of Box. At the termination or expiration of this Agreement, Lessees will surrender the Box in as good a condition as when leased, reasonable use excepted, and shall pay Bank the cost of repairs made necessary by their failure to do so.

Disposition of Unclaimed Contents. If Lessees do not remove the contents of the Box upon termination or expiration of this Agreement, Bank may open the Box. If Lessee has unsatisfied obligations to Bank, Bank shall have the rights of a secured creditor under the Uniform Commercial Code, including the right to sell the contents of the Box and apply the proceeds of such sale to satisfy such obligations. To the extent such contents are not used to satisfy such obligations, Bank shall comply with the applicable unclaimed property law.

Rights and Remedies of Bank. In addition to Bank's rights under this Agreement, Bank shall have all rights granted to lessors of safe deposit boxes by applicable law. Each Lessee is liable for obligations and for any breach by any other Lessee. Lessees shall be liable to Bank for any costs, expenses or damages resulting from any breach of this Agreement by Lessees, including Bank's expenses and attorneys' fees in enforcing its rights under this Agreement.

Notices. All notices shall be sent in writing, except when you and we have agreed notice may be given electronically. Bank may send any notice to the address for any Lessee in Bank's records, and such notice will be effective for all Lessees. Lessees shall notify Bank of any change in any Lessee's address. Lessees shall send to or deliver all notices to the Bank office at which the Box is located or such other address we may give you. Notices shall be effective five (5) days after mailing or upon actual receipt, if earlier.

Miscellaneous. This Agreement is binding on the parties' heirs and legal representatives. No waiver by Bank of performance of an obligation shall be a waiver of any subsequent requirement. Lessees may not assign their rights under this Agreement.

REDDI RESERVE OVERDRAFT PROTECTION

This section applies to clients who have been approved for Reddi Reserve overdraft protection either in writing, over the telephone, or via the Internet. This disclosure, your Reddi Reserve Application and the Approval Letter, if any, together constitute your REDDI RESERVE OVERDRAFT AGREEMENT ("Reddi Reserve Agreement"). Your use of the Reddi Reserve overdraft protection constitutes acceptance of these terms and your agreement to be bound by them. The Reddi Reserve Agreement sets forth important terms of the agreement between you and the Bank and should be reviewed carefully.

Definitions. The following definitions apply and will help you better understand this Reddi Reserve Agreement. The words "Reddi Reserve Account" refer to the revolving overdraft credit account applied for by you in writing, over the telephone or via the Internet governed by the Reddi Reserve Agreement between you and the Bank. The words "Reddi Reserve Application" refer to (i) the application you filed out either in writing, over the telephone, or via the Internet to request a Reddi Reserve Account, or (ii) your Pre-Approved Acceptance Certificate, if any. The words "Approval Letter" refer to the letter notifying you of approval of your Reddi Reserve Account, if any. The word "Account" refers to the checking account with the Bank you have designated in your application as the "Account" in your Reddi Reserve Application.

Credit Limit. The credit limit on your Reddi Reserve Account is disclosed on each monthly statement (your initial credit limit appears on your Approval Letter). You agree not to use or allow anyone else to use your Reddi Reserve Account in any way that would cause your credit limit to be exceeded. You are liable for the entire outstanding balance even if it exceeds your credit limit. The Bank may increase or decrease your credit limit at any time. You may request a change in your credit limit by completing an updated application in your local branch.

How to Obtain Advances. Subject to your credit limit, you may obtain advances on your Reddi Reserve Account by writing a check in excess of the available collected balance in the Account, by requesting a credit advance in person at any of our authorized locations, or through an electronic transaction by using an access device provided to you as an eligible owner of the Account. Any advances made by the Bank for amounts in excess of available balances shall be made through an automatic cash transfer from your Reddi Reserve Account to the Account in the amount of the overdraft rounded up to the nearest one hundred dollars (\$100.00) (up to your credit limit). You are liable for all such advances even if the request for advance is by another owner or authorized signer of the Account who is not obligated on your Reddi Reserve Account. If there is more than one (1) person authorized to use the Reddi Reserve Account, you agree not to give us conflicting instructions, such as one of you telling us not to give advances to the other. You agree to pay prevailing overdraft and other applicable fees in effect at the time of any overdraft when an overdraft cannot be paid because an automatic cash transfer sufficient to pay the full amount of the overdraft would exceed your credit limit.

Your application for this revolving overdraft credit line also serves as a request to receive any new services such as access devices which may be available at some future time as one of our services in connection with this overdraft credit line. You understand that this request is voluntary and that you may refuse any of these new services at the time they are offered. You further understand that the terms and conditions of this Agreement will govern any transactions made pursuant to any of these new services.

Monthly Statements. The Bank will send or make available to you a monthly statement summarizing each transaction on your Reddi Reserve Account during the preceding billing period. This statement may be combined with your regular Account statement. Your monthly statement will show the total amount you owe as of the end of the billing period, any interest charges, late payment fees or other fees, the minimum payment due, and the payment due date. It also shows your current credit limit.

Review your monthly statement promptly and carefully; preservation of your rights under federal law regarding resolution of billing errors depends upon your timely recognition of potential errors, as explained in "Your Billing Rights" notice at the end of this Reddi Reserve Agreement.

How the New Balance is Determined. The total amount that you owe the Bank at the end of the current billing period appears as the "New Balance" on the monthly statement. The entire amount owing on your Reddi Reserve Account at the end of the previous billing period is called the "Previous Balance." The New Balance is determined by taking the Previous Balance and (1) subtracting any payments and credits received by the Bank during the current billing period, and then (2) adding any advances on your Reddi Reserve Account, interest charges, fees, and other adjustments.

Annual Percentage Rate. The daily periodic rate will be 1/365 (1/366 for a leap year) of the then current ANNUAL PERCENTAGE RATE. The ANNUAL PERCENTAGE RATE is a variable rate. The ANNUAL PERCENTAGE RATE in effect throughout a particular billing period will be the Bank's prime rate (as defined below) index plus a margin. Information about the Index and margin is available at any of our Bank offices, on your corresponding monthly statement, or published from the Head Office of the Bank. We will use the most recent Index value available to us as of the date of any ANNUAL PERCENTAGE RATE adjustment. The Periodic Rate and the corresponding ANNUAL PERCENTAGE RATE on your Credit Line will increase or decrease as the index increases or decreases from time to time. We will determine the Periodic Rate and the corresponding ANNUAL PERCENTAGE RATE as follows: We start with the current index and then add a certain margin. To determine the Periodic Rate that will apply to your account, we add a margin to the value of the Index, then divide the value by the number of days in a year (daily). To obtain the ANNUAL PERCENTAGE RATE we multiply the Periodic Rate by the number of days in a year (daily). This result is the ANNUAL PERCENTAGE RATE. In no event will the corresponding ANNUAL PERCENTAGE RATE be more than the maximum rate allowed by applicable law.

Adjustments to the Periodic Rate and the corresponding ANNUAL PERCENTAGE RATE resulting from changes in the Index will take effect monthly. The calculation for a billing period will use the Bank's prime rate in effect on the first calendar day of that particular billing period. The ANNUAL PERCENTAGE RATE and periodic rate in effect for each billing period are disclosed on the corresponding monthly statement.

All other factors being equal, and subject to the method by which the minimum payment is calculated (as described below), an increase in the ANNUAL PERCENTAGE RATE will increase the minimum payment, and a decrease in the ANNUAL PERCENTAGE RATE will decrease the minimum payment.

Prime Rate: The interest rate on your account is subject to change from time to time based on changes in an independent index which is the Prime Rate as

published in the Wall Street Journal (the "Index"). If a range of rates has been published, the higher of the rates will be used. Information about the Index is available or published daily in the Wall Street Journal. You acknowledge that the Prime Rate as used herein does not mean the lowest rate at which the Bank has made or may make loans to any of its customers, either now or in the future. If the Index becomes unavailable, the Bank may designate a substitute Index after providing notice to you.

Interest Charges. An interest charge will be assessed on each advance from your Reddi Reserve Account from the date of such advance to the date of repayment of such advance. There is no grace period within which an advance from your Reddi Reserve Account can be repaid without incurring an interest charge. These interest charges will apply whether before or after default, judgment, or the closing of your Reddi Reserve Account. The total amount of the interest charge for a billing period will be calculated as follows:

a. We first determine the "average daily balance" of your Reddi Reserve Account (including current transactions). To get the "average daily balance" we take the beginning balance of your account each day, add any new advances and subtract any payments or credits. This gives us the daily balance (any unpaid interest charges incurred during that billing period are not included in the daily balance). Then, we add up all the daily balances for the billing period and divide the total by the number of days in the billing period. This gives us the "average daily balance," which is also called the "balance subject to interest charge" on your monthly statement.

b. We then multiply the balance subject to interest charge by the number of days in the billing period. The resulting number is then multiplied by the daily periodic rate to determine the total amount of your interest charge on advances from your Reddi Reserve Account for that billing period.

Payments. You agree to pay the Bank, according to the terms of this Reddi Reserve Agreement, the entire amount (including all advances and other fees and charges) owing hereunder. All payments shall be in U.S. Dollars drawn on funds on deposit in the United States. Do not mail cash payments. You may prepay all or any portion of the outstanding balance at any time without penalty. If the New Balance is less than twenty-five dollars (\$25.00), the minimum payment required will be the full amount of the New Balance. If the New Balance is twenty-five dollars (\$25.00) or more, then the minimum payment will be the sum of two (2) numbers: the first (1st) number is the greater of twenty-five dollars (\$25.00) or one percent (1%) of the New Balance; the second (2nd) number is the total of all interest charges, any past due amount and any late payment fees.

Each month the Bank will automatically debit the minimum payment amount (described above) from the Account to make the required minimum payment on your Reddi Reserve Account, unless you have previously made payment in the amount of the minimum due or more. The automatic payments will be debited from the Account and applied to your Reddi Reserve Account on the payment due date set forth in the monthly statement. Automatic payments will be for the minimum payment amount only. If you wish to pay more than the minimum payment amount, then you will need to pay a higher amount by the payment due date. NOTE: If on the payment due date the Account does not contain sufficient funds to cover an automatic payment for the minimum amount due, then the amount of the automatic payment made on the due date will be the amount of the funds actually in the Account on that day. The automatic payment system will not overdraw the Account in order to make the minimum payment amount due on your Reddi Reserve Account which could result in late payment fees and other charges. The automatic payment system will then check the Account daily and continue to debit the Account until the full minimum payment amount has been reached.

Unless otherwise agreed or required by applicable law, payments and other credits will be applied first to late charges and other charges; then to interest charges; and then to unpaid principal. Payment for more than the minimum payment amount (but not more than the outstanding balance) will be accepted as a single payment for that billing period; the amount in excess of the minimum payment will not be applied toward future payments due.

The Bank may accept late payments, partial payments, or any payment marked with any kind of restrictive endorsement (such as "paid in full" or "in settlement") without giving effect to the restrictive endorsement and without losing, waiving, or impairing any of the Bank's rights under this Reddi Reserve Agreement or under applicable law.

Your Reddi Reserve Account (Miscellaneous Fees). If the minimum payment shown on your monthly statement has not been debited from your Account (because your Account did not contain sufficient funds) or it is not received at the Bank on or before the payment due date, you will be charged a late fee. This late fee will be added to and included in the New Balance. If any check or other instrument submitted as payment on your Reddi Reserve Account is dishonored or must be returned because it cannot be processed, there will be a returned payment fee charged. A transfer fee will be charged every time an advance is made from your Credit Line Account. Please note that more than one advance may be made during any given day.

Please see "Reddi Reserve Accounts" section for specific information on these fees in the *Consumer Deposit Accounts Disclosure & Fee Schedule*. **Joint Accounts.** If your Reddi Reserve Account is in the name of more than one (1) person, each and every such person shall be jointly and severally liable for the full outstanding balance, including without limitation any amount in excess of

your credit limit. In addition, except as otherwise required by applicable law, you agree that all monthly statements and notices regarding your Reddi Reserve Account may be sent or made available to any one of you.

Restrictions on Use of Reddi Reserve Account. Only you and authorized agents acting on your behalf are permitted to use your Reddi Reserve Account. You also agree that the Reddi Reserve Account will not be used for any illegal purpose.

Financial and Credit Information. The Bank may need updated financial information from you at some time in the future. If the Bank asks, you agree to furnish any current financial information that the Bank may request.

You hereby authorize the Bank to make whatever credit inquiries or investigations about you that the Bank deems appropriate and to disclose to reputable information reporting bureaus credit information about your Reddi Reserve Account and your performance under this Reddi Reserve Account. The Bank may ask credit reporting bureaus for reports of your credit history. At your request, the Bank will tell you whether or not the Bank has requested such reports and will tell you the names and addresses of the credit reporting bureaus furnishing the reports. We may report information about your account to credit reporting bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report if you fail to fulfill the terms of this Reddi Reserve Agreement.

Change of Name or Address. You agree to promptly notify the Bank if you change your name, home address, or mailing address. You may notify the Bank in person at any Nevada State Bank Office, by writing to the Bank at P.O. Box 980, Las Vegas, NV, 89125-0980, or by calling Customer Service, at 702-383-0009 (Las Vegas calling area), 775-652-6611 (Reno calling area), or 1-800-727-4743 (all other areas). The Bank will not honor your telephone instructions unless you correctly give such identifying information as the Bank may request.

Closing Your Reddi Reserve Account. You may close your Reddi Reserve Account at any time by writing to the Bank at the address listed in the preceding paragraph. The Bank may close your Reddi Reserve Account at any time without cause. Closure of the Account will result in automatic closure of the Reddi Reserve Account. You are liable for advances on your Reddi Reserve Account even if an advance is made after closure of the Account or your Reddi Reserve Account. Also, you may be required to pay the entire amount owing on your closed Reddi Reserve Account. At the Bank's option and at its sole discretion, you will pay that entire amount owing either (a) within five (5) days, or (b) by making monthly payments based on a fixed rate fully amortizing loan of up to twenty-four (24) months with principal and interest paid monthly (the Bank may require collateral until the loan is paid in full). The fixed ANNUAL PERCENTAGE RATE will be equal to the ANNUAL PERCENTAGE RATE (as calculated pursuant to the section titled ANNUAL PERCENTAGE RATE) in effect on the date that the unpaid balance is converted from an open-end loan to a closed-end loan.

Default. The Bank may declare the outstanding balance immediately due and payable, and may close your Reddi Reserve Account under any of the following conditions:

1. If your minimum payment is late.
2. If you breach any portion of this Reddi Reserve Agreement.
3. If you die or become incapacitated, file for bankruptcy or other adjustment of debt proceeding or the same is filed against you.
4. If you become insolvent or generally unable to pay your debts.
5. If you make an assignment for the benefit of creditors or there is appointed a receiver for you or your assets.
6. If you have furnished false or misleading information on the Reddi Reserve Application.
7. If you are in default under any other obligations you owe the Bank.
8. If the Bank reasonably believes that you are unable or unwilling to honor all of your obligations under this Reddi Reserve Agreement.
9. If there is instituted against you a suit in any court or there is issued against you a writ by any such court.
10. If there is an assessment against you for any unpaid state or federal income taxes.
11. If there is a material change in your financial condition.
12. If the Bank deems itself insecure.

Legal Action and Costs. Without waiving the Dispute Resolution provisions of this Reddi Reserve Agreement as contained in the Section, "Resolving Disputes (Arbitration)", the Bank may take legal action (including collection action) against you and you agree to pay all collection costs whether or not awardable as court costs (including the cost of Bank staff) and reasonable attorney's fees. If the Bank sues to collect and you win the lawsuit, the Bank will pay your court costs and reasonable attorney's fees.

Interpretation, Effect, Changes, Duration. Except for your right to make charges to your Reddi Reserve Account (which right expires when your Reddi Reserve Account is closed), all other provisions of this Reddi Reserve Agreement shall remain in full force and effect until your Reddi Reserve Account is closed and all amounts owing in conjunction with your Reddi Reserve Account are paid in full.

Headings. The headings used in this Reddi Reserve Agreement are for convenience only and shall have no bearing on the interpretation of this Reddi Reserve Agreement.

Changing This Agreement. You agree that the Bank may change the terms of this Agreement, including without limitation any term pertaining to the interest charges, at any time upon written notice to you. Except with regard to increases or decreases in your credit limit or closure of your Reddi Reserve Account, the Bank will notify you of any such change at least 45 days in advance. If you do not agree to the change, you must notify the Bank in writing before the effective date of the change, and the Bank may close your Reddi Reserve Account and may elect to have you pay all amounts due on or before the first Payment Due Date occurring after the effective date. Otherwise, you shall be deemed to have agreed to the change in the Bank's notice. Use of the Reddi Reserve Account after the effective date of the change shall be deemed to be your acceptance of the new terms.

Assignment and Binding Effect. The Bank may sell, assign, or transfer the Reddi Reserve Agreement or your Reddi Reserve Account or any portion thereof without notice to you. Subject to the foregoing, the Reddi Reserve Agreement shall be binding upon the heirs, representatives, successors, and assigns of the parties hereto.

Your Billing Rights.

This notice tells you about your rights and the Bank's responsibilities under the Fair Credit Billing Act.

What To Do If You Find a Mistake on Your Statement:

If you think there is an error on your statement, write to the Bank at the address listed on your bill.

In your letter, give the Bank the following information:

- Account information: Your name and account number.
- Dollar amount: The dollar amount of the suspected error.
- Description of problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact the Bank:

- Within 60 days after the error appeared on your statement.
- At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify the Bank of any potential errors in writing. You may call the Bank, but if you do the Bank is not required to investigate any potential errors and you may have to pay the amount in question.

What Will Happen After The Bank Receives Your Letter:

When the Bank receives your letter, the Bank must do two things:

1. Within 30 days of receiving your letter, the Bank must tell you that the Bank received your letter. The Bank will also tell you if the Bank has already corrected the error.
2. Within 90 days of receiving your letter, the Bank must either correct the error or explain to you why the Bank believes the bill is correct.

While the Bank investigates whether or not there has been an error:

- The Bank cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your statement, and the Bank may continue to charge you interest on that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your balance.
- The Bank can apply any unpaid amount against your credit limit.

After the Bank finishes their investigation, one of two things will happen:

- If the Bank made a mistake: You will not have to pay the amount in question or any interest or other fees related to that amount.
- If the Bank does not believe there was a mistake: You will have to pay the amount in question, along with applicable interest and fees. The Bank will send or make available to you a statement of the amount you owe and the date payment is due. The Bank may then report you as delinquent if you do not pay the amount the Bank thinks you owe.

If you receive the Bank's explanation but still believe your bill is wrong, you must write to the Bank within 10 days telling the Bank that you still refuse to pay. If you do so, the Bank cannot report you as delinquent without also reporting that you are questioning your bill. The Bank must tell you the name of anyone to whom the Bank reported you as delinquent, and the Bank must tell those organizations know when the matter has been settled between us.

If the Bank does not follow all of the rules above, you do not have to pay the first \$50 of the amount you question even if your bill is correct.

Effective May 1, 2011 for new accounts and May 31, 2011 for accounts opened prior to May 1, 2011.

2710126-020

NA0019 05/11

© 1986, 1992, 1995 Wells Fargo Financial Services - Bankers Systems™
Form ZH-AIBTIS-NV 5/01/2011 Custom TCM-30m,2ay,3e,4s,8a,8d,6

Notice of Change to the Deposit Agreement and Disclosure
Effective Date: July 21, 2011

For any interest-bearing business demand deposit account, the Deposit Agreement and Disclosure is amended to delete any requirement for customer to give Bank prior notice before withdrawals.

NA0019ADD (07/11)

J60-124

Cash1720

JA 00006525

EXHIBIT 92.J61

Recording Requested by and Return

CASHMAN EQUIPMENT

3300 ST ROSE PKWY Credit Dept

HENDERSON, NV 89052

Phone 800 937-2326 Fax 702 633-4695

Customer # 101381 MOJAVE ELECT

Project / Job LAS VEGAS CITY HALL

PO # 603410-017

Agreement # R16743

Agreement Date 3/9/2010

Cert No

015

12/7/2010

CLARK County

**PRELIMINARY NOTICE OF RIGHT TO LIEN AND
REQUEST FOR RECEIPT OF NOTICE OF COMPLETION**

Owner:

R16743

Customer contracting for said Equipment or Labor:

OH LAS VEGAS LLC

MOJAVE ELECTRIC

60 PUBLIC SQUARE STE 1005

3755 W HACIENDA AVE

CLEVELAND OH 44113

LAS VEGAS NV 89118

Phone:

Phone: (702) 798-2970

Lender, Surety or Bonding Co:

General

WHITING TURNER CONTR CO - 6720

6720 VIA AUSTI PKWY STE 300

LAS VEGAS NV 89118

Phone: (702) 650-0700

The undersigned notifies you that they have supplied equipment for the improvements of the property identified as:

Agreement #: R16743

R16743

Address: 495 MAIN ST

E CLARK

City / State: LAS VEGAS

NV county: CLARK

Job Info: LAS VEGAS CITY HALL

This is not a notice that the undersigned has not or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, claim a lien as provided by law against the property if the undersigned is not paid.

REQUEST IS HEREBY MADE: The Owner is hereby requested, pursuant to NRS 108.228(4), to provide this claimant with a copy of any Notice of Completion recorded on this construction project.

Customer is required to immediately advise Cashman Equipment should this piece of equipment or any other piece of equipment designated for use on this project be moved to another project.

Prepared by:

Karen Lee McClain

12/7/2010

KAREN LEE McCLAIN, CREDIT ASSISTANT Phone: (800) 937-2326 ext 4603 Fax: (702) 633-4695

For more information regarding this notice or to obtain a release, please contact your account representative:

KAREN LEE McCLAIN

Phone: (800) 937-2326

Fax: (702) 633-4695

CONFIDENTIAL

J61-001

WTUR0001204

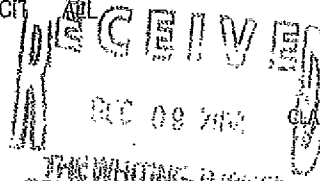
JA 00006527

EXHIBIT 92.J62

Recording Requested by and Return to:
CASHMAN EQUIPMENT
3300 ST ROSE PKWY Credit Dept
HENDERSON, NV 89052

Phone 800 937-2326 Fax 702 633-4695

Customer # 101381 MOJAVE ELECTRIC
Project / Job LAS VEGAS CITY HALL
PO # 603410-017
Agreement # R16743
Agreement Date 3/9/2010
Cert No



015
12/7/2010
CLARK County

**PRELIMINARY NOTICE OF RIGHT TO LIEN AND
REQUEST FOR RECEIPT OF NOTICE OF COMPLETION**

General
WHITING TURNER CONTR CO - 6720
6720 VIA AUSTI PKWY STE 300
LAS VEGAS NV 89119
Phone: (702) 650-0700

Customer contracting for said Equipment or Labor:
MOJAVE ELECTRIC
3755 W HACIENDA AVE
LAS VEGAS NV 89118
Phone: (702) 798-2870

Owner:
OH LAS VEGAS LLC
50 PUBLIC SQUARE STE 1005
CLEVELAND OH 44113
Phone:

Lender, Surety or Bonding Co:

The undersigned notifies you that they have supplied equipment for the improvements of the property identified as:

Agreement #:	R16743	R16743
Address:	495 MAIN ST	/E CLARK
City / State:	LAS VEGAS NV	county: CLARK
Job Info:	LAS VEGAS CITY HALL	

This is not a notice that the undersigned has not or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, claim a lien as provided by law against the property if the undersigned is not paid.

REQUEST IS HEREBY MADE: The Owner is hereby requested, pursuant to NRS 108.228(4), to provide this claimant with a copy of any Notice of Completion recorded on this construction project.

Customer is required to immediately advise Cashman Equipment should this piece of equipment or any other piece of equipment designated for use on this project be moved to another project.

Prepared by: Karen Lee McClain 12/7/2010
KAREN LEE McCLAIN, CREDIT ASSISTANT Phone: (800) 937-2326 ext 4603 Fax: (702) 633-4695

For more information regarding this notice or to obtain a release, please contact your account representative:

KAREN LEE McCLAIN
Phone: (800) 937-2326
Fax: (702) 633-4695

CONFIDENTIAL

J62-001
WTUR0001218

JA 00006529

EXHIBIT 92.J63

File:0 {NV}{PRIVATE}{OWNER}
Recording Requested by and Return to:
CASHMAN EQUIPMENT COMPANY

3300 St. Rose Pkwy
HENDERSON, NV 89052

Customer: CAM CONSULTING
P.O. #:
Project: CITY OF LAS VEGAS NEW CITY HALL
Rec ID: AB206643-B5B2-42EE-A888-18688642078
Job #: S1236701
Cert No.:

NOTICE OF RIGHT TO LIEN (PRIVATE WORK)

(Nevada Revised Statutes)

TO: GENERAL CONTRACTOR
MOJAVE ELECTRIC INC

3755 W HACIENDA AVE
LAS VEGAS, NV 89118-2905

TO: OWNER OR REPUTED OWNER
RQ LAS VEGAS LLC

50 PUBLIC SQ-TT #1410
CLEVELAND, OH 44113-2202

FORRESTER
CONSULTING
APR 27 2011

The undersigned notifies you that he has supplied materials or performed work or services for improvement of your real property as follows: Equipment Rental. The project is commonly known as: CITY OF LAS VEGAS NEW CITY HALL. The project is located at: 495 MAIN STREET, LAS VEGAS, NV 89101.

The person contracting for said labor or materials is: CAM CONSULTING, 3874 CIVIC CENTER DR, N LAS VEGAS, NV 89030-7524.

Said labor, materials or services were first furnished or worked performed on 02/01/2011.

This is not a notice that the undersigned has not or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, claim a lien as provided by law against the property if the undersigned is not paid.

REQUEST IS HEREBY MADE that the Owner or Public Entity, pursuant to Nevada's Mechanic's Lien Statutes serve on the Undersigned, by certified mail, a copy or copies of any and all Notices of Completion the Owner or Public Entity, its agents or its assigns, causes to be recorded with the County Recorder's Office where the property is located with respect to the improvements to be made.

I declare that I am authorized to file this claim on behalf of the claimant. I have read the foregoing document and know the contents thereof; the same is true of my own knowledge. I declare under penalty of perjury that the foregoing is true and correct. Executed at HENDERSON, Nevada on 04/20/2011 for CASHMAN EQUIPMENT COMPANY.

Prepared by: **AAA FORMS FILING SERVICE**
LUPE GALLEGOS, REPRESENTATIVE FOR, CREDIT MANAGEMENT ASSOCIATION Phone: (702) 259-2622 Fax: (702) 259-9908

PROOF OF SERVICE BY MAIL AFFIDAVIT

I declare that I served a copy of the above document, and any related documents, by certified or registered mail, postage prepaid, or other certified delivery, addressed to the above named parties, at the addresses listed above, on 04/20/2011. I declare under penalty of perjury that the foregoing is true and correct. Executed at HENDERSON, Nevada on 04/20/2011.

Prepared by: **AAA FORMS FILING SERVICE**
LUPE GALLEGOS, REPRESENTATIVE FOR, CREDIT MANAGEMENT ASSOCIATION

CC: TO LENDER, SURETY OR BONDING CO.

CONFIDENTIAL

J63-001
WTUR0001221

JA 00006531

EXHIBIT 92.J64

File:0 [NV][PRIVATE][OWNER]

Recording Requested by and Return to:
CASHMAN EQUIPMENT COMPANY

3300 St. Rose Pkwy
HENDERSON, NV 89052

Customer: CAM CONSULTING

P.O. #:

Project: LV CITY HALL

Rec ID: 5522B3D6-B114-4646-8990-4A109E387A011

Job #: 812389/109502

Cert No.:

FOREST CITY CREDIT
CONSTRUCTION CO. INC.

NOTICE OF RIGHT TO LIEN (PRIVATE WORK)

(Nevada Revised Statutes)

TO: GENERAL CONTRACTOR
CAM CONSULTING

3674 CIVIC CENTER DR
NORTH LAS VEGAS, NV 89030-7524

TO: OWNER OR REPUTED OWNER

P Q LAS VEGAS LLC

8FOREST CITY ENTERS INC

PO BOX 94877

CLEVELAND, OH 44101

The undersigned notifies you that he has supplied materials or performed work or services for improvement of your real property as follows: Equipment Rental. The project is commonly known as: LV CITY HALL. The project is located at: 495 MAIN ST, LAS VEGAS, NV 89101, APN Number 139-34-201-022

The person contracting for said labor or materials is: CAM CONSULTING, 3674 CIVIC CENTER DR, NORTH LAS VEGAS, NV 89030-7524.

Said labor, materials or services were first furnished or worked performed on 03/25/2011.

This is not a notice that the undersigned has not or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, claim a lien as provided by law against the property if the undersigned is not paid.

REQUEST IS HEREBY MADE that the Owner or Public Entity, pursuant to Nevada's Mechanic's Lien Statutes serve on the Undersigned, by certified mail, a copy or copies of any and all Notices of Completion the Owner or Public Entity, its agents or its assigns, causes to be recorded with the County Recorder's Office where the property is located with respect to the improvements to be made.

I declare that I am authorized to file this claim on behalf of the claimant. I have read the foregoing document and know the contents thereof; the same is true of my own knowledge. I declare under penalty of perjury that the foregoing is true and correct. Executed at HENDERSON, Nevada on 04/28/2011 for CASHMAN EQUIPMENT COMPANY.

Prepared by: Lisa Tsukiashi
LISA TSUKIASHI, REPRESENTATIVE FOR, CREDIT MANAGEMENT ASSOCIATION Phone: (702) 259-2622 Fax: (702) 259-9908

PROOF OF SERVICE BY MAIL AFFIDAVIT

I declare that I served a copy of the above document, and any related documents, by certified or registered mail, postage prepaid, or other certified delivery, addressed to the above named parties, at the addresses listed above, on 04/28/2011. I declare under penalty of perjury that the foregoing is true and correct. Executed at HENDERSON, Nevada on 04/28/2011.

Prepared by: Lisa Tsukiashi
LISA TSUKIASHI, REPRESENTATIVE FOR, CREDIT MANAGEMENT ASSOCIATION

CC: TO LENDER, SURETY OR BONDING CO.

CONFIDENTIAL

J64-001
WTUR0001199

JA 00006533

EXHIBIT 92.J65

**Invoice 119877****Invoice Date 01/31/12**

Mojave Electric
3755 West Hacienda Avenue
Attn: Chris Melers
LAS VEGAS, NV 89118

OK
[Signature]

JA 00006535



Gruber Technical Inc.

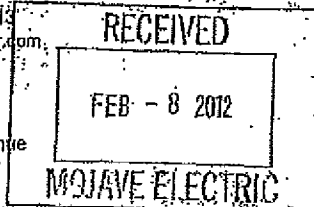
dha Gruber Power Services
21613 N. 2nd Avenue
Phoenix, AZ 85027-2918 USA
Telephone: 602/663-2868
Fax: (602) 267-4313
Email: hal@gruber.com

Invoice 119878-A

Invoice Date 01/31/12

Bill To:

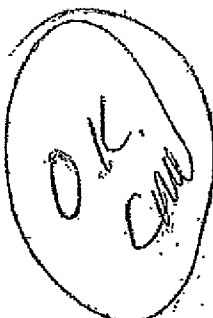
Mojave Systems
3755 West Hacienda Avenue
LAS VEGAS, NV 89119



Ship To:

Mojave Electric
3755 West Hacienda Avenue
Attn: Chris Meiers
Las Vegas, NV 89118

THIS IS A REVISED INVOICE

Customer	2MOJ01		Ship Via	FOB	Terms	AMEX
Purchase Order Number	4024911-0006		Salesperson	Order Date	Our Order Number	
			VAN	01/20/12	117661	
Quantity Ordered	Quantity Shipped	Item Description	Unit of Measure	Unit Price	Extended Price	
11.600	11.600	82-FSLBR	EA	145.00000	1687.50	
	0.000	GPS - VARIABLE - Onsite/Offsite - FE Labor Rate		N		
1.000	1.000	82-FSTRVL	EA	0.00000	0.00	
	0.000	GPS - VARIABLE - Travel - Field Engineer Travel Rate		N		
1	1	82-PERDIEM		0.00000	0.00	
	0	GPS - VARIABLE - Offsite - Perdiem Charge		N		
						
<p>THIS INVOICE HAS BEEN PAID BY CREDIT CARD</p> <p>DO NOT PAY THIS INVOICE. DO NOT PAY INVOICE</p> <p>INVOICE IS FOR YOUR RECORDS ONLY</p>						
<p>Non-taxable Subtotal</p> <p>Taxable Subtotal</p> <p>Tax</p> <p>Total Invoice</p>					<p>1687.50</p> <p>0.00</p> <p>0.00</p> <p>1687.50</p>	

Customer Original

Page 1

J65-002

JA 00006536



Gruber Technical Inc.

d/b/a Gruber Power Services
21613 N. 2nd Avenue
Phoenix, AZ 85027-2918 USA
Telephone: 602/883-2665
Fax: (602) 257-4313
Email: hal@gruber.com

Invoice 119904-A

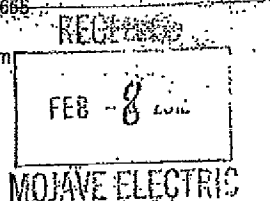
Invoice Date 01/31/12

Bill To:

Mojave Systems
3755 West Hacienda Avenue
LAS VEGAS, NV 89119

Ship To:

Mojave Electric
3755 West Hacienda Avenue
Las Vegas, NV 89118



THIS IS A REVISED INVOICE

Customer	Ship Via	PO#	Terms		
2MOJ01			AMEX		
Purchase Order Number		Salesperson	Order Date	Our Order Number	
4024911-0040		VAN	01/05/12	117040	
Quantity Ordered	Quantity Shipped	Item Number	Unit of Measure	Unit Price	Extended Price
	Back Ordered	Item Description		Disc 100% Tax	
1.000	1.000	82-F-SLR	EA	2050.32000	2050.32
	0.000	GPS - Service - Mitsubishi 9800AD 500 KVA - Startup		N	
		01/05/12 VAN :			
		Equipment: Mitsubishi 9800AD 500 KVA			
		Service: Startup during normal business hours			
		Job#: B85988 (under City of Las Vegas, City Hall, Peter Fergen)			
		Contact: Chris Meiers; Mojave Electric cmeiers@mojaveelectric.com C:			
		702-205-3311 O: 702-798-2970			
		Location of Unit: Las Vegas City Hall, 495 South Main Street, Las Vegas, NV (unit is in the basement)			
1	1	82-FSCCFEE	EA	0.00000	0.00
	0	GPS - VARIABLE - Credit Card Fee		N	
<div>THIS INVOICE HAS BEEN PAID BY CREDIT CARD</div> <div>DO NOT PAY THIS INVOICE - DO NOT PAY INVOICE</div> <div>INVOICE IS FOR YOUR RECORDS ONLY</div> <div>*****</div> <div>Non-taxable Subtotal 2050.32</div> <div>Taxable Subtotal 0.00</div> <div>Tax 0.00</div> <div>Total Invoice 2050.32</div>					

Customer Original

Page

J65-003

JA 00006537



Gruber Technical Inc.

dba Gruber Power Services
21613 N. 2nd Avenue
Phoenix, AZ 85027-2918-USA
Telephone: 602/863-2656
Fax: (602) 257-4313
Email: hal@gruber.com

Invoice 119948-A

Invoice Date 01/31/12

Bill To:

Mojave Systems
3755 West Hacienda Avenue
LAS VEGAS, NV 89118

RECEIVED

FEB - 8 2012

MOJAVE ELECTRIC

Ship To:

Mojave Electric
3755 West Hacienda Avenue
Attn: Chris Meiers
Las Vegas, NV 89118

THIS IS A REVISED INVOICE

Customer	2MOJO1	Ship Via	AMEX	Order Date	01/30/12	Our Order Number	117878
Purchase Order Number	Salesperson		VAN		Tax		
Quantity Ordered	Quantity Shipped	Item Number	Unit Price	Discount %	Tax	Extended Price	
2.000	2.000	82-FSLBR	EA	145.00000	N	290.00	
	0.000	GPS - Service Call Onsite for City Inspection					
		01/30/12 VAN :					
		Equipment; Mitsubishi 9800AD 500' kVA					
		Service: Tech. available during city inspection					
		Job#065998					
		Contact: Chris Meiers; cmeiers@mojavectric.com C: 702-205-3					
		111 Q: 702-798-2970					
		Location of Equipment: Las Vegas City Hall 495 South Main Street, Las Vegas, NV (unit is in basement)					
1	1	82-FSCCFEE	EA	0.00000	N	0.00	
	0	GPS - VARIABLE - Credit Card Fee					
THIS INVOICE HAS BEEN PAID BY CREDIT CARD							
DO NOT PAY THIS INVOICE. DO NOT PAY INVOICE							
INVOICE IS FOR YOUR RECORDS ONLY							
Non-taxable Subtotal						290.00	
Taxable Subtotal						0.00	
Tax						0.00	
Total Invoice						290.00	

Customer Original

Page 1

J65-004

JA 00006538

Hampton Tedder Technical Services, Inc.

HIGH VOLTAGE TESTING AND MAINTENANCE

(909) 628-1256 • Fax (909) 628-6375

LICENSE NO. 288589

INVOICE NO. 77942

TO: **MOJAVE ELECTRIC**

3755 W. Hacienda Avenue

Las Vegas, NV 89119

Attn: Accounts Payable

OCT 12 2011

CUSTOMER P.O. 4024911-0001

HTTS JOB NO. TN11469

DATE October 10, 2011

TERMS **NET UPON RECEIPT**

JOB: **Las Vegas City Hall**

495 Main Street

Las Vegas, NV 89101

REMIT TO: P.O. BOX 2338
MONTCLAIR, CA 91763

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
PROGRESS BILLING			
<u>SCOPE OF WORK</u>			
Diagnose Complete and Startup for Caterpillar Generator and Paralleling Switchgear.			
<u>Labor: 09/27/11 - 09/30/11</u>			
28 HRS	Journeyman Foreman S/T	\$103.00	\$2,884.00
28 HRS	Journeyman Wireman S/T	\$95.00	\$2,660.00
56 HRS	Truck & Tools	\$30.00	\$1,680.00
Subtotal Labor:			\$7,224.00
<u>Material:</u>			
6 EA	Loop Clamp	\$1.83	\$10.98
2 EA	Sleeve Wire, Pack 100	\$120.91	\$241.82
8.1% Sales Tax, Clark County			\$252.80
Subtotal Material & Tax:			\$20.48
Invoice Subtotal:			\$273.28
Less 10% Retention			\$7,497.28
TOTAL AMOUNT DUE THIS INVOICE			-\$749.73
			\$6,747.55

Handwritten notes:
O.K. [initials]
6747.55
Thank You
Your Business is Appreciated and We Hope to Serve You Again.

Small print:
Should litigation be commenced to collect on this account, or any portion thereof, the prevailing party shall be entitled to receive reasonable attorney fees and costs of litigation. The invoiced amount is due and payable "NET UPON RECEIPT." In the event payment is not received, the invoiced amount or any unpaid part of the invoiced amount shall bear interest at the rate of ten (10%) percent per annum.

WHITE - Original / YELLOW - Duplicate (Please remit with payment) / PINK & GOLDEN ROD - Office Copy

J65-007

JA 00006541

Hampton Tedder Technical Services, Inc. ^{CAM}

HIGH VOLTAGE TESTING AND MAINTENANCE

(909) 628-1256 • Fax (909) 628-6375

LICENSE NO. 288589

INVOICE NO. 77943

OCT 11 2011

TO: **MOJAVE ELECTRIC**

3755 W. Hacienda Avenue

Las Vegas, NV 89118

Attn: Accounts Payable

CUSTOMER P.O. 4024911-0001

HTTS JOB NO. TN11469

DATE October 10, 2011

TERMS **NET UPON RECEIPT**

JOB: *Las Vegas City Hall*

495 Main Street

Las Vegas, NV 89101

REMIT TO: P.O. BOX 2338
MONTCLAIR, CA 91763

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
	RETENTION BILLING		
	<u>SCOPE OF WORK</u> Diagnose Complete and Startup for Caterpillar Generator and Paralleling Switchgear (Retention Withheld on Invoice 77942).		
	Original Contract Amount:	\$7,497.28	
	Less Previous Billing:	-\$6,747.55	
	Total Retention Withheld:	\$749.73	
	TOTAL AMOUNT DUE THIS INVOICE		\$749.73
	<div>HOLD RETENTION YES NO</div>		
	<div>Should litigation be commenced to collect on this account, or any portion thereof, the prevailing party shall be entitled to receive reasonable attorney fees and costs of litigation. The invoiced amount is due and payable "NET UPON RECEIPT." In the event payment is not received, the invoiced amount or any unpaid part of the invoiced amount shall bear interest at the rate of ten (10%) percent per annum.</div>		

WHITE - Original / YELLOW - Duplicate (Please remit with payment) / PINK & GOLDEN ROD - Office Copy

J65-008

JA 00006542

Hampton Tedder Technical Services, Inc.

HIGH VOLTAGE TESTING AND MAINTENANCE

(909) 628-1256 • Fax (909) 628-6375

LICENSE NO. 288589

INVOICE NO. 77977

TO: **MOJAVE ELECTRIC**

3755 W. Hacienda Avenue

Las Vegas, NV 89119

Attn: Accounts Payable

OCT 21 2011

CUSTOMER P.O. 4024911-0001

HTTS JOB NO. TN11469

DATE October 20, 2011

TERMS **NET UPON RECEIPT**JOB: **Las Vegas City Hall**

495 Main Street

Las Vegas, NV 89101

REMIT TO: P.O. BOX 2338
MONTCLAIR, CA 91763

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
PROGRESS BILLING			
<u>SCOPE OF WORK</u>			
Diagnose Complete and Startup for Caterpillar Generator and Paralleling Switchgear.			
<u>Labor: 10/03/11 - 10/07/11</u>			
24 HRS	Journeyman Foreman S/T	\$103.00	\$2,472.00
72 HRS	Journeyman Wireman S/T	\$95.00	\$6,840.00
96 HRS	Truck & Tools	\$30.00	\$2,880.00
Subtotal Labor:			\$12,192.00
<u>Material:</u>			
6 EA	1-1/4" Hole Loop Clamp	\$1.83	\$10.98
1000 FT	Belden 22/2C Low Cap Cable	\$1.11	\$1,110.00
1 EA	Data Port Connector	\$4.05	\$4.05
1000 FT	THHN #10 Black 19STR CU 500S/R Wire	\$0.31	\$310.00
500 FT	THHN #10 Blue 19STR CU 500S/R Wire	\$0.31	\$155.00
500 FT	THHN #10 Red 19STR CU 500S/R Wire	\$0.31	\$155.00
3500 FT	THHN #14 Orange 19STR CU 500S/R Wire	\$0.12	\$420.00
500 FT	THHN #14 Red 19STR CU 500S/R Wire	\$0.12	\$60.00
1 EA	Wire Marker Book	\$11.28	\$11.28
8.1% Sales Tax, Clark County			\$2,236.31
Subtotal Material & Tax:			\$2,417.45
Invoice Subtotal:			\$14,609.45
Less 10% Retention			-\$1,460.95
TOTAL AMOUNT DUE THIS INVOICE			\$13,148.50
<small>Should litigation be commenced to collect on this account, or any portion thereof, the prevailing party shall be entitled to receive reasonable attorney fees and costs of litigation. The invoiced amount is due and payable "NET UPON RECEIPT." In the event payment is not received, the invoiced amount or any unpaid part of the invoiced amount shall bear interest at the rate of ten (10%) percent per annum.</small>			

WHITE - Original / YELLOW - Duplicate (Please remit with payment) / PINK & GOLDEN ROD - Office Copy

J65-009

JA 00006543

Hampton Tedder Technical Services, Inc.

HIGH VOLTAGE TESTING AND MAINTENANCE

(909) 628-1256 • Fax (909) 628-6376

LICENSE NO. 288589

INVOICE NO. 77978

TO: **MOJAVE ELECTRIC**

3755 W. Hacienda Avenue

Las Vegas, NV 89119

Attn: Accounts Payable

CUSTOMER P.O. 4024911-0001

HTTS JOB NO. TN11469

DATE October 20, 2011

TERMS **NET UPON RECEIPT**

JOB: *Las Vegas City Hall*

495 Main Street

Las Vegas, NV 89101

REMIT TO: P.O. BOX 2338
MONTCLAIR, CA 91763

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
	RETENTION BILLING		
	<u>SCOPE OF WORK</u> Diagnose Complete and Startup for Caterpillar Generator and Paralleling Switchgear (Retention Withheld on Invoice 77977).		
	Original Contract Amount: \$14,609.45		
	Less Previous Billing: <u>-\$13,148.50</u>		
	Total Retention Withheld: \$1,460.95		
	TOTAL AMOUNT DUE THIS INVOICE		\$1,460.95
	<div><div>HOLD RETENTION</div><div>YES NO</div></div> <div><div>O.K.</div><div>CPD</div></div>		<div><div>CP</div><div>1460.95</div></div>
	<small>Should litigation be commenced to collect on this account, or any portion thereof, the prevailing party shall be entitled to receive reasonable attorney fees and costs of litigation. The invoiced amount is due and payable "NET UPON RECEIPT." In the event payment is not received, the invoiced amount or any unpaid part of the invoiced amount shall bear interest at the rate of ten (10%) percent per annum.</small>		<div><div>Thank You</div><div>Your Business is Appreciated</div><div>We Hope to Serve You A</div></div>

WHITE - Original / YELLOW - Duplicate (Please remit with payment) / PINK & GOLD - OFFER

Office

J65-010

JA 00006544

Hampton Tedder Technical Services, Inc.

HIGH VOLTAGE TESTING AND MAINTENANCE

(909) 628-1266 • Fax (909) 628-6375

LICENSE NO. 280589

INVOICE NO. 78040

COPY

TO: **MOJAVE ELECTRIC**

3755 W. Hacienda Avenue

Las Vegas, NV 89119

Attn: Accounts Payable

CUSTOMER P.O. 4024911-0001

HTTS JOB NO. TN11469

DATE November 15, 2011

TERMS **NET UPON RECEIPT**

JOB: Las Vegas City Hall

495 Main Street

Las Vegas, NV 89101

REMIT TO: P.O. BOX 2338
MONTCLAIR, CA 91763

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
	RETENTION BILLING		
	<u>SCOPE OF WORK</u> Diagnose Complete and Startup for Caterpillar Generator and Paralleling Switchgear (Retention Withheld on Invoice 78039).		
	Original Contract Amount: \$10,432.00		
	Less Previous Billing: <u>-\$9,388.80</u>		
	Total Retention Withheld: <u>\$1,043.20</u>		
	TOTAL AMOUNT DUE THIS INVOICE		\$1,043.20
			$\frac{\$1}{1043.20}$
	<small>Should litigation be commenced to collect on this account, or any portion thereof, the prevailing party shall be entitled to receive reasonable attorney fees and costs of litigation. The invoiced amount is due and payable "NET UPON RECEIPT." In the event payment is not received, the invoiced amount or any unpaid part of the invoiced amount shall bear interest at the rate of ten (10%) percent per annum.</small>		

Thank You
Your Business is Appreciated and
We Hope to Serve You Again.

WHITE - Original / YELLOW - Duplicate (Please remit with original)

J65-011

JA 00006545

Hampton Tedder Technical Services, Inc.

HIGH VOLTAGE TESTING AND MAINTENANCE

(909) 628-1256 • Fax (909) 628-6375

LICENSE NO. 288589

INVOICE NO. 78037

COPY

TO: **MOJAVE ELECTRIC**

3755 W. Hacienda Avenue

Las Vegas, NV 89119

Attn: Accounts Payable

CUSTOMER P.O. 4024911-0001

HTTS JOB NO. TN11469

DATE November 15, 2011

TERMS **NET UPON RECEIPT**

JOB: **Las Vegas City Hall**

495 Main Street

Las Vegas, NV 89101

REMIT TO: P.O. BOX 2338
MONTCLAIR, CA 91763

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
PROGRESS BILLING			
<u>SCOPE OF WORK</u>			
Diagnose Complete and Startup for Caterpillar Generator and Paralleling Switchgear.			
<u>Labor: 10/17/11 - 10/21/11</u>			
32 HRS	Journeyman Foreman S/T	\$103.00	\$3,296.00
27 HRS	Journeyman Wireman S/T	\$95.00	\$2,565.00
26 HRS	Truck & Tools	\$30.00	\$780.00
Subtotal Labor:			\$6,641.00
Invoice Subtotal:			\$6,641.00
Less 10% Retention			-\$664.10
TOTAL AMOUNT DUE THIS INVOICE			\$5,976.90
<small>Should litigation be commenced to collect on this account, or any portion thereof, the prevailing party shall be entitled to receive reasonable attorney fees and costs of litigation. The invoiced amount is due and payable "NET UPON RECEIPT." In the event payment is not received, the invoiced amount or any unpaid part of the invoiced amount shall bear interest at the rate of ten (10%) percent per annum.</small>			

\$5,976.90

Thank You

*Your Business is Appreciated and
We Hope to Serve You Again.*

WHITE Original / YELLOW Duplicate (Please Print Name)

J65-012

JA 00006546

Hampton Tedder Technical Services, Inc.

HIGH VOLTAGE TESTING AND MAINTENANCE

(909) 828-1256 • Fax (909) 828-6375

LICENSE NO. 280589

INVOICE NO. 79036

TO: **MOJAVE ELECTRIC**

3755 W. Hacienda Avenue

Las Vegas, NV 89119

Attn: Accounts Payable

COPY

NOV 17 2011

CUSTOMER P.O. 4024911-0001

HTTS JOB NO. TN11469

DATE November 15, 2011

TERMS **NET UPON RECEIPT**

JOB: **Las Vegas City Hall**

495 Main Street

Las Vegas, NV 89101

REMIT TO: P.O. BOX 2338
MONTCLAIR, CA 91763

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
	RETENTION BILLING		
	<u>SCOPE OF WORK</u> Diagnose Complete and Startup for Caterpillar Generator and Paralleling Switchgear (Retention Withheld on Invoice 78037).		
	Original Contract Amount:	\$6,641.00	
	Less Previous Billing:	<u>-\$5,976.90</u>	
	Total Retention Withheld:	\$664.10	
	TOTAL AMOUNT DUE THIS INVOICE		\$664.10
	<div>Should litigation be commenced to collect on this account, or any portion thereof, the prevailing party shall be entitled to receive reasonable attorney fees and costs of litigation. The invoiced amount is due and payable "NET UPON RECEIPT." In the event payment is not received, the invoiced amount or any unpaid part of the invoiced amount shall bear interest at the rate of ten (10%) percent per annum.</div>		

Q
6/6/12

Thank You
Your Business is Appreciated and
We Hope to Serve You Again.

WHITE Original / YELLOW Duplicate (Please Print Name)

J65-013

JA 00006547

Hampton Tedder Technical Services, Inc.

HIGH VOLTAGE TESTING AND MAINTENANCE

(909) 628-1256 • Fax (909) 628-6375

LICENSE NO. 288589

INVOICE NO. 78039

TO: **MOJAVE ELECTRIC**

3755 W. Hacienda Avenue

Las Vegas, NV 89119

Attn: Accounts Payable

CUSTOMER P.O. 4024911-0001

HTTS JOB NO. TN11469

DATE November 15, 2011

TERMS **NET UPON RECEIPT**

JOB: **Las Vegas City Hall**

495 Main Street

Las Vegas, NV 89101

REMIT TO: P.O. BOX 2338
MONTCLAIR, CA 91763

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
	PROGRESS BILLING		
	<u>SCOPE OF WORK</u>		
	Diagnose Complete and Startup for Caterpillar Generator and Paralleling Switchgear.		
	<u>Labor: 10/10/11 - 10/14/11</u>		
44 HRS	Journeyman Foreman S/T	\$103.00	\$4,532.00
40 HRS	Journeyman Wireman S/T	\$95.00	\$3,800.00
70 HRS	Truck & Tools	\$30.00	\$2,100.00
	<i>Subtotal Labor:</i>		<i>\$10,432.00</i>
	<i>Invoice Subtotal:</i>		<i>\$10,432.00</i>
	Less 10% Retention		<i>-\$1,043.20</i>
	TOTAL AMOUNT DUE THIS INVOICE		\$9,388.80
	<div>Should litigation be commenced to collect on this account, or any portion thereof, the prevailing party shall be entitled to receive reasonable attorney fees and costs of litigation. The invoiced amount is due and payable "NET UPON RECEIPT." In the event payment is not received, the invoiced amount or any unpaid part of the invoiced amount shall bear interest at the rate of ten (10%) percent per annum.</div>		

9/368.80

Thank You

*Your Business is Appreciated and
We Hope to Serve You Again.*

WHITE Original / YELLOW Duplicate (Please retain)

J65-014

JA 00006548



3755 W. Sunset Road Ste A
Las Vegas, NV 89118
Phone (702) 396-8500
Fax (702) 396-9027

** Invoice **

Remit to:
CODALE ENERGY SERVICES & SUPPLY
PO BOX 843437
LOS ANGELES, CA 90084-3437

Invoice #: S4387942.001
Invoice Date: 11/14/11
P/O #: 4024711-BAT-10001
Rel #: PROJECT7
Page #: 1

Tel: 801-975-7300

Bill To:
MOJAVE ELECTRIC
3755 W HACIENDA AVE
AKA WEST EDNA ASSOCIATES
LAS VEGAS, NV 89118

Ship To:
MOJAVE ELE/ CITY OF LV CITY HALL
CITY OF LV - NEW CITY HALL
3755 W. HACIENDA AVE
LAS VEGAS, NV 89118

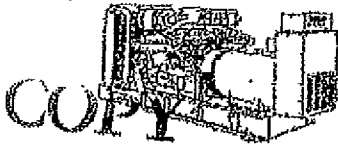
ORDER DATE	SHIP DATE	WRITER	TERMS	SHIP VIA	TAX BR	ORDERED BY
10/31/11	11/14/11	ROWHOL	See Discount Below	DIRECT	7	PETE
ORDER QTY	SHIP QTY	DESCRIPTION			NET PRC	EXT PRC
160ea	160ea	CASHMAN FLAMM FLX500 BATTERIES LINE: 1			0.000/EA	0.00
4ea	4ea	CASHMAN BATTERY CABINET LINE: 1			0.000/EA	0.00
1ea	1ea	MISC GEAR PRICE LINE: 1			70510.000/EA	70510.00
1ea	1ea	NEVADA NONTAXABLE SHIPPING TO FOLLOW LINE: 2			3500.000/ea	3500.00

NOV 29 2011

All sales subject to Codale ESS Terms and Conditions (T&C's) Available at www.codaleess.com/terms Sales Tax is Not included in any Bid				Net Amt	74010.00
Cash Discount 1480.20 If Paid By 12/15/11 - 15825 NS				Sales Tax	5711.31
.. Reprint .. Reprint .. Reprint .. Reprint ..				Total	79721.31

J65-015

JA 00006549



Power Generation Specialist
www.gen-tech-nv.com

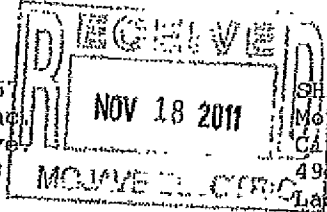
BILL TO:

Mojave Electric Inc.
3755 W. Hacienda Ave.
Las Vegas NV 89118

I N V O I C E

GEN-TECH OF NEVADA
4785 Copper Sage St, Suite A
Las Vegas NV 89115

Toll Free @ 866-633-6400



SHIP TO:

Mojave Electric Inc.
City Hall Building
495 S Main
Las Vegas NV 89106

Invoice #	Order #	Customer#	Customer P.O.	Terms
32258	19408	67	4024911-0002	Net 30 Days

Invoice Dt	Order Dt	Ship Via:	SlsPerson
11/16/11	11/16/11		ZZZ

QUANTITY	U/M	ITEM/DESCRIPTION	UNIT PRICE	AMOUNT
----------	-----	------------------	------------	--------

Performed service estimate per
PHXQ10239 \$4,000.00
Sales Tax \$.00
Shipping \$.00
TOTAL DUE \$4,000.00

S/O:02000032979 Date:11/16/11
Tech:450 Stumpf, John
Equ#:GEN0900CA1013XX
Ser#:JSJ01013
1.0 EA SERVICE ESTIMATE PHXQ10239
Equ#:GEN0900CA1016XX
Ser#:JSJ01016

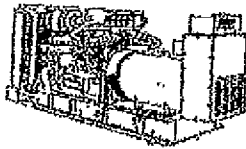
4,000.00 4,000.00

Total Due On 12/16/11 4,000.00

REMIT TO: GEN-TECH OF NEVADA 7901 N. 70th Ave. Glendale AZ 85303
Late Charge of 1.5% on Past Due Amounts

J65-016

JA 00006550



Power Generation Specialists
www.gentechusa.com

BILL TO: 67
Mojave Electric Inc.
3755 W. Hacienda Ave.
Las Vegas NV 89118

INVOICE

GEN-TECH OF NEVADA
4785 Copper Sage St, Suite A
Las Vegas NV 89115

Toll Free @ 866-633-6400

NOV 18 2011

SHIP TO:
Mojave Electric Inc.
City Hall Building
495 S Main
Las Vegas NV 89106

4624911-0002

Invoice #	Order #	Customer#	Customer P.O.	Terms
32259	19409	67	Peter Fergen	Net 30 Days
Invoice Dt	Order Dt	Ship Via:	SlsPerson	ZZZ
11/16/11	11/16/11			
QUANTITY	U/M	ITEM/DESCRIPTION	UNIT PRICE	AMOUNT

Performed service estimate per
PHXQ10338 \$9,190.00
Sales Tax \$.00
Shipping \$.00
TOTAL DUE \$9,190.00

S/O:02000033021 Date:11/16/11
Tech:450 Stumpf, John
Equ#:GEN0900CA1013XX
Ser#:JSJ01013
EA SERVICE ESTIMATE PHXQ10338
Equ#:GEN0900CA1016XX
Ser#:JSJ01016

1.0 9,190.00 9,190.00

Total Due On 12/16/11

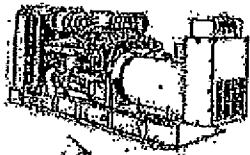
9,190.00

INCREASE PO
FOR 4624911-0002
LAW

REMIT TO: GEN-TECH OF NEVADA 7901 N. 70th Ave. Glendale AZ 85303
Late Charge of 1.5% on Past Due Amounts

J65-017

JA 00006551



GEN-TECH of NEVADA

4785 Copper Sage, Ste A, Las Vegas NV 89115

Phone: (702) 633-6400 Fax: (702) 633-5960

www.gentechusa.com

*Received
4/30/12*

BILL TO:

Mojave Electric
3755 W Hacienda Avenue
Las Vegas NV 89118

SHIP TO:

Mojave Electric
Las Vegas City Hall
495 S Main Street
Las Vegas NV 89101

4024/911-0002

INVOICE

Invoice #	Order#	Customer#	Terms
33102	33102	67	N30
Invoice Date	Order Date	Customer P.O.	Sales Person
02/21/12	11/28/11	Requesting PO	KW

Quantity	U/M	Item Description	Unit Price	Amount
----------	-----	------------------	------------	--------

Assisted with Fire Pump testing & emergency ATS testing

1-Callout to reset all circuit breakers that were left open

1-Callout to reset master emergency stop

Correct wiring in CAT/ISO PSG analog metering panel

Conduct on-site generator & switchgear training

S/O: 020000933102 Date: 11/28/11

Tech 450/1102: J Stumpf/J Ramey

Eq: CAT Firepumps SR5

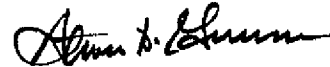
Sec#: JSJ01016 & JSJ01013

1	EA	LABOR		\$3,570.00
1	EA	MILEAGE		\$ 446.00
1	EA	PARTS		\$ 2.15
		Sales Tax (8.1%)		\$.17
		TOTAL DUE		\$4,018.32

Please remit payment to: 4785 Copper Sage Street, Ste A Las Vegas NV 89115

J65-018

JA 00006552



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CASHMAN EQUIPMENT COMPANY,)
)
Plaintiff,)
vs.)
)
CAM CONSULTING INC.,)
)
Defendant.)
)
AND RELATED PARTIES)

CASE NO. A-11-642583-C
A-11-653029-C
DEPT NO. XXXII

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ROB BARE, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 1

TUESDAY, JANUARY 21, 2014

APPEARANCES:

For the Plaintiff:

JENNIFER LLOYD-ROBINSON, ESQ.
BRIAN J. PEZZILLO, ESQ.

For the Defendant:

BRIAN W. BOSCHEE, ESQ.
WILLIAM MILLER, ESQ.

RECORDED BY CARRIE HANSEN, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

I N D E X

WITNESSES FOR THE PLAINTIFF:

KEITH LOZEAU

Direct Examination By Mr. Pezzillo 7

Cross-Examination By Mr. Boschee 43

Redirect Examination By Mr. Pezzillo 74

Recross Examination By Mr. Boschee 80

SHANE NORMAN

Direct Examination By Ms. Lloyd-Robinson 86

Cross-Examination By Mr. Boschee 126

Redirect Examination By Ms. Lloyd-Robinson 182

Recross Examination By Mr. Boschee 187

E X H I B I T S

PLAINTIFF'S EXHIBITS ADMITTED:

PAGE

1 through 65 13

1 **LAS VEGAS, NEVADA, TUESDAY, JANUARY 21, 2014, 1:05 P.M.**

2 * * * * *

3 MS. LLOYD-ROBINSON: Jennifer Lloyd on behalf of
4 Cashman Equipment Company. With me here today is Joel Larson
5 from Cashman Equipment, and Brian Pezzillo.

6 THE COURT: All right. And can you spell his last
7 name again? They have it in the paperwork --

8 MS. LLOYD-ROBINSON: Pezzillo?

9 THE COURT: Yeah.

10 MS. LLOYD-ROBINSON: P-e-z-z-i-l-l-o.

11 THE COURT: All right.

12 MR. BOSCHEE: Brian Boschee and Will Miller from my
13 office on behalf of Defendants West Edna Associates, Whiting
14 Turner. The owners and the sureties also here in the
15 courtroom, Brian Bugni from Mojave Electric and Nancy Briseno
16 from Whiting Turner.

17 THE COURT: Okay. All right. Please have a seat and
18 relax everyone. All right. So we know that corporate
19 representatives can be in the courtroom throughout the
20 entirety of the trial. Do you want to identify who the
21 corporate representatives are going to be just for the record?
22 Do you have anybody like that?

23 MS. LLOYD-ROBINSON: We have Joel Larson here on
24 behalf of Cashman Equipment.

25 THE COURT: Okay.

1 MS. LLOYD-ROBINSON: Also in the courtroom are Shane
2 Norman and Keith Lozeau, two witnesses Cashman will be
3 calling, and we would agree to exclude them from the courtroom
4 at this time.

5 THE COURT: All right. The way I do that is if
6 either party wants to invoke what is essentially the witness
7 exclusionary rule, then I would do that based upon a request.
8 That's your request?

9 MR. BOSCHEE: I am requesting that, yes, sir.

10 THE COURT: Okay. So other than the corporate
11 representative, Mr. Larson, until the others testify, then I
12 would just exclude them from the courtroom. They can wait
13 just outside the courtroom until they're called.

14 And then once the witnesses are called, then they
15 have the option to stay or not stay, in my opinion. If some
16 issue comes up having to do with potential recalling, let me
17 know, because I typically let the witnesses stay in the
18 courtroom once they've finalized their testimony unless
19 somebody has a good faith belief or has an issue with their
20 presence for any reason.

21 Okay. And for the witnesses, one thing about, you
22 know, the way I do stuff around here is I like to tell people
23 stuff. So if you have any questions, ask me. And the reason
24 we have a witness exclusionary rule is while we do not think
25 that your testimony would be influenced by hearing somebody

1 else's testimony, it is conceivable or possible that it could
2 be influenced by hearing somebody else's testimony. So
3 because of that, we would exclude you until such time as
4 you've testified.

5 And then once you've testified, since there wouldn't
6 be any potential effect on your testimony further, then you
7 can stay or leave or do whatever you want. That's why we
8 exclude you, because we just don't want your testimony to be
9 influenced by hearing what somebody else had to say, or what
10 the lawyers might have had to say in a statement to the Court
11 or anything like that. Okay.

12 All right. Before we go any further, I do want to
13 let everybody know what I've received in documentation. I did
14 receive a joint pretrial memorandum which I've looked at. It
15 was well done. And I've also received and I have with me the
16 fourth amended complaint, as well as the operational counter
17 claim that we have here. And I have trial briefs. I have
18 plaintiff's trial brief and defendant's trial brief.

19 Now, I just want to take a moment and let the
20 attorneys primarily responsible for these trial briefs know
21 that in reading them it was evident to me that both of you
22 really put a lot of time and effort into creating these
23 documents in my view that are exceptional, and they were a
24 true assistance to me. And I want to tell you thank you for
25 doing that, and your clients ought to be pretty darn happy

1 with the caliber of the work that was done in producing these
2 trial briefs.

3 MR. BOSCHKE: Well, thank you, Your Honor.

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

5 THE COURT: All right. So with that, any other
6 pretrial issues before we get right into things?

7 MR. BOSCHKE: I don't think so. And I will
8 represent, I don't believe recall is going to be an issue. I
9 know that Cashman's two witnesses are both out of state
10 witnesses. We intend to get everything we can hopefully out
11 of cross-examination so they can both go home. So we don't
12 anticipate that being an issue.

13 THE COURT: All right. And as I've indicated already
14 sort of off the record, in lieu of any sort of opening
15 statements that you might have in a trial, the Court would
16 just use the trial briefs as essentially your positions that
17 you would outline in opening statement anyway. And that's
18 another good reason why I'm happy that they're exceptional,
19 because they give me a pretty good overview of things.

20 Okay. Ms. Lloyd.

21 MS. LLOYD-ROBINSON: Thank you. I'm going to go
22 ahead and ask for Keith and Shane to -- actually, Keith can
23 stay. He's going to be the first witness, and we're just
24 going right into it, so.

25

1 (Shane Norman exits the courtroom.)

2 THE COURT: All right.

3 MS. LLOYD-ROBINSON: The plaintiff would call Keith
4 Lozeau.

5 KEITH LOZEAU, PLAINTIFF'S WITNESS, SWORN

6 THE CLERK: Please state and spell your first and
7 last name for the record, please.

8 THE WITNESS: It's Keith Lozeau. The first name's
9 spelled K-e-i-t-h. The last name's spelled L-o-z-e-a-u.

10 THE COURT: All right. Mr. Lozeau, there's some
11 water, cups, if you want to help yourself at any time.

12 THE WITNESS: Thanks.

13 THE COURT: Go right ahead.

14 MR. PEZZILLO: Thank you, Your Honor.

15 I feel somewhat bad. I think I've been
16 mispronouncing your last name since we met.

17 THE WITNESS: Everybody does. Don't worry.

18 DIRECT EXAMINATION

19 BY MR. PEZZILLO:

20 Q Sir, you've stated your name. Where are you
21 currently employed?

22 A I'm currently employed at Patten Industries,
23 which is the Caterpillar dealership in the Chicagoland area.

24 Q So you're avoiding the winter by being here
25 right now?

1 A I am.

2 Q Good. I hear it's bad. How long have you been
3 employed there?

4 A About 16 months.

5 Q Okay. Prior to that where were you employed?

6 A Cashman Equipment Company.

7 Q How long were you with Cashman?

8 A Ten, probably 11 years.

9 Q And during those 11 years, what positions did
10 you hold with Cashman?

11 A Primarily sales and sales management, rental
12 management.

13 Q In that capacity of sales and rental management,
14 what were your job duties?

15 A Oversee the day-to-day operations of both the
16 sales and rental departments, the fleet management on the
17 rental side. And the sales side, it's more organizing sales
18 efforts and then managing the projects as they go through the
19 process from order to completion.

20 Q And did you hold any other positions other than
21 sales and rental manager, or management?

22 A Prior to that at Cashman and -- I actually
23 worked there twice. So I worked there for 11 years this time.
24 Prior to that I had worked there nine years, and it's kind of
25 a two-year break in there that I worked for a competitor. I

1 held a lot of different roles. I was a technician. I was a
2 service manager, and then sales as well.

3 Q You're aware we're here with regards to the Las
4 Vegas City Hall project?

5 A Yes.

6 Q Are you familiar with that project personally?

7 A Yes.

8 Q Can you describe just in general terms what was
9 that project?

10 A It's a municipal city hall. From Cashman's
11 standpoint, there was a standby power system involved, which
12 is a sort of a two-part system. There's a UPS, which is, I
13 guess you could call it short-term power supply, and then the
14 generator sets, which are more of a long-term power supply.

15 Q And UPS, does that stand for something?

16 A Uninterruptible power supply.

17 Q Okay. And you indicated that was kind of a more
18 temporary fix. Does that -- is that something that kicks in,
19 in the event of a blackout, a power loss?

20 A Yes. The UPS is online all the time feeding
21 power. So when power goes out, there's essentially no change
22 to the loads that the UPS is feeding.

23 Q Okay. How does that then interact with the
24 generators?

25 A If there's an extended outage, the generator

1 sets will start to come online, and they will actually feed
2 the loads that the utility had been feeding prior to,
3 including the UPS's. The UPS's essentially never change.
4 They don't care what power supply is feeding them. Everything
5 stays the same. There's a system of controls that selects
6 whether you're on utility or generator.

7 Q Okay. Now, what was your personal involvement
8 with the city hall project on behalf of Cashman?

9 A We had worked with the design engineer on the
10 system and made some recommendations and suggestions on the
11 size and scope of the system and what capacities, some general
12 design as far as some redundancy and some different things.
13 And when the project came out, it was pretty close to what we
14 had put together for them. And then we quoted the job to a
15 lot of different contractors and then did the project with
16 Mojave.

17 Q With regard to the UPS and the generators that
18 you refer to, are these, for lack of a better term, any stock
19 items or any specialty items for each individual job?

20 A Very specialty.

21 Q So are they designed for each specific job that
22 you may encounter?

23 A They're not designed around the job. They're a
24 pretty off the shelf product, but it's very project specific.
25 It's not something we would ever carry in inventory.

1 Q Okay. Were you involved -- in your capacity as
2 an employee with Cashman, were you involved in the bidding of
3 the project on behalf of Cashman?

4 A Secondarily, yes. Our salesperson can sign as
5 the person who actually prepared the bids, but it was a
6 cooperative effort.

7 Q Okay. Can you walk us through how did Cashman
8 first become aware of the Las Vegas City Hall project?

9 A Well, yeah. Like I said, we were contacted by
10 the electrical engineering group JV Consulting Engineers, and
11 they were letting us know that they were working on the
12 project and they wanted some ideas for design and different
13 things. And that was probably at least a year before the
14 project ever came out on the street. And then working with
15 the contractors when it came out for bid, which is the two are
16 never related. Sometimes it's very sequential and sometimes
17 there's a year, many years gap in between.

18 Q So it's not unusual for the design phase to
19 precede actual delivery by a significant period of time?

20 A Oh, yeah, absolutely.

21 Q And in this case do you recall how long the
22 design phase preceded delivery of the generators and the
23 intended equipment?

24 A Predated, boy, probably two years before
25 delivery.

1 Q And when Cashman prepared its bid, who did it
2 submit that bid to originally?

3 A Several different contractors and actually, I
4 don't remember all of them, but Mojave Electric was one of
5 them.

6 Q Okay. Are you aware of a company known as CAM
7 Consulting?

8 A Yes.

9 Q Was that a party that you had originally
10 submitted a bid to on this job?

11 A No.

12 Q With regard to the bid that Cashman provided,
13 was it done as a lump sum bid, time and material? How was
14 that done?

15 A Lump sum — excuse me. Lump sum bid in two
16 parts. The UPS is one part and the generators and switch gear
17 is another part.

18 Q Who was your primary contact at Mojave?

19 A Well, Peter Fergen is somebody that I talked to
20 a lot, but I can't remember who the estimator was on the
21 project.

22 THE COURT: All right. On that kind of thing, unless
23 it's an easily spellable name, I'd suggest when those kind of
24 names get mentioned, if you know how to spell the last name
25 especially, because she's got to type it all up, and plus I'll

1 take notes, it would be good.

2 THE WITNESS: Okay. Sure.

3 THE COURT: So do you know?

4 THE WITNESS: Pete Fergen, the last name is spelled
5 F-e-r-g-e-n.

6 THE COURT: Okay. Thank you.

7 MR. PEZZILLO: I'm going to have you turn to joint
8 Exhibit 54. I apologize. Let me back up. Did we need to put
9 on the record that we had stipulated to the exhibits? That
10 was mentioned.

11 THE COURT: Okay. We haven't done that yet.

12 MR. PEZZILLO: We probably should.

13 MR. BOSCHEE: Yeah, yeah.

14 THE COURT: Mr. Pezzillo.

15 MR. PEZZILLO: Your Honor, we have submitted seven
16 binders with joint Exhibits 1 through --

17 MR. BOSCHEE: 65, I think.

18 MR. PEZZILLO: -- 65, and the parties have stipulated
19 that those will be admitted into evidence.

20 MR. BOSCHEE: We have stipulated. We have so
21 stipulated. We don't want to move to admit every single
22 exhibit to save time.

23 THE COURT: All right. So Exhibits 1 through 65 are
24 admitted.

25 (Plaintiff's Exhibit 1 through 65 admitted.)

1

2

MR. PEZZILLO: Thank you, Your Honor.

3

MR. BOSCHEE: Thank you, Judge.

4

(Pause in proceeding.)

5

6

MR. PEZZILLO: May I approach the witness, Your Honor?

7

8

THE COURT: Sure, go ahead. Oh, and you don't — you don't need to ask for permission to do things. Just go ahead and do them.

9

10

11

12

MR. PEZZILLO: That could be a very dangerous instruction. I'm married. I'm not used to being given that much freedom, so.

13

THE COURT: Okay.

14

15

MR. PEZZILLO: Exhibit 54, and it'll be page 29. It should be in the bottom right-hand corner of 54-29.

16

THE WITNESS: Okay.

17

BY MR. PEZZILLO:

18

Q Can you identify that document for me?

19

20

A This appears to be the bid that we prepared for this project and sent out to Universal Contractors.

21

Q And was this a bid that was provided to Mojave?

22

A Yes.

23

24

Q Was this the only bid that was submitted to Mojave?

25

A There had been several prior to this where there

1 was some variances in the design of the system, where they
2 were trying to decide the value of various options that we had
3 offered. This was the final quote.

4 Q Is it fair to say then that there was -- once
5 you submitted a bid, there was still room for negotiation?

6 A Sometimes, yeah.

7 Q Okay. On this project --

8 A On this project, I don't recall that actually.

9 Q Okay.

10 A Probably, likely.

11 Q So this was the final bid submitted to Mojave?

12 A Yes.

13 Q And ultimately was Cashman chosen to supply the
14 generators and the UPS sets?

15 A Yes, we were.

16 Q Was the equipment supplied by Cashman, was it
17 supplied directly to Mojave?

18 A It was supposed to be, yes. Originally as bid,
19 that was our intention.

20 Q Okay. Did --

21 A We were asked later if we would be willing to
22 work with a minority owned business.

23 Q Does the term "DBE," disadvantaged business
24 entity, does that ring a bell?

25 A Correct. Correct.

1 Q Okay. So ultimately did you end up working with
2 a DBE?

3 A We did. We actually had talked to a couple
4 prior to meeting Angelo and we couldn't get the terms and
5 conditions right, and so we were introduced to Angelo.

6 Q And in fact, you mentioned you had spoke to an
7 individual named Angelo. Do you remember his last name?

8 A Yes. Angelo Carvalho. I'm sorry. And I'm not
9 sure I know how to spell it. I think it's C-a-r-v-a-h-l-o.

10 MS. LLOYD-ROBINSON: V-a-l-h-o, I think.

11 MR. PEZZILLO: He's a party.

12 MS. LLOYD-ROBINSON: Yeah.

13 THE WITNESS: Okay. Sorry.

14 MR. PEZZILLO: That's okay. We'll figure it out.

15 BY MR. PEZZILLO:

16 Q And ultimately, did you enter into an agreement
17 with Mr. Carvalho's company?

18 A Ultimately, yes, we did.

19 Q And could you tell the Court what the name of
20 his company was?

21 A CAM Consulting. C-A-M.

22 Q Thank you. How did you first come to meet
23 Mr. Carvalho?

24 A He had gotten a call from Peter Fergen, he's
25 kind of a friend of mine, and he said that we've had this

1 person contact us as interested in transacting this kind of
2 business and if you'd like to meet him, you're welcome to come
3 by and meet him. And that's what happened. I went over to
4 their office and met them in their boardroom and talked to
5 them for awhile, and we came to an agreement on how we could
6 structure a deal.

7 Q And when you indicate you went to their offices,
8 would that be CAM Consulting, or was that Mojave's offices?

9 A Mojave Electric's office.

10 Q And I don't recall if you actually stated this,
11 but what position did Mr. Fergen have with Mojave?

12 A He's vice president of purchasing and project
13 management. Is that right? I don't know. He wears 18
14 different hats. And I'm sorry, I'm talking to Brian across
15 the table.

16 Q That's okay.

17 A I might be the wrong person to ask. He wears a
18 lot of hats. He is a vice president, right?

19 MR. BOSCHEE: Yeah.

20 THE WITNESS: Okay. I got that part right.

21 MR. PEZZILLO: You did. You get a B for effort. If
22 you don't know anything, feel free to say you don't know.
23 It's that --

24 THE WITNESS: Okay. I thought I knew. I guess I
25 don't.

1 BY MR. PEZZILLO:

2 Q Did Mr. -- was anybody else present at that
3 meeting other than yourself, Mr. Carvalho and Mr. Fergen?

4 A No.

5 Q Do you recall what was discussed at that
6 meeting?

7 A You know, generally we just talked about the
8 scope of the project. Angelo talked a little bit about his
9 history and what had gone on with him and how he came to have
10 a DBE entity. And then we just, you know, it seemed like a
11 good fit and we talked about, you know, what his fee would be
12 for services, and we shook hands on it.

13 Q Had you ever had any dealings, either you
14 personally or on behalf of Cashman, with Mr. Carvalho?

15 A No. First time meeting him.

16 Q Had you ever dealt with CAM Consulting at all?

17 A No.

18 Q And that's true of Cashman as well, isn't it,
19 that in addition to you personally?

20 A To the best of my knowledge, yes.

21 THE COURT: Could you give me a time frame for that
22 meeting?

23 MR. PEZZILLO: Sure.

24 BY MR. PEZZILLO:

25 Q Do you recall when you -- you gave me a very

1 interesting look. Do you recall the approximate time frame
2 when you met Mr. Carvalho?

3 A It probably was April of 2011, somewhere in that
4 neighborhood. Maybe I got my years wrong. 2010?

5 Q I might be able to show you some documents —

6 A Where's the — well, okay. Here's our bid, it
7 was January. It was probably April of 2010. Sorry. I should
8 have just looked at the bid.

9 Q Okay.

10 A We did the bid in January and all this came
11 around, around April where we wanted to get things going.

12 Q And what year was that?

13 A 2010.

14 Q '10. Okay.

15 A Yes.

16 Q After that meeting with Mr. Carvalho, did you
17 have any further dealings with him?

18 A Very minimal. I think I might have talked to
19 him once on the phone after that, and I don't even recall what
20 we talked about. And then after that, no, not direct.

21 Q Did Cashman ever supply any of the generator set
22 or the UPS directly to Mr. Carvalho or CAM Consulting?

23 A As in physically provide the equipment?

24 Q Correct.

25 A We did not physically provide the equipment to

1 him.

2 Q Who did you provide that to?

3 A That was to Mojave Electric's people at the
4 site.

5 Q Was CAM Consulting doing -- well, let me back
6 up.

7 Can you explain, what was it envisioned that CAM
8 Consulting would be doing on this job?

9 A Collecting a fee.

10 Q Okay. But --

11 A I mean, really very little. He was an
12 intermediary that satisfied the terms of what we were asked to
13 do on the contract using minority -- excuse me, disadvantaged
14 business entities.

15 Q And what kind of -- if you know, what kind of a
16 fee was CAM Consulting to receive?

17 A Half a point of the project, if I remember
18 correctly.

19 Q During any of your discussions with CAM or with
20 Mojave, was it ever represented that CAM would have the
21 authority to act as an agent for Cashman?

22 MR. BOSCHEE: Objection. May call for a legal
23 conclusion.

24 THE COURT: I think in his experience he would have a
25 general understanding as to what an agent would be, so I'll

1 allow the question.

2 MR. PEZZILLO: You can go ahead and answer.

3 THE WITNESS: In terms strictly on the what I would
4 call the commercial side of it, the financial side part of it.
5 As far as the physical aspects of the project, going through
6 submittals and those kinds of things, it was all, I think,
7 pretty much understood by everybody everything would be
8 directly with Mojave.

9 BY MR. PEZZILLO:

10 Q And so if I understand your testimony, Cashman
11 dealt primarily with Mojave directly?

12 A Correct.

13 Q Okay. When you've had discussions with any
14 personnel at Mojave, did they ever provide you any information
15 or background with regard to CAM Consulting?

16 A Not really, no.

17 Q Did anybody ever tell you about any financial
18 information on CAM, or their financial wherewithal, anything
19 along those lines?

20 A No.

21 Q Based on your experience as an employee of
22 Cashman, had Cashman had a lot of interactions with Mojave on
23 prior jobs before city hall?

24 A Yes.

25 Q Rough estimate, can you say how many? Are we

1 talking five, ten, dozens?

2 A Over the years, probably dozens.

3 Q In your experience, are you aware of any payment
4 issues you ever had with Mojave?

5 A Not serious. Sometimes slow, but usually there
6 was misunderstandings associated with things that were going
7 on in the project. Generally they paid.

8 Q Okay. Fair to say slow pay issues sometimes,
9 but eventually you got paid?

10 A Yes.

11 Q Were there ever any jobs that you're aware of
12 where Cashman was left unpaid on a Mojave project?

13 A No.

14 Q If I could have you turn, same Exhibit 54, to
15 page 17.

16 A [Complies.]

17 Q Do you recognize that document?

18 A I do.

19 Q And specifically pages 17 through 20 looks to be
20 a single document. I'll ask you to verify that.

21 A That is correct. That is the purchase order
22 from Mojave Electric to Cashman for the UPS portion of the
23 project.

24 Q And then turning the page to same exhibit, joint
25 Exhibit 54, pages 21 through 24, I'd ask you if you recognize

1 that document?

2 A I do recognize it.

3 Q And what is that?

4 A That is the purchase order for the generator
5 sets and the switch gear and controls for the same project,
6 city hall.

7 Q So is this the document that would have followed
8 your submittals and bid to Mojave?

9 A Yes. Optimistically speaking, yes.

10 Q Is there any hedging there? Is that --

11 A No, no. In other words, I mean when you send a
12 bid out, you hope you're going to win the job.

13 Q Oh, okay.

14 A So right. I mean, generally these follow if you
15 do your work.

16 Q So in this case it was a good thing because
17 Cashman did get the job?

18 A Yes.

19 Q Are you aware or did you direct in any way for
20 these purchase orders -- in the top left-hand corner it states
21 "CAM Consulting care of Cashman." Was that -- do you know why
22 it's written in that fashion?

23 A You know, I honestly don't. I didn't question
24 it either, honestly.

25 Q Okay. And do you know who prepared these

1 purchase orders?

2 A Peter Fergen's group. He usually did them
3 himself, but I'm not sure. You know, I'm not there, so I
4 don't know.

5 Q But they originated with Mojave?

6 A Correct.

7 Q Now, this is probably a little bit of a loaded
8 question and it may have a bit of a background, but can you
9 walk us through the steps that Cashman would go through from
10 first contact and learning about the job up to the point where
11 you start actually delivering equipment?

12 A Sure.

13 MR. BOSCHEE: Can I object? Is this as to this job
14 or generally?

15 MR. PEZZILLO: This job.

16 MR. BOSCHEE: Okay.

17 THE WITNESS: For this job. Okay.

18 THE COURT: Do you withdraw the objection?

19 MR. BOSCHEE: Withdraw the objection.

20 THE WITNESS: Okay. You know, there's several steps
21 and they're actually pretty consistent across most of our
22 projects. In this case we were fortunate enough to work with
23 the engineer on the design. We worked with the contractors
24 through the bidding process, and then we worked with the
25 winning contractor when there's an actual purchase order

1 generated and we have the sale.

2 Once we process the purchase order, we do some work
3 with the factory and prepare what's called submittals.
4 They're basically a manual on the equipment that we're
5 proposing to provide with drawings and technical data and all
6 the other things that the design group on the building are
7 going to want to see.

8 So we submit our submittals. They're big thick
9 binders like these, and they are -- we submit them to Mojave.
10 Mojave submitted them, I'm going to assume, to Whiting Turner.
11 Whiting Turner would have submitted them to either the owner's
12 agent or directly to the architect. And then the architect
13 would submit them back down to the electrical engineer on the
14 project, which was JVA Consulting Engineers.

15 And then JVA would review those books and make sure
16 that we are providing everything that we are required to
17 provide and we haven't tried to do something underhanded, I
18 guess, or something that doesn't meet with their requirements.
19 So that happened. There was actually a resubmittal process
20 where some questions were generated by the JVA folks.

21 And it kind of -- that train that I described
22 earlier, it just kind of flows both ways. The books came back
23 to us through that same process, the reverse order of it. We
24 prepared some additional information and data and called for
25 resubmittals, and put them through that exact train again.

1 JVA approved them that time and sent them back down
2 to us. We received the resubmittals and we ordered equipment.
3 And when the equipment was ready to ship, we made arrangements
4 at the site to deliver it to the site.

5 BY MR. PEZZILLO:

6 Q And the equipment would ship, so is this
7 something that's not -- not assembled locally?

8 A Correct.

9 Q Where was it assembled at?

10 A The generator sets would have built -- been
11 built in Georgia. The enclosures were built in Idaho,
12 enclosures and tanks. The switch gear was built in Atlanta.
13 The UPS was actually built in Japan but shipped out of --
14 right outside of Pittsburgh, Pennsylvania. I believe that's
15 the major components.

16 Q And then those pieces, when they'd be ready for
17 delivery, they're then shipped, trucked, whatever the case
18 might be here to Las Vegas?

19 A Correct.

20 Q And with whom would you coordinate with regards
21 to the scheduling of when they'd be ready for those on the job
22 site?

23 A Well, there's, you know, factory agents as far
24 as getting the stuff picked up and on a truck. And then with
25 the site superintendent, whoever Mojave had out at the site.

1 I know we talked to Chris Meiers a bit, but he was the project
2 manager. Sometimes he'd delegate some of that out depending
3 on the project.

4 So most of my communications were with Chris. I'm --
5 there's another name on some of these documents I imagine
6 we're going to get to here in a little bit. And I did not
7 talk to that person. I only talked to Chris.

8 Q At any point in that process was CAM involved?

9 A Not that I'm aware of.

10 Q And if you could turn to joint Exhibit 16.

11 A [Complies.]

12 Q Have you got 16 there?

13 A Mm-hmm.

14 Q Okay. As you -- if you could just leaf through
15 16 quickly and then in general describe, if you recognize it,
16 what these are pictures of.

17 A Without getting into what's in each individual
18 picture, there's pictures here of the electrical stub outs
19 coming out of the concrete pad. There's pictures of the base
20 fuel tanks with the generator sets and the inside of the
21 outdoor enclosures. There's a picture of some of the
22 shipped-loose control parts and pieces, some fuses, a
23 distribution panel, and then there's pictures of the generator
24 sets being craned into place.

25 Q Okay. We'll back up just to make clear what

1 pages we're looking at.

2 A Oh, I'm sorry.

3 Q That's okay. You're ahead of me.

4 THE COURT: The truth is I followed it real well.

5 MR. PEZZILLO: Oh, did you?

6 THE COURT: Yeah.

7 MR. PEZZILLO: Okay. Then I don't have anything
8 further framework.

9 BY MR. PEZZILLO:

10 Q There's pictures here that you referred to where
11 the generator's obviously being craned into place, and that
12 would be the way you set those generators in place?

13 A Yes.

14 Q And do you have a rough approximation how heavy
15 these are?

16 A Probably somewhere in the neighborhood of 50 or
17 60,000 pounds, guess.

18 MR. PEZZILLO: I don't believe joint Exhibit 2 is in
19 that notebook. I'm going to have him turn to joint Exhibit 2.

20 MR. BOSCHKE: Yeah, isn't it?

21 MR. PEZZILLO: Oh, okay.

22 THE WITNESS: Actually, it is.

23 BY MR. PEZZILLO:

24 Q Okay. And there should be four pages there, and
25 I'd ask you if you can take a look at those and tell me if you

1 recognize them?

2 A These are our invoices for the equipment sold.

3 Q So these would be invoices basically for the
4 pictures we were just looking at?

5 A For all the equipment, yes.

6 Q Now, if you review these invoices, to the best
7 of your knowledge, was everything on these invoices supplied
8 to the project?

9 A Yes.

10 Q Was there anything that was not supplied at any
11 point?

12 A The only thing on these invoices that was not
13 provided were the batteries for the UPS.

14 Q And do you see those specifically identified on
15 a particular invoice?

16 A Yes. On page J2003, it actually says in the
17 description of the item, it says, "400 kW 277 480 volt 3-phase
18 with batteries." That's referring to the batteries for the
19 UPS.

20 Q Okay. Other than that, was there anything else
21 that would not have been supplied?

22 A Other than that, no.

23 Q In general, if you know, what is Cashman's
24 general policy with regards to when it invoices for materials
25 supplied?

1 A Generally when equipment ships to our -- is
2 delivered to a site is when we generate an invoice. We've had
3 customers ask us to invoice them sooner if they need it in a
4 particular fiscal year or something along those lines. We
5 have to be very careful in complying with gap, and we do that.
6 For some reason our first -- for some reason sometimes we hold
7 on invoices for a period of time as well, but that's pretty
8 rare.

9 Q So on this exhibit for instance, on joint
10 Exhibit 2, page 1, it looks like we have a date of February 1,
11 2011. That would relate to what?

12 A I would say that the equipment probably shipped
13 to the site in very late January.

14 Q And if we flip to the last page there, joint
15 Exhibit 2, page 4, would your answer be the same there, that
16 there's a date of March 25, 2011, a small invoice for \$329?

17 A Some various small shipped-loose parts. I can't
18 read it because of the COD. It's quantity sixes. Oh, you
19 know what. I know what this is. This was lugs for the
20 circuit breaker on one of the transfer switches.

21 Q So this is something that would have shipped
22 around March 25, 2011?

23 A Yes.

24 Q Now if I can have you turn back to exhibit --
25 Joint 54, and have you turn to page 223 in that exhibit.

1 A Okay.

2 Q Can you tell me what this document is?

3 A This is a transmittal letter from us to Mojave
4 Electric for delivering the submittals for the project on
5 January 25th of 2010.

6 Q So this is part of the process you've described
7 for the Court of submitting documents for approval prior to
8 ordering the equipment to be shipped in December?

9 A Correct. This is when we were still -- this is
10 actually specifically for we were looking at some different
11 design options, so they were still -- we were still working on
12 the potential there might have been some changes to the scope
13 at the time of this document.

14 Q And that would be in January 2010?

15 A Correct.

16 Q And if I could have you turn to page 216, same
17 exhibit.

18 A Okay.

19 Q Can you describe what that document is for me?

20 A This appears to be the packing slip for the UPS
21 from Mitsubishi Electric to us.

22 Q And in the top right-hand corner there's a ship
23 date of November 11, 2010. Is that your understanding that
24 they would be accurate for when this was shipping?

25 A Yes.

1 Q And if you turn to page 217, I'm going to ask
2 you the same question, if you recognize this document?

3 A This is the bill of lading from the trucking
4 company for the same item.

5 Q Same item. Okay. And then on page 213, do you
6 recognize this document?

7 A Yes. This is the bill of lading for the — or
8 one of the generator sets for the project.

9 Q Now, there's a date in the top center, December
10 8, 2010. Is it your understanding that that date would be
11 accurate?

12 A Yes.

13 Q And if I can have you turn one preceding page,
14 to page 212, and ask you the same question, if you recognize
15 this document?

16 A This is the same document for the other
17 generator set.

18 Q Okay. And in fact, there are, I mean, it's
19 reflected in the pictures, but there are two generators on
20 site, correct?

21 A That is correct.

22 Q And if I can have you turn to page 211, do you
23 recognize this document?

24 A This is a packing — or a bill of lading for the
25 what we call station batteries for the control system for the

1 generator sets.

2 Q Okay. Somebody testified earlier there are
3 certain batteries that were not delivered to the project.
4 There's more than one battery to this?

5 A There is. This is one -- this is the batteries
6 for the control system for the generator sets. There are
7 starting batteries for the generator sets which were also
8 delivered. The third type of batteries was for the UPS that
9 were not shipped.

10 Q Okay. And the date on this one in the upper top
11 center is December 23, 2010; is that an accurate date?

12 A Yes.

13 Q So is it typical that as we're going through
14 these documents, that pieces of what will eventually be a
15 single system would ship separately?

16 A Yes.

17 Q And can we turn to page 222, same exhibit there,
18 54. Do you recognize this document?

19 A Yes.

20 Q What is this?

21 A This is a shipping document from Cashman to the
22 site, where we delivered the station batteries from the
23 previous document and the three transfer switches for the
24 project and the site.

25 Q And this date indicated is January 5, 2011.

1 Would that be to the best of your knowledge?

2 A Yes.

3 Q And you may not -- this may be the signature you
4 were referring to as not recognizing at the bottom, received
5 by?

6 A Yes. It -- a Tom, starts with a C, and I think
7 his -- Tom Ceravolo, C-e-r-a-v-o-l-o.

8 Q Thank you for remembering to spell it.

9 A You're welcome.

10 Q That's not somebody you personally dealt with,
11 correct?

12 A It is not.

13 Q Is it -- would it be typical for Cashman to have
14 its customer, in this case Mojave, sign off on this as items
15 were being delivered to the project site?

16 A Yes.

17 Q And if you could turn to page 218 on the same
18 exhibit. If you can review pages 218, 219 and 220.

19 A These are the -- these three documents are for
20 the shipping of the generator sets and their associated
21 attachments, the enclosures, base fuel tanks, mufflers, all
22 those things on trucks from the people that built --

23 The generator sets are shipped from Georgia on this
24 project to Idaho, to a company that makes the tanks and
25 enclosures. They build the tank. They put the generator set

1 on the tank and they drop the enclosure over the top of it,
2 put it together all as one piece, and then they ship that
3 whole piece here, and that's what these documents are for.

4 Q Okay. And on page 218, that one bears the date
5 of January 17, 2011; is that accurate?

6 A Yes.

7 Q And one on -- the page stamp is actually covered
8 by a black mark, but it would be page 220. It has a date of
9 January 20, 2011. Is that accurate to the best of your
10 knowledge?

11 A Yes.

12 Q Are you aware of any items that were delivered
13 by Cashman that were ever rejected by Mojave?

14 A No.

15 Q Did CAM ever reject anything?

16 A No.

17 Q Were there ever any complaints by any party with
18 regards to any of the quality of the items being supplied by
19 Cashman?

20 A No.

21 Q Did Cashman ever receive any notices of intents
22 to back charge them on this project?

23 A No.

24 Q Are you aware if Cashman ever received any
25 notices of an intent to withhold payment?

1 A No.

2 Q At the time that you — when did you last finish
3 on the project, or working on the city hall project?
4 Approximately. You don't have to give an exact date.

5 A Yeah. I mean, I guess it depends on — I still
6 am, right? We're sitting here. So I'm not sure how to
7 answer.

8 Q While employed by Cashman, when were you last on
9 the project not associated with litigation?

10 A Not associated with litigation, probably
11 February or March of that year. There was some additional
12 office discussion working with a project manager at the
13 factory. I don't know. There were some ongoing discussions
14 maybe in the spring of 2011, somewhere in that neighborhood.

15 Q Do you have an understanding as of the time you
16 were finishing with the project that the equipment being
17 supplied by Cashman was going to be utilized on that project?

18 A Yes.

19 Q And if I can have you turn to joint Exhibit 31.

20 THE COURT: What number are you on?

21 MR. PEZZILLO: Joint 31.

22 THE COURT: Thirty-one. Okay. Go ahead.

23 BY MR. PEZZILLO:

24 Q And I'm going to have you turn to page 3 of that
25 exhibit, and ask you if you recognize this document?

1 A Yes.

2 Q Tell us what this document is.

3 A This is an internal document for a technician to
4 go out to the site to perform some sort of predelivery, or
5 excuse me, pre-startup work at the site. It doesn't say what,
6 so I don't know.

7 Q Given the dates on this, it looks, if I'm
8 reading it correctly, the doc date is January 12, 2011, and
9 the invoice date's January 31. That would be -- that would be
10 around the same time that the generator being delivered; is
11 that correct?

12 A Yeah. Based on the date, looking at this and
13 looking at the dollar amount, it was pretty likely we had a
14 technician at the site the day of delivery kind of supervising
15 setting the units in place and making sure all the parts and
16 pieces were there.

17 Q Would that be typical?

18 A Yes.

19 Q And if I can have you turn to the same exhibit,
20 Joint 31, page 5, and ask you to identify that document.

21 A This is another internal invoice. This
22 actually -- someone actually says in the description that our
23 technician attended a meeting at the site, probably to talk
24 over some technical issues.

25 Q And the dates on that, the document date is

1 April 20, 2011 with an invoice date of May 24. That would
2 indicate the dates that the services were performed?

3 A It should, yeah.

4 Q And if I can have you turn to page 6, the same
5 question, what this document is.

6 A This is another internal document or work order
7 that was generated by our service department that would have
8 been charged to the sales department. The technician went out
9 to the site and installed the exhaust silencers and did what
10 we call a pre-start check on the generator sets.

11 Q And would that be something that you would
12 typically do when delivering a system such as this?

13 A Yes.

14 Q And can you identify the date that that work
15 would have been performed on?

16 A The -- it's -- the document date, the generation
17 date was 4/25. The close date was 6/27. It should have been
18 in that time window.

19 Q Okay. So previously you answered the invoicing
20 for Cashman is done at or around the time an item is
21 delivered. Is that the same thing for these service invoices?

22 A No. No. These services happen once the
23 equipment is at the site, and there's a process that the
24 contractor goes through of connecting the equipment to the
25 infrastructure of the site, bolting it to the ground, all

1 those things. And then we've got some -- we go out and check
2 that over to make sure it was all done correctly, to
3 Caterpillar's specifications, and then, like I said, in this
4 case our guys installed the mufflers and that sort of thing
5 too.

6 Q So these invoices would be associated with the
7 dates that that work was performed as opposed to dates of
8 delivery?

9 A Correct.

10 Q Okay. And if I can have you turn to exhibit --
11 same exhibit, J31, page 9.

12 A Okay.

13 Q Can you tell me what this is?

14 A This is actually the service report for the
15 previous documents, and this is the document that the
16 technician himself generates that describes what work he did
17 and when he did it.

18 Q And if you look at the bottom, the last block of
19 information there, it has a variety of dates. What
20 information is being imparted there?

21 A Those are the dates they perform those
22 particular tasks. So for example, on May 5, 2011, they
23 installed one of the mufflers on the roof, and then on May 4,
24 the following day [sic] they finished installing the mufflers
25 and then they did additional work after that.

1 Q So if we're looking at this report, the last
2 date I see on here is May 23 that would -- can we derive from
3 that, that would be the last day Cashman performed work on the
4 site?

5 A Yes.

6 Q During your involvement on the project, did you
7 ever request -- make a request of Mojave that they issue any
8 joint checks to both CAM and Cashman?

9 A Yes, we did ask.

10 Q Who did you speak to when that was requested?

11 A I believe it was Peter Fergen.

12 Q And what was the response? Were they willing to
13 do it?

14 A At first, yes. And then they -- I'm not sure
15 who they talked to, but he came back and he said that they
16 couldn't do it because that would give the appearance that CAM
17 Consulting was not holding up their obligation, the deal of
18 actually transacting the business. It would appear like they
19 weren't really involved.

20 Q And during the course of the project, Cashman's
21 involvement on it, was CAM ever actually involved on
22 day-to-day activities?

23 A No.

24 Q And you testified that primarily Cashman would
25 deal directly with Mojave?

1 A Correct.

2 MR. PEZZILLO: At this time I don't have any further
3 questions, Your Honor.

4 THE COURT: All right. Before Mr. Boschee, before
5 you ask questions to Mr. Lozeau -- how do you say it?

6 THE WITNESS: Lozo [phonetic]. You're close.

7 THE COURT: Lozeau. Okay. Mr. Lozeau, I've got a
8 question or two. I just wondered, I think it's pretty obvious
9 and I've read it in the briefs too, but the -- the equipment,
10 these generators and what have you, can you give me a
11 practical definition as to what the construction business
12 purpose for those would be?

13 THE WITNESS: They are an emergency standby system
14 they -- if the building loses normal power for some reason.
15 There's two different parts. That's why two different pieces
16 of equipment. There's the what the customer typically calls
17 critical load that can't go down for any reason, things like
18 computers and, if it was in a hospital, healthcare equipment,
19 they don't want it to go down for any reason, that equipment
20 goes on the UPS and that's online all the time.

21 The generator sets generally don't run unless there
22 is a power outage. If there's a power outage for longer than
23 a few seconds, the control system understands that there's a
24 power outage and starts the generators, brings them online for
25 the duration of the outage.

1 THE COURT: All right. So just in a practical sense,
2 correct me if I'm wrong, it seems like all this effort is just
3 so you always have power no matter what during the whole
4 process, right?

5 THE WITNESS: Yes, sir.

6 THE COURT: But there's no chance of there ever being
7 no power at all?

8 THE WITNESS: No chance would probably be a stretch.

9 THE COURT: Very limited chance?

10 THE WITNESS: Very small chance, correct.

11 THE COURT: Very small chance. All right. And then
12 the other thing I wanted to clarify is there's been some
13 mentioning of CAM being a disadvantaged business and what have
14 you. Do you have an understanding as to what the real reason
15 or any reason business-wise would have been to involve CAM?

16 THE WITNESS: Compulsion. I mean, it was something
17 that was strongly encouraged by the owner. They wanted
18 disadvantaged businesses to have part in the project.

19 THE COURT: Do you know why that is, I mean,
20 practically speaking --

21 THE WITNESS: Do we want to have --

22 THE COURT: -- or at the time?

23 THE WITNESS: -- a political discourse?

24 I'm not being a smart ass. I'm not sure how to
25 answer, sir.

1 THE COURT: Okay.

2 THE WITNESS: It's something that's politically
3 favorable.

4 THE COURT: All right. Okay. That's all I have.
5 Before I turn it over to you, do you have any questions,
6 Mr. Pezzillo, based upon what I asked?

7 MR. PEZZILLO: No, Your Honor.

8 THE COURT: Okay. Mr. Boschee, go ahead.

9 MR. BOSCHEE: And for the record, I think David
10 Phillips can expound on Your Honor's question a little bit
11 when he takes the stand in the case, because he had some very
12 clear directives, I think.

13 THE COURT: All right.

14 THE WITNESS: And I apologize for cussing, Your
15 Honor.

16 THE COURT: Well, that's -- I mean, I've heard worse.

17 THE WITNESS: Okay. Well...

18 THE COURT: But okay.

19 MR. BOSCHEE: And I'll go ahead and apologize,
20 because I mispronounced your name at least a dozen times
21 during your deposition, so thank you for correcting that for
22 everybody.

23 THE WITNESS: It's quite all right.

24 CROSS-EXAMINATION

25

1 BY MR. BOSCHEE:

2 Q The last document we were just looking at, if
3 you'd take a look at it. I think it's the service report, the
4 Caterpillar service report. Did you already close your
5 binder?

6 A I closed the binder. I'm sorry. Do you
7 remember what it was?

8 Q It is page 31, 009. J31, 009.

9 A Okay. Go ahead.

10 Q Just looking at this, at the bottom of the page
11 where you were just reading from, the dates, at the top of
12 that block it says, "Repair background." Do you see that?

13 A Yes.

14 Q So to the best of your knowledge, was the work
15 being done actual installation of work that was part of the
16 contract, or was this follow-up repair work that was being
17 requested, or do you know?

18 A It's not repair work, because it's assembling --
19 it's finishing the assembly of the system. We can't ship them
20 fully assembled because they won't fit on the truck.

21 Q Okay.

22 A So it's just a matter of us installing the last
23 parts and pieces to make them a whole unit.

24 Q And when you talk about finishing construction,
25 the last few entries that take up most of the -- most of the

1 repair process comments are interconnection and wiring. Do
2 you see that?

3 A Yes.

4 Q What is interconnection and wiring?

5 A It can be actually one of two things. There's
6 inter-connective wiring between the base fuel tank of the
7 generator set for some alarms that goes up to the generator
8 set control panel. And then there's interconnected wiring
9 between our parts and pieces.

10 All the parts that we provide generally have to talk
11 to each other, for want of a better term. So all that control
12 wiring, a lot of times the contractor will pull the wiring and
13 our technicians will do the final termination of the wirings.

14 Q Okay.

15 A Of the wiring. Excuse me.

16 Q But you're fairly certain that that was just
17 kind of standard, getting the stuff connected, the work that
18 was going on in May of 2011?

19 A Yes.

20 Q Okay. Was that pre-startup work?

21 A Yes.

22 Q Okay. And we'll get to that in a little — in a
23 few minutes. Now, you testified at the beginning of your
24 direct examination you no longer work for Cashman; is that
25 correct?

1 A That is correct.

2 Q You are being compensated for your time to
3 testify in this case; is that right?

4 A No.

5 Q You're not having your expenses paid?

6 A I did have my expenses paid.

7 Q Okay. Flight, hotel, anything like that?

8 A Mm-hmm.

9 Q Okay.

10 A Yes. Sorry.

11 Q And you worked for Cashman for approximately 19
12 years all told, I think is what we talked about in your
13 deposition, right?

14 A Yes.

15 Q Okay. And in that time, you used the word
16 "dozens" in your direct examination, you had many dozens of
17 interaction and projects with Mojave Electric; is that right?
18 I mean, several dozen?

19 A Over -- yes. Probably, yes.

20 Q And slow pay was used, but there was never
21 actually an occurrence of not getting paid in your dealings
22 with Mojave; is that right?

23 A Not that I'm aware of.

24 Q Now, you also testified that shortly after the
25 bidding process, Mojave informed you that the project was

1 going to require a DBE; is that right, the disadvantaged
2 business entity?

3 A What was your timing again?

4 Q After the bidding process, after you guys had
5 obtained the bid.

6 A Yes.

7 Q Okay. And that was the conversation you had
8 with Pete Fergen?

9 A Yes.

10 Q Okay. And during that conversation, did Mr.
11 Fergen convey to you that this was a requirement coming from
12 the city, or was that not discussed?

13 A I think we made the assumption that it was
14 coming from the city, because they're -- most government
15 projects now that you do are going to involve a certain DBE
16 requirement. The thing that sort of surprised us a little bit
17 on this one was the project wasn't actually owned by the city,
18 so we were a little surprised that they were asking for it
19 anyway. But it was -- to answer your question, I'm not sure
20 where the request came from on his side of it.

21 Q You had worked on, we'll call them public jobs
22 before this, correct?

23 A Correct.

24 Q So using a disadvantaged business entity wasn't
25 any -- it wasn't a new experience for you, was it?

1 A It's not new, no. It's not -- I'd be incorrect
2 if I said it's tremendously common though either.

3 Q But you had used disadvantaged business entities
4 before this, hadn't you, Cashman had, or worked with them?

5 A I'm trying to think. I don't -- I'm not -- I
6 don't recall.

7 Q Okay.

8 A If we did, it was very few times. But usually
9 we were able to -- Cashman Equipment is owned by a woman.
10 They're not registered as a DBE, so a lot of times we were
11 able to submit that when we sold something to a government
12 entity and they were willing to accept that. So typically we
13 did not.

14 Q You were -- when you had this conversation with
15 Mr. Fergen, you had an entity that you -- that Cashman, I say
16 you, but that Cashman was hoping to use as the DBE in this
17 project; is that right?

18 A Yes.

19 Q And they couldn't get a certificate was
20 basically the hang-up there, wasn't it?

21 A Correct.

22 Q And do you recall who that entity was?

23 A I mean, it's a friend of mine. Her name is
24 Rebecca Youngbar [phonetic].

25 Q And she just for whatever reason, she was just

1 having a tough time getting the DBE qualification in order to
2 meet what ultimately was the requirement, right?

3 A It's a process, and we didn't have time to wait
4 for a process.

5 Q And again, like you just said, time was getting
6 short on this project. If you didn't find a DBE, potentially
7 the bid was going to go somewhere else, wasn't it?

8 A Potentially, yes.

9 Q Okay. And obviously you didn't want to lose the
10 bid of this magnitude; is that right?

11 A We try not to.

12 Q Now, you talked about the conversation you had
13 with Pete and Cam Consulting in particular. But in fact, Pete
14 gave you the names of several disadvantaged business entities
15 that he had worked with in the past, didn't he? Do you recall
16 that?

17 A I wouldn't say several. I mean, there was a
18 discussion at one point about one company.

19 Q NEDCO Supply?

20 A Yes.

21 Q Did you ever talk about Codale Energy, another
22 potential?

23 A I don't think so on this project, no.

24 Q Okay. But you definitely talked about NEDCO?

25 A Correct.

1 Q And CAM. And per your recollection, NEDCO
2 Supply was going to be considerably more expensive than CAM,
3 weren't they?

4 A Considerably.

5 Q It was like 3 1/2 percent was what they were
6 going to ask, wasn't it, something along those lines?

7 A I don't recall, but it was significantly more.

8 Q And so ultimately you take the meeting with CAM,
9 with Mr. Carvalho and Mr. Fergen at Mojave's office, right?

10 A Correct.

11 Q And after that meeting things go well, you have
12 a handshake deal, you negotiate the fee that CAM's going to
13 charge; is that right?

14 A That is correct.

15 Q And I said you, that's you personally on behalf
16 of Cashman?

17 A Yes.

18 Q And that was, I think you testified a half-point
19 earlier?

20 A Yes, sir.

21 Q And in fact, on the other projects Mojave had
22 been doing that, you have a knowledge and understanding that
23 they were getting charged a whole percent? Did Pete ever tell
24 you that?

25 A No.

1 Q As a source of angst that you got them down to a
2 half-point? Okay.

3 A Boy, that would make you crazy.

4 Q But you negotiated the fee and you ultimately
5 negotiated the agreement with CAM after that meeting, correct?

6 A Yes.

7 THE COURT: Okay. Just to be sure, when you say half
8 a point, that's half a percent?

9 MR. BOSCHEE: That's correct.

10 THE WITNESS: Yes, sir.

11 THE COURT: That's what CAM's fee is in this?

12 THE WITNESS: Right.

13 BY MR. BOSCHEE:

14 Q And it comes out to, I want to say, about \$3700
15 on the total PO in this case. I think that's about right,
16 isn't it? I'm doing math in my head, which—

17 A I'd have to do the math. You're probably pretty
18 close, yeah.

19 Q But 755, 37?

20 A Absolutely, yeah.

21 THE COURT: Now, I guess it stands to reason that's
22 why you gave testimony that they didn't really do anything.
23 It's there as a — I mean, we're talking about it and that's
24 what it is, it's there as a contractual placeholder it sounds
25 like to me is one way of looking at it.

1 MR. BOSCHÉE: Which --

2 THE WITNESS: Yes, sir.

3 BY MR. BOSCHÉE:

4 Q Which again goes to the point, I mean, that's a
5 good -- that's a reason why you wouldn't want to necessarily
6 pay a company like NEDCO 3 1/2 or 4 percent, because in this
7 case they weren't really going to be doing a whole lot?

8 A Correct.

9 Q Paying CAM a half a percent was much more cost
10 effective for Cashman, wasn't it?

11 A For what we were -- for what we were asking,
12 yes, certainly.

13 Q And now, after the initial meeting, you have
14 this meeting with Mr. Carvalho and Mr. Fergen at Mojave's
15 office, you guys, and I say you guys, this is Mr. Norman ran
16 CAM's credit, didn't you? You did a credit check on the
17 company, didn't you?

18 A Shane did at some point. I don't recall the
19 timing.

20 Q But it was before you entered into the contract
21 with them, wasn't it?

22 A In other words, before these purchase orders
23 were signed?

24 Q Yes.

25 A No. It was probably after these POs were

1 signed.

2 Q So you believe the credit check was run after?

3 A That would be typical. Usually if we pick up a
4 purchase order from a new company that we've not done business
5 with before, at that point we do a credit check, unless we
6 have some reason to do it earlier, which is not typical, but
7 we do.

8 Q Would you have the -- do you have the booklet
9 Exhibit 1 in front of you, joint Exhibit 1?

10 A I do.

11 Q This is ultimately the credit check, the credit
12 form, the application for credit that was filled out; is that
13 right?

14 A Correct.

15 Q And is that -- and I can't -- it looks like
16 Angelo Carvalho signature name. And it looks like it's dated
17 1/31 of 2011; is that right?

18 A That is the date on the second page, yes.

19 Q So I guess the question I would have is, at that
20 point, we've gone through all the machinations of this, most
21 of the equipment was either in the process of being delivered
22 or was actually on 1/31/2011 on site, wasn't it?

23 A Yes.

24 Q And yet you guys were just running CAM's credit
25 then?

1 A Apparently so, yes.

2 Q And CAM's credit -- again, without getting into
3 any federal violations, CAM's credit wasn't exactly stellar,
4 was it?

5 A I couldn't tell you. I don't ask. That's a
6 question for Shane.

7 Q Okay. Did Shane ever express any concern about
8 CAM's credit when he was talking to you?

9 A Absolutely, yes.

10 Q And precisely what did Shane tell you about his
11 concerns?

12 A He had concerns. I don't ask about credit
13 stuff. It's private.

14 Q Okay. And but at that point there are concerns,
15 but the equipment's already delivered. Most of what you guys
16 were going to do was pretty much done at that point. The
17 credit wasn't anything that bothered you at that stage, was
18 it?

19 A The discussion that had been had was that, I
20 mean, essentially Mojave was paying the bill. I was going to
21 say guaranteeing payment, but that's not even really the case.
22 Essentially Mojave was paying the bill.

23 Q Right.

24 A As we talked about earlier, that had never been
25 a problem before and we were okay with that. When -- now,

1 this is secondhand. This is what Shane told me, because I was
2 on vacation when this happened. But when the equipment
3 shipped, there was a question of extending CAM Consulting
4 terms rather than having them pay on delivery.

5 And so Shane went through this process of running his
6 credit, had some concerns, and that's when we started looking
7 at he had asked for a check to be cut sooner and for Cashman
8 to be made whole on a more immediate basis rather than waiting
9 30 days or longer, and that's when we got the check that we
10 got.

11 Q Right. The credit didn't concern you, kind of
12 going back to the Mojave aspect of it, because again, Mojave
13 was good pay, right?

14 A Yes.

15 Q And you were anticipating in your mind as you're
16 doing this that the Mojave tender of funds was going to be a
17 simultaneous exchange of funds from Mojave to CAM to Cashman,
18 that there wasn't going to be any break in the process. You
19 were going to get paid by Mojave, correct?

20 A That was our understanding of how the
21 transaction was to be handled, yes.

22 Q And in fact, during a conversation that you had
23 with Pete Fergen, Pete actually recommended that you just have
24 them sign the check over and then cut them their fee right
25 then and there, didn't he, their \$3700, their nominal whatever

1 it was? That was actually a recommendation that Pete made
2 with respect to dealing with this company, isn't it?

3 A I don't think I recall that.

4 Q Okay. And because Pete didn't because Mojave --

5 A Because we had asked for a joint check, but we
6 were told we couldn't do that and -- and again, at this point
7 I'm out of town, so Shane's having some of these discussions.
8 But my understanding from his discussion was that they agreed
9 that they would just go to Mojave's office and exchange checks
10 there. I -- if there was an offer of the check being signed
11 directly over to Cashman, I don't believe I was in that
12 conversation.

13 Q Okay. That wasn't a recommendation that you
14 recall getting from Fergen at some point prior to this check
15 exchange?

16 A No.

17 Q Okay. Now, as it turned out -- well, let's just
18 talk about the joint check for a minute. You've worked on
19 dozens of projects with Mojave over the years. Have you ever
20 got -- has Cashman ever gotten a joint check from Mojave that
21 you can recall?

22 A No, not that I can recall.

23 Q Okay. But you asked for one here?

24 A Correct.

25 Q Because you had concerns about the Carvalho and

1 CAM's credit, right?

2 A Correct.

3 Q Now, the simultaneous exchange of funds that I
4 had contemplated you had contemplated between Mojave to CAM to
5 Cashman, that didn't happen in this instance, did it?

6 A I don't believe so. I wasn't there, so.

7 Q I understand. But you have an understanding
8 Shane Norman basically agreed to wait a few days on the
9 deposit and accepted a post-dated check, right?

10 A I wasn't there.

11 Q Okay. You knew -- but whatever Shane did on
12 site on the 26th of April of 2011, with respect to the checks,
13 he didn't tell you about it because you were on vacation,
14 right?

15 A Correct.

16 Q And in fact, you didn't make -- you didn't find
17 out that Mr. Norman had made this decision to sit on the check
18 for a few days until several days later; isn't that right?

19 A Yes. Correct.

20 Q In fact, you called Mojave asking about the
21 status of payment and he -- they actually informed you that
22 the payment had taken place on the 26th, didn't they?

23 A That is correct.

24 Q Okay. And then the check, if you know, you
25 know, the check wasn't actually even deposited until May 2,

1 which is the following Monday, was it? You guys didn't even
2 attempt to deposit it until three days after the post date; is
3 that right?

4 A I don't know.

5 Q But you know the check was returned for a stop
6 payment, right?

7 A Correct. Yes.

8 Q Okay. And now you know, or you knew at the
9 time, probably when you were more engaged in the litigation,
10 that through looking at bank records and everything else, that
11 in that corresponding six days between the 26th of April and
12 the 2nd of May, that Carvalho had basically absconded with all
13 this money, he had run for the hills pretty much?

14 A We found that out after the fact, yes.

15 Q Right. And this -- after this you personally
16 contacted -- you know, again, the beginning of the following
17 week, early May, you contacted Pete Fergen to see if there was
18 anything Mojave could do to either stop payment or help you
19 track this guy down, right?

20 A Yes.

21 Q And Pete did in fact again, and the folks at
22 Mojave did in fact help you guys -- there was nothing they
23 could do about the check, right, it was too late?

24 A Correct.

25 Q But they did help you track Carvalho down,

1 didn't they? They had some information as to where to get
2 him?

3 A Yes. We had several different times where we
4 tried to find the man, so it's kind of hard to keep them all
5 straight. But I believe that time, yes, there was
6 participation from Mojave on that.

7 Q I understand. And at that point, at some point
8 thereafter you and Mr. Norman had -- did track down
9 Mr. Carvalho eventually, didn't you?

10 A We did.

11 Q Okay. And you got a check from him?

12 A Shane did. I was not there when that happened.

13 Q Were you involved in that process at all, or are
14 these questions I just have to ask Shane?

15 A You probably want to ask Shane for the most
16 part. The only thing I was involved in relative to Angelo at
17 this point in time, for time going forward, was beating on the
18 guy's door trying to get him to answer the door at his house.

19 Q Did he answer the door?

20 A He did not.

21 Q Okay. But Shane eventually got him, got ahold
22 of him somehow some way and got him a check?

23 A Yes, he did.

24 Q But that check didn't clear either, did it?

25 A No, unfortunately.

1 Q Because the funds were gone?

2 A As we found out at that point, yes.

3 Q Okay. Now, and again, I'm going off the 26th of
4 April because aside from the fact that I think everybody
5 testified that was when the check exchange happened, it's also
6 in counsel's trial brief, you testified that all the stuff had
7 been delivered except for the UPS batteries. Do you recall
8 that just a few minutes ago?

9 A Yes.

10 Q Okay. But Cashman's work wasn't done, was it?

11 A No. I mean, our work is not done on a project
12 like that until the equipment is completely started up and the
13 warranty is signed over to the owner.

14 Q Right. The startup still had to be completed,
15 right?

16 A Yes.

17 Q The UPS batteries still needed to be delivered?
18 They were in your warehouse and hadn't been delivered yet,
19 correct?

20 A They were not in our warehouse. We don't buy
21 them until it's time for startup.

22 Q But they were -- they had not been delivered
23 yet?

24 A Correct.

25 Q The exhausting mufflers weren't fully installed

1 at that point, were they? That process had begun but not been
2 completed because it was -- it had to happen in startup? Do
3 you recall that?

4 A Your dates of April 26, and based on the dates
5 that we just looked at in that service report, they were all
6 May, I would say that no, the exhaust had not been installed
7 to that point.

8 Q And obviously there were the PLC codes that
9 needed to be inputted into the system at some point after
10 startup; is that right?

11 A That is part of startup, yes.

12 Q Can you tell the Court -- and again, I'm asking
13 an open-ended question in cross-examination, which is usually
14 a big no-no. But can you tell the Court what PLC codes are?

15 A Yes. There's two types of codes. There's --
16 it's actually called addressing. It's a -- there's a computer
17 protocol, a communications protocol that the system uses to
18 communicate with the customer's equipment. It could be a
19 computer. It could be a building management system, whatever
20 that is, so the customer can look at what's going on with the
21 system at any given time from, you know, the way
22 [unintelligible] anywhere in the world. That coding is
23 public. It's essentially open source code that we would give
24 to anybody if they asked for it.

25 There's another type of protocol communication that

1 happens internally within the gear, where the components talk
2 to each other, that is proprietary to Caterpillar that we
3 don't ever give out.

4 Q Okay. And when I'm talking about the codes, the
5 PLC codes in this case that weren't delivered, it's the latter
6 that haven't been delivered for this project; is that right?

7 A You know, I hate to use the term "delivered,"
8 because the code is probably there in the PLCs. We're just
9 not going to activate it.

10 Q Right. Okay. You're not going to activate it
11 because you guys haven't been paid?

12 A Yes.

13 Q Okay. I say you guys. You're not
14 necessarily --

15 A Cashman. I understand.

16 Q -- a part of Cashman anymore. Cashman wasn't
17 paid. Right.

18 Now, after the -- we'll call it the check debacle,
19 but the payment issue arises in early May of 2011, Cashman
20 issued a stop work directive, didn't they? Kind of going back
21 to this whole --

22 A In other words, that we weren't going to go to
23 the site anymore until we were paid?

24 Q Right.

25 A Yes.

1 Q Okay. And in fact, after that directive was
2 sent down after Cashman said, hey, we're done, no more work
3 was done on the project after that came down; is that right?

4 A Not that I'm aware of.

5 Q Okay.

6 A Not by Cashman employees, no.

7 Q Not by Cashman, correct. Including these codes?

8 A Including these codes.

9 Q Why are -- can you explain to the Court briefly,
10 and the Mojave employees can do this too, but why are these
11 proprietary codes important to have the gear talk to each
12 other, talk -- to have this machine talk to each other?

13 A It's -- there's these -- the switch gear is made
14 up of a lot of subassemblies and components, and they're -- if
15 they don't talk to each other, they don't know what the
16 different parts or pieces are doing it's not going to work.
17 It's all -- for all intents and purposes, the -- if -- picture
18 wiring your brain; that's essentially what we're doing.

19 Q Maybe not wiring my brain, but the standard --

20 A A more generic version of yours.

21 THE COURT: And I did something with these codes.
22 Didn't we do something with the codes?

23 MR. BOSCHEE: You did. You ordered them to install
24 the codes and that issue's up on appeal.

25 THE COURT: Okay.

1 BY MR. BOSCHEE:

2 Q So the code, and that -- but that does create --
3 the machinery not speaking to each other does create a safety
4 concern, because if one aspect shuts down, it's all going to
5 shut down because it's not communicating; is that right
6 generally?

7 A I would hesitate to say it's safety concern,
8 only because there's two generator sets on the job and either
9 one of those generator sets can typically pick up most of the
10 load in the building if not all of it. And there's a way to
11 make that gear work manually without the logic, and have it
12 operate such that they will get emergency power if they have
13 an outage. It won't be the way the system was designed. It
14 will only be on one generator, but they can make it work.

15 Q Okay. Other than these UPS batteries, we were
16 looking at some dates and some, you know, late January 2011,
17 pretty much all of the equipment was delivered to the site by
18 February 1, 2011; is that right?

19 A To the best of my knowledge, yes.

20 Q Other than there was the -- we looked at the one
21 invoice in the exhibit where there was the March date, and
22 those were for the lugs, the 300 and some-odd dollars' worth
23 of lugs. But other than that, everything was on site ready to
24 go by February 1; is that right?

25 A Right. And those lugs were custom lugs. They

1 were not — Mojave had made a change to their wire size at the
2 site, so it wasn't anything — it wasn't like we short-shifted
3 them. It was something we needed to change to accommodate.

4 Q But it was a nominal 300 and some-odd dollar?

5 A Correct. Yes.

6 Q And going back to the stop work order, you
7 actually attended a meeting, you personally attended a meeting
8 at Mojave with Mojave principals, and during that meeting you
9 articulate, hey, you know, we didn't get paid, we're not doing
10 anymore work until we get paid; is that right? Do you recall
11 that meeting?

12 A I recall the meeting. I'm not sure I was the
13 one that said that.

14 Q But that was conveyed by Cashman to Mojave —

15 A Yes.

16 Q — wasn't it?

17 Okay. And in fact, that was Cashman's position, is
18 that you guys weren't going to do anymore work until you got
19 paid, right?

20 A Yes.

21 Q Even though Mojave's position, as you may or may
22 not recall, was that they had already paid for the equipment
23 and that it was kind of a Cashman issue as to why you guys
24 didn't get the money, right? And they wanted you to finish?

25 A That would be their opinion, yes.

1 Q Now, after that meeting and the stop work
2 directive, Cashman never did finish the work on the project,
3 did it? Once you guys stopped --

4 A Never's a long time. We have not to this point.

5 Q All right. Once you guys stopped, you guys were
6 stopped, there was no more work done, correct?

7 A Correct.

8 Q So you guys didn't do the startup, right?

9 A Did not.

10 Q Never did turn on, I guess, those PLC codes,
11 correct?

12 A Correct.

13 Q May or may not have finished the exhaust and
14 muffler system, correct?

15 A I'm going to say based on the guy's service
16 report that he finished them.

17 Q Okay. But you don't know if it was actually
18 completed, you're just going off the one service report?

19 A Yes.

20 Q And Cashman never actually -- Cashman never
21 supplied the UPS batteries to the site; is that right?

22 A Apparently not.

23 Q Well, we're going to get to that.

24 A Yeah.

25 Q You're aware that Cashman recorded a mechanic's

1 lien in this case for the full amount of the PO and the
2 invoices, correct, for the full 755, 755,000 and change?

3 A I would hope so, yes.

4 Q Okay. Even though the work was never completed?

5 A It's your opinion.

6 Q Well, you just told me the work wasn't
7 completed. So I'm asking you, the work was never completed,
8 was it?

9 A Well, and I would say they got what they paid
10 for.

11 Q You're aware that Cashman has recovered assets
12 in this litigation from the Carvalho CAM defendants, correct?
13 Do you know that?

14 A I just found out yesterday some, yes.

15 Q Well, then I won't ask you a lot about them, but
16 we'll leave it at that.

17 Let's get to the UPS batteries. They were not
18 supplied as part of the initial scope of work, the 755. We
19 testified about that on direct. Do you remember that?

20 A They were not physically provided, correct.

21 Q Correct. But they were -- but those batteries
22 for this project were eventually sold to a company called
23 Codale Supply, right -- or Energy, right?

24 A That Codale, yes. Correct.

25 Q And then they were eventually purchased by

1 Mojave and used on the project. Do you have any knowledge of
2 that?

3 A I do.

4 Q And you know that because you and Pete Fergen
5 essentially brokered that deal, right?

6 A Correct.

7 Q Okay. And do you have an understanding of how
8 much Cashman was paid for those batteries?

9 A It's been a while. Somewhere in the -- it seems
10 to me about \$65,000.

11 Q Well, let's take a look at Exhibit 65.

12 A Well, let's just take a look at that.

13 Q Okay.

14 (Pause in proceeding.)

15 BY MR. BOSCHEE:

16 Q What I'm showing you is an invoice that Codale
17 billed to Mojave, and possible that there was some upcharge.
18 But that number, the total number was 79,721.31. Does that
19 refresh your recollection as to how much Codale paid Cashman
20 for those batteries?

21 A I'd have to look at Cashman's invoices. This is
22 obviously what Mojave paid Codale for.

23 THE COURT: What exhibit is that?

24 MR. BOSCHEE: 65, page 15.

25 THE COURT: Page 15.

1 MR. BOSCHÉE: Sorry. I opened it up for the witness
2 and didn't tell Your Honor. I apologize.

3 THE COURT: So it's page 15. Okay.

4 BY MR. BOSCHÉE:

5 Q Okay. But this would -- it wouldn't surprise
6 you if it was at some -- if the number that was paid to
7 Cashman was in this ballpark?

8 A No, it would not surprise me.

9 Q Okay. And again, this is a deal, this is
10 something that you worked out with Pete Fergen. Mojave ended
11 up paying Codale. Codale bought the batteries from Cashman
12 and they were supplied to the project, correct?

13 A Correct.

14 Q Okay. So assuming for a moment that it was
15 approximately, we'll say, you know, we'll use \$79,000 that was
16 paid. Cashman actually got paid \$79,000 or some number
17 thereabouts for those batteries, correct?

18 A We were paid for the batteries, yes.

19 Q Okay. So --

20 A Well, actually, you know what. Technically I
21 don't know that. I've not seen a check from Codale paying us
22 for them. I'm assuming, because there's not any sort of a
23 dispute, that we were paid.

24 Q But the batteries were ultimately -- those
25 batteries were ultimately supplied to city hall, correct? To

1 the best of your knowledge?

2 A To the best of my knowledge.

3 Q And that would be money that was paid to Cashman
4 above and beyond the \$755,000, right? For equipment that was
5 part of the original PO, right?

6 A Or you could say it would apply toward that
7 amount. I guess it depends how you look at it.

8 Q If you weren't -- assuming that you weren't
9 paid --

10 A You're talking like we received \$755,000. We
11 did not.

12 Q Well, let's say that the Court doesn't buy any
13 of my arguments and rules against me and awards Cashman
14 \$755,000. Cashman would receive \$755,000, and they've already
15 received \$80,000 approximately for these batteries, so they
16 would actually get a windfall, wouldn't they?

17 A I guess it depends on your point of view. You
18 folks aren't cheap.

19 Q Taking out attorney's fees obviously.

20 A So yeah, I mean, and I'm not trying to be a
21 smart aleck.

22 Q I understand.

23 A I don't know. I really don't know the answer to
24 your question.

25 THE COURT: Well, here's the better question. In

1 your view, the value of the batteries reportedly demonstrated
2 in Exhibit 65, that being \$79,721.31, is that inclusive or not
3 inclusive in the lien amount of 755?

4 THE WITNESS: Those batteries were inclusive within
5 the amount, yes, sir.

6 THE COURT: Okay.

7 BY MR. BOSCHEE:

8 Q As was the startup work and the additional --
9 additional work that was required to get the thing up and
10 running; is that correct?

11 A Yes.

12 Q And Mojave had to hire other folks, and you can
13 go through Exhibit 65 if you want. But you have an
14 understanding Mojave had to hire other folks to do that work,
15 correct, to start up the --

16 A It's my understanding that's what they did, yes.

17 Q Because you guys certainly didn't do it, because
18 you weren't going to do it because you didn't get paid, right?

19 A Correct.

20 Q Sitting here right now, you don't have any
21 reason to believe that the check that Mojave tendered to CAM
22 Consulting had insufficient funds, do you?

23 A No. Obviously it didn't.

24 Q Because Carvalho took money and bought a house
25 and a car and --

1 A For what dollar amount did you say?

2 Q What's that?

3 A For what dollar amount did you say?

4 Q It was more than the -- more than the 755 that
5 CAM cut to you guys.

6 A Yeah. And that was my understanding later, is
7 that there was more paid than just our \$755,000, which to your
8 earlier point would have made it kind of difficult for them to
9 just sign the check over to Cashman.

10 Q Well, you could have cut them the difference,
11 couldn't you?

12 A Agreed.

13 Q And at the end of the day, had Shane -- had the
14 check been signed over and you guys cut them a check back,
15 that would have accomplished the same thing as a joint check,
16 wouldn't it have essentially? You guys would have gotten your
17 money anyway.

18 A If we had been paid directly by -- if they had
19 written the check to CAM, CAM had signed the check over to
20 Cashman and we had paid CAM his fee would that have
21 accomplished the end?

22 Q Same as a joint check.

23 A Probably, yes.

24 Q Same thing. Both checks were drawn out of the
25 Nevada State Bank account. Had Shane Norman and Angelo

1 Carvalho gone to a Nevada State Bank branch over on South
2 Jones a few blocks away from Mojave's office, you guys should
3 have been able to get a cashier's check right then and there
4 for the full amount less his fee because it was drawn from the
5 same bank, couldn't you have?

6 A I'm going to assume yes.

7 Q Right. And instead what happened, Mr. Norman
8 took a post-dated check, waited to deposit it, and now we're
9 all here because Cashman's seeking to have Mojave paid for
10 this equipment a second time, or in the case of the batteries
11 a third time; is that right?

12 A That's your opinion.

13 Q Is that not right? Is that accurate?

14 A There's more than one way of looking at it.

15 Q Okay. Mojave --

16 A That's why we're here.

17 Q Mojave wouldn't have to pay -- wouldn't have to
18 pay any judgment, you have an understanding as to that,
19 wouldn't you?

20 A If we had been paid as expected, we wouldn't be
21 here.

22 Q Understood. But you don't have any -- you're
23 not arguing, you're not disputing that Mojave actually paid
24 the 755 and actually then some, but they actually paid the
25 755, didn't they?

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

5
4
5

6

7

8
9
10
11
12
13
14
15
16
17
18
19
20

21

Electronically Filed
Case No: 66452 Jun 17 2015 01:08 p.m.
Case No: 61715 Tracie K. Lindeman
Case No: 65819 Clerk of Supreme Court

District Court Case Nos.: **A642583 &
A653029**

23
24

26

TABLE OF CONTENTS FOR JOINT APPENDIX
- CHRONOLOGICAL & ALPHABETICAL -

Jennifer R. Lloyd, Esq.
Nevada Bar No. 9617
Marisa L. Maskas, Esq.
Nevada Bar No. 10928
Pezzillo Lloyd
6725 Via Austi Pkwy., Suite 290
Las Vegas, Nevada 89119
Attorneys for Appellant

Brian W. Boschee, Esq.
Nevada Bar No. 7612
William N. Miller, Esq.
Nevada Bar No. 11658
Holley, Driggs, Walch, Puzey & Thompson
400 S. Fourth St., 3rd Fl.
Las Vegas, NV 89101
Attorneys for Respondents

TABLE OF CONTENTS (CHRONOLOGICAL)

Tab No.	Description	Filed	Vol. No.	Page(s)
1	Complaint	06/03/2011	1	JA00001- 9
2	Amended Complaint	07/25/2011	1	JA00010 - 27
3	Affidavits of Service on Angelo Carvalho and Janel Rennie aka Janel Carvalho	09/29/2011	1	JA00028 - 33
4	Second Amended Complaint	09/30/2011	1	JA00034-50
5	Errata to Second Amended Complaint	10/10/2011	1	JA00051-52

1	6	Acceptance of Service	10/10/2011	1	JA00053
2					
3	7	Answer to Second Amended Complaint, Counterclaim and Crossclaim	10/26/2011	1	JA00054-75
4					
5					
6					
7	8	Amended Answer to Second Amended Complaint, Counterclaim and Crossclaim	10/27/2011	1	JA00076-97
8					
9					
10					
11					
12	9	Errata to Amended Answer to Second Amended Complaint, Counterclaim and Crossclaim	11/10/2011	1	JA00098-99
13					
14					
15					
16					
17	10	Cashman's Response to Mojave's Counterclaim	11/21/2011	1	JA000100-03
18					
19					
20					
21	11	Complaint (Filed in A653029)	12/09/2011	1	JA000104-11
22					
23	12	Motion to Consolidate (re: Case A653029)	01/11/2012	1	JA000112-18
24					
25					
26	13	Acceptance of Service (Filed in A653029)	01/18/2012	1	JA000119-22
27					
28					

1	14	Affidavit of Service	01/19/2012	1	JA000123-25
2	15	Scheduling Order	01/31/2012	1	JA000126-28
3	16	Notice of Entry of Order Granting Motion to Consolidate (Filed in A653029)	02/02/2012	1	JA000129-34
4					
5					
6					
7					
8	17	Answer to Complaint (Filed in A653029)	02/02/2012	1	JA000135-44
9					
10					
11	18	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	02/21/2012	1	JA000145-46
12					
13					
14	19	Affidavit of Service	03/01/2012	1	JA000147-49
15					
16	20	Defendants' Motion for Summary Judgment	03/09/2012	1	JA000150-203
17					
18					
19					
20	21	Cashman's Opposition to Motion for Summary Judgment	04/23/2012	1-2	JA000204-61
21					
22					
23					
24	22	Affidavit of Service	04/30/2012	2	JA000262-65
25					
26	23	Defendants' Reply to Cashman's Opposition to	05/02/2012	2	JA000266-75
27					
28					

		Motion for Summary Judgment		
24	Third Amended Complaint	05/24/2012	2	JA000276-94
25	Notice of Entry of Order Granting Cashman's Motion to Amend Complaint	05/25/2012	2	JA000295-99
26	Notice of Entry of Order Denying Defendants' Motion for Summary Judgment without Prejudice	05/25/2012	2	JA000300-04
27	Defendants' Answer to Third Amended Complaint, Counterclaim, and Cross Claim	06/28/2012	2	JA000305-31
28	Counterclaimants' Motion for Mandatory Injunction to Procure Codes on OST or in the Alternative Application for Writ of Possession	07/18/2012	2	JA000332-58

1	29	Cashman's Answer to Counterclaim	07/20/2012	2	JA000359-63
2					
3	30	Cashman's Opposition to Motion for Injunctive Relief or Writ of Possession	07/26/2012	2	JA000364-97
4					
5					
6					
7	31	Reply to Cashman's Opposition to Motion for Injunctive Relief or Writ of Possession	07/31/2012	2	JA000398-404
8					
9					
10					
11					
12	32	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	08/06/2012	2	JA000405-06
13					
14					
15					
16	33	Notice of Posting Security Bond	08/09/2012	2	JA000407-13
17					
18	34	Findings of Fact and Conclusions of Law Based upon Counterclaimants Motion to Procure Codes	08/10/2012	2	JA000414-16
19					
20					
21					
22					
23	35	Notice of Entry of Findings of Fact and Conclusions of Law Based upon Counterclaimants Motion to Procure Codes	08/13/2012	2	JA000417-22
24					
25					
26					
27					
28					

1	36	Transcript of Proceedings for August 3, 2012	08/22/2012	2	JA000423-38
2					
3					
4	37	Cashman's Motion for Reconsideration of Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST	08/29/2012	2	JA000439-66
5					
6					
7					
8					
9					
10					
11					
12					
13					
14	38	Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims	08/30/2012	2	JA000467-98
15					
16					
17					
18					
19	39	Opposition to Cashman's Motion for Reconsideration of Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST	09/07/2012	2-3	JA000499-609
20					
21					
22					
23					
24					
25					
26					
27					
28					

1	40	Notice of Appeal	09/13/2012	3	JA00610-19
2	41	Defendants' Motion to Expunge or Reduce Mechanic's Lien	09/17/2012	3	JA000620-700
3					
4					
5					
6	42	Case Appeal Statement	09/18/2012	3	JA000701-03
7					
8	43	Cashman's Opposition to Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims	09/19/2012	3-4	JA000704-853
9					
10					
11					
12					
13					
14					
15	44	Notice of Posting Cost Bond	09/19/2012	4	JA000854-57
16					
17	45	Cashman's Motion to Stay or Suspend Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST	09/28/2012	4	JA000858-84
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					

1	46	Defendants' Opposition to Cashman's Motion to Stay or Suspend Order Granting in Part	10/01/2012	4	JA000885-89
2		Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively			
3		Motion for Clarification and Request for OST			
4					
5					
6					
7					
8					
9					
10					
11					
12	47	Amended Affidavit of Service	10/17/2012	4	JA000890
13					
14	48	Cashman's Reply to its Motion to Stay or Suspend Order Granting in Part	10/22/2012	4	JA000891-904
15		Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively			
16		Motion for Clarification and Request for OST			
17					
18					
19					
20					
21					
22					
23					
24					
25	49	Cashman's Opposition to Defendants' Motion to Expunge or Reduce Mechanic's Lien	10/25/2012	4-5	JA000905-1039
26					
27					
28					

1	50	Motion to Amend Complaint	10/31/2012	5	JA0001040-76
2					
3	51	Order Granting Cashman's Motion to Stay or Suspend Order Granting in Part Motion for Preliminary Injunction to Procure Codes	11/02/2012	5	JA0001077-78
4					
5					
6					
7					
8					
9	52	Notice of Entry of Order Granting Cashman's Motion to Stay or Suspend Order Granting in Part Motion for Preliminary Injunction to Procure Codes	11/02/2012	5	JA0001079-83
10					
11					
12					
13					
14					
15					
16	53	Affidavit of Brian Bugni in support of Defendants' Motion to Expunge or Reduce Mechanic's Lien	11/02/2012	5	JA0001084-85
17					
18					
19					
20					
21	54	Affidavit of Nancy Briseno-Rivero in support of Defendants' Motion to Expunge or Reduce Mechanic's Lien	11/02/2012	5	JA0001086-87
22					
23					
24					
25					
26					
27					
28					

1	55	Cashman's Reply in support of Countermotion for Summary Judgment	11/02/2012	5	JA0001088- 1101
2					
3					
4					
5	56	Reply to Cashman's Opposition to Motion to Expunge or Reduce Mechanic's Lien	11/02/2012	5	JA0001102-11
6					
7					
8					
9					
10	57	Notice of Posting Bond	11/07/2012	5	JA0001112-16
11					
12	58	Opposition to Motion to Amend Complaint	11/19/2012	5	JA0001117-26
13					
14					
15	59	Reply in Support of Motion to Amend Complaint	12/17/2012	5	JA0001127-48
16					
17					
18	60	Notice of Entry of Order Granting Motion to Amend Complaint	01/09/2013	5	JA0001149-53
19					
20					
21	61	Fourth Amended Complaint	01/10/2013	5	JA0001154-72
22					
23					
24	62	Transcript of Proceedings for November 9, 2012	01/11/2013	5	JA0001173- 1203
25					
26					
27	63	Certificate of Service for Fourth Amended	01/17/2013	5	JA0001204-05
28					

	Complaint			
64	Acceptance of Services for LWTIC Successor, LLC, FC/LW Vegas, PQ Las Vegas, LLC, and QH Las Vegas, LLC	01/22/2013	5	JA0001206-13
65	Answer to Fourth Amended Complaint, Counterclaim and Crossclaim	02/07/2013	5	JA0001214-40
66	QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment	02/07/2013	5-6	JA0001241-1355
67	Cashman's Motion for Summary Judgment on the Payment Bond Claim	02/25/2013	7	JA0001356-1520
68	Cashman's Opposition to QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC,	03/06/2013	7	JA0001521-1664

	and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment			
69	Defendants' Opposition to Cashman's Motion for Summary Judgment on the Payment Bond Claim	03/15/2013	7-8	JA0001665- 1782
70	Cashman's Supplement to its Countermotion for Summary Judgment on its Payment Bond and Mechanic's Lien Claims	03/18/2013	8	JA0001783- 1893
71	Defendants' Supplement to Motion to Expunge Lien and Opposition to Motion for Summary Judgment as to Lien and Bond Claims	04/02/2012	8-9	JA0001894- 2065
72	Cashman's Reply to its Motion for Summary Judgment on the Payment Bond	04/05/2013	9	JA0002066-94

		Claim		
73	Supplement to Cashman's Supplement to its Countermotion for Summary Judgment on its Payment Bond and Mechanic's Lien Claims	04/05/2013	9	JA0002095- 2101
74	QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Reply to their Motion to Dismiss, or in the alternative, Motion for Summary Judgment	04/05/2013	9- 10	JA0002102- 2387
75	Order Rescheduling Pretrial/Calendar Call	04/17/2013	10	JA0002388-89
76	Notice of Entry of Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims and Cashman's Countermotion for Summary	05/06/2013	10	JA0002390-95

	Judgment			
77	Notice of Entry of Order Denying Cashman's Motion for Summary Judgment on Defendants' Payment Bond Claim	05/06/2013	10	JA0002396-2401
78	Notice of Entry of Order Denying Mojave's Motion to Expunge or Reduce Mechanic's Lien	05/06/2013	10	JA0002402-07
79	Notice of Entry of Order Denying QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment	05/06/2013	10	JA0002408-13
80	Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	05/31/2013	10	JA0002414-40
81	QH Las Vegas, PQ Las Vegas, LWITC Successor and	06/11/2013	10	JA0002441-61

	FC/LW Vegas' Answer to Fourth Amended Complaint			
82	Opposition to Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	06/20/2013	10	JA0002462-74
83	Cashman's Reply in Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	07/02/2013	10	JA0002475-87
84	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	09/06/2013	10	JA0002488-90
85	Cashman's Response to Mojave's Counterclaim (Filed in A653029)	09/12/2013	10	JA0002491-95
86	Order Granting Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	09/20/2013	10	JA0002496-97

1	87	Notice of Entry of Order Granting Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	09/24/2013	10- 11	JA0002498- 2502
2	88	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	10/1/2013	11	JA0002503-05
3	89	Defendants' Trial Brief	01/16/2014	11	JA0002506-33
4	90	Plaintiff's Trial Brief	01/16/2014	11	JA0002534-59
5	91	Joint Pretrial Memorandum	01/16/2014	11	JA0002560-79
6	92	Joint Trial Exhibit Index	01/21/2014	11	JA0002580-82
7	92.J01 to 92.J65	Joint Trial Exhibits	01/21/2014	11- 27	JA0002583- 6552
8	93	Non-Jury Trial Transcripts (for January 21, 2014 through January 24, 2014)	01/31/2014	27- 29	JA0006553- 7098
9	94	Motion for Relief Pursuant to NRCP 60(b) and Motion	03/20/2014	29	JA0007099- 7112

	for Attorneys' Fees and Costs Pursuant to NRS Ch. 108			
95	Appendix to Exhibits to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108	03/20/2014	29-30	JA0007113-7359
96	Opposition to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108	04/15/2014	30-31	JA0007360-7693
97	Reply to Cashman's Opposition to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108	04/23/2014	31	JA0007694-7707
98	Cashman's Reply in Support of Motion for Attorneys' Fees	05/05/2014	31	JA0007708-13
99	Findings of Fact and Conclusions of Law	05/05/2014	31	JA0007714-29

1	100	Notice of Entry of Findings of Fact and Conclusions of Law	05/06/2014	31	JA0007730-47
2					
3					
4	101	Memorandum of Costs and Disbursements	05/13/2014	31	JA0007748-50
5					
6					
7	102	Notice of Appeal	05/30/2014	32	JA0007751-72
8					
9	103	Case Appeal Statement	06/05/2014	32	JA0007773-76
10					
11	104	Decision and Order	08/04/2014	32	JA0007777-81
12					
13	105	Notice of Entry of Decision and Order	08/13/2014	32	JA0007782-88
14					
15	106	Judgment	08/18/2014	32	JA0007789-91
16					
17	107	Notice of Entry of Judgment	08/21/2014	32	JA0007792-96
18					
19	108	Order Denying Cashman's Request for Costs Pursuant to NRS 18.020	09/02/2014	32	JA0007797-98
20					
21					
22	109	Notice of Entry of Order Denying Cashman's Request for Costs Pursuant to NRS 18.020	09/02/2014	32	JA0007799-7804
23					
24					
25					
26					
27					
28					

1	110	Errata to Notice of Entry of Order Denying Cashman's Request for Costs Pursuant to NRS 18.020	09/02/2014	32	JA0007804-12
2					
3					
4					
5					
6	111	Notice of Appeal	09/02/2014	32	JA0007813-29
7					
8	112	Case Appeal Statement	09/11/2014	32	JA0007830-33
9					
10	113	Stipulation and Order for Dismissal of Defendants Fidelity and Deposit Company of Maryland and Travelers Casualty and Surety Company of America with Prejudice	05/08/2015	32	JA0007834-36
11					
12					
13					
14					
15					
16					
17					
18					
19	114	Notice of Entry of Stipulation and Order for Dismissal of Defendants Fidelity and Deposit Company of Maryland and Travelers Casualty and Surety Company of America with Prejudice	05/11/2015	32	JA0007837-42
20					
21					
22					
23					
24					
25					
26					
27					
28					

TABLE OF CONTENTS (ALPHABETICAL)

Tab No.	Description	Filed	Vol. No.	Page(s)
6	Acceptance of Service	10/10/2011	1	JA00053
13	Acceptance of Service (Filed in A653029)	01/18/2012	1	JA000119-22
64	Acceptance of Services for LWTIC Successor, LLC, FC/LW Vegas, PQ Las Vegas, LLC, and QH Las Vegas, LLC	01/22/2013	5	JA0001206-13
53	Affidavit of Brian Bugni in support of Defendants' Motion to Expunge or Reduce Mechanic's Lien	11/02/2012	5	JA0001084-85
54	Affidavit of Nancy Briseno-Rivero in support of Defendants' Motion to Expunge or Reduce Mechanic's Lien	11/02/2012	5	JA0001086-87
14	Affidavit of Service	01/19/2012	1	JA000123-25

1	19	Affidavit of Service	03/01/2012	1	JA000147-49
2					
3	22	Affidavit of Service	04/30/2012	2	JA000262-65
4					
5	3	Affidavits of Service on Angelo Carvalho and Janel Rennie aka Janel Carvalho	09/29/2011	1	JA00028 - 33
6					
7					
8					
9	47	Amended Affidavit of Service	10/17/2012	4	JA000890
10					
11	8	Amended Answer to Second Amended Complaint, Counterclaim and Crossclaim	10/27/2011	1	JA00076-97
12					
13					
14					
15					
16	2	Amended Complaint	07/25/2011	1	JA00010 - 27
17					
18					
19	17	Answer to Complaint (Filed in A653029)	02/02/2012	1	JA000135-44
20					
21	65	Answer to Fourth Amended Complaint, Counterclaim and Crossclaim	02/07/2013	5	JA0001214-40
22					
23					
24					
25					
26	7	Answer to Second Amended Complaint, Counterclaim and	10/26/2011	1	JA00054-75
27					
28					

	Crossclaim			
95	Appendix to Exhibits to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108	03/20/2014	29-30	JA0007113-7359
42	Case Appeal Statement	09/18/2012	3	JA000701-03
103	Case Appeal Statement	06/05/2014	32	JA0007773-76
112	Case Appeal Statement	09/11/2014	32	JA0007830-33
29	Cashman's Answer to Counterclaim	07/20/2012	2	JA000359-63
80	Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	05/31/2013	10	JA0002414-40
37	Cashman's Motion for Reconsideration of Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or	08/29/2012	2	JA000439-66

	Alternatively Motion for Clarification and Request for OST			
67	Cashman's Motion for Summary Judgment on the Payment Bond Claim	02/25/2013	7	JA0001356- 1520
45	Cashman's Motion to Stay or Suspend Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST	09/28/2012	4	JA000858-84
43	Cashman's Opposition to Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims	09/19/2012	3-4	JA000704-853
49	Cashman's Opposition to Defendants'	10/25/2012	4-5	JA000905-1039

		Motion to Expunge or Reduce Mechanic's Lien		
30	Cashman's Opposition to Motion for Injunctive Relief or Writ of Possession	07/26/2012	2	JA000364-97
21	Cashman's Opposition to Motion for Summary Judgment	04/23/2012	1-2	JA000204-61
68	Cashman's Opposition to QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment	03/06/2013	7	JA0001521- 1664
83	Cashman's Reply in Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	07/02/2013	10	JA0002475-87
55	Cashman's Reply in support of Countermotion for Summary	11/02/2012	5	JA0001088- 1101

	Judgment			
98	Cashman's Reply in Support of Motion for Attorneys' Fees	05/05/2014	31	JA0007708-13
72	Cashman's Reply to its Motion for Summary Judgment on the Payment Bond Claim	04/05/2013	9	JA0002066-94
48	Cashman's Reply to its Motion to Stay or Suspend Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST	10/22/2012	4	JA000891-904
10	Cashman's Response to Mojave's Counterclaim	11/21/2011	1	JA000100-03
85	Cashman's Response to Mojave's Counterclaim (Filed in A653029)	09/12/2013	10	JA0002491-95

70	Cashman's Supplement to its Countermotion for Summary Judgment on its Payment Bond and Mechanic's Lien Claims	03/18/2013	8	JA0001783-1893
63	Certificate of Service for Fourth Amended Complaint	01/17/2013	5	JA0001204-05
1	Complaint	06/03/2011	1	JA00001- 9
11	Complaint (Filed in A653029)	12/09/2011	1	JA000104-11
28	Counterclaimants' Motion for Mandatory Injunction to Procure Codes on OST or in the Alternative Application for Writ of Possession	07/18/2012	2	JA000332-58
104	Decision and Order	08/04/2014	32	JA0007777-81
27	Defendants' Answer to Third Amended Complaint,	06/28/2012	2	JA000305-31

		Counterclaim, and Cross Claim		
20	Defendants' Motion for Summary Judgment	03/09/2012	1	JA000150-203
38	Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims	08/30/2012	2	JA000467-98
41	Defendants' Motion to Expunge or Reduce Mechanic's Lien	09/17/2012	3	JA000620-700
69	Defendants' Opposition to Cashman's Motion for Summary Judgment on the Payment Bond Claim	03/15/2013	7-8	JA0001665- 1782
46	Defendants' Opposition to Cashman's Motion to Stay or Suspend Order Granting in Part Counterclaimants' Motion for Preliminary Injunction to Procure Codes or Alternatively	10/01/2012	4	JA000885-89

	Motion for Clarification and Request for OST			
23	Defendants' Reply to Cashman's Opposition to Motion for Summary Judgment	05/02/2012	2	JA000266-75
71	Defendants' Supplement to Motion to Expunge Lien and Opposition to Motion for Summary Judgment as to Lien and Bond Claims	04/02/2012	8-9	JA0001894-2065
89	Defendants' Trial Brief	01/16/2014	11	JA0002506-33
9	Errata to Amended Answer to Second Amended Complaint, Counterclaim and Crossclaim	11/10/2011	1	JA00098-99
110	Errata to Notice of Entry of Order Denying Cashman's Request for Costs Pursuant to NRS 18.020	09/02/2014	32	JA0007804-12

1	5	Errata to Second Amended Complaint	10/10/2011	1	JA00051-52
2					
3					
4	99	Findings of Fact and Conclusions of Law	05/05/2014	31	JA0007714-29
5					
6					
7	34	Findings of Fact and Conclusions of Law Based upon Counterclaimants Motion to Procure Codes	08/10/2012	2	JA000414-16
8					
9					
10					
11					
12	61	Fourth Amended Complaint	01/10/2013	5	JA0001154-72
13					
14	91	Joint Pretrial Memorandum	01/16/2014	11	JA0002560-79
15					
16	92	Joint Trial Exhibit Index	01/21/2014	11	JA0002580-82
17					
18	92.J01	Joint Trial Exhibits	01/21/2014	11-27	JA0002583-6552
19	to				
20	92.J65				
21					
22					
23	106	Judgment	08/18/2014	32	JA0007789-91
24					
25	101	Memorandum of Costs and Disbursements	05/13/2014	31	JA0007748-50
26					
27	94	Motion for Relief Pursuant to NRCP	03/20/2014	29	JA0007099-7112
28					

	60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108			
50	Motion to Amend Complaint	10/31/2012	5	JA0001040-76
12	Motion to Consolidate (re: Case A653029)	01/11/2012	1	JA000112-18
93	Non-Jury Trial Transcripts (for January 21, 2014 through January 24, 2014)	01/31/2014	27- 29	JA0006553- 7098
40	Notice of Appeal	09/13/2012	3	JA00610-19
102	Notice of Appeal	05/30/2014	32	JA0007751-72
111	Notice of Appeal	09/02/2014	32	JA0007813-29
105	Notice of Entry of Decision and Order	08/13/2014	32	JA0007782-88
76	Notice of Entry of Defendants' Motion for Summary Judgment of Surety Payment and License Bond Claims and Cashman's Countermotion for	05/06/2013	10	JA0002390-95

	Summary Judgment			
100	Notice of Entry of Findings of Fact and Conclusions of Law	05/06/2014	31	JA0007730-47
35	Notice of Entry of Findings of Fact and Conclusions of Law Based upon Counterclaimants Motion to Procure Codes	08/13/2012	2	JA000417-22
107	Notice of Entry of Judgment	08/21/2014	32	JA0007792-96
77	Notice of Entry of Order Denying Cashman's Motion for Summary Judgment on Defendants' Payment Bond Claim	05/06/2013	10	JA0002396-2401
109	Notice of Entry of Order Denying Cashman's Request for Costs Pursuant to NRS 18.020	09/02/2014	32	JA0007799-7804
26	Notice of Entry of Order Denying Defendants'	05/25/2012	2	JA000300-04

	Motion for Summary Judgment without Prejudice			
78	Notice of Entry of Order Denying Mojave's Motion to Expunge or Reduce Mechanic's Lien	05/06/2013	10	JA0002402-07
79	Notice of Entry of Order Denying QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment	05/06/2013	10	JA0002408-13
87	Notice of Entry of Order Granting Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	09/24/2013	10-11	JA0002498-2502
25	Notice of Entry of Order Granting Cashman's Motion to Amend Complaint	05/25/2012	2	JA000295-99

52	Notice of Entry of Order Granting Cashman's Motion to Stay or Suspend Order Granting in Part Motion for Preliminary Injunction to Procure Codes	11/02/2012	5	JA0001079-83
60	Notice of Entry of Order Granting Motion to Amend Complaint	01/09/2013	5	JA0001149-53
16	Notice of Entry of Order Granting Motion to Consolidate (Filed in A653029)	02/02/2012	1	JA000129-34
114	Notice of Entry of Stipulation and Order for Dismissal of Defendants Fidelity and Deposit Company of Maryland and Travelers Casualty and Surety Company of America with Prejudice	05/11/2015	32	JA0007837-42
57	Notice of Posting Bond	11/07/2012	5	JA0001112-16

1	44	Notice of Posting Cost Bond	09/19/2012	4	JA000854-57
2					
3	33	Notice of Posting Security Bond	08/09/2012	2	JA000407-13
4					
5	82	Opposition to Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	06/20/2013	10	JA0002462-74
6					
7					
8					
9					
10	39	Opposition to Cashman's Motion for Reconsideration of Order Granting in Part Counter- claimants' Motion for Preliminary Injunction to Procure Codes or Alternatively Motion for Clarification and Request for OST	09/07/2012	2-3	JA000499-609
11					
12					
13					
14					
15					
16					
17					
18					
19					
20	96	Opposition to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108	04/15/2014	30- 31	JA0007360- 7693
21					
22					
23					
24					
25					
26	58	Opposition to Motion to Amend Complaint	11/19/2012	5	JA0001117-26
27					
28					

108	Order Denying Cashman's Request for Costs Pursuant to NRS 18.020	09/02/2014	32	JA0007797-98
86	Order Granting Cashman's Motion for Award of Attorneys' Fees and Costs Pursuant to NRS 108.2275	09/20/2013	10	JA0002496-97
51	Order Granting Cashman's Motion to Stay or Suspend Order Granting in Part Motion for Preliminary Injunction to Procure Codes	11/02/2012	5	JA0001077-78
75	Order Rescheduling Pretrial/Calendar Call	04/17/2013	10	JA0002388-89
18	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	02/21/2012	1	JA000145-46
32	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	08/06/2012	2	JA000405-06

1	84	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	09/06/2013	10	JA0002488-90
2					
3					
4	88	Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call	10/1/2013	11	JA0002503-05
5					
6					
7					
8	90	Plaintiff's Trial Brief	01/16/2014	11	JA0002534-59
9					
10	66	QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Motion to Dismiss, or in the alternative, Motion for Summary Judgment	02/07/2013	5-6	JA0001241- 1355
11					
12					
13					
14					
15					
16					
17					
18	74	QH Las Vegas, LLC, PQ Las Vegas, LLC, LWTIC Successor, LLC, and FC/LW Vegas Reply to their Motion to Dismiss, or in the alternative, Motion for Summary Judgment	04/05/2013	9- 10	JA0002102- 2387
19					
20					
21					
22					
23					
24					
25					
26	81	QH Las Vegas, PQ Las Vegas, LWITC Successor and FC/LW Vegas'	06/11/2013	10	JA0002441-61
27					
28					

	Answer to Fourth Amended Complaint			
59	Reply in Support of Motion to Amend Complaint	12/17/2012	5	JA0001127-48
31	Reply to Cashman's Opposition to Motion for Injunctive Relief or Writ of Possession	07/31/2012	2	JA000398-404
97	Reply to Cashman's Opposition to Motion for Relief Pursuant to NRCP 60(b) and Motion for Attorneys' Fees and Costs Pursuant to NRS Ch. 108	04/23/2014	31	JA0007694-7707
56	Reply to Cashman's Opposition to Motion to Expunge or Reduce Mechanic's Lien	11/02/2012	5	JA0001102-11
15	Scheduling Order	01/31/2012	1	JA000126-28
4	Second Amended Complaint	09/30/2011	1	JA00034-50
113	Stipulation and Order for	05/08/2015	32	JA0007834-36

	Dismissal of Defendants Fidelity and Deposit Company of Maryland and Travelers Casualty and Surety Company of America with Prejudice			
73	Supplement to Cashman's Supplement to its Countermotion for Summary Judgment on its Payment Bond and Mechanic's Lien Claims	04/05/2013	9	JA0002095-2101
24	Third Amended Complaint	05/24/2012	2	JA000276-94
36	Transcript of Proceedings for August 3, 2012	08/22/2012	2	JA000423-38
62	Transcript of Proceedings for November 9, 2012	01/11/2013	5	JA0001173-1203