

Page 82	Page 84
<p>1 the specifics and startup, I'm not a power generation 2 person. I don't know what that all entails. But 3 suffice it to say, to -- to make it workable and 4 functionable according to all the -- the codes of the 5 building codes. 6 Q. And I wasn't looking for the technical specs 7 that Keith might be able to give me. I was looking 8 for -- you've used the word "startup" a handful of 9 times. I just wan to make sure the record is clear for 10 a layperson reading it, what you mean by startup when 11 you are referring to that, and I think you just 12 answered it. 13 A. Yeah. And that process generally happens 14 toward the latter part of the project. 15 Q. And some of that still needs to be completed; 16 correct? 17 A. Yes. 18 Q. Now, at some point after all this 19 unfortunateness happens, you guys did leave the 20 project; correct, Cashman? You stopped working? 21 A. Again, I don't know -- I mean, we did not 22 finish and complete. 23 Q. Right. 24 A. Everything that -- the startup, if that makes 25 sense. I don't -- I don't know what point -- at what</p>	<p>1 A. I don't -- I don't recall those documents 2 stating anything like that. Not that they didn't, I 3 just -- I just haven't seen them or reviewed them in 4 the recent past. 5 Q. Do you ever recall, either from our office or 6 directly from Mojave -- and this may come directly from 7 Mojave -- requesting a repair of any of the materials, 8 any of the equipment that Cashman had provided? 9 A. I don't recall. 10 Q. Would that be something that Keith might be 11 better -- would he have handled that or would that be 12 something that you dealt with? 13 A. No. That probably would have been him, 14 but -- primarily. However, all it would take is simply 15 reviewing the document, and I could answer the 16 question. 17 Q. Well, let's talk about the -- at some point 18 when the payment wasn't made, you guys decided that 19 going the mechanic's lien route is what needed to 20 happen; correct? 21 A. Yeah, absolutely. 22 Q. We will mark the next one in line. And, 23 again, I suspect -- I don't know, but this may 24 be -- you may or may not have any recollection of any 25 of this.</p>
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<p>1 point that was or what that even actually means, but, 2 yes, we did not come back and finish everything. 3 Q. And that may be a better question for Keith, 4 but I just wanted to kind of get to my next thing. 5 Do you recall receiving a demand or any kind 6 of communication from Mojave to come back and finish up 7 what was still left to be done? 8 A. I believe you guys sent some legal 9 correspondence demanding that we do that. 10 Q. Okay. 11 A. Do -- is that the case? 12 Q. Well, I'll represent to you that I think you 13 got it from both Mojave and perhaps our office. 14 A. Okay. 15 Q. But you recall receiving a demand request from 16 Mojave to finish up; right? 17 A. Yes. 18 Q. You didn't do that; right? 19 A. No. 20 Q. You didn't go back there after receiving that 21 demand, did you? 22 A. Not that I am aware of, no. 23 Q. Do you recall in the demands that you received 24 Mojave having issues with the quality or functioning of 25 the materials that had been provided by Cashman?</p>	<p>1 MR. BOSCHEE: This is Exhibit 5, I believe. 2 (Exhibit 5 marked.) 3 BY MR. BOSCHEE: 4 Q. Take a look at this document. It's entitled 5 notice of right to lien. It's typically referred to as 6 prelien notice. Do you recognize this document? 7 A. I do. 8 Q. It says it was prepared by CMA Forms Filing 9 Service. Does that ring a bell? 10 A. Yes. 11 Q. Is that something that you guys use a lot? 12 A. Yes. 13 Q. This wasn't something that was prepared 14 by -- and I don't want to know any communications, per 15 se. This wasn't anything that was prepared by counsel, 16 was it? 17 A. No. 18 Q. It's not something that you would typically 19 hire your attorney to put together, is it? 20 A. As much as we love her, no. She's too 21 expensive. 22 Q. Exactly. I was going to say that's not just a 23 Jennifer issue. 24 To the best of your understanding and 25 recollection, is this the only prelien notice that you</p>

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<p>1 guys provided to this project?</p> <p>2 A. To my knowledge, yes.</p> <p>3 Q. This was served, it looks like on the</p> <p>4 parties -- and if you look midway down the page, this</p> <p>5 might refresh your recollection -- served on the</p> <p>6 parties by mail on about April 20, 2011; is that</p> <p>7 correct?</p> <p>8 A. That's what it states, yes.</p> <p>9 Q. Why did you guys decide to do a prelien notice</p> <p>10 at this time before you had even gotten the check?</p> <p>11 What kind of spurred this on in your decision-making</p> <p>12 process?</p> <p>13 A. The issues at hand.</p> <p>14 Q. What issues were at hand at that point?</p> <p>15 A. The nonpayment.</p> <p>16 Q. The nonpayment -- explain yourself. I'm</p> <p>17 missing what you're --</p> <p>18 A. We had not been paid yet.</p> <p>19 Q. The invoices were a little old?</p> <p>20 A. Yes. And Angelo was not present.</p> <p>21 Q. When the rubber hit the road and Angelo</p> <p>22 finally showed up on the 27th-ish, give or take, 26th,</p> <p>23 27th, and you swapped the check for the release, you</p> <p>24 didn't release the prelien notice or anything, did you?</p> <p>25 You kept it in place?</p>	<p>1 of a mechanic's lien that you guys recorded?</p> <p>2 A. Yeah.</p> <p>3 Q. And this one, this one you did have counsel</p> <p>4 assist you with; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. I don't want to get into communications that</p> <p>7 you had with Jennifer at all. I really don't. Let me</p> <p>8 ask you this: Who determined the amount of the</p> <p>9 original contract in line 1? Was that you or your</p> <p>10 counsel?</p> <p>11 A. I -- I sent her all the paperwork and -- and</p> <p>12 told her how much it was.</p> <p>13 Q. So the determination of the amount of the lien</p> <p>14 was something that you guys determined and then --</p> <p>15 A. Yes.</p> <p>16 Q. -- forwarded on?</p> <p>17 And that was based on the invoices we looked</p> <p>18 at --</p> <p>19 A. Yes.</p> <p>20 Q. -- about an hour ago; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Materials supplied, that included the startup,</p> <p>23 whatever we want to call it, installation, startup,</p> <p>24 getting the stuff working; correct?</p> <p>25 A. Yes.</p>
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<p>1 A. Well, there's -- there's no -- I mean, it's a</p> <p>2 notice.</p> <p>3 Q. I understand.</p> <p>4 A. There's no release or anything required to</p> <p>5 these. It's just a notice.</p> <p>6 Q. I guess what I am getting at is -- I</p> <p>7 understand what you are saying. You didn't send</p> <p>8 anything to any of the folks saying, Okay. We're paid,</p> <p>9 we're good, don't worry about it?</p> <p>10 A. No. I mean, not in regards to --</p> <p>11 Q. It's not something that you would typically do</p> <p>12 anyway, is it?</p> <p>13 A. No, not like that.</p> <p>14 Q. I'm going to show you the next one, which is</p> <p>15 the lien.</p> <p>16 (Exhibit 6 marked.)</p> <p>17 BY MR. BOSCHEE:</p> <p>18 Q. I'm guessing you recognize this document?</p> <p>19 A. I do.</p> <p>20 Q. Is that your signature at the bottom of the</p> <p>21 page?</p> <p>22 A. Yes.</p> <p>23 Q. And on the next page?</p> <p>24 A. Yes, indeed.</p> <p>25 Q. Does this appear to be a true and correct copy</p>	<p>1 Q. Did you at that time have any reason to</p> <p>2 believe that that number was not accurate?</p> <p>3 A. No.</p> <p>4 Q. Sitting here right now, do you have any reason</p> <p>5 to believe that number might not be accurate?</p> <p>6 A. No.</p> <p>7 Q. You testified earlier that the startup,</p> <p>8 getting everything working, was part of what you</p> <p>9 invoiced for, and in particular, on February 1, 2011;</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. That's part of what's in that invoicing? But</p> <p>13 it wasn't done yet because that happens as a process</p> <p>14 over the course of the project; correct?</p> <p>15 A. Yes.</p> <p>16 Q. And then you told me that there's still some</p> <p>17 of that that needs to be done because, you know, you</p> <p>18 guys just didn't finish it; correct, primarily because</p> <p>19 of what happened here?</p> <p>20 A. Yes.</p> <p>21 Q. So you would agree with me, wouldn't you, that</p> <p>22 the \$755,893.89 includes at least some services, some</p> <p>23 startup services you guys haven't actually performed</p> <p>24 yet, wouldn't you?</p> <p>25 A. Yes.</p>

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<p>1 Q. But you still included it in your notice of 2 lien? 3 A. Yes. 4 Q. Do you have an intention to perform those 5 services at some point? 6 A. Yes. 7 Q. When? 8 A. When we're paid. 9 Q. Okay. 10 A. Did you expect that? 11 Q. I did expect that. 12 And to the extent, if for whatever reason you 13 guys don't get paid as a result of this lawsuit or 14 hopefully for everybody Mr. Carvalho winning the 15 lottery, those services aren't going to be performed 16 until you actually get the money; right? You are not 17 going to go back out there, other than what the court 18 apparently ordered you to do on Friday, but you aren't 19 going to go out there and perform additional services 20 on this project, are you, until you get this money? 21 A. That is our plan, yes. 22 Q. Okay. 23 A. Unless other legal ramifications present 24 themselves. 25 Q. I understand.</p>	<p>1 Q. Date on the notice June 24, 2011, is that 2 accurate, to the best of your knowledge? 3 A. Yes. 4 Q. No other notices were served before this date, 5 were they? 6 A. I don't know that to be true. 7 Q. Have you seen any? 8 A. Not that I am aware of. 9 Q. In fact, this is the only 90 day notice to the 10 general that you have ever actually seen; is that 11 correct? 12 A. Yes. 13 Q. And -- disregard that. I was going to ask a 14 bad question and I'm not going to. 15 A. Thank goodness. 16 Q. Exactly. I have asked plenty of bad ones 17 already. 18 You have -- and, again, I'm going to try to 19 steer this away from legal conclusions as best I can, 20 but Cashman has brought a claim in this lawsuit for 21 fraudulent transfer against Mojave. Do you have an 22 understanding of that, that that claim has been 23 asserted? 24 A. Yes. 25 Q. Factually, what is the basis, sitting here</p>
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<p>1 Do you have anything else you want to tell me 2 about the amount of the lien, the \$755,893.89 that you 3 believe, other than what we just talked about, you have 4 no other issues with the amount, do you? 5 A. No. It's the sum of invoices that we have 6 given. 7 Q. Well, around the same time, I think you guys 8 served, if I'm not mistaken, a notice to the general 9 contractor; correct? I'm going to show it to you. I'm 10 just asking. 11 (Exhibit 7 marked.) 12 BY MR. BOSCHEE: 13 Q. I will represent to you that I'm fairly 14 certain that that's Jennifer's signature on the bottom 15 of the page, having seen it a couple of times, but have 16 you seen this document before? 17 A. Yeah. 18 Q. Do you recognize it? 19 A. Uh-huh. 20 Q. This is a true and correct copy of the 90-day 21 notice that was sent to Whiting Turner; is that right? 22 A. I believe so, yes. 23 Q. And was this notice sent in an effort to 24 preserve a claim against Whiting surety? 25 A. Yes.</p>	<p>1 right now, your understanding, what factual basis do 2 you have for asserting that claim? 3 A. Would you like me to answer that? 4 MS. ROBINSON: No. You can answer it to the 5 best of your knowledge. 6 BY MR. BOSCHEE: 7 Q. To the best of your knowledge. 8 MS. ROBINSON: But if you don't have a clear 9 understanding -- 10 BY MR. BOSCHEE: 11 Q. And then I'll follow-up with some other 12 questions as to elements if you don't. 13 A. There were checks cut back to Angelo Carvalho 14 in significant amounts that we believe some of those 15 funds should have been ours, if not all of them. 16 Q. Checks cut to Carvalho or checks from 17 Carvalho? 18 A. Checks cut from Carvalho back to Mojave. 19 Q. Those were two checks, if memory serves; 20 correct? 21 A. (Witness nods.) 22 Q. Right around the same dates we're talking 23 about, end of April? 24 A. Yes, yes. 25 Q. What investigation have you done with respect</p>

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<p>1 to those checks and the job that they came from, if 2 any? 3 A. I -- we were limited to what Mojave has 4 supplied us. 5 Q. Do you have an understanding as to what job 6 they relate to? 7 A. Again, our information directly comes from 8 Mojave. 9 Q. What has Mojave told you about those checks? 10 A. They said they were in relation to something 11 else. 12 Q. Another job? 13 A. Yes. 14 Q. Who told you that, Francis again? 15 A. No. That came from a -- I don't recall when 16 we got that information. There was -- there was a 17 meeting between our president and Keith Lozeau and an 18 owner of Mojave. I forget what his name is right off 19 the bat. 20 Q. Troy Nelson? 21 A. I believe it was with Troy and Brian Bugney 22 (phonetic). There were several things that came out of 23 that meeting. It could have been -- resulted from that 24 meeting. There was also -- 25 Q. While you have got that in your train of</p>	<p>1 flag goes up. And so at some point, you or somebody 2 else contacts Mojave and says, Hey, what's up with 3 this? 4 A. Yeah. And we have not really gotten a clear 5 response as to what it really is. 6 Q. When you say "we haven't got a clear detail," 7 what response have you gotten? 8 A. Based on -- again, if my recollection serves 9 me well, and it's secondhand. 10 Q. I understand. And Keith -- I maybe have to 11 ask him about that. 12 A. No. It's Keith and my president -- 13 Q. Sure. 14 A. -- that it was -- was not related to this job, 15 which we don't entirely feel is true. 16 Q. Why not? 17 A. Well -- 18 Q. I mean, what is the basis for your belief? 19 A. Again, the timing of the checks. I mean, that 20 he wrote those checks upon receiving his check from 21 Mojave. 22 Q. Okay. 23 A. All one check, from what I understand, in 24 that -- in that instance, and he didn't have enough 25 money to pay him until he got his check from Mojave,</p>
Page 95	Page 97
<p>1 thought, what else came out of that meeting, if you 2 recall? 3 A. That we didn't receive payment. 4 Q. Obviously. 5 A. So not much. 6 Q. I think we will all agree on that point, but 7 anything else? What else did you guys talk about 8 during that meeting? 9 A. I was not present. I was out on vacation, so 10 I was not there. 11 Q. But you are fairly certain that these two 12 checks came up in that meeting? 13 A. Yes. 14 Q. Have you personally had any conversations with 15 anybody at Mojave about these two checks? 16 A. No, I have not. 17 Q. And the entire source of your information 18 regarding these two checks and why they were paid comes 19 from what you've gleaned from Mojave; correct? 20 A. Well, the way when about the checks is Angelo 21 Carvalho's bank records. 22 Q. Right. 23 A. So that's -- that's where that is. 24 Q. So you get the bank records from Carvalho and 25 you see these checks going back to Mojave and a red</p>	<p>1 which was -- I mean, there's -- there's a -- there's a 2 kind of a series of check that come into CAM prior to 3 that. But this was the big one, and this is the time 4 that he paid it back, which we feel was -- timing meant 5 that that was really our money from Mojave. 6 Q. But you testified earlier that you have an 7 understanding that Mojave wrote a check in the amount 8 greater than the amount that was owed to Cashman to 9 Carvalho at that point; right? 10 A. Yes. 11 Q. So at least theoretically, he could have had 12 enough money to pay it back if there was money owed to 13 Mojave. He could have paid both of you, theoretically; 14 right? 15 A. Well, he should have been able to pay all of 16 us theoretically, yes. 17 Q. This other job that Mojave articulated or told 18 you or indicated that this money was for, have you guys 19 looked into that job at all? Have you done any 20 independent investigation? 21 A. We -- we don't know what job that is. We 22 don't have any details that I'm aware of. 23 Q. Mojave never told you what job it was? 24 A. I -- I don't -- I don't know. 25 Q. Okay.</p>

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<p>1 A. Whether or not they told somebody else, I am 2 not aware of, but I don't know. 3 Q. In your meetings with Carvalho, let's start 4 there, meetings and telephone conversations? 5 A. Uh-huh. 6 Q. Did he ever explain what his relationship was 7 with Mojave? 8 A. Other than he had been -- I mean, he actually 9 showed me the checks that he had signed and sent to the 10 two other vendors in the second deal, which meant that 11 he was the disadvantaged business owner entity for 12 several other vendors in relation to Mojave's dealings. 13 But other than that, I don't know. 14 Q. So he showed you checks where he had kind of, 15 where Carvalho and CAM -- 16 A. I'm sorry, to clarify, copies of checks. 17 Q. Sure. Where he had been in this position 18 before, where he had been the disadvantaged business 19 owner used by Mojave on other projects; correct? 20 A. I don't know that they were other projects. I 21 think this one was -- this project? 22 Q. This project? 23 A. Yes. 24 Q. Did you talk to anybody at Mojave about what 25 their relationship was with CAM or Carvalho or why they</p>	<p>1 documents we've seen of kind of a conspiracy between 2 Mojave and Angelo Carvalho and CAM with respect to this 3 project; is that right? Is that your understanding? 4 A. Yeah. We -- we believe -- again, to restate, 5 we believe that those funds that CAM wrote a check back 6 to Mojave should -- should be ours. 7 Q. Okay. 8 A. And that's where we think the misdeeds are. 9 Q. But sitting here right now, you don't have any 10 knowledge or understanding of any kind of special 11 interpersonal relationship between Mojave and CAM or 12 anybody at Mojave and Angelo Carvalho, do you? 13 A. I -- I do know that -- I forget. I don't know 14 with which individual at Mojave it was. It wasn't 15 Francis. It was -- I believe it was one of the 16 owners -- 17 Q. Okay. 18 A. -- had a relationship with him and he was the 19 one that referred Keith, our guy, to CAM. And, in 20 fact, when Keith did meet with CAM, it was at Mojave's 21 office. 22 Q. You don't remember who that was? 23 A. I -- I don't recall. Keith would know. 24 Q. Okay. I'll ask Keith about that. 25 But, I mean, sitting here right now, your</p>
Page 99	Page 101
<p>1 wanted to use this particular entity? 2 A. No. 3 Q. Did Francis ever indicate anything other than 4 she had a friendship with Carvalho? 5 A. She -- she was a point of contact and was able 6 to talk to him on a regular basis and a fountain of 7 information when it came to tracking him down. 8 Q. With respect to that, obviously you contacted 9 Mojave when the funds didn't clear, and there was \$800 10 left in the bank account; correct? 11 A. Yes. 12 Q. Did Francis or anyone else at Mojave offer any 13 suggestions as to how to get to this guy or how to get 14 funds out of this guy or what he had been doing? 15 A. Again, my perspective was, Hey, can we put a 16 stop payment on the check? Let's see what we can do to 17 get that done. I don't know that they offered any 18 suggestions. I don't recollect them making any 19 suggestions. 20 Q. Okay. 21 A. I would have -- anything. 22 Q. Help. I understand. 23 So you've also -- I think there's -- and I 24 don't want to get into any legal terms, but there's 25 this kind of idea in the allegations and some of the</p>	<p>1 understanding -- again, for the limited purpose of the 2 person most knowledgeable for the subjects listed -- 3 A. Uh-huh. 4 Q. -- but sitting here right now, your basis for 5 the conspiracy, fraudulent transfer type accusations, 6 allegations that have been made -- 7 A. Uh-huh. 8 Q. -- is really only those two checks being cut 9 and the timing of them; isn't that right? 10 A. Yes. 11 Q. And you have done no other investigation as to 12 why those checks were cut or the job that they were cut 13 for? 14 A. No. I mean, again, we are limited to what 15 Mojave is willing to provide, and we have not received 16 any additional evidence on that. 17 Q. Sure. 18 MR. BOSCHEE: If I can take about two minutes, 19 I want to go back over my notes. I think we're just 20 about done. 21 MS. ROBINSON: Okay. 22 (A short break was taken.) 23 MR. BOSCHEE: Back on the record. 24 BY MR. BOSCHEE: 25 Q. You understand you are still under oath?</p>

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<p>1 A. I do.</p> <p>2 Q. Couple of just cleanup that I probably know</p> <p>3 the answers to but you talked about the fact that you</p> <p>4 did not set up a charge account with CAM. Do you</p> <p>5 remember talking about that?</p> <p>6 A. I did.</p> <p>7 Q. What is a charge account?</p> <p>8 A. Something where you buy now, pay later.</p> <p>9 Q. And you buy now, pay later, how exactly is</p> <p>10 that different than the arrangement you did set up with</p> <p>11 CAM?</p> <p>12 A. Well, we didn't never receive the money.</p> <p>13 Q. I understand.</p> <p>14 A. So it ended up being that way, but that's not</p> <p>15 the way it was intended.</p> <p>16 Q. It was intended to be relatively immediate</p> <p>17 payment?</p> <p>18 A. Yes.</p> <p>19 Q. Why didn't you set up the charge account with</p> <p>20 CAM?</p> <p>21 A. I didn't feel they had enough credit to open</p> <p>22 up a \$755,000 line of credit for a brand new customer I</p> <p>23 have never heard of before with limited credit</p> <p>24 information.</p> <p>25 Q. Sure. But setting up a charge account</p>	<p>1 That's not the end of the world either.</p> <p>2 Other than that, the last question I always</p> <p>3 ask, and your counsel is almost certainly going to</p> <p>4 object because Brian always objects, are there any</p> <p>5 other topics that you are planning to testify about in</p> <p>6 this case that we have not discussed today at this</p> <p>7 deposition?</p> <p>8 MS. ROBINSON: I'm going to object that that's</p> <p>9 not really a question, but go ahead.</p> <p>10 THE WITNESS: I -- I -- I mean, I don't know.</p> <p>11 We just take it day by day.</p> <p>12 BY MR. BOSCHEE:</p> <p>13 Q. I understand that. But I guess what I am</p> <p>14 saying is are there any other areas of knowledge or</p> <p>15 information that you have that you are planning to</p> <p>16 relate to the Court or testify about at trial in this</p> <p>17 case that we have not discussed at this deposition</p> <p>18 today?</p> <p>19 A. I think our deposition has been fairly full</p> <p>20 bodied, but I -- I don't know -- I don't know what else</p> <p>21 I could testify to. I mean, there's probably some</p> <p>22 little things here and there, but I don't -- I</p> <p>23 couldn't --</p> <p>24 Q. But no major topic areas, though?</p> <p>25 A. Well, we discussed the nonpayment and how that</p>
Page 103	Page 105
<p>1 wouldn't have really benefited Cashman in this</p> <p>2 situation?</p> <p>3 A. It -- it wouldn't have changed what the</p> <p>4 outcome would have -- well, would have, should have,</p> <p>5 could have, but it wouldn't have had any bearing on</p> <p>6 what happened.</p> <p>7 Q. In an effort in trying to avoid another</p> <p>8 deposition and maybe get away with this with a</p> <p>9 subpoena, do you know who your insurance carrier is?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 A. Well, I mean I -- I know who our agent is,</p> <p>13 it's Jenkins Athens.</p> <p>14 Q. But you don't know who you are insured with?</p> <p>15 Because we would send a subpoena to them asking them</p> <p>16 for the claim information, but if you don't know, you</p> <p>17 don't know.</p> <p>18 A. If you would like a written statement from my</p> <p>19 CFO, we could do that.</p> <p>20 Q. Or we could send something over.</p> <p>21 MS. ROBINSON: Send a request over.</p> <p>22 BY MR. BOSCHEE:</p> <p>23 Q. We'll send a request over. I was just hoping</p> <p>24 you might know off the top of your head, so we could</p> <p>25 send a subpoena out to the insurance, but it's fine.</p>	<p>1 came about and that kind of stuff. So, I mean, there</p> <p>2 are probably a lot of other aspects to the case, but</p> <p>3 none that I'm --</p> <p>4 Q. I just wanted to make sure --</p> <p>5 A. Unless you have anything specifically you</p> <p>6 would like to add or whatever, but --</p> <p>7 Q. No. We have gotten -- I mean, there are a lot</p> <p>8 of specific things that I may need information from</p> <p>9 other folks about, but I just wanted to make sure there</p> <p>10 was no other broad topics that you are like, Oh, well,</p> <p>11 actually, I know all this stuff about this other area.</p> <p>12 I just want to make sure we have covered everything.</p> <p>13 A. Well, like I said, there's a lot of aspects to</p> <p>14 the case.</p> <p>15 Q. Sure.</p> <p>16 A. But I can't -- I can't say whether we have</p> <p>17 covered them all or not. I guess that's your opinion.</p> <p>18 MR. BOSCHEE: Okay. I have no further</p> <p>19 questions. Your counsel may ask you questions, but I</p> <p>20 doubt it.</p> <p>21 MS. ROBINSON: No questions.</p> <p>22 MR. BOSCHEE: Okay.</p> <p>23 (Thereupon, the deposition concluded at</p> <p>24 11:52 a.m.)</p> <p>25</p>

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1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE REASON

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13 * * * * *

14
15 I, SHANE NORMAN, deponent herein, do hereby certify and
16 declare under the penalty of perjury the within and
17 foregoing transcription to be my deposition in said
18 action; that I have read, corrected and do hereby affix
19 my signature to said deposition.
20

21
22 _____
23 SHANE NORMAN, Deponent
24
25

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1 CERTIFICATE OF REPORTER
2 STATE OF NEVADA)
3 COUNTY OF CLARK)

4 I, Michelle R. Ferreyra-Marez, a Certified Court
5 Reporter licensed by the State of Nevada, do hereby
6 certify: That I reported the deposition of SHANE
7 NORMAN, commencing on THURSDAY, AUGUST 16, 2012, at
8 9:43 a.m.

9 That prior to being deposed, the witness was
10 duly sworn by me to testify to the truth. That I
11 thereafter transcribed my said stenographic notes into
12 written form, and that the typewritten transcript is a
13 complete, true and accurate transcription of my said
14 stenographic notes, and that a request has been made to
15 review the transcript.

16 I further certify that I am not a relative,
17 employee or independent contractor of counsel or of any
18 of the parties involved in the proceeding, nor a person
19 financially interested in the proceeding, nor do I have
20 any other relationship that may reasonably cause my
21 impartiality to be questioned.

22 IN WITNESS WHEREOF, I have set my hand in my
23 office in the County of Clark, State of Nevada, this
24 30th day of August, 2012.

25 _____
MICHELLE R. FERREYRA-MAREZ, CCR No. 876

EXHIBIT F

BOND FOR RELEASE OF MECHANIC'S LIEN

BOND NUMBER: 58685401

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

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

See Attached Exhibit "A"

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

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

Mojave Electric

By: _____

Western Surety Company

By: _____

Kelly M. Lamb, Attorney-In-Fact

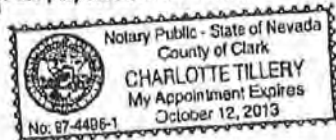
State of Nevada)

County of Clark)

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

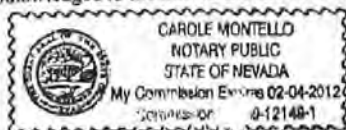
State of Nevada)

County of Clark)



Charlotte Tillery
Notary Public
My Commission Expires: _____

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



Carole Montello
Notary Public
My Commission Expires: February 4, 2012

MOJ00051

JA 0000698

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

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

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

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

- In Unlimited Amounts -

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

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

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



WESTERN SURETY COMPANY

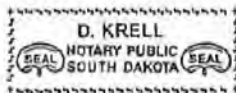
Paul T. Bruffat, Senior Vice President

State of South Dakota }
County of Minnehaha }

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

My commission expires

November 30, 2012



D. Krell, Notary Public

CERTIFICATE

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



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

INDEMNIFICATION AND DEFENSE AGREEMENT

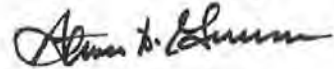
WHEREAS, Mojave Electric ("Mojave") entered into a Subcontract Agreement ("Agreement") with The Whiting-Turner Contracting Company ("Whiting-Turner") on February 11, 2010;

WHEREAS, Article 8 of that Agreement required Mojave to bond any liens placed give the City of Las Vegas New City Hall project by Mojave's subcontractors or vendors in circumstances where Mojave was paid for the work or equipment, which was subject of the lien;

WHEREAS, Cashman Equipment Company ("Cashman") recorded a lien on June 22, 2011, in Book/Inst. 201106220002156, records of Clark County, Nevada Clerk and Recorder in the amount of \$755,893.89 for provision of generators for which Mojave has been fully paid by Whiting-Turner;

WHEREAS, pursuant to Article 8 of the Agreement, Mojave has posted Western Surety Company, Payment Bond No. 929490974 dated March 2, 2010 ("Western's Payment Bond"), which requires the bonding company to indemnify and defend Whiting-Turner from any failure to pay an obligation on the City of Las Vegas New City Hall project by Mojave in circumstances where Whiting-Turner has paid Mojave for the work or equipment in question;

WHEREAS, Whiting-Turner placed the Western's Payment Bond on notice of Cashman's claim in Case No. A642583, entitled *Cashman Equipment Company, plaintiff, vs. CAM Consulting Inc., et al., defendants*, District Court, Clark County, Nevada and lien foreclosure action;



CLERK OF THE COURT

1 ASTA

2 Jennifer R. Lloyd-Robinson, Esq.

3 Nevada Bar No. 9617

4 Marisa L. Maskas, Esq.

5 Nevada Bar No. 10928

6 **PEZZILLO ROBINSON**

7 6725 Via Austi Parkway, Suite 290

8 Las Vegas, Nevada 89119

9 Tel: 702 233-4225

10 Fax: 702 233-4252

11 jrobinson@pezzillorobinson.com

12 mmaskas@pezzillorobinson.com

13 *Attorneys for Plaintiff,*

14 *Cashman Equipment Company*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 CASHMAN EQUIPMENT COMPANY, a
18 Nevada corporation,

19 Plaintiff,

20 vs.

CASE NO.: A642583

DEPT.: 32

Consolidated with Case No.: A653029

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

Defendants.

AND ALL RELATED MATTERS.

CASE APPEAL STATEMENT

Plaintiff, CASHMAN EQUIPMENT COMPANY ("CASHMAN"), by and through its
counsel of record, PEZZILLO ROBINSON, hereby submits the following Case Appeal Statement:

1. Name of appellant filing this case appeal statement: CASHMAN EQUIPMENT COMPANY.
2. Identify the judge issuing the decision, judgment, or order appealed from: Hon. Rob Bare
3. Identify each appellant and the name and address of counsel for each appellant: CASHMAN EQUIPMENT COMPANY c/o Jennifer R. Lloyd-Robinson, Esq., Pezzillo Robinson, 6725 Via Austi Pkwy., Suite 290, Las Vegas, NV 89119.
4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel): WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC, c/o Brian Boschee, Esq., Cotton, Driggs, et al., 400 S. 4th St., 3rd Fl., Las Vegas, NV 89101.
5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission): Not applicable in this matter.
6. Indicate whether appellant was represented by appointed or retained counsel in the district court: Retained counsel.
7. Indicate whether appellant is represented by appointed or retained counsel on appeal: Retained counsel.
8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: Not appearing in forma pauperis.
9. Indicate the date the proceedings commenced in the district court (c.g., date complaint, indictment, information, or petition was filed): The initial complaint was filed on June 3, 2011.
10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court: Plaintiff filed action alleging breach of contract, lien foreclosure and associated claims seeking payment for equipment supplied to the New Las Vegas City Hall Project. Defendants filed a Motion to Procure Codes seeking a preliminary injunction from the Court requiring Cashman to start up the equipment even though Cashman has not received payment for the equipment from the party with which it contracted. The Court granted the Motion and issued the preliminary injunction without making the required findings in support.

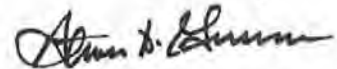
- 1 11. Indicate whether the case has previously been the subject of an appeal to or original writ
2 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of
3 the prior proceeding: Not applicable in this matter.
4
5 12. Indicate whether this appeal involves child custody or visitation: Not applicable in this matter.
6
7 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:
8 Appellant believes settlement is a possibility.

9
10 DATED: September 17, 2012

PEZZILLO ROBINSON

11 By: 

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



CLERK OF THE COURT

OPP

Jennifer R. Lloyd-Robinson, Esq.
Nevada Bar No. 9617
Marisa L. Maskas, Esq.
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mmaskas@pezzillorobinson.com
Attorneys for Plaintiff,
Cashman Equipment Company

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

vs.

Case No.: A642583
Dept. No.: 32

Consolidated with Case No.: A653029

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

Defendants.

**CASHMAN EQUIPMENT COMPANY'S
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OF SURETY
PAYMENT AND LICENSE BOND
CLAIMS AND COUNTERMOTION FOR
SUMMARY JUDGMENT**

DATE: OCTOBER 15, 2012
TIME: 9:00 AM

AND ALL RELATED MATTERS.

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

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

**CASHMAN EQUIPMENT COMPANY'S OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OF SURETY PAYMENT AND LICENSE BOND CLAIMS
AND COUNTERMOTION FOR SUMMARY JUDGMENT**

COMES NOW, CASHMAN EQUIPMENT COMPANY ("Cashman"), and submits the following Opposition to Defendants' Motion for Partial Summary Judgment and Countermotion for Summary Judgment of WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC's claims against Cashman and for judgment in favor of Cashman on its Claims against the Payment Bond and Lien Release Bond. This Opposition and Countermotion are supported by the following Memorandum of Points and Authorities, the Affidavit of Shane Norman, the Exhibits attached hereto and the Court's file herein.

DATED: September 19, 2012

PEZZILLO ROBINSON

By: /s/ Jennifer Lloyd-Robinson

Jennifer R. Lloyd-Robinson, Esq.

Nevada Bar No. 9617

Marisa L. Maskas, Esq.

Nevada Bar No. 10928

6725 Via Austi Parkway, Suite 290

Las Vegas, Nevada 89119

Attorneys for Plaintiff,

Cashman Equipment Company

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants, WEST EDNA ASSOCIATES, LTD., dba MOJAVE ELECTRIC ("Mojave"), WESTERN SURETY COMPANY ("Western"), THE WHITING TURNER CONTRACTING COMPANY ("Whiting"), TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA ("Travelers") and FIDELITY AND DEPOSIT COMPANY OF MARYLAND ("Fidelity") (hereinafter collectively "Defendants") have submitted a Motion for Summary Judgment which must be denied, as it is unsupported by admissible evidence, is

1 partially based upon Nevada law that does not apply to Cashman's payment bond claim, and
2 misrepresents the facts. Instead, judgment should be granted in favor of Cashman and against
3 Whiting, Fidelity and Travelers on Cashman's payment bond claim as the actual undisputed
4 facts supported by admissible evidence, when analyzed in light of the requirements set forth
5 in the payment bond demonstrate that Cashman is entitled to prevail.

6 The background of this matter has been well documented throughout the course of this
7 litigation. This case revolves around the amounts due and owing Cashman for equipment sold
8 to CAM CONSULTING, INC. ("Cam"). See Exhibit "1," Affidavit of Shane Norman. The
9 equipment was supplied to the New Las Vegas City Hall project (the "Project"). *Id.* Whiting
10 was the General Contractor for the Project, and Whiting entered into a subcontract with
11 Mojave. See Exhibit "3," Whiting/Mojave Contract. The Project was a private construction
12 project, not a public works project, as it was privately owned. See Exhibit "2."

13 After Cashman failed to receive payment for the equipment provided to the Project,
14 Cashman recorded a mechanic's lien against the Project, a remedy which is unavailable to
15 claimants on public works projects. See Exhibit "4," Mechanic's Lien. Thereafter, Mojave
16 posted a Lien Release Bond, which by operation of law releases the lien from the property and
17 serves to secure the lien claim. See Exhibit "5." Cashman also made a claim on the private
18 Payment Bond obtained by Whiting for the Owner of the Project, from Fidelity & Travelers,
19 Bond No. 8997023/105375118 (the "Payment Bond") for the amount due and owing. See
20 Exhibit "6," Payment Bond and Exhibit "7," Payment Bond Claim. The Owner is identified
21 in the Payment Bond as QH Las Vegas LLC. See Exhibit "6." L/W TIC Successor LLC and
22 FC/LW Vegas LLC are affiliates of the Owner as is Forest City Commercial Management
23 Inc. (hereinafter collectively referred to as "Owner"). See Exhibit "18."

24 NRS 339.015 et seq., the statutes governing public works payment bonds, does not
25 apply to Cashman's claim against the private Payment Bond at issue in this matter, as this was
26 a private, not public, Project. The Payment Bond states "the Contractor and the Surety,
27
28

1 jointly and severally, bind themselves...to the Owner to pay for labor, materials and
2 equipment furnished for use in the performance of the Construction Contract, which is
3 incorporated herein by reference." See Exhibit "6", ¶ 1. The Owner of the Project is
4 identified as QH Las Vegas, LLC. Id. at p. 1. The Owner is not identified as the City of Las
5 Vegas, as would be the case if this were a public works project. Defendants offer no
6 evidence in support of their assertion that this project should be governed by NRS 339.105 et
7 seq., because none exists. The fact that subsequent to construction the Project was transferred
8 to the City of Las Vegas, does not retroactively make the Project a public project, no matter
9 the number of times Defendants claim it should be treated as such. The terms and conditions
10 of the Payment Bond govern claims against the Payment Bond, and all arguments offered by
11 Defendants in reliance upon NRS 339.015 et seq. and the Miller Act must be disregarded as
12 they are inapplicable to the facts of this matter.

13 Further, Defendants repeatedly do not comply with NRCP 56 and EDCR 2.21(c) as
14 they have failed to support many of their factual assertions with any admissible evidence,
15 requiring denial of the Motion. Defendants' claims that Cashman failed to comply with the
16 notice requirements and that Cashman's notice was untimely are supported by no evidence.
17 Defendants include the Declarations of Roxanne Kasten for Travelers, and Susan Getz for
18 Fidelity; however the relevant statements included in the each Declaration are made "upon
19 information and belief". Affidavits in support of summary judgment motions shall be made
20 on personal knowledge. See NRCP 56(e). Statements made upon information and belief are
21 not admissible and are expressly prohibited with regard to motions for summary judgment.
22 See *Gunlord Corp. v. Bozzano*, 95 Nev. 243, 245 (1979) (papers which do not comply with
23 NRCP 56(c) are deemed legally insufficient.) Defendants have not submitted admissible
24 evidence in support of the allegations used in seeking judgment, therefore judgment cannot be
25 granted.

II.

STATEMENT OF UNDISPUTED FACTS

1. The Las Vegas City Hall project (the "Project") was constructed on privately owned property at the time of construction. See Exhibit "2."

2. The Project was owned by P Q Las Vegas, LLC from December 2009 until February 17, 2012, when the building was transferred to the City of Las Vegas, Nevada. Id.

3. Cashman contracted with Cam to supply equipment to the Project. See Exhibit "1" and Exhibit "8," Credit Application.

4. Cashman was not paid for the equipment it supplied to the Project. See Exhibit "1."

5. Cashman is currently owed \$755,893.89 for equipment supplied to incorporated into the Project. Id.

6. Cashman invoiced Cam for the equipment supplied on February 1, 2012 and March 25, 2012. See Exhibits "1" and "13."

7. The equipment Cashman supplied to the Project required certain start up functions that was to be performed well after the equipment is delivered to the Project. See Exhibit "1."

8. Cashman's work on the Project was not complete at the time the equipment was delivered.

9. Cashman served a "Preliminary Notice" to Mojave and the Owner on April 20, 2011. See Exhibit "11."

10. Cashman filed its Complaint on June 3, 2011.

11. Cashman recorded its Notice of Lien on June 22, 2011, which was served upon Cam, Mojave, Whiting and the Owner. See Exhibit "4."

12. On June 24, 2011, Cashman instructed its attorneys to serve a Claim on Payment Bond to Whiting Turner Contracting Company. See Exhibit "1" and "6."

1 13. Cashman was not aware of the existence of the Payment Bond at this time, but
2 wanted to preserve any claim it may have should a Payment Bond later be discovered. *Id.*

3 14. An Amended Complaint was filed on July 25, 2011, to include a lien
4 foreclosure claim.

5 15. On September 8, 2011, Mojave, as Principal, obtained a Bond for Release of
6 Mechanic's Lien from Western Surety Company (hereinafter "Lien Release Bond"). See
7 Exhibit "5."

8 16. Cashman filed its Second Amended Complaint on September 30, 2011.

9 17. On March 6, 2012, Defendants first served Cashman with a copy of the
10 Payment Bond. See Exhibit "9," Defendants Supplemental Disclosure of Documents.

11 18. On March 19, 2012, Cashman moved to amend its complaint in order to
12 include a claim on the Payment Bond.

13 19. At the time the Motion to Amend was filed, Fidelity was already a party to this
14 matter, represented by the law firm of Cotton, Driggs, et al.

15 20. Cashman's Motion was granted on May 7, 2012, and the Third Amended
16 Complaint was filed on May 24, 2012.

17 21. Cashman obtained Default Judgments against Cam and Carvalho, filed on
18 September 11, 2012. See Exhibit "10."

19
20 **III.**

21 **ARGUMENTS AND AUTHORITIES**

22 A. Standard for Motion for Summary Judgment

23 Defendants' Motion must be denied as the facts material to Cashman's claims and
24 supported by admissible evidence require that judgment be entered in favor of Cashman on its
25 Claim against the Payment Bond. Summary judgment is only appropriate when "the
26 pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are
27 properly before the court demonstrate that no genuine issue of material fact exists, and the
28

1 moving party is entitled to judgment as a matter of law.” Wood v. Safeway, Inc., 121 Nev.
2 724, 731, 121 P.3d 1026, 1031 (2005); see also Margrave v. Dermody Properties, Inc., 110
3 Nev. 824, 827, 878 P.2d 291, 293 (1994); and NRCP 56. A factual dispute is genuine when
4 the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.
5 Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005). Summary judgment is
6 appropriate when, as a matter of law, there is no genuine issue as to any material fact. NRCP
7 56(c); Prostack v. Songailo, 97 Nev. 38, 40, 623 P.2d 978 (1981); see also Barr v. Gaines,
8 103 Nev. 548, 549, 746 P.2d 634, 635-36 (1987) (summary judgment is appropriate where
9 only question is one of law).

10 Here, Defendants’ motion must be denied as the undisputed facts regarding the
11 Payment Bond requirements establish that Cashman is entitled to judgment on its Payment
12 Bond claim. Even if the Court does not find that Cashman is entitled to judgment at this time,
13 Defendants’ Motion must be denied as they failed to submit to the Court admissible evidence
14 in support of their factual allegations and rely upon law that has no application to Cashman’s
15 claims, as this Project was private at the time of construction and therefore is not subject to
16 the Nevada statutes governing public works projects (NRS Ch. 339).

17 **B. Defendants’ Request for Summary Judgment Relating to Cashman’s Payment**
18 **Bond Claim Must Be Denied.**

19 1. The Payment Bond Issued by Fidelity and Travelers is a Private Bond, and
20 Therefore NRS Ch. 339 et seq. Does Not Apply.

21 Cashman is a proper claimant on the Payment Bond as it was obtained for the benefit
22 of potential claimants who did not receive payment for work performed on the Project. See
23 Exhibit “6.” NRS 339.015 et seq., the statutes governing payment bonds for public works
24 projects, does not apply in this matter, and Defendants reliance upon the statutory
25 requirements contained therein is in error and misrepresents the governing law to this Court.
26 All arguments made by Defendants in reliance upon the statutory requirements of NRS
27
28

1 Chapter 339 must be disregarded, as the Project at issue is a **private project** and NRS Ch. 339
2 is only applicable in matters involving public works projects.

3 The title of NRS Ch. 339: is "CONTRACTORS' BONDS ON **PUBLIC WORKS**".
4 (Emphasis added). NRS 339.025(1) states:

5 Before any contract ... exceeding \$100,000 for any project for the
6 new construction, repair or reconstruction of any public building or
7 other public work or public improvement of any contracting body
8 is awarded to any contractor, the contractor shall furnish to the
9 contracting body the following bonds which become binding upon
10 the award of the contract to the contractor...

11 (Emphasis added).

12 NRS 339.015(2) defines "Contracting Body" as "the State, county, city, town, school
13 district, or any public agency of the State or its political subdivisions which has authority to
14 contract for the construction, alteration or repair of any public building or other public work
15 or public improvement."

16 Here, the Project was private construction. As set forth in the Payment Bond, Whiting
17 contracted with Q H Las Vegas, LLC for the construction of the Project. See Exhibit "6."
18 Defendants claim that the Project had "public and private components", however they fail to
19 provide any evidence in support of this allegation, therefore it must be disregarded by the
20 Court. See Motion at p. 8, ln. 6. As NRS 339.025(1) requires that the contracting body be a
21 state agency, and the Owner of the Project was a private entity, there can be no argument that
22 this was anything but a private Project. The Payment Bond does not reference that it was
23 issued pursuant to NRS Chapter 339 and specifically designates the Owner of the Project as
24 QH Las Vegas, LLC, not a state agency. The Payment Bond also includes its own terms and
25 conditions, which differ from the requirements NRS Chapter 339. Therefore, Cashman's
26 claim on the Payment Bond is governed solely by the terms of the Payment Bond and all
27 reference to NRS Chapter 339 by Defendants must be disregarded.
28

1 2. Cashman Has Complied with the Requirements of the Payment Bond, or is
2 Excused from Compliance under its Terms.

3 As discussed above, the Project was private at the time of construction, and was later
4 transferred to the City of Las Vegas. See Exhibit "2." As such, Cashman need only comply
5 with the provisions of the Payment Bond in order to enforce its claim against the Bond.

6 The relevant portions of the Payment Bond are expressly stated as follows:

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

9 4.2. Claimants who do not have a direct contract with the
10 Contractor:

- 11 1. Have furnished written notice to the Contractor and
12 sent a copy, or notice thereof, to the Owner, within 90
13 days after having last performed labor or last furnished
14 materials or equipment included in the claim stating,
15 with substantial accuracy, the amount of the claim and
16 the name of the party to whom the materials were
17 furnished or supplied or for whom the labor was done
18 or performed; and
- 19 2. Have either received a rejection in whole or in part
20 from the Contractor, or not received within 30 days of
21 furnishing the above notice any communication from
22 the Contractor by which the Contractor has indicated
23 that claim will be paid directly; and
- 24 3. Not having been paid within the above 30 days, have
25 sent a written notice to the Surety (at the address
26 described in Para. 12) and send a copy, or notice
27 thereof, to the Owner, stating that a claim is being
28 made under this Bond and enclosing a copy of the
 previous written notice furnished to the Contractor.

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

(Emphasis added).

1 Cashman complied with Section 4.2.1. Cashman timely sent notice of its claim when
2 it served on Whiting, the general contractor, its Notice of Claim on Payment Bond on June 24,
3 2011. See Exhibit "7". The notice is timely as Cashman's work on the Project was not
4 complete at delivery of the equipment, as Defendants now allege in this Motion for the first
5 time. Defendants have maintained in their initial Motion for Summary Judgment, filed on or
6 about March 9, 2012, and in their Motion to Procure Codes, filed on or about July 18, 2012,
7 that Cashman's work included startup of the equipment provided to the Project. The notice
8 under Section 4.2.1 is required to be sent within 90 days after having last furnished materials
9 or equipment. Cashman had not completed its work at the time the equipment was delivered.
10 Defendants cannot in good faith claim that Cashman's time to assert its claim began upon last
11 delivery as Defendants have been repeatedly arguing in various forms that Cashman still
12 needs to complete its work and that Cashman's failure to start up the equipment is causing
13 irreparable harm. If Cashman's work was complete, as Defendants now claim, in late March
14 2012, then there would be no need for the preliminary injunction Defendants were so eager to
15 obtain. Further, the testimony offered by Defendants as to this allegation is only given "upon
16 information and belief" and therefore cannot be considered by the Court.

17 The earliest date under which Cashman could be said to have completed its work
18 would have been the date at which payment failed and Cashman was relieved of any further
19 duty to perform due to the nonpayment. The initial payment from Carvalho was received on
20 April 26, 2011, and Cashman received notice of that payment was stopped on that check on
21 May 4, 2011. See Exhibit "14". Therefore, the notice required under Section 4.2.1, was
22 required to be served by August 2, 2011, ninety days from the date Cashman was excused
23 from further performance under its agreement with Cam. As Cashman served its notice on
24 June 24, 2011, the notice required by Section 4.2.1 was timely, even though Cashman was not
25 aware whether a payment bond was required for this Project, given that it was not public
26 works. See Exhibit "1".

1 Cashman also sufficiently complied with Section 4.2.3 of the Payment Bond. The
2 notice required by Section 4.2.3 does not have to be made within a specific time, it simply
3 states that notice must be provided to the Surety and the Owner that claim is being made on
4 the Payment Bond after 30 days have passed from the notice sent to the general contractor.
5 Fidelity and the Owner had notice that Cashman had not been paid and that Cashman had
6 initiated a claim on the bond as early as August 8, 2011, as evidenced by correspondence
7 from Todd M. Touton, attached hereto as Exhibit "18". In that correspondence, Mr. Touton
8 demands that Cashman withdraw any bond claim it initiated. Mr. Touton makes this demand
9 on behalf of Whiting, Fidelity and the Owner. Mr. Touton later confirms his representation of
10 these parties in subsequent correspondence dated August 25, 2011. See Exhibit "19". By
11 requesting that the bond claim be withdrawn, the Owner and Fidelity acknowledge that they
12 had actual notice of Cashman's claim on the Payment Bond satisfying the requirements of
13 Section 4.2.3.

14 Further, immediately upon receiving the Payment Bond in Whiting's disclosures on
15 March 6, 2012, Cashman sought leave of the Court to amend its Complaint to include a claim
16 on the Payment Bond. See Exhibit "9." The Motion to Amend was served on counsel for
17 Fidelity in this matter providing additional notice under Section 4.2.3 that Cashman was
18 asserting a claim against the Bond. See Exhibit "20," Certificate of Mailing for Motion to
19 Amend. It is important to note that Cashman did not know whether a Payment Bond had been
20 obtained by Whiting on the Project, until the disclosure as part of this litigation. See Exhibit
21 "1." However, as Cashman sought to pursue all remedies potentially available to it, Cashman
22 determined to send notice of its claim to Whiting on June 24, 2011, in case a payment bond
23 was in effect, concerning the amount owed to Cashman for equipment supplied on the Project.
24 See Exhibits "1" and "6." As such, should the Court determine an issue exists as to whether
25 Cashman complied with Section 4.2.3, Defendants should not be rewarded for their failure to
26 provide the Payment Bond to Cashman and allowed to claim that Cashman did not provide a
27
28

1 notice they intentionally, the requirement for which they intentionally withheld from
2 Cashman.

3 Cashman's sufficient compliance with Section 4.2.3 is also satisfied based upon
4 Section 5 of the Payment Bond. Section 5 provides that if the Owner of the Project gives
5 notice to the general contractor or the Surety of a notice required by Section 4, that
6 requirement is deemed satisfied. The Owner of the Project gave notice to Whiting that
7 Cashman was asserting a claim for amounts owed for equipment supplied to the Project,
8 giving rise to "sufficient compliance" as set forth in Section 5. See Exhibit "16," email dated
9 July 7, 2011 between Owner representatives concerning communications with Whiting.¹

10 Further, Whiting has produced emails ranging in date from May thru July 2011,
11 evidencing that Whiting was made aware of the fact that Cashman was not paid for the
12 equipment. See Exhibit "21." An email dated July 5, 2011 was sent to the Owner
13 representative, David Phillips, which included a copy of the Payment Bond claim. Id. As
14 evidenced by these emails, all parties involved, including Mojave, Whiting and the Owner,
15 were aware and had actual notice of Cashman's claim on the Payment Bond and its
16 mechanic's lien against the Project. Id.

17 Finally, Cashman is a claimant under the terms of the Payment Bond. As NRS Ch.
18 339 does not apply, as explained above, Defendants' arguments as to Cashman being a fourth-
19 tier contractor are not valid. The Court need only look to the Payment Bond to determine
20 whether Cashman is a claimant. The Payment Bond provides in Section 15.1 the definition of
21 a claimant under the bond, which includes "all other items for which a mechanic's lien may
22 be asserted in the jurisdiction where the labor, materials or equipment were furnished."
23 Pursuant to NRS 108.2214, a lien claimant is "any person who provides work, material or
24

25
26 ¹ This email demonstrates that all parties were aware of Cashman's claims and the status thereof. If the Court
27 finds that actual notice is insufficient, Cashman is in the process of conducting additional discovery on this issue,
28 precluding judgment from being entered in favor of Defendants, especially in light of the genuine issue this
raises as to whether Section 5 of the Payment Bond has been satisfied and considering that discovery is ongoing.

1 equipment with a value of \$500 or more to be used in or for the construction, alteration or
2 repair of any improvement, property or work of improvement.” As Cashman supplied
3 equipment in an for the construction of this Project that was valued at more than \$500,
4 Cashman is a lien claimant under NRS 108.2214 and is therefore a Claimant under the
5 Payment Bond pursuant to Section 15.1.

6 Finally, Defendants argue that Cashman failed to mitigate its damages by putting its
7 insurance carrier on notice of Carvalho’s acts. It is unclear how this argument is relevant to
8 this instant Motion; however the entire argument must be disregarded as no evidence is
9 offered in support of its allegations, only statements made upon information and belief by
10 counsel. A Motion for Summary Judgment must be based upon admissible evidence, not
11 unsupported allegations of counsel.

12
13 **C. Defendants’ Request for Summary Judgment Relating to Whiting’s License**
14 **Bond Claim is Moot.**

15 Cashman will voluntarily dismiss the claim asserted against Whiting’s contractor’s
16 license bond (Fidelity License Bond No. 9045603).

17 **IV.**

18 **CONCLUSION**

19 For the foregoing reasons, Cashman respectfully requests that the Court deny
20 Defendants’ Motion for Summary Judgment of Surety Payment and License Bond Claims,
21 and instead enter judgment in favor of Cashman as set forth below.

22 ///

23 ///

24 ///

25 ///

26 ///

27

28

**CASHMAN EQUIPMENT COMPANY'S COUNTER-MOTION
FOR SUMMARY JUDGMENT ON ITS PAYMENT BOND
AND MECHANIC'S LIEN CLAIMS**

A. Cashman is Entitled to Summary Judgment on its Claim against the Payment Bond as the Undisputed Facts Establish that Cashman is Owed \$755,893.89 for Equipment Supplied to the Project and Cashman Perfected its Claim on the Payment Bond.

Summary judgment is appropriate against Defendants Whiting, Travelers and Fidelity on Cashman's claim against the Payment Bond obtained for this Project. Defendant Whiting, the general contractor for the Project, obtained the private Payment Bond on or about November 5, 2009. See Exhibit "6." Defendants admit the validity of the Payment Bond and its applicability to this Project. See Declaration of Susan Getz and Declaration of Roxanne H. Kasten attached to Defendants' Motion. Cashman supplied equipment to the Project and failed to receive payment for the equipment. See Exhibit "1". Cashman asserted a claim on the Payment Bond on June 24, 2011. See Exhibit "7." As addressed above, summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005),

Cashman complied with the requirements to assert a claim on the Payment Bond, as set forth above in Cashman's Opposition to Defendants' Motion. To briefly restate, Cashman is a proper claimant on the Payment Bond and provided the notices required to establish entitlement to claim on the Payment Bond. Section 15.1 of the Payment Bond provides that a claimant includes "all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished." As Cashman is entitled to hold a mechanic's lien under NRS 108.2214, Cashman is a claimant under the Payment Bond.

Cashman complied with Section 4.2.1 of the Payment Bond, as Cashman timely sent notice of its claim when it served on Whiting, the general contractor, its Notice of Claim on

1 Payment Bond on June 24, 2011. See Exhibit "7". The service of this Notice is undisputed
2 and relied upon by Mojave in its Motion. Cashman's notice is timely as Cashman's work on
3 the Project was not complete at delivery of the equipment, but at the earliest would have been
4 complete on the date at which payment failed and Cashman was relieved of any further duty
5 to perform due to the nonpayment, which was May 4, 2011. Therefore as Cashman's notice
6 of its claim was served on June 24, 2011 before the expiration of 90 days, its notice of claim
7 complied with Section 4.2.1.

8 Section 4.2.3 was substantially complied with as it is established that Fidelity and the
9 Owner had actual notice that Cashman had not been paid and that Cashman had initiated a
10 claim on the bond as early as August 8, 2011. See Exhibit "18". Cashman also provided
11 notice sufficient to comply with 4.2.3 when it sought to amend its complaint after being
12 provided with a copy of the Payment Bond by Whiting. See Exhibit "20". Further, pursuant
13 to Section 5, it is believed that the Owner of the Project gave notice to Whiting Turner that
14 Cashman was asserting a claim for amounts owed for equipment supplied to the Project,
15 giving rise to "sufficient compliance" with Section 4. See Exhibit "16".

16 It is undisputed that Cashman supplied equipment to the Project, has not been paid for
17 that equipment and is owed \$755,893.89. See Exhibit "1". Therefore, as Cashman has
18 satisfied the requirements to making a claim against the Payment Bond and has established
19 the amount owed for equipment supplied to the Project, summary judgment should be granted
20 in favor of Cashman and against Defendants Whiting, Travelers and Fidelity in the amount of
21 \$755,893.89.

22
23 **B. Cashman Perfected its Mechanic's Lien against the Project and is Entitled to Summary
Judgment Against the Lien Release Bond.**

24 Summary judgment should also be granted in favor of Cashman on its claim against
25 the Lien Release Bond. Based on the evidence set forth herein, there is no dispute that: (1)
26 Cashman provided equipment to Cam for use on the Project; (2) the equipment provided by
27
28

1 Cashman was incorporated into the Project; (3) Cashman was not paid for the equipment; (4)
2 Cashman is owed the principal amount of \$755,893.89 for the equipment; (5) Cashman
3 perfected its mechanic's lien claim; and (6) Cashman is entitled to recover on its mechanic's
4 lien claim against the Lien Release Bond. Therefore, Cashman is entitled to summary
5 judgment against the Lien Release Bond posted by Defendant Mojave, as principal, and
6 Defendant Western, as surety, for the undisputed amount owed to Cashman, \$755,893.89, and
7 is entitled to an award of interest, fees and costs pursuant to NRS 108.2421(6).

8 1. Cashman's Mechanic's Lien Claim is Governed by NRS 108.221 et seq.

9 Summary judgment should be awarded in favor of Cashman on its mechanic's lien
10 claim against the Lien Release Bond, issued to Mojave by Western, as Cashman perfected its
11 mechanic's lien against the Project at issue and has not been paid in full for the equipment it
12 provided to the Project. In Nevada, the **purpose** of the mechanic's lien statutes "is to secure
13 payment to those who perform labor or furnish material to improve the property of the
14 owner." Crestline Investment Group, Inc. v. Lewis, 119 Nev. 365, 368, 75 P.3d 363, 366
15 (2003). As addressed above, summary judgment is appropriate when "the pleadings,
16 depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly
17 before the court demonstrate that no genuine issue of material fact exists, and the moving
18 party is entitled to judgment as a matter of law." Wood v. Safeway, Inc., 121 Nev. 724, 731,
19 121 P.3d 1026, 1031 (2005). The evidence in this matter establishes that judgment should be
20 granted in favor of Cashman on its mechanic's lien claim.

21 The requirements to hold a mechanic's lien are set forth in NRS Chapter 108. A lien
22 claimant is defined as "any person who provides work, material or equipment with a value of
23 \$500 or more to be used in or for the construction, alteration, or repair of any improvement,
24 property or work of improvement." NRS 108.2214. Pursuant to NRS 108.222, a lien
25 claimant has a lien upon the property and any improvements for which the work, materials
26 and equipment were furnished or to be furnished, where there is an agreed upon price, for "the
27 unpaid balance of the price agreed upon for such work, material or equipment...whether
28

1 performed, furnished or to be performed or furnished at the instance of the owner or his
2 agent.”

3 The notice of lien must be recorded within 90 days after the date on which the latest of
4 the following occurs: the completion of work improvement, the last delivery of material or
5 furnishing of equipment by the lien claimant for the work of improvement, or the last
6 performance of work by the lien claimant for the work of improvement. NRS 108.226. The
7 lien must then be served on the owner within 30 days of recording. NRS 108.227. Where the
8 claimant did not contract with the owner of the property, the claimant is required to send a
9 notice of right to lien at any time after the first delivery of material or performance of work
10 occurs. NRS 108.245. Upon the giving of the notice of right lien, the lien claimant has a
11 “right to lien for materials or equipment furnished or for work or services performed in the 31
12 days before the date the notice of right to lien is given” and for those supplied thereafter until
13 the project is complete. Id. Pursuant to NRS 108.233, the action to enforce the lien must be
14 filed before the expiration of 6 months from the date the lien was recorded. Where a lien
15 release bond is obtained pursuant to NRS 108.2415, the lien claimant is entitled to bring an
16 action against the principal and surety on the lien release bond. NRS 108.2421. After suit is
17 filed, the Court shall then enter judgment according to the right of the parties, and shall, by
18 decree, proceed to hear and determine the claims in a summary way. NRS 108.239(7).

19 In addition to recovery of the lienable amount due to the lien claimant, a claimant is
20 entitled to an award of interest, attorneys’ fees and costs pursuant to NRS 108.237(1) and (2).
21 See NRS 108.2421(6). First, NRS 108.237(1) states:

22 The court shall award to a prevailing lien claimant, whether on its
23 lien or on a surety bond, the lienable amount found due to the lien
24 claimant by the court and the cost of preparing and recording the
25 notice of lien, including, without limitation, attorney’s fees, if
26 any, and interest. The court shall also award to the prevailing lien
27 claimant, whether on its lien or on a surety bond, the costs of the
28 proceedings, including, without limitation, reasonable attorney’s
fees, the costs for representation of the lien claimant in the

proceedings, and any other amounts as the court may find to be justly due and owing to the lien claimant.

2. Cashman Perfected its Mechanic's Lien and Is Entitled to Judgment

Cashman is a proper lien claimant, as defined in NRS 108.2214, as it contracted with Cam to provide equipment to the Property for an amount greater than \$500.00. See Exhibit "1." Cashman provided the equipment pursuant to the terms of its contract with Cam. Id. Invoices for the equipment were issued on February 1, 2011 and March 25, 2011 for amounts owed under the Contract. Id. Cashman served its Notice of Right to Lien on April 20, 2011 to both the Owner and Mojave, pursuant to NRS 108.245. See Exhibit "11." On April 26, 2011, Cashman received a check from Cam to pay the amount owed, however Cam stopped payment on that check. See Exhibit "1" and "14." Despite efforts to collect the amount owed from Cam, Cashman did not receive payment. Id. Cashman recorded its Notice of Lien against the Project on June 22, 2011 in accordance with NRS 108.226, and served its lien on the Owner on June 29, 2011 as required per NRS 108.227(1). See Exhibit "4." The lien was recorded for the amount owed, determined as provided by NRS 108.222. Cashman then commenced foreclosure proceedings within six months of recording the lien as required by NRS 108.233(1) by filing an Amended Complaint on July 25, 2011. Mojave and Western subsequently posted a Lien Release Bond, Bond No. 58685401 ("Lien Release Bond"), pursuant to NRS 108.2415 on September 13, 2011. See Exhibit "5."

It is undisputed that Cashman provided equipment to the Project and is owed \$755,893.89. Cashman substantially complied with the statutory requirements that are to be followed in order to maintain and enforce a mechanics' lien in Nevada. Cashman sent all notices required to be sent by NRS 108.221 et seq., as set forth herein. The Nevada Supreme Court in *Hardy Companies, Inc. v. SNMARK, LLC*, 245 P.3d 1149, 1155 (2010) stated "'This court has repeatedly held that the mechanic's lien statutes are remedial in character and should be liberally construed; that substantial compliance with the statutory requirements is sufficient

1 to perfect the lien if the property owner is not prejudiced.”” quoting Las Vegas Plywood v. D
2 & D Enterprises, 98 Nev. 378, 380, 649 P.2d 1367, 1368 (1982).

3 Cashman perfected its mechanic’s lien claim by substantially complying with the
4 requirements of NRS 108.221, et seq. as set forth herein; therefore Cashman is entitled to
5 judgment in the amount of \$755,893.89 against the Lien Release Bond, Bond No. 58685401,
6 plus interest at the maximum statutory rate allowed, through the date that judgment is entered
7 by this court, attorneys’ fees, costs and post-judgment interest on the total amount of the
8 judgment at the statutory rate, pursuant to NRS 108.2421(6).

9 **IV.**

10 **CONCLUSION**

11 Based on the foregoing, Cashman respectfully requests that the Court grant its request
12 for Summary Judgment in favor of Cashman and against Defendants on its payment bond
13 claim and on its mechanic’s lien claim.

14 DATED: September 19, 2012 PEZZILLO ROBINSON

15
16 By: /s/ Jennifer Lloyd-Robinson
17 Jennifer R. Lloyd-Robinson, Esq.
18 Nevada Bar No. 9617
19 Marisa L. Maskas, Esq.
20 Nevada Bar No. 10928
21 6725 Via Austi Parkway, Suite 290
22 Las Vegas, Nevada 89119
23 Attorneys for Plaintiff,
24 Cashman Equipment Company
25
26
27
28

EXHIBIT 1

1 AFFIDAVIT OF SHANE NORMAN IN SUPPORT OF OPPOSITION TO
2 MOTION FOR SUMMARY JUDGMENT OF SURETY PAYMENT AND LICENSE BOND
3 CLAIMS, AND CASHMAN'S COUNTER-MOTION FOR SUMMARY JUDGMENT

4 STATE OF NEVADA)
5) ss.
6 COUNTY OF CLARK)

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

8 1. I am personally knowledgeable about the facts contained herein and am competent to
9 testify.

10 2. I am the Credit Manager at CASHMAN EQUIPMENT COMPANY ("Cashman") and
11 am authorized to make this Affidavit.

12 3. Cashman is a Nevada corporation authorized to conduct business in Clark County,
13 Nevada.

14 4. Plaintiff and Defendant CAM CONSULTING, INC. ("Cam") entered into an
15 agreement (the "Contract") in which Plaintiff agreed to sell to certain equipment to Cam for
16 incorporation into the City Hall project in the City of Las Vegas (the "Project"). See Exhibit "8," a
17 true and correct copy of the Credit Application, attached hereto.

18 5. The total cost of the equipment was \$755,893.89 and Defendant Cam agreed to pay this
19 amount to Plaintiff.

20 6. The equipment supplied to the Project required certain start-up functions that would not
21 occur until the Project neared completion.

22 7. Cashman delivered the equipment to the Project as requested.

23 8. Invoices for the equipment supplied were issued on February 1, 2011 and March 25,
24 2011. See Exhibit "13," a true and correct copy of the Invoices, attached hereto.

25 9. Defendant Cam failed to provide payment to Cashman.

26 10. As a result of nonpayment, Cashman filed the instant litigation to collect the amounts
27 due.

28 11. Cashman served a preliminary notice to Mojave and the owner, P Q Las Vegas, LLC on
 April 20, 2011. See Exhibit "11," a true and correct copy of the Preliminary Notice, attached hereto.

Perzillo Robinson
6725 VIA AUSTIN PKWY, SUITE 290
LAS VEGAS, NEVADA 89119
TEL 702 233-4225

1 12. On April 26, 2011, Cashman was presented with a check from Cam in the amount of
2 \$755,893.89. See Exhibit "14," a true and correct copy of the check received from Cam, attached
3 hereto.

4 13. This check received from Cam was returned to Cashman as unpaid on May 4, 2011, as
5 Cam stopped payment on the check shortly after issuing it to Plaintiff. *Id.*

6 14. Due to Cam's Breach of Contract in failing to pay Cashman as required, Cashman was
7 excused from completing its work under the Contract.

8 15. Cashman recorded its Notice of Lien on June 22, 2011, which was served upon Cam,
9 Mojave, Whiting Turner Contracting Company and FC/LW Vegas, LLC. See Exhibit "4," a true and
10 correct copy of the Notice of Lien, attached hereto.

11 16. On June 24, 2011, I instructed our attorneys to serve a Claim on Payment Bond to
12 Whiting Turner Contracting Company. See Exhibit "7," a true and correct copy of the Payment Bond
13 Claim, attached hereto.

14 17. I was not aware that there was a payment bond procured by THE WHITING TURNER
15 CONTRACTING COMPANY ("Whiting") at this time. *Id.*

16 18. I only became aware of the existence of a payment bond on March 6, 2012, when
17 Cashman's attorneys received a copy of the payment bond procured by Whiting from Whiting's
18 attorneys.

19 19. Cam purchased the equipment from Cashman.

20 20. Cam was not an agent of Cashman.

21 21. Cashman understood that Cam was supplying the equipment to Mojave.

22 22. Mojave refused to issue a joint check to Cam and Cashman, despite Cashman's request
23 that it do so.

24 ///

25 ///

26 ///

27 ///

28

FURTHER YOUR AFFIANT SAYETH NAUGHT.

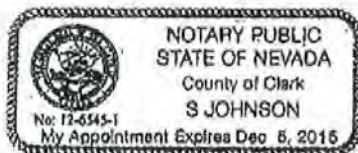
Shane Norman

Date _____

Shane Norman
Credit Manager
Cashman Equipment

Subscribed and sworn to before me
this 19 day of September, 2012.

Notary Public in and for said county and state



Pezallo Robinson
6725 VIA AUSTI PKWY, SUITE 290
LAS VEGAS, NEVADA 89119
TEL 702 233-4225

EXHIBIT 2

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Search

P

Tuesday, September 18, 2012

[Clark County](#) > [Departments](#) > [Assessor](#) > [Property Records](#)

Assessor

Michele W. Shafe, Assessor**ARCEL OWNERSHIP HISTORY**
[Assessor Map](#) | [Aerial View](#) | [Comment Codes](#) | [Current Ownership](#) | [New Search](#)
ASSessor DESCRIPTIONARCEL MAP FILE 117 PAGE 14 LOT 1
C 34 TWP 20 RRG 61

CURRENT PARCEL NO.	CURRENT OWNER	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DISTRICT	ESTIMATED SIZE
139-34-201-022	CITY OF LAS VEGAS Comments: SF 186-40	20120217:01875	02/17/2012	NO STATUS	203	2.71 AC

PARCEL NO.	PRIOR OWNER(S)	RECORDED DOCUMENT NO.	RECORDED DATE	VESTING	TAX DISTRICT	ESTIMATED SIZE
139-34-201-022	P Q LAS VEGAS L L C	20091210:03372	12/10/2009	NO STATUS	203	2.71 AC
139-34-201-022	LIVEWORK L L C ETAL	20070622:04071	06/22/2007	NO STATUS	203	2.71 AC
139-34-201-022	LIVEWORK L L C ETAL	20070622:04071	06/22/2007	NO STATUS	203	2.44 AC

Note: Only documents from September 15, 1999 through present are available for viewing.

NOTE: THIS RECORD IS FOR ASSESSMENT USE ONLY. NO LIABILITY IS ASSUMED
AS TO THE ACCURACY OF THE DATA DELINEATED HEREON.
[Jobs](#) | [Site Map](#) | [Contact Us](#) | [Privacy Policy](#) | © 2010 Clark County, NV | 500 S. Grand Central Pkwy., Las Vegas, NV 89155 (702) 355-0000

GENERAL INFORMATION	
PARCEL NO.	139-34-201-022
OWNER AND MAILING ADDRESS	CITY OF LAS VEGAS %OFFICES BUS DEV %DIRECTOR 400 STEWART AVE 2ND FLR LAS VEGAS NV 89101-2913
LOCATION ADDRESS CITY/UNINCORPORATED TOWN	495 S MAIN ST LAS VEGAS
ASSESSOR DESCRIPTION	PARCEL MAP FILE 117 PAGE 14. LOT 1 SEC 34 TWP 20 RNG 61
RECORDED DOCUMENT NO.	* 20120217:01875
RECORDED DATE	02/17/2012
VESTING	NO STATUS
COMMENTS	SF 186-40

*Note: Only documents from September 15, 1999 through present are available for viewing.

ASSESSMENT INFORMATION AND SUPPLEMENTAL VALUE	
TAX DISTRICT	203
APPRAISAL YEAR	2012
FISCAL YEAR	12-13
SUPPLEMENTAL IMPROVEMENT VALUE	0
SUPPLEMENTAL IMPROVEMENT ACCOUNT NUMBER	N/A

REAL PROPERTY ASSESSED VALUE		
FISCAL YEAR	2011-12	2012-13
LAND	908970	743702
IMPROVEMENTS	0	0
PERSONAL PROPERTY	0	0
EXEMPT	0	743702
GROSS ASSESSED (SUBTOTAL)	908970	743702
TAXABLE LAND+IMP (SUBTOTAL)	2597057	2124863
COMMON ELEMENT ALLOCATION ASSD	0	0
TOTAL ASSESSED VALUE	908970	743702
TOTAL TAXABLE VALUE	2597057	2124863

ESTIMATED LOT SIZE AND APPRAISAL INFORMATION	
ESTIMATED SIZE	2.71 Acres
ORIGINAL CONST. YEAR	0
LAST SALE PRICE MONTH/YEAR	0
LAND USE	0-00 VACANT

Affix R.P.T.T.: \$ Exempt 02

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of Las Vegas
c/o Office of Business Development
400 Stewart Avenue, 2nd Floor
Las Vegas, Nevada 89101
Attn: Director

MAIL TAX STATEMENTS TO:

City of Las Vegas
c/o Office of Business Development
400 Stewart Avenue, 2nd Floor
Las Vegas, Nevada 89101
Attn: Director

APNs: 139-34-201-022
386052-565
(Space above line for Recorder's use only)

Inet #: 201202170001875

Fees: \$0.00 N/G Fee: \$0.00

RPTT: \$0.00 Ex: #002

02/17/2012 11:16:14 AM

Receipt #: 1070223

Requestor:

FIRST AMERICAN TITLE HOWARD

Recorded By: KGP Pgs: 6

DEBBIE CONWAY

CLARK COUNTY RECORDER

GRANT, BARGAIN AND SALE DEED

PQ LAS VEGAS, LLC, a Delaware limited liability company, as "GRANTOR," do hereby Grant, Bargain, Sell and Convey to the CITY OF LAS VEGAS, NEVADA, a political subdivision of the State of Nevada, as "GRANTEE" the real property located in County of Clark, State of Nevada bounded and described as follows:

See Exhibit "A" attached hereto and incorporated herein by this reference;

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or otherwise appertaining.

SUBJECT TO:

1. General taxes for the current fiscal tax year not yet due and payable.
2. All matters of record.

{Signature Page Follows}

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on the date set forth below.

Dated as of February 16, 2012

"GRANTOR"

PQ LAS VEGAS, LLC,
a Delaware limited liability company

By: 

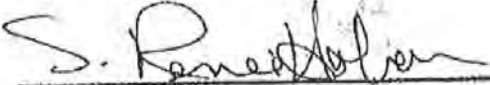
Name: Dimitri Vazelakis

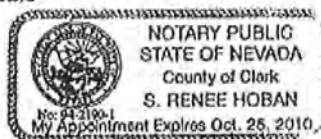
Title: Authorized Representative

Dimitri Vazelakis

STATE OF Nevada } ss.
COUNTY OF Clark

This instrument was acknowledged before me on Dec. 14, 2009
by Dimitri Vazelakis as Auth Rep. of PQ LAS VEGAS, LLC, a Delaware
limited liability company.


NOTARY PUBLIC



S. RENEE HOBAN
#04-2100-1
EXP. 10-25-10

EXHIBIT A
Legal Description of Land

EXPLANATION

THIS DESCRIPTION DESCRIBES THE REMAINING BLOCK 6 OF CLARK'S LAS VEGAS TOWNSITE, CITY OF LAS VEGAS, NEVADA.

LEGAL DESCRIPTION

BEING A PORTION OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 34, TOWNSHIP 20 SOUTH, RANGE 01 EAST, M.D.M., IN THE CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, BEING A PORTION OF LOTS 1 THROUGH 16 INCLUSIVE AND ALL OF LOTS 17 THROUGH 32 INCLUSIVE AND ALL OF THAT CERTAIN VACATED 20' ALLEY THAT LIES BETWEEN LEWIS AVENUE AND CLARK AVENUE WITHIN A PORTION OF BLOCK 6 AS SHOWN ON THE PLAT OF CLARK'S LAS VEGAS TOWNSITE, ON FILE IN BOOK 1, PAGE 37 OF PLATS OF CLARK COUNTY, NEVADA RECORDS AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE FOUND ALUMINUM CAP MARKING THE INTERSECTION OF MAIN STREET AND CLARK AVENUE ON THE NEVADA DEPARTMENT OF TRANSPORTATION "O" CENTERLINE; THENCE NORTH 27°54'11" EAST, ALONG SAID CENTERLINE, A DISTANCE OF 50.03 FEET; THENCE SOUTH 82°05'49" EAST, A DISTANCE OF 49.00 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF MAIN STREET:

THENCE NORTH 27°54'11" EAST, ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 380.72 FEET (380.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 90°01'00", A CURVE LENGTH OF 15.71 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF LEWIS AVENUE; THENCE SOUTH 82°04'49" EAST, ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 275.19 FEET (275.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE SOUTHWESTERLY; THENCE SOUTHEASTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 89°59'04", A CURVE LENGTH OF 15.71 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF FIRST STREET; THENCE SOUTH 27°54'15" WEST, ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 380.52 FEET (380.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHWESTERLY; THENCE SOUTHWESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 89°58'27", A CURVE LENGTH OF 15.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF CLARK AVENUE; THENCE NORTH 82°07'18" WEST, ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 275.19 FEET (275.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE

90°01'29", A CURVE LENGTH OF 16.71 FEET TO THE POINT OF BEGINNING.

CONTAINING IN ALL 2.71 ACRES OF LAND.

BASIS OF BEARING

SOUTH 27°54'30" WEST, BEING THE CENTERLINE OF CASINO CENTER BOULEVARD BETWEEN STEWART AVENUE AND COOLIDGE AVENUE AS SHOWN BY THAT CERTAIN MAP IN FILE 67, PAGE 78 OF SURVEYS IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

MARK D. HERZIG
PROFESSIONAL LAND SURVEYOR
NEVADA LICENSE NO. 18982
POGGEMEYER DESIGN GROUP, INC.
6960 SMOKE RANCH ROAD, SUITE 110
LAS VEGAS, NEVADA 89148



07-14-09

ALSO DESCRIBED AS FOLLOWS:

LOT 1 AS SHOWN BY MAP THEREOF ON FILE IN FILE 117 OF PARCEL MAPS, PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a) 139-34-201-022
b) _____
c) _____
d) _____

2. Type of Property

a) ☐ Vacant Land b) ☐ Single Fam. Res.
c) ☐ Condo/Townhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg. f) ☒ Comm'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other _____

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. a) Total Value/Sales Price of Property:

\$ N/A

b) Deed In Lieu of Foreclosure Only (value of property)

\$ N/A

c) Transfer Tax Value:

\$ N/A

d) Real Property Transfer Tax Due

\$ N/A

4. If Exemption Claimed:

a. Transfer Tax Exemption, per 375.090, Section: 2

b. Explain reason for exemption: Transfer to a government entity.

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____

Capacity: Grantor

Signature: Elizabeth N Fretwell

Capacity: Grantee

SELLER (GRANTOR) INFORMATION

BUYER (GRANTEE) INFORMATION

(REQUIRED) Elizabeth N Fretwell

(REQUIRED)

Print Name: PQ LAS VEGAS, LLC

Print Name: CITY OF LAS VEGAS, NEVADA

Address: Terminal Tower, Ste. 1410, 50 Public Sq.

Address: 400 Stewart Avenue, 2nd Floor

City: Cleveland

City: Las Vegas

State: Ohio 44113

State: Nevada 89101

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: First American Title

File Number: 786052

Address: 2490 Paseo Verde Pkwy

3960520

City: Henderson

State: NV

Zip: 89074

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

EXHIBIT 3

SUBCONTRACT

THE WHITING-TURNER CONTRACTING COMPANY

Address Reply to: 6720 Via Austl Parkway, Suite 300
Las Vegas, NV 89119

Phone: 702-650-0700
Fax: 702-650-2650

SUBCONTRACT NO. J2600-26A

SUBCONTRACT FOR Electrical, Fire Alarm, and Low Voltage

SUBCONTRACTOR Mojave Electric
Address 3755 W. Hacienda Avenue
Las Vegas, NV 89118
(P) 702-798-2970
(F) 702-798-7912
Remittance Address Same as above

License # 19512

OWNER QH Las Vegas, LLC
50 Public Square, Suite 1005
Cleveland, OH 44113

PROJECT City of Las Vegas New City Hall
495 Main Street
Las Vegas, NV 89101

This agreement, made this 11th day of February, 2010, by and between
hereinafter called the Subcontractor, and THE WHITING-TURNER CONTRACTING COMPANY, of Baltimore
Maryland, with its principal office located at 300 East Joppa Road, Baltimore, Maryland, a body corporate of the State
of Maryland, hereinafter called the Contractor,
WITNESSETH, that the Subcontractor and Contractor for the consideration hereinafter named, agree as
follows:

ARTICLE 1. DEFINITIONS—

(a) As used herein, the following terms shall have the meanings indicated:
"Architect" or "Engineer" means the architect or engineer directing the work as agent of the Owner, or any
other person authorized by the General Contract to direct or pass upon any matter or thing connected with the
performance of the General Contract.
"Contract Documents" means (a) the General Contract, (b) all general, supplementary and other conditions
applicable to the Project, (c) the Drawings and Specifications, and (d) all bulletins and addenda issued in connection
with the Project.
"Drawings and Specifications" means the drawings and specifications described in Article 2 hereof, and all
addenda and/or revisions thereto.
"General Contract" means the contract executed or to be executed by the Owner and the Contractor in
connection with the construction of the Project and any amendments thereto.

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Initiated by: _____
Contractor: _____ Subcontractor: _____

Rev. 12/08

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Where the contract entered into between Owner and Contractor is a Construction Management Agreement, the term "Contractor" shall be deemed to mean "Construction Manager".

"Subcontract" means this document and all of the Contract Documents which shall be made a part of this Subcontract and are incorporated herein by reference.

(b) Where the term "Contractor" is used in the Specifications, insofar as it has application to the work required to be done by the Subcontractor as provided herein, it shall be deemed for the purposes hereof to refer to the Subcontractor. The term "Contractor" or "General Contractor" when used in the Contract Documents shall be deemed to make reference to the Subcontractor insofar as it has application to the work covered by this Subcontract. The term "Subcontractor" may be referred to as "it" whether Subcontractor is incorporated or not.

ARTICLE 2. SCOPE OF WORK—The work to be performed and materials to be furnished by the Subcontractor are as specified in Article 3 hereof and in accordance with Drawings and Specifications prepared by IMA Architecture dated "Exhibit C Document Log dated 11-24-09", and as set forth in Exhibit B.

ARTICLE 3. PROVISION OF LABOR AND MATERIALS—

(a) The Subcontractor agrees to furnish and pay for all labor and supervision, tools, apparatus, supplies, equipment, and services, and also to furnish, deliver, install, and pay for all materials necessary for the performance and completion of the work described under the Scope of Work, free from all claims and liens of materialmen, suppliers, laborers, truckers, subcontractors, and others making claims through the Subcontractor. All such work shall be done to the satisfaction of the Owner, the Architect and/or Engineer, and the Contractor in accordance with the Contract Documents. Subcontractor agrees to submit daily work reports and monthly progress reports and schedule updates upon request by the Contractor. The Subcontractor agrees that with respect to the Scope of Work hereunder it will stand in the Contractor's shoes with respect to the Contractor's obligations to the Owner under the Contract Documents and will perform all work and obligations as set forth on the Contract Documents to the satisfaction of the Owner. At all times that Subcontractor has personnel at the Project site, it shall also have present an authorized representative of Subcontractor who shall supervise and direct Subcontractor's personnel and be responsible for their actions. Such representative shall be authorized to act on behalf of the Subcontractor and communications to such representative shall be binding upon Subcontractor.

(b) In the event any deviations from the Contract Documents are incorporated in any shop drawings of or by the Subcontractor, such deviations and the reasons therefore shall be fully explained in writing by separate letter to the Contractor and Owner at the time the shop drawings are submitted to the Contractor and Owner. Failure to so specify and explain any such deviation will automatically void any inadvertent approval of the same by the Contractor, Architect, Engineer and/or Owner.

(c) The Subcontractor represents and warrants that it is an expert in the particular line or lines of work herein contracted to be done and that it is competent to know whether the materials, methods and apparatus specified for this work are sufficient and suitable to secure the results contemplated by the Contract Documents. The Subcontractor shall be responsible for fulfilling the requirements of the Contract Documents. Subcontractor agrees to cooperate in carrying out Contractor's quality assurance program including, but not limited to, furnishing necessary documentation and facilitating inspections and quality checks.

(d) In the event that Subcontractor employs union labor the Subcontractor agrees to be bound by the terms and provisions of the agreement establishing the Impartial Jurisdictional Disputes Board, any such successor Board, or any subsequent method agreed to be employers and the unions affiliated with the Building and Construction Trades Department, AFL-CIO, for the settlement of jurisdictional disputes. The Subcontractor also agrees that any assignments of disputed work shall be made in accordance with any agreement of record between the disputing trades, or any published decision of record compiled and published by the Building and Construction Trades Department, AFL-CIO in Agreements and Decisions Rendered affecting the Building Industry.

ARTICLE 4. DILIGENT PERFORMANCE—

(a) Subcontractor agrees to commence, pursue diligently and complete the work in such sequence and order and according to such schedules as Contractor shall establish from time to time during the course of the work, and shall perform the work so as not to delay any other trades or contractors, time being of the essence of this Subcontract. Any written dates furnished by the Subcontractor and approved by Contractor and Owner for delivery of materials, samples, shop drawings, etc., shall become a part of this Subcontract. Subcontractor shall furnish information requested by the Contractor in connection with monitoring and updating the Project schedule and shall immediately notify Contractor in writing of any interruption of the work or late delivery which causes or may cause a delay in Subcontractor's performance. No extension of completion date shall be permitted unless approved in writing by the Contractor and Owner, and Subcontractor shall be responsible for any losses or penalties incurred by Contractor as a result of delays in completing Subcontractor's work. If Contractor determines that the Subcontractor is behind schedule or will not be able to maintain the schedule, Subcontractor shall submit a remedial plan to recover, shall work overtime, shift work, or work in an altered sequence, if deemed necessary, in the judgment of the Contractor to maintain the progress of the work. Any such overtime, acceleration, shift or altered sequence work required to maintain progress or to complete the work on a timely basis shall be at Subcontractor's expense and shall not entitle Subcontractor to an extension of time or additional compensation. Contractor may supplement Subcontractor's forces, at Subcontractor's expense, if deemed necessary by the Contractor to maintain the Project schedule. Subcontractor shall be liable to the Contractor for any delay or damages, including consequential or liquidated damages, threatened or assessed against the Contractor to the extent caused by the Subcontractor.

(b) To the fullest extent permitted by applicable law, Contractor shall have the right at any time to delay or

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Initiated by: _____
Contractor: _____ Subcontractor: _____

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suspend the work or any part thereof without incurring liability therefore. An extension of time shall be the sole and exclusive remedy of Subcontractor for any delays or suspensions suffered by Subcontractor, but only to the extent that a time extension is obtained from the Owner, and Subcontractor shall have no right to seek or recover from Contractor any damages or losses, whether direct or indirect, arising from or related to any delay or acceleration to overcome delay, and/or any impact or effect of such delays on the Work.

(c) Subcontractor shall cooperate fully with Contractor in providing promptly any information requested by Contractor in connection with preparation of schedules for the Project, including, but not limited to, detailed information concerning the sequence, beginning and ending dates of activities, cost breakdowns related to such activities, and any information requested for Critical Path Method scheduling if used for the Project. The costs of all such activities on the part of Subcontractor are included in the Subcontract Amount.

(d) In the event of any dispute under this Subcontract or as to the work to be performed, Subcontractor shall continue to diligently perform the work as directed by Contractor without interruption, deficiency or delay.

ARTICLE 5. PAYMENT--

(a) Payment of amounts due under the Subcontract, shall be made as follows: The Contractor shall, pay to the Subcontractor an amount equal to ninety percent (90%) or such higher percentage as required by applicable law of the value of the work performed by the Subcontractor as determined by the Architect and approved by the Contractor during any calendar month within fifteen (15) days after payment therefor has been received by the Contractor from the Owner, or within such shorter period specified by applicable law, statute or regulation. The Contractor shall be under no obligation to make any payment to the Subcontractor except to the extent that the Contractor has received funds from the Owner for the work invoiced by the Subcontractor; that is to say, the Subcontractor shall not be entitled to payment if for any reason, the Owner fails to pay the Contractor in accordance with the General Contracts, such payment from the Owner being a condition precedent to any obligation of Contractor to Subcontractor. Retainage and any other balance of the Contract Amount shall be payable fifteen (15) days or within such shorter period specified by applicable law, after the work under this Subcontract has been completed and accepted by the Owner, Architect, and Contractor and following approval by the Architect of the final application for payment, and settlement of all claims, if any, under this Agreement, provided that Subcontractor has fully performed all of its obligations hereunder. The Contractor is hereby authorized to deduct and offset from any payment an amount equal to any and all sums or obligations owing by the Subcontractor to the Contractor and costs necessary to complete the work to be performed under this Subcontract, and any and all claims liquidated or unliquidated, by the Contractor against the Subcontractor, arising hereunder, under any other contract or agreement between the Subcontractor and the Contractor or from any other liability or obligation of the Subcontractor to the Contractor whether under this Subcontract or otherwise.

(b) The Subcontractor agrees to submit to the Contractor applications for payment by the ~~first~~ ^{last} of each month, or at such other time as provided in the Contract Documents so as to enable the Contractor to timely apply to the Owner for payment. As a condition precedent to the payment of any application, the Subcontractor shall (1) produce waivers of mechanics lien rights and claim releases in the form required by Contractor by Subcontractor and all persons supplying labor or materials to the Subcontractor on the Project through the period covered by the application, or (2) exhibit such other evidence as the Contractor may require that charges for all labor and material have been paid. Any payments made by Contractor to Subcontractor are to be held in trust by Subcontractor for the payment of any lower tier Subcontractor or supplier. The Contractor shall have the right to contact Subcontractor's suppliers and subcontractors of any tier, direct or indirect, to determine the current status of indebtedness and Subcontractor authorizes them to provide such information. Contractor in its discretion may make checks payable jointly to Subcontractor and the supplier or subcontractor or directly to the supplier or subcontractor for the account of the Subcontractor.

(c) Payment by the Contractor to the Subcontractor or for its account shall not be deemed to be an admission or approval by the Contractor of the sufficiency of the work covered by the payment.

(d) Notwithstanding any other provisions of this Agreement, Contractor shall be under no obligation to make any payment to the Subcontractor under any provision hereof except to the extent that Contractor has received funds from Owner, payment by Owner being a condition precedent to payment of the Subcontractor. Notwithstanding the foregoing, nothing in this Subcontract shall be construed to prohibit Subcontractor from pursuing its rights, if any, to a mechanic's lien or statutory bond claim in the event that non-payment of the Subcontractor was caused by the failure of the Owner to pay Contractor amounts legally due. Subcontractor further agrees that, prior to exercising its rights or filing any claims, if any, against the Contractor or any surety for non-payment caused by the failure of the Owner to pay Contractor amounts legally due, Subcontractor shall first timely exercise and exhaust any rights and remedies that may exist with respect to enforcing a mechanic's lien on the Project.


(e) Contractor may apply any payments, otherwise due Subcontractor hereunder to any other indebtedness, liability or obligation of Subcontractor to Contractor whether under this Subcontract or any other agreement or circumstance.

ARTICLE 6. ADDITIONAL OR OMITTED WORK--

(a) In the event that the Contractor directs Subcontractor to perform additional work, Subcontractor agrees that it will promptly perform and diligently complete such work whether or not Contractor and Subcontractor have agreed on the cost of such work. Subcontractor shall submit to Contractor a lump sum proposal for such work, which proposal shall include a detailed cost breakdown for each component of the work, indicating both quantities and unit prices, and such proposal shall be submitted to Contractor not later than 7 days after Contractor directs Subcontractor to perform such extra or additional work or such lesser period if required by the Contract between Owner and Contractor. If a lump sum price or unit price for the additional work cannot be agreed upon, or Subcontractor fails to submit such proposal within 7 days after Contractor directs Subcontractor to perform extra or additional work, Subcontractor agrees to do the work on the basis of its actual cost plus percentage fees for overhead and profit as set forth in Article 10. The Contractor shall not be liable for payment for any additional work performed by the Subcontractor unless such work is first expressly authorized by the Contractor in writing and payment is made by the Owner to the Contractor for such

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Initiated by:
Contractor: 

Subcontractor: 

extra work, payment by Owner to Contractor being a condition precedent for Contractor to pay Subcontractor for such work. Both authorization in writing by the Contractor and actual payment by the Owner to the Contractor for such extra work shall be conditions precedent to Contractor's obligation to pay Subcontractor for such additional work. Any additional compensation or time to be given to Subcontractor shall be set forth in a contract supplement and shall constitute a full and final equitable adjustment of compensation, time or any other alleged entitlement, known or unknown, arising in connection with the facts and circumstances described in and which gave rise to such contract supplement and Subcontractor waives all damages, direct, indirect and consequential, relating to such facts and circumstances, including, but not limited to, impact, reduced productivity, interference by other trades, lack of coordination of the work by Contractor, inefficiencies, acceleration, delays, extended overhead, diminished bonding capacity or lost profits.

(b) In the event that the Subcontractor performs any such authorized additional work on an actual cost plus basis, it shall furnish each day to the representative of the Contractor, duplicate payroll sheets, timesheets, material tickets, equipment charges, and a statement or slips for all other charges, retaining a copy of each thereof, and securing on each thereof the signature of the duly accredited representative of the Contractor. Such signed copies of payroll sheets, timesheets, material tickets, statements and slips shall accompany the application for payment.

(c) Should the Contractor during the execution of this Contract require the Subcontractor to omit any work embraced within the terms of this Subcontract, said omission being for the account of the Owner, the Contractor, or any other subcontractor on the work, the Subcontractor agrees to omit such work, and the Contractor will deduct from any monies due the Subcontractor the value of such omitted work as reasonably determined by Contractor.

(d) In the event of any dispute, controversy, or claim for additional compensation or time extensions, except for payment for extra or additional work expressly directed by Contractor in accordance with Section 6 (a) of this Subcontract, the compensation for which shall be fully and finally governed by Section 6 (a) of this Subcontract and for which no further claim can or shall be made, notice in writing shall be given to the Contractor no later than seven (7) days following the occurrence on which such claim is based, unless the notice provision in the General Contract between the Owner and Contractor is less than seven (7) days, in which case, Subcontractor shall give notice to Contractor within 2 days less than the time required for Contractor to give notice to the Owner according to the notice provision in the General Contract. Such notice shall describe the dispute, controversy or claim in detail so as to allow Contractor to review its merits. Such notice shall also provide detailed information to substantiate such claim including supporting documentation and calculations, and including any information requested by Contractor. Any claim not presented within such time period shall be deemed waived by Subcontractor.

(e) If the Subcontractor shall make any claim against the Contractor for extra work or additional compensation for which the Owner or its agents may be liable, the Contractor may present such claim or claims to the Architect and/or Owner for determination and decision provided (1) such claim is not, in the judgment of the Contractor, made in bad faith, (2) Subcontractor has given notice in accordance with Article 6 (d) and in the form required by the General Contract, and has presented the claim to Contractor within the time required by Article 6 (d), (3) Subcontractor has both requested in writing that Contractor present the claim and has agreed in writing, on terms satisfactory to Contractor, to pay all costs of Contractor in presenting and pursuing such claim. Further, if Contractor requires that Subcontractor execute a liquidating agreement or similar agreement on terms satisfactory to Contractor further memorializing the understanding of the parties in connection with the presentation of such claims, Subcontractor shall execute such agreement as a precondition for Contractor to submit such claim. Presentation of the claim by Contractor shall not be construed as an acknowledgment of the validity thereof, or a waiver of any right of the Contractor, and such action shall be without prejudice to its rights. If the claim is presented by the Contractor to the Architect and the Owner, the decision of the Architect and/or Owner shall be final and binding upon the Subcontractor to the same extent and purpose that it is final and binding on the Contractor.



(f) No additional time or compensation will be allowed for weather delays or difficulties or inconveniences arising from mud, dust, water, ice, snow, wind, heat or cold or similar natural or physical conditions unless permitted under the General Contract and a claim therefore is made as set forth in Section 6(e). Contractor assumes no responsibility for material received, unloaded or stored for or by Subcontractor. Materials, tools, supplies, equipment, etc., belonging to or leased to Subcontractor are its responsibility and no claim for missing or stolen property will be allowed. Contractor shall not be required to provide hoisting facilities or temporary power, water or heat unless otherwise provided herein.

(g) Contractor may direct Subcontractor to work overtime or premium time and Subcontractor shall comply with such direction. If approved in advance in writing by Contractor's authorized representative, Subcontractor may be reimbursed for such work but only for the difference between regular time and overtime for direct payroll cost and the related payroll taxes, insurance, and benefits, and shall not be entitled to any additional compensation for overhead or profit or for inefficiencies or declines in productivity or other impacts. Subcontractor shall be responsible for the costs of overtime work caused by failure of Subcontractor to provide sufficient manpower, maintain the progress of the Work, or otherwise meet its obligations hereunder.

ARTICLE 7. DEFAULT--

(a) In the event the Subcontractor shall, in the judgment of the Contractor, (1) become unable to fulfill its financial obligation, become insolvent, or file or have filed against it any petition in bankruptcy, make an assignment for the benefit of creditors, or commence or have commenced against it or enter into any other proceeding or arrangement for relief of debtors, reorganization or deferral or discharge of debts, (2) fail to pay, when due, for materials, supplies, labor, taxes, or other items purchased or used in connection with the work, (3) fail to pursue the work in accordance with this Subcontract and the schedules established by the Contractor, (4) fail to supply a sufficiency of properly skilled supervisors, workmen, or of materials, tools, equipment, or supplies of the proper quality (including failure occasioned by a strike, picketing, boycott, or other cessation of work by Subcontractor's employees), (5) interfere with or disrupt, or threaten to interfere with or disrupt the operations of the Contractor, the Owner, or any other laborer, materialmen, supplier, subcontractor, or other person working on the job, whether by reason of any labor dispute, picketing, boycotting, or by any other reason, (6) violate any applicable federal, state, or local laws or

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Initialed by: 
Contractor:  Subcontractor:

regulations, (7) advise Contractor or demonstrate to Contractor that Subcontractor will be unable to timely and adequately perform any of its obligations under this Subcontract, or (8) commit any other breach of this Subcontract, then any such event shall immediately with no further action or notice required on the part of the Contractor, constitute a default by the Subcontractor under this Subcontract, and any such event shall be deemed to be a breach of this Subcontract. The Contractor will give the Subcontractor written notice of default. Upon receipt of such notice, Subcontractor shall have two (2) days in which to cure any such default provided, however, that if, in the judgment of the Contractor, such default cannot be cured within a two (2) day period after such notice, or Subcontractor has advised the Contractor or Contractor has otherwise determined that Subcontractor is unable to cure or remedy said default, the Contractor will notify the Subcontractor of default but the Subcontractor will not have any right to cure such default and the Subcontractor may be terminated immediately. In the event of a default for which there is no right to cure as provided hereinabove, or in the event of the expiration of the 2-day cure period set forth hereinabove without all such defaults having been fully cured, the Contractor may terminate this Subcontract, take possession of all or any materials, fabricated items wherever located, supplies, equipment and tools pertaining to the Project whether on the Project site, in the Subcontractor's premises or in transit, and may make independent arrangements for completion of the work. The Subcontractor grants to Contractor a right of entry into any premises owned or leased by Subcontractor for the foregoing purposes. The amount of completion cost, as well as any other costs, damages, or expenses, including Contractor's legal fees and expense, incurred as a result of such default shall be charged against any unpaid balance due to the Subcontractor under this Agreement or under any other agreement between Contractor and Subcontractor; and, if said total costs, damages or expenses shall exceed the balance due, the Subcontractor agrees to pay the amount of said excess immediately upon demand of the Contractor. The materials, supplies, equipment and tools taken by the Contractor may be used in completing the Project and may be incorporated into the improvements being constructed. With respect to any of such items incorporated into the Project, or consumed in the job, the net reasonable value of the same as of the date of taking shall be taken into account in the calculation of the aforesaid total completion costs, damages, and expenses. With respect to any such items which are not so incorporated or consumed, or which have a salvage value, the Contractor may, at its option (1) assume title to the same or any part of the same, as of the date of default and take into account the net reasonable value thereof as of the date of taking in the calculation of the total completion cost, damages, and expenses or (2) return the same to Subcontractor and take into account the net reasonable value of the use thereof by Contractor in the calculation of the said total completion cost, damages, and expenses.

(b) In addition to, and not in substitution of, the remedies herein above specified, Contractor may immediately, in the event of default or failure of Subcontractor to perform its obligations hereunder, provide or arrange for such workmen and materials necessary to continue and complete the work contracted for hereunder for the account of the Subcontractor and at Subcontractor's cost and expense, and apply any and all funds due or to become due to the Subcontractor thereto, all without terminating, rescinding or voiding this Subcontract or releasing the Subcontractor from any liability hereunder or from any damages caused by Subcontractor's failure to perform.

(c) In the event of a default by the Subcontractor under this Subcontract, all sums and obligations owing to the Contractor by the Subcontractor in any right or capacity, whether under this Subcontract or otherwise, immediately shall become due and payable to the Contractor.

(d) In the event the Contractor does not terminate this Subcontract, but assents to delayed completion of the work by the Subcontractor, such assent shall not be construed as a waiver of the Subcontractor's obligation to reimburse the Contractor for any costs, damages, or expenses incurred as a result of such delay; and all such costs, damages, and expenses shall be paid or reimbursed to Contractor upon demand.

(e) In the event that Contractor wrongfully exercises any of its rights under this Article 7, Subcontractor's sole and exclusive remedy shall be payment of the Subcontract Amount for the portion of the Subcontract performed by Subcontractor, and Subcontractor hereby waives any and all other rights, claims and remedies under this Subcontract and/or at law.

ARTICLE 8. RELEASES OF CLAIMS AND WAIVER OF LIENS--

Subcontractor agrees to provide to Contractor, and to provide and obtain from its subcontractors and suppliers of all tiers, executed releases of claims and/or waivers of liens and lien rights in the form required by Contractor and at such times as may be requested by Contractor. Subcontractor shall hold all monies paid by Contractor in trust for the payment of lower tier subcontractors and suppliers, promptly apply all payments made hereunder to Subcontractor's cost for labor and materials for the Project, and shall further take any and all necessary actions to keep the Project free and clear of all claims for liens and any and all claims against Contractor or Owner or any bonds posted by either of them in connection with the Project. In the event that any person furnishing labor or materials to the Subcontractor files a notice of intent to place a lien on the Project or files a lien on the Project or files a notice of claim or makes a claim against the Contractor or Owner or any bonds posted by either of them in connection with the Project, Subcontractor shall promptly but in no event later than any time required for a release bond to be posted under the General Contract take all necessary steps to have such notice or lien or claim withdrawn, including, if requested by Contractor, the posting of a bond. In the event that Subcontractor does not fulfill its obligations under this Article 8, Contractor may take all actions which it deems reasonable or necessary to protect the Project from liens and claims and the costs of any such actions including the cost of posting a release bond and attorney's fees, shall be deducted from amounts payable by Contractor to Subcontractor under this Agreement or any other agreement or circumstance. Subcontractor shall remain liable in the event that monies payable to it are insufficient to pay any damages or expenses arising from such liens.

ARTICLE 9. MISCELLANEOUS--

(a) The Subcontractor shall not sublet, assign or transfer this Contract or any part thereof, or the money due or to become due under it, without the written consent of Contractor; and any assignment or transfer without such consent shall be void. Subcontractor hereby assigns to Contractor, upon termination of this Subcontract for any reason prior to its complete performance, all of subcontractor's rights in and to any agreements or purchase orders for labor or

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materials, equipment or services related to the Project, as well as any shop drawings, plans, specifications, or other documents prepared by or on behalf of the Subcontractor and such assignment shall create no rights in any other person unless accepted by Contractor. Contractor may assign this Subcontract, including but not limited to the Owner, the Owner's lender, or other entities as required by the Owner, to another contractor upon termination of the General Contract, or to any other persons or entities as required by the General Contract.

(b) The Subcontractor shall not cause any unnecessary interference with or delay to the Contractor or to other subcontractors on said Project and shall repair promptly and be responsible for all damage done to the work of the Contractor or other subcontractors by Subcontractor, its agents, employees, subcontractors, or suppliers. Subcontractor shall be directly responsible to the Contractor or other subcontractors whose work is so damaged. The Contractor shall be responsible to the Subcontractor for physical damage to Subcontractor's work only if such damage is directly and proximately caused by the sole negligence of the Contractor.

(c) The Subcontractor shall clean up and remove daily from the job site dirt, trash and debris arising from its work as directed by the Contractor. In the event the Subcontractor fails to clean up and remove such dirt, trash and debris, the Contractor may, at its discretion, arrange for the same at Subcontractor's expense.

(d) To the fullest extent permitted by applicable law, Subcontractor agrees to defend, indemnify and hold harmless the Contractor and/or Owner, their officers, directors, agents and employees, from and against any and all claims, suits, liens, judgments, damages, losses and expenses, including, but not limited to, attorney's fees, arising in whole or in part and in any manner from the acts or omissions of the Subcontractor, its officers, directors, agents, employees or subcontractors, in the performance of this Contract, regardless of whether such lien, claim, suit, judgment damage, loss or expense is caused in part by a party indemnified hereunder. Nothing herein shall be construed to require Subcontractor to indemnify Contractor and Owner and/or their respective officers, directors, agents and employees from the sole negligence of Contractor or Owner, and/or their respective officers, directors, agents and employees. The Subcontractor shall defend and bear all costs of defending any actions or proceedings brought against the Contractor and/or Owner, their officers, directors, agents and employees, arising in whole or in part out of any such acts or omissions, provided, however, that the Contractor and/or Owner shall have the right to approve counsel to conduct such defense. Nothing herein shall be construed to create an indemnity obligation prohibited by applicable law or to waive Subcontractor's rights against any other subcontractor or supplier which may have contributed to causing the injury or damage. In claims against any person or entity indemnified under this Section by an employee of the Subcontractor or Sub-Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation in amount or types of damages, compensation or benefits payable by or for the Subcontractor or Sub-Subcontractors under workers compensation acts, disability benefits, acts or other employee benefit acts.

(e) Subcontractor acknowledges that, before executing this Agreement, it has carefully examined this Agreement, the Contract Documents and the Project site, has made such investigation of the Work required to be done and the material required to be furnished and, based upon such examination and investigation, Subcontractor represents that it fully understands and can perform all requirements of the Contract Documents.

(f) With regard to the subject matter of this Subcontract: (1) Subcontractor shall have no greater rights and/or remedies against Contractor with respect to any matter (including, but not limited to, omissions, alterations, extra work and additional compensation) than Contractor has against Owner pursuant to the Contract Documents; (2) Subcontractor assumes all obligations, duties and responsibilities by which Contractor is bound to Owner pursuant to the Contract Documents; (3) Subcontractor shall be bound to Contractor to the same extent that Contractor is bound to Owner by all of the terms, provisions and conditions set forth in the Contract Documents; and (4) Owner shall have all rights and remedies against Subcontractor that Owner has against Contractor pursuant to the Contract Documents.

(g) The Contractor shall have the right at any time, and for any or no reason, including for convenience, to terminate this Subcontract and require the Subcontractor to cease work thereon. The Subcontractor, in such event, shall be entitled to further payment only as provided in Article 5. The Subcontractor agrees to be bound by any and all provisions in the General Contract respecting renegotiation as well as termination for any reason.

(h) Subcontractor agrees to clearly note on each payment check to, and related invoice of, its subcontractors and material suppliers which exceed One Thousand Dollars (\$1,000.00), as being for work or materials provided pursuant to this Agreement for this Project, by name, all to be subject to Contractor's inspection upon request. Subcontractor also agrees to submit promptly to Contractor, upon request, the name, address and telephone number of each subcontractor or supplier of any tier, to Subcontractor for labor, materials, or equipment used on this Project. Contractor may contact any such subcontractors and suppliers and Subcontractor authorizes them to provide Contractor with any requested information.

(i) The Subcontractor warrants its workmanship and materials furnished against any defects, faults or damages arising therefrom during the period of construction and for a period of one year from the date of final completion of the Project (or for such longer period of time as may be required herein or by the Contract Documents). The Subcontractor shall remedy such defective workmanship, material, or damages at the request of the Contractor, at times convenient to the Owner, and to the satisfaction of Owner, Architect and Contractor.

(j) Subcontractor shall comply with all applicable federal, state, and local laws and regulations by which it is bound and shall perform this Subcontract in strict conformity with applicable laws, codes, ordinances, rules, regulations and requirements of Federal, State, County and Municipal authorities and of the National Board of Fire Underwriters and any local fire Underwriters and any local fire insurance exchange now or hereafter in effect. In the event of any discrepancy between the present requirements of such laws or authorities and the provisions of this Subcontract, the former shall govern, and the Subcontractor shall perform the work as required thereby at no extra cost. Should the Subcontractor incur additional costs because of any future change in such requirements, additional compensation therefor shall be subject to Articles 5 and 6 hereof. If the Subcontractor performs any work or is otherwise in violation of any such laws, codes, ordinances, rules, regulations or requirements, it shall bear all costs arising or resulting therefrom.

(k) Subcontractor shall be represented on the job site during the course of its work by qualified, full-time supervisors acceptable to Contractor. The Contractor shall have the right to require at any or all progress meetings,

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Contractor:

Subcontractor:

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whether called by the Owner, the Contractor, or others, the presence of a representative of the Subcontractor authorized to act in its behalf. All work hereunder shall be performed by persons well qualified and experienced in the kind of work to be performed and licensed as required by law. Subcontractor shall enforce discipline and good order among its employees, suppliers, and subcontractors engaged in the work. Contractor may require Subcontractor to remove from the project any such employees, suppliers, or subcontractors or others employed on the work that Contractor may deem incompetent, improper, or a hindrance to progress of any work on the Project, whereupon any such employee, supplier, or subcontractor shall be so removed and shall not again be employed on any part of the work without written consent of the Contractor.

(l) The Subcontractor agrees that it shall not engage in discriminatory employment practices in violation of any Federal, State, or local law, or Owner requirements regarding employment discrimination, including any order or regulation of any agency authorized to enforce any such law. To the extent applicable, the Subcontractor agrees to comply with Title VII of the Civil Rights Act of 1964, Executive Order 11246, and all additional orders, regulations, amendments, etc., pertaining thereto, including certification of non-segregated facilities. The Subcontractor agrees to furnish such additional information, certifications, and policies as may be required by the Contract Documents. The Subcontractor agrees to comply with all applicable rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Assistance Act of 1974, and the Americans With Disabilities Act of 1990.

(m) Subcontractor shall comply with all applicable federal, state and local laws, regulations and orders relating to occupational safety and health, and related procedures established by Contractor and shall, to the extent permitted by law, indemnify and hold Contractor and Owner, their directors, officers, agents and employees, harmless from any and all liability, public or private, penalties, contractual or otherwise, losses, damages, costs, attorney's fees, expenses, causes of action, claims or judgments resulting from a claim filed by anyone in connection with the aforementioned acts, or any rule, regulation or order promulgated thereunder, arising out of this Agreement or any subcontract hereunder. Subcontractor further agrees in the event of a claim of violation of any such laws, regulations, orders or procedures arising out of or in any way connected with the performance of this Agreement, Contractor may immediately take whatever action is deemed necessary by Contractor to remedy the claim of violation. Any and all costs or expenses paid or incurred by Contractor in taking such action shall be borne by Subcontractor, and may be deducted by Contractor from any payments due Subcontractor. Subcontractor shall have the primary responsibility to safeguard and protect its employees on the Project from injuries as well as any other persons or property which could be affected by Subcontractor's operations on the Project. In addition but not in substitution for Subcontractor's primary responsibility for safety, the Subcontractor agrees to (1) comply with all safety rules and regulations and work practices and procedures established by the Contractor and/or the Owner; (2) take all necessary steps to promote safety and health on the job site; (3) cooperate with Contractor and other contractors in preventing and eliminating safety and health hazards; (4) train, instruct and provide adequate supervision to assure that its employees are aware of, and comply with, applicable Federal and State safety and health laws, standards, regulations and rules, safe and healthful work practices and all applicable safety rules, regulations, and work practices and procedures of the Contractor; (5) not create any hazards or expose any of its employees, employees of the Contractor or employees of contractors to any hazards; (6) immediately abate all hazards within its control regardless of whether it created such hazard; and (7) where the Subcontractor is aware of the existence of a hazard not within its control, notify the Contractor of the hazard as well as warn exposed persons to avoid the hazard.

(n) In the event of variations, conflicts, ambiguities or inconsistencies between or among the terms, provisions or conditions of this Subcontract and any other Contract Documents, the terms, provisions and conditions which grant greater rights or remedies to Contractor or impose higher standards with regard to the obligations, responsibilities and scope of work of the Subcontractor shall control. Notwithstanding any other provisions of this Subcontract or of the Contract Documents, no provision hereof shall be construed to permit Subcontractor to pursue against the Contractor rights and remedies available to the Owner against the Contractor in the General Contract unless such rights and remedies are specifically and explicitly made available to the Subcontractor herein. In particular, disputes hereunder shall not be resolved by arbitration, but rather shall be resolved by litigation unless Contractor directs Subcontractor in writing to arbitrate a specific dispute. In the event that arbitration is provided in the General Contract for disputes between Owner and Contractor or Contractor otherwise chooses, at its sole discretion to submit a matter to arbitration, Subcontractor agrees, upon request of Contractor, to submit any disputes as determined by Contractor in its sole discretion, to arbitration and, if necessary, consolidation of said disputes with any arbitration or administrative proceedings between Contractor and Owner or any other party.


(o) The Subcontractor agrees to provide and furnish prior to commencing work, certificates in duplicate of insurance covering its work under this Contract for Worker's Compensation, General Liability Insurance to include Bodily Injury and Property Damage Insurance, and other insurances with limits and coverages as set forth in the Contract Documents or in Exhibit A attached hereto, whichever is greater. All policies of insurance shall be in "occurrence" form and with companies and in amounts acceptable to the Contractor, and shall not be subject to modifications or cancellation during the terms of the work hereunder without thirty (30) days prior written notice to the Contractor by certified or registered mail. Subcontractor will not change or terminate said policies without the written consent of the Contractor. The Subcontractor accepts exclusive liability for contribution tax or premiums for Unemployment Compensation, Social Security, Withholding Tax and Worker's Compensation.

(p) The Subcontractor agrees to furnish a bond guaranteeing its performance of this Subcontract, and the payment of its subcontractors and suppliers, if so requested by the Contractor, in amount and form and with such surety as are acceptable to the Contractor. The cost of the bond shall be paid by Subcontractor unless otherwise provided herein. Subcontractor shall be deemed not to have provided a bond meeting the requirements of this Subcontract in the event that the bond is conditioned upon the payment of monies due Subcontractor hereunder to an escrow agent or other third party who will disburse payment to subcontractors, material suppliers or other creditors of the Subcontractor.

(q) The Subcontractor understands and agrees that it shall not deal directly with representatives of the Owner, but shall handle all matters connected with this Subcontract, the work, or the furnishing of the materials or payment therefor, exclusively through the Contractor, unless otherwise directed in writing by the Contractor.

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Initialed by:
Contractor: 

Subcontractor: 

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(f) This Subcontract shall be governed by the laws of the State of Maryland, without regard to principles of conflict of laws. Any action or suit arising hereunder shall be brought in the jurisdiction where Contractor's principal office is located without regard to principles of conflict of laws or forum non conveniens. In the event of litigation between them, Contractor and Subcontractor waive trial by jury. If requested by Contractor, Subcontractor agrees to submit any dispute under this Subcontract to arbitration under the Construction Industry Rules of the American Arbitration Association, or pursuant to any Arbitration procedure and rules governing the General Contract, if any.

(g) Neither party hereto may waive or release any of its rights under this Agreement, except in writing. The waiver by either party hereto of any breach of any provision of this Subcontract shall not be construed as, or constitute, a continuing waiver, or a waiver of any other breach of any provision of this Subcontract.

(h) If any provision of this Agreement is held by a Court of competent jurisdiction or arbitrator(s) to be invalid or unenforceable, whether in whole or in part, such provision shall be ineffective only to that extent without invalidating or rendering unenforceable any valid portions of the provision and/or any other provision of this Subcontract.

(i) The Parties agree that they have both had the opportunity to obtain the assistance of counsel in reviewing the terms of this Subcontract prior to execution, and as such this Subcontract shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

(j) Owner shall be considered a third party beneficiary of all rights under the Contract, but not the obligations. Subcontractor shall have no rights or claims directly against Owner except to the extent of any mechanic's lien rights available by statute. All other legal or equitable claims by Subcontractor, including claims against Owner of quantum meruit or unjust enrichment, are hereby waived and released. This Subcontract and the exhibits attached hereto and incorporated by reference herein contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Subcontract may be amended only in writing signed by both Contractor and Subcontractor.

ARTICLE 10. SUBCONTRACT AMOUNT—The Contractor agrees to pay the Subcontractor for the performance of its work hereunder the following sum or sums, which shall unless otherwise specified, include all taxes, insurance premiums, charges for permits and all other fees and charges, and shall be firm and binding on the Subcontractor for the work and not conditioned upon a firm completion date or on any labor increases or material escalation costs which might occur during the course of construction: **TEN MILLION NINE HUNDRED NINETY-SIX THOUSAND SIX HUNDRED SIXTY-NINE DOLLARS** ————— \$10,969,669

Percentage fees for overhead and profit for extra work, subject to the provisions of Article 6 hereof, shall be: 10% for work performed by Subcontractor's own forces and 3% for work performed by its subcontractors and suppliers. Subcontractor shall likewise be entitled to 10% for work performed by their own forces and 5% for work performed by their contractors and suppliers. No fee will be allowed on overtime premiums. Such percentages include all office overhead and supervision above the foreman level.

ARTICLE 11. CONTRACT ALTERATIONS AND OMISSIONS—Any terms and conditions, to the extent inserted or added as part of an exhibit hereto by Contractor into this Subcontract, are hereby acknowledged by both parties to form a part of this Subcontract. In the event any terms and conditions are inserted or added as part of an exhibit hereto by Subcontractor, such terms and conditions shall only become part of this Subcontract if, and only if, each such term or condition is initiated by both Parties. In the event of conflict between any such properly added terms and conditions, and the standard terms in this Subcontract, the added terms and conditions shall prevail. In the event any such changes to this Subcontract form, including alterations and omissions noted thereon, are inconsistent with the requirements of the second sentence of Article 3(a), the requirements of the second sentence of Article 3 (a) shall prevail in all respects.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

SUBCONTRACTOR:

Mojave Electric

BY:

SIGNATURE

Troy Nelson, President

PRINTED NAME AND TITLE

DATE:

2-11-10

WITNESS:

CONTRACTOR:

THE WHITING-TURNER CONTRACTING COMPANY

BY:

SIGNATURE

Paul Schmitt, Vice President

PRINTED NAME AND TITLE

DATE:

2/11/10

WITNESS:

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Initialed by

Contractor:

Subcontractor:

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LIST OF EXHIBITS

The Exhibits listed below are hereby incorporated into this Subcontract:

Exhibit A - Insurance

Exhibit B - Scope of Work

Exhibit C - Document Log dated "11/24/09"

Exhibit D - Project Schedule dated "12/17/09"

Exhibit E - High Rise Fire Protection Report dated "09/04/09"

Exhibit F - Geotechnical Reports

Geotechnical Results Report dated 10/03/2008

PV Tree Lateral Load Analysis dated 07/20/2009

Asphalt Pavement Design Am 1 dated 02/06/2009

Permanent Dewatering System Evaluation dated 06/18/2009

Environmental Sampling Results dated 07/20/2009

Environmental Sampling Results Borehole B7 dated 07/20/2009

R-Value Report dated 11/10/09

R-Value NDOT Approval Letter dated 11/25/09

Exhibit G - Asbestos Survey dated 10/25/2007

Exhibit H - Block C Asbestos Survey dated 12/18/09

Exhibit I - Project Manual

LEED Program

Site Specific Safety Program

Staging and Logistics

Project Specific Quality Control Program

WT Procedures and Standard Forms

Diversity Supplier Information

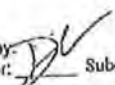
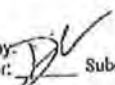
Exhibit K - Labor Rates

Exhibit L - Work Continuation Agreement - Pending

Exhibit M - Letter of Ascent - Pending

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Initiated by: 
Contractor: 

Subcontractor: 

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EXHIBIT A
INSURANCE

GENERAL INSURANCE REQUIREMENTS

Prior to commencement of any work on the Project, Subcontractor shall, at its own expense, maintain, during the term of this Subcontract and any extensions thereof, the following insurance in the forms and with limits to satisfy both the requirements listed on this Exhibit A and those specified by the Subcontract and/or any other applicable Contract Documents.

All insurance policies must be from insurers authorized to conduct business within the state(s) where the project is located. The insurance companies must also have a Best's Rating of at least "A-" and a financial size of "Class VII" or better. Subcontractor shall disclose and shall be responsible for payment of any deductibles or self insured retention under these policies.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE

This insurance will pay the subcontractor's obligations under appropriate worker's compensation statutes, including federal benefits under the U.S. Longshore and Harbor Workers Compensation Act, the Federal Employers' Liability Act and the Jones Act, covering all employees who perform any of the obligations of the Subcontractor under this Subcontract.

Employers liability coverage shall provide limits of at least \$500,000 each accident for bodily injury and \$500,000 each employee for disease. The policy limit for disease shall be at least \$500,000.

For Connecticut projects, Subcontractor hereby agrees that Whiting-Turner is reimbursing Subcontractor a sufficient amount as payment for the Workers Compensation Premium for its workers on this Project.

COMMERCIAL GENERAL LIABILITY INSURANCE

This insurance must be written on an "occurrence" basis, responding to claims arising out of occurrences which take place during the policy period. The commercial general liability form should provide limits of at least the following:

- \$1,000,000 each occurrence for bodily injury and property damage
- \$1,000,000 each incident for personal and advertising injury
- \$2,000,000 products-completed operations aggregate
- \$2,000,000 general aggregate

The general aggregate limit shall apply separately to each project. The products and completed operations coverage is to be maintained for a period of at least two years following the completion of the work. The Whiting-Turner Contracting Company is to be included as an additional insured.

The contractual liability coverage shall include protection for the subcontractor from claims arising out of the liability assumed under the indemnification provisions of the Subcontract. There shall be no separate exclusion for liability arising out of explosion, collapse and underground hazards (XCU) or subsidence, if the scope of subcontractors work involves digging, excavation, grading, or use of explosives.

BUSINESS AUTOMOBILE LIABILITY INSURANCE

This insurance shall apply to any auto, including all owned, hired and non-owned vehicles, to a combined single limit of at least \$1,000,000 each accident. For those subcontractors subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement # MCS-90 should be attached to the policy, with a primary limit of at least \$1,000,000 each accident.

Any statutorily required "No-Fault" benefits and uninsured/underinsured motorists' coverage should be included. Any deductible under this policy must be disclosed and will be fully assumed by the subcontractor.

UMBRELLA EXCESS LIABILITY INSURANCE

This insurance must provide coverage in excess of the limits of employers' liability, commercial general liability and business automobile liability. The policy should provide for a limit of at least \$5,000,000 each occurrence and a \$5,000,000 aggregate and include coverage as broad as the primary insurance.

CERTIFICATES OF INSURANCE/ADDITIONAL INSURED REQUIREMENTS

Prior to commencing work and throughout the Subcontract term and any extensions thereof, as a material term of the Subcontract, Subcontractor shall provide Whiting-Turner with certificates of insurance using the ACORD form or its equivalent executed by a duly authorized representative of each insurer and with copies of any necessary riders or endorsements attached, in a form reasonably acceptable to Whiting-Turner, evidencing that Subcontractor's insurance coverage is in compliance with the insurance requirements set forth in this Exhibit A and in the Contract Documents.

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Contractor: _____ Subcontractor: _____

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All insurance policies shall be endorsed to provide at least 60 days prior written notice to Whiting-Turner of cancellation, non-renewal, and/or material change of any insurance provided pursuant to this Exhibit A. The following wording (or similar wording) "endeavor to" and "but failure to mail such notice shall impose no obligation of liability of any kind upon the company, its agents or representatives", in the Certificate of Insurance or elsewhere shall not relieve the Subcontractors or Insurer of this notice obligation.

Whiting-Turner, the Owner and other entities as may be reasonably requested shall be named as an additional insured under the Commercial General Liability, Auto Liability and Umbrella Excess Liability policies of insurance, and special policies listed below if applicable, per standard ISO endorsement forms 2010 (07/04) for ongoing operations and 2037 (07/04) for products/completed operations, or their equivalent. Coverage shall be maintained by the Subcontractor for itself and for the additional insureds for a period of at least two years following the completion of the work or for such longer period as required by the Contract Documents. Such insurance shall include cross-liability coverage as provided under standard ISO forms separation of insured clause. It is expressly agreed and understood by and between Subcontractor and Whiting-Turner that the insurance afforded the additional insureds shall be the primary insurance and that any other insurance carried by Whiting-Turner shall be excess of all other insurance carried by the Subcontractor and shall not contribute with the Subcontractor's insurance. Subcontractor further agrees to provide endorsements on its insurance policies which shall state the foregoing and to provide the following language on its insurance certificates to acknowledge compliance with these requirements; however, Subcontractor's failure to provide such endorsements or acknowledgement shall not affect Subcontractor's agreement hereunder:

"Whiting-Turner, the Owner and (other requested entities) are Additional Insured's under these liability insurance policies on a primary and non-contributory basis and such coverage shall comply with the provisions of standard ISO endorsement forms CG 2010 (07/04) for ongoing operations and CG 2037 (07/04) for completed operations, or their equivalent. A waiver of subrogation in favor of the above listed parties shall apply to all policies required under this Subcontract."




WAIVER OF SUBROGATION

Subcontractor hereby waives all rights of subrogation against Owner, Whiting-Turner, the Architect and its consultants, and any of Subcontractor's sub-contractors and consultants, and their respective trustees, directors, officers, employees and agents for recovery of damages to the extent those damages are covered by any insurance policies the Subcontractor is required to maintain as set forth herein. Subcontractor agrees to obtain, at its own cost, and deliver to Whiting-Turner copies of any endorsements necessary to provide such a waiver under the applicable insurance coverage.

SPECIAL COVERAGE - IF APPLICABLE

1. Mold/Fungi -- If the scope of Subcontractor's work involves the construction of the building envelope (skin, windows, roof, flashings, etc.), plumbing systems or HVAC systems, or could cause or contribute to water intrusion or the development of "mold", "fungi" or "bacteria", the Subcontractor's general liability policy shall not contain any exclusion for such exposures. If Subcontractor's general liability policy excludes such coverage, then Contractor may require the Subcontractor to carry Pollution Liability Insurance with mold specifically endorsed as a pollutant.
2. Pollution -- If the scope of services or work under this Subcontract could result in a potential environmental hazard, including but not limited to, transportation, handling or abatement of hazardous substances, or involve work such as demolition, earthwork, or utilities that could result in a potential environmental exposure, Subcontractor shall purchase and maintain Pollution Liability Insurance which shall be on an occurrence basis with a limit as required by contractor, and which shall be not less than \$2,000,000 per claim. If Subcontractor can only provide this insurance on a "claims made" basis, such policy shall provide an "additional reporting period" endorsement providing coverage for at least two years beyond project completion or such longer period of time as specified in the contract documents.
3. Blasting -- If the scope of the Subcontractor's work involves any blasting operations, Subcontractor agrees to provide specific evidence, to the satisfaction of Contractor, that the insurance policy covers such operations.
4. Professional Liability -- If the scope of Subcontractor's work involves the performance of any design/engineering as part of its scope of work, and Subcontractor's general liability policy excludes such coverage, Subcontractor and Contractor, which shall not be less than \$2M per claim or the value of the Subcontract, whichever is greater. Unless otherwise agreed to by contractor, this policy shall provide an "additional reporting period" endorsement providing coverage for at least two years beyond project completion or such longer period of time as specified in the contract documents.

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Contractor:  Subcontractor: 

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EXHIBIT B
SCOPE OF WORK



The work to be performed and materials to be furnished by the Subcontractor, as Specified in Article 3 hereof and in accordance with Drawings and Specifications prepared by JMA Architects (refer to Drawing and Specification Log) and Whiting-Turner's direction, are outlined as follows:

.01 GENERAL REQUIREMENTS

1. The scope of work shall conform to plans and specifications and is to include all design services, labor, supervision, insurance, bonds, taxes, material, fabrication, delivery, installation, tools, trucking, equipment, layout, shop drawings, submittals, unloading, scaffolding, ladders, hoisting, transportation, permits, engineering, necessary drawing reproduction (as established by Contractor), incidentals, support functions and other items or services necessary for, related to, and reasonably incidental to the proper execution and completion of the work.
2. Subcontractor shall provide all submittals Six (6) Original copies, coordination drawings, shop drawings, pertinent manufacturers data, MSDS sheets (for ALL material), mock-ups, samples, as-built's (in reproducible form), procurement log (tied into schedule), etc. required to complete the work as specified by the Contract Documents. Submittals shall be coordinated to allow ample time for review, approval, fabrication and delivery prior to and in accordance with the construction schedule. All submittal data shall be received within fifteen (15) days of notice to proceed and/or contract date, whichever is sooner. Failure to provide such information in the time frame specified could result in consequential damages and/or default.
3. Prior to the commencement of work, subcontractor shall furnish a certificate of insurance naming "The Whiting-Turner Contracting Company"; "Livework, LLC"; "QH Las Vegas, LLC"; "PQ Las Vegas, LLC"; "Forest City Commercial Construction Co, Inc."; "Forest City Enterprises, Inc. and their subsidiaries and affiliates"; "The City of Las Vegas," "Elkus Manfredi Architects"; and "JMA Architecture", as additional insured. The coverage's shall meet or exceed those specified in Whiting-Turner's Exhibit A. Subcontractor shall require each sub-subcontractor to have the insurance coverage required by Exhibit A. Subcontractor shall furnish Whiting-Turner evidence thereof before each sub-subcontractor commences any work.
4. Subcontractor shall submit schedule of values for approval prior to issuance of first invoice. This schedule of values will be used for progress billings.
5. Original invoices are to be submitted by the 1st of each month for work completed through the end of the month. Invoices to be notarized and submitted on Whiting-Turner's modified AIA G702 and G703 forms. No FAX copies shall be accepted. "Pencil Draw" copy due no later than the 25th of the month. Releases of liens are to be provided with each invoice. Union subcontractors shall submit monthly verification of current trust fund payment. If invoices are not received by the due date, that invoice shall not be processed till the next billing cycle. In addition, each subcontractor shall submit monthly certified payroll including the zip code of the employee's residence.
6. Subcontractors shall be responsible for their own worker transportation and parking. Subcontractor shall abide by the parking rules established by Whiting-Turner. Further, On-Site Parking is not guaranteed. Be advised that public roadways may be the only parking available.
7. Subcontractor shall perform daily and final clean up of debris for all work performed under this contract in order to meet the jobsite cleanliness guidelines set forth by Whiting-Turner. Dumpsters will be provided by Whiting-Turner. This clean up shall be performed often enough to ensure no other trades are hampered by debris and / or debris causes a safety situation. Should subcontractor fail to clean work areas on a daily basis, Whiting-Turner will issue one final written notice only, giving the subcontractor 24 hours notice to remedy the problem. Failure to meet the requirements within the 24 hours provided shall constitute immediate default of contract. The area will then be cleaned by alternate methods and all costs will be forwarded to subcontractor. Should the area be occupied by multiple subcontractors, the cost shall be pro-rated based on manpower on project site.

SC12

Rev, 12/08

Initialed by:
Contractor:  Subcontractor: 


WTC00012
JA 0000747

49. Subcontractor shall provide necessary traffic control, flagmen, delineators, signage, etc. as necessary when subcontractor's work impacts on-site or off-site vehicular or pedestrian traffic flow.
50. Subcontractor is made aware that this project has a diversity program. It is this subcontractors responsibility to make opportunities available for these firms. Subcontractor shall be expected to utilize MBE / WBE / DBE vendors and suppliers where possible and provide backup of efforts made to obtain diversity and a monthly report on actual cost expended.
51. Subcontractor is made aware that this project will fall under prevailing wages requirements. As such, subcontractor shall be required to submit certified payroll for duration of the project. Subcontractor shall submit all payroll for the month by the 5th day of the following month.
52. Subcontractor is made aware that this project is to follow the Leadership in Energy and Environmental Design (LEED) construction criteria based on LEED for New Construction, Version 2.2. The project goal is to obtain a LEED Silver rating. Subcontractors shall be required to fully comply with the LEED requirements for the project.
53. Subcontractor must provide a LEED submittal form for each product used or installed on-site. This submittal shall contain the manufacturer's location, location of product extraction or harvest, cost of material, post-consumer and pre-industrial recycle content (including) product data to verify, and MSDS if applicable along with other data as requested. All subcontractors shall comply with the specified LEED requirements identified in the specifications for which they are responsible. Strict adherence to the specifications is required, as varying products or materials could result in the project failing to get the desired certifications.
54. Subcontractor must be in compliance with Whiting-Turner's Indoor Air Quality (IAQ) Plan per LEED-NC Version 2.2 Credit EQ-P1. This includes protecting absorptive materials from moisture damage, and meeting or exceeding the SMACNA IAQ Guidelines of Occupied Buildings under construction, 1995, Chapter 3.
55. Whiting-Turner will provide co-mingle recycling bins for use by the Subcontractor. Recycled waste materials shall include, but are not limited to, all wood products, cardboard, paper, metal, gypsum, carpet, paint, glass, rigid foam insulation and plastic. Separate bins will be provided for concrete and CMU recycling. Subcontractor must remain in compliance of the Whiting-Turner's Construction Waste Management plan per LEED-NC Version 2.2 Credit MR-2.2.
56. Subcontractor shall submit the VOC content of all paints, coatings, adhesives and sealants used inside the building (defined as inside the weatherproofing system and applied on-site) to allowable standards provided by LEED-NC Version 2.2 Credits EQ-4.2.
57. Subcontractor understands that all floors may be worked on simultaneously. Subcontractor shall be responsible for having sufficient manpower to complete work concurrently, in multiple areas as required. Subcontractor shall include any and all necessary remobilizations required to successfully complete this work.
58. Change order Pricing and Processing
 - Definitions:
 - A. Overhead: Any office labor, management labor, estimating, secretarial, accounting, etc. above working foreman. Materials considered overhead are items such as but not limited to copy machines, phones, fax machines and all items associated with office work.
 - B. Profit: Fee for work performed as percentage of cost of work. No fee shall be attributed to overhead.
 - C. Small tools: (Value less than \$300.00) shall be considered overhead unless specific tasks require equipment / tools be purchased to accomplish such work at which time they will become property of the Owner.
 - E. Insurance:
 - Liability insurance, health insurance for office staff, automobile and equipment insurance, theft insurance, builder risk insurance shall be considered overhead.
 - F. Bond Cost: Shall be attributed to the change order pricing based on submitted bond rate at bid submission and contract award.

SC16

Rev. 12/08

Initialed by:
Contractor: 

Subcontractor: 

WTA 0000748

59. Labor:

- A. Final bids should contemplate that a contractor doing work onsite, or a subcontractor being utilized to do work onsite, must be party to a local labor agreement with the construction union that represents the trade(s) that it will employ on the project. Such labor agreement must contain a no strike clause applicable to the project and a method for adjusting employee work disputes without work disruption. Any exceptions to this requirement must be specific and approved in writing by Paul Schmitt, Whiting-Turner prior to final bid submittal.
- B. Final bids should contemplate that any party working onsite (either as a contractor or subcontractor) who has a collective bargaining relationship with a labor organization is responsible for all costs and contingencies associated with that relationship including any costs related to or resulting from contract terms or contract renegotiations between it and the relevant labor organization. By way of example only, these costs could include wage and benefit adjustments as a result of renegotiations, expenses of further negotiations, or other costs required by any negotiated work practices with the relevant labor organization.
- C. Final bids should contemplate that a Project Labor Agreement applicable to this project may be agreed to with unions in the Southern Nevada Building Trades Council, and if such agreement is in place, contractors on this project utilizing trades represented by that Council will be expected to sign the agreement. If such an agreement is negotiated, it may include hiring priorities for candidates in certain city wards of highest unemployment. It will not adjust the current wage and benefit packages paid employees under current collective bargaining agreements. It may also contain a work continuation commitment whereby the employees agree to work, and the contractors agree not to lock out, during any future labor negotiations provided the contractors agree to make pay raises retroactive to the time of prior contract expiration. Details on that status of these matters may be obtained by contacting Paul Schmitt, Whiting-Turner prior to final bid submittal.
- D. Final bids should contemplate that if a Project Labor Agreement is not agreed to that all contractors must nevertheless make every affirmative effort to procure and hire candidates for this project who reside in the areas of highest unemployment, Wards 1, 3 and 5 of Las Vegas, and that such employee origins will be measured and monitored throughout the project. The geographical boundaries of the Wards are available from the city.

02 SPECIFIC SCOPE OF WORK

- 1. The scope of work shall conform to plans and specifications and is to include furnishing material, fabrication, layout, shop drawings, submittals, necessary drawing reproduction, delivery, scaffolding, ladders, hoisting, bracing, shoring, unloading, installation, tools, trucking, transportation, permits, equipment, labor, supervision, insurance, taxes, incidentals, engineering and support functions necessary for or related to proper execution and completion of the Electrical scope of work, whether temporary or permanent, including other sections as they apply to this work in accordance with all drawings, specifications, addenda, general conditions, requirements, and other related documents as indicated herein.
- 2. Subcontractor understands this specific scope of work is meant only to assist the subcontractor. Subcontractor is ultimately responsible for all Electrical on the project plans and specifications.
- 3. Subcontractor understands this project is registered under LEBD version 2.2 and is pursuing a LEBD Silver Certification. Subcontractor further understands all requirements in purchasing, materials, certifications, installation methods, and procedures required by LEBD version 2.2 and agrees to actively pursue all available credits. Subcontractor has included all costs associated with achieving these credits. In the event achievement of a LEBD credit is in jeopardy due to this Subcontractor's negligence, Subcontractor shall be responsible for all costs associated with the remediation necessary to achieve said credit.
- 4. Subcontractor has reviewed the documentation requirements as detailed in the contract documents and has included all costs associated with timely submission of all documents.

SC17

Rev. 12/08



Initialed by
Contractor:

Subcontractor:

WTC00014
JA 0000749

5. Subcontractors systems, materials, equipment, and installation methods shall be in accordance with all LEED requirements per the Contract Documents, including but not limited to, erosion/sedimentation control, building commissioning, construction waste management, recycled content, regional materials, low emitting materials, FSC certified woods, no urea-formaldehyde products, construction indoor air quality management, etc.
6. Subcontractor must sort trash and debris before placing in Whiting-Turner trash dumpsters as noted in the LEED recycling plan for reuse and recycling of all debris. This includes reporting (on a monthly basis) of all recycled/reused/local material and/or equipment installed to date relative to project totals.
7. Subcontractor understands the existing site and soil conditions as indicated in the attached Geotechnical Report.
8. Subcontractor shall include all costs required to meet the attached project schedule.
9. Subcontractor must provide barricades as necessary to prevent construction debris and or activities from endangering the building during installation of work performed under this Subcontract. Subcontractor shall obtain all hot work permits and provide all fire watch for its own welding and cutting operations.
10. Subcontractor shall provide all shoring and bracing required for these installations including engineering, governing agency approvals, shoring materials and placement, daily shoring safety inspections, and shoring dismantle in this Subcontract. Subcontractor agrees to multiple shoring mobilizations if required. Shoring and bracing shall remain in place until the structure can be supported as designed.
11. Subcontractor's proposal is based on the current OSHA Standards of Fall Protection. This will be a 100% tie-off project. It is understood that the safety rails provided by the Contractor are not to be utilized as a tie off point.
12. Subcontractor shall provide protection when working near, below or above project access points and other trades as it pertains to this scope of work.
13. Subcontractor shall be responsible for all scraping and patching cost of fireproofing material when installing work covered under this Subcontract and/or fixing any damages caused by this Subcontractor. Subcontractor understands that the fireproofing Subcontractor will be the only one allowed to perform patchwork do to warranty issues. All costs for patchwork for work covered under this Subcontract will be forwarded to this Subcontractor.
14. Subcontractor shall include all task lighting required for work covered under this Subcontract.
15. Subcontractor shall verify all benchmarks, layout, subcontractor provided surveying, approved shop drawings, etc. prior to commencement of installation. Subcontractor shall coordinate with other Subcontractors' work that interfaces with this Subcontractor's work including, but not limited to, embeds, box-outs, penetrations, electrical, structural supports, lighting, etc. Contractor's supervision shall assist and enforce all coordination between Subcontractors.
16. Subcontractor must provide a prior 48-hour written notice and coordination to Contractor stating that the Subcontractor will be using a crane and/or the crane pad on first, second shift, third shift and or overtime. In the event of crane shared use, all paperwork for shared use of other Subcontractor's cranes on site shall be the responsibility of this Subcontractor and the Subcontractor which has priority use of that crane. Contractor shall not be responsible for any damage/accidents arising from such use. Subcontractor understands, that due to its own negligence, any cost associated with lack of waivers, crane damage, crane repairs, additional crane mobilizations and demobilizations, first, second, third shift and or overtime to maintain the project schedule of other trades, will be the responsibility of this Subcontractor.
17. Subcontractor understands and shall include all cost to meet the provisions stated in the attached high rise fire protection report for City of Las Vegas New City Hall for this scope of work.
18. Subcontractor understands that all seismic connections/ anchorage will be a deferred submittal to the City of Las Vegas Building Department and any and all costs associated with these will be the

SCI8

Initialed by: 
Contractor:  Subcontractor:

Rev. 12/08

WTC00015
JA 0000750

1 **business that -- that would merit that type of transaction.**

2 Q. Did CAM?

3 A. No.¹⁵

4 In other words, Cashman had no basis for the trust it provided CAM and left itself
5 completely vulnerable to this type of criminal act. Therefore, its repeated attempts to garner
6 sympathy and paint Mojave as the villain remain unsupported.

7 Mojave and the Owner handled business for this project just like they always do. They
8 did not issue joint checks as detailed in multiple prior motions, because it was not their policy to
9 do so, but Cashman failed to withhold its equipment when a joint check was refused.¹⁶ Once a
10 payment issue arose with CAM, Cashman failed to take reasonable steps with Angelo regarding
11 the follow up appointment to the financial facility. Cashman PMK Shane Norman admits that
12 Cashman simply waited to hear from Angelo rather than contacting authorities immediately or
13 taking further steps to protect itself. By the time Cashman did contact Mojave, it could not stop
14 payment on its check:

15 Q. But as the credit manager for Cashman, do you have something that you typically do
16 when a situation arises like this?

17 A. Well, this is not a typical situation, to be honest with you. We don't have checks of
18 this magnitude bounce that I can ever recall. Or bounce, I guess that's not the right word. Or
19 stop payment. Become nonsufficient -- or non -- don't yield funds. How's that? That's probably
20 the best word. That's what we did is we went after -- **directly after Angelo Carvalho and tried**
21 **to get Mojave to put a stop payment on their check to him.**

22 Q. **But by the time you did that, it was too late, wasn't it?**

23 A. **Yeah. They said it wasn't possible.**¹⁷

24 Thus, Cashman consistently presents themselves as the pitiful aggrieved party, but must
25 take some responsibility for its own failure to act at every stage of this transaction.

26 ¹⁵ *Id.*

27 ¹⁶ *Id.*, P.51, LL. 10-23.

28 ¹⁷ *Id.*, P. 43, LL. 13-24.

1 Finally, upon information and belief, Cashman also failed to obtain property loss or a
2 criminal policy to protect itself from any party absconding with its funds.¹⁸ Rather than seek out
3 the appropriate relief from insurance or the perpetrator, Cashman continues to reach for
4 Mojave's pockets and chase causes of action without any substantial evidence. Consequently,
5 Cashman should be held responsible for the attorney's fees paid. Cashman perpetually holds the
6 entire project hostage, because it will not complete the work agreed to without additional
7 payment and without a supportable claim. Rather than work with the City to complete the City
8 Hall and keep its patrons safe, Cashman would rather hold out for its money, despite the fact that
9 Mojave has bonded around the work to be performed, outside of the Lien.

10 Obviously, Cashman considers itself first and foremost and will stop at nothing to force
11 Mojave and the City's hands.

12 III. CONCLUSION

13 Cashman's Lien must be expunged as it has not completed the work and has not properly
14 served its Pre-Lien pursuant to Nevada law. Alternatively, the Lien should be reduced to reflect

15 ///

16 ///

17 ///

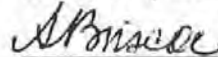
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27 ¹⁸ To date, this testimony has not yet been confirmed despite numerous attempts. Cashman has agreed to provide a
28 third PMK for this information.

1 actual and lienable work performed in the amount of \$329.00. The current Lien is excessive and
2 Defendants are entitled to attorney's fees and costs incurred in bringing this motion under NRS
3 108.2275(6)(a) and (b).

4 Dated this 17th day of September, 2012.

5 COTTON DRIGGS, WALCH,
6 HOLLEY, WOLOSON & THOMPSON

7 

8 BRIAN W. BOSCH, ESQ.

9 Nevada Bar No. 7612

10 SHELLEY A. BRISCOE, ESQ.

11 Nevada Bar No. 9985

12 400 South Fourth Street, Third Floor

13 Las Vegas, Nevada 89101

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

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that, on the 17th day of September, 2012 and pursuant to
3 NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing
4 MOTION TO EXPUNGE OR REDUCE MECHANIC'S LIEN, postage prepaid and addressed
5 to:

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

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

13 Keen L. Ellsworth, Esq.
14 ELLSWORTH & BENNION, CHTD.
15 777 N. Rainbow Blvd., Suite 270
Las Vegas, Nevada 89107
Attorneys for Element Iron and Design

16
17
18 
19 An employee of Cotton, Driggs, Walch,
Holley, Woloson & Thompson
20
21
22
23
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25
26
27
28

EXHIBIT A

APN: 139-34-311-021

Recording Requested By:
Jennifer R. Lloyd-Robinson, Esq.
Pezzilla Robinson
6750 Via Austi Parkway, Suite. 170
Las Vegas, Nevada 89119

Inet #: 201106220002156

Fees: \$15.00

N/C Fee: \$0.00

06/22/2011 10:52:02 AM

Receipt #: 820247

Requestor:

PEZZILLO ROBINSON

Recorded By: MBH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

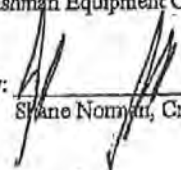
NOTICE OF LIEN

The undersigned, Cashman Equipment Company ("Lien Claimant"), claims a lien upon the property described in this notice for work, materials, or equipment furnished or to be furnished for the improvement of the property:

1. The amount of the original contract is: \$755,893.89.
2. The total amount of all additional or changed work, materials and equipment, if any, is: \$0.
3. The total amount of all payments received to date is: \$0.
4. The amount of the lien, after deducting all just credits and offsets, is: \$755,893.89.
5. The name of the owner, if known, of the property is: FC/LW Vegas LLC and LWTIC Successor LLC, care of Forest City Enterprises.
6. The name of the person by whom the Lien Claimant was employed or to whom the Lien Claimant furnished or agreed to furnish work, materials or equipment is: Cam Consulting, Inc.
7. A brief statement of the terms of payment of the Lien Claimant's contract is: Lien Claimant was to be paid upon delivery.
8. A description of the property to be charged with the lien is: 518 S. 1st St., Las Vegas, Nevada, Assessor's Parcel Number 139-34-311-021.

Dated: June 21, 2011

Cashman Equipment Company

By: 
Shane Norman, Credit Manager

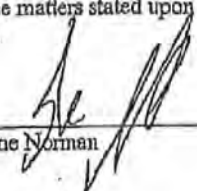
CASH027

JA 0000632

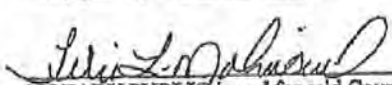
STATE OF NEVADA)
)
COUNTY OF CLARK) SS:

I, Shane Norman, being first duly sworn on oath, according to law, deposes and says:

I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own personal knowledge, except those matters stated upon information and belief, and, as to those matters, I believe them to be true.


Shane Norman

SUBSCRIBED AND SWORN to before me
this 2nd day of June, 2011.


NOTARY PUBLIC in and for said County and State



CASH028

JA 0000633

EXHIBIT B

File: C [NV] [PRIVATE] [COPY: EST]
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: A3206643-B5B2-12EB-A99B-18688642078

Job #: 81236701

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
BQ LAS VEGAS LLC

30 PUBLIC BQ-ET #1410
CLEVELAND, OH 44113-2202

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.

CMA FORMS FILING SERVICE

Prepared by:

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:

CMA FORMS FILING SERVICE

LUPE GALLEGOS, REPRESENTATIVE FOR, CREDIT MANAGEMENT ASSOCIATION

CC: TO LENDER, SURETY OR BONDING CO.

CASH013

JA 0000635

EXHIBIT C

CASHMAN

BAT

INVOICE

1.800.937.2326
www.cashmanequipment.comCAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV

89030-7524

PLEASE REMIT TO:
Cashman Equipment Company
File # 58751
Los Angeles, CA 90074-6751

S1236701 02-01-11 109502

THANK YOU!

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

ITEM	QTY	DESCRIPTION	UNIT PRICE	TOTAL PRICE
S1236701	02-01-11	109502 767810-GEN10010	00 E 815 4 .1	
S12367	02-01-11	10		206227
AA	C32	JSJ01016	.0	10-081
CUSTOMER CONTACT: ANGELO CARVALHO				
1.0		EQUIPMENT SALE CATERPILLAR INC. MODEL C32 900 KW, 4580/277V, 4P, 4W, N3R ENCLOSED GENERATOR ID NO: 10-081 SERIAL NO: JSJ01016		152849.91
1.0		EQUIPMENT SALE CATERPILLAR INC. MODEL C32 900 KW, 4580/277V, 4P, 4W, N3R ENCLOSED GENERATOR ID NO: 10-082 SERIAL NO: JSJ01013		152849.91
1.0		EQUIPMENT SALE ** 8000A, 480/277V, 3P, 4W, N3R CATERPILLAR INC. MODEL TRANSWITCH ID NO: 10-037 SERIAL NO: TSG03509		7672.45
1.0		EQUIPMENT SALE **1000A, 480/277V, 4P, N3R CATERPILLAR INC. MODEL TRANSWITCH ID NO: 10-038 SERIAL NO: TSG033510		10215.66
1.0		EQUIPMENT SALE **1200A, 480/277V, 4P, 4W, N3R CATERPILLAR INC. MODEL TRANSWITCH ID NO: 10-039 SERIAL NO: TSG03511		10812.66
1.0		EQUIPMENT SALE **3000A, 480/277V, 3P, 4W, N3R CATERPILLAR INC. MODEL SWITCHGEAR PARALLELING SWITCHGEAR ID NO: 10-040 SERIAL NO: SWGR36267		244869.50

SOLD TO:

CAM CONSULTING
3874 CIVIC CENTER DR
NORTH LAS VEGAS NV

89030-7524

SHIP TO/REFERENCE:

CITY OF LAS VEGAS NEW CITY
MOJAVE ELECTRIC INC
2755 W HACIENDA AVE
LAS VEGAS NV 89118CASHMAN
Power Solutions

BAT

Computer Protection
Systems
WHOLESALE & RETAIL DISCOUNT

ERS

TERMS: DUE UPON RECEIPT OF INVOICE. A 1.5%
PER MONTH LATE CHARGE WILL BE ASSESSED ON
PAST DUE INVOICES. 8-0010V231001

CASH003

JA 0000637

CASHMAN



INVOICE

 1.800.837.2328
 www.cashmanequipment.com

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

 PLEASE REMIT TO:
 Cashman Equipment Company
 File # 58751
 Los Angeles, CA 90074-8751

S1236701 02-01-11 109502

598936.26

THANK YOU!

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

S1236701	02-01-11	109502	767810-GRN10010	00	E	815	4	2
S12367	02-01-11		10					206227
AA	C32	JSJ01016				.0	10-081	

 FUEL
 SPARE PARTS
 SHUNT TRIP STATION
 TRUCK LAY OVER
 CUST SRV AGMT

 7611.75
 2353.17
 497.50
 1741.25
 7462.50

COD

598936.26

SOLD TO:

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

SHIP TO/REFERENCE:

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

 CASHMAN
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CASHMAN



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 www.cashmanequipment.com

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 NORTH LAS VEGAS NV 89030-7524

 PLEASE REMIT TO:
 Cashman Equipment Company
 File # 56751
 Los Angeles, CA 90074-6751

81236601 02-01-11 109502

156627.92

THANK YOU!

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

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CUSTOMER CONTACT: ANGELO CARVALHO

EQUIPMENT SALE

MISC

MODEL 98AB500244

UPS

1.0

ID NO: 10-504

SERIAL NO: 10-71M73354-01

156627.92

 400 KW, 277/480V, 3 PHASE W/BATTERIES
 MGE 15000 UPS60
 SHUNTRIP INVERTER

COD

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THANK YOU!

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CUSTOMER CONTACT: ANGELO CARVALHO

EQUIPMENT SALE
CATERPILLAR INC. MODEL
ID NO: MISC-PD SERIAL NO: XXXXX

1.0

LUSS
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PAST DUE INVOICES.

CASH006

JA 0000640

[illegible]

EXHIBIT D

DISTRICT COURT
CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a Nevada
corporation,

Plaintiff,

vs.

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

Defendants.

) Case No.

) A642583

DEPOSITION OF PERSON MOST KNOWLEDGEABLE OF
CASHMAN EQUIPMENT COMPANY
KEITH LOZEAU

Las Vegas, Nevada
Tuesday, September 4, 2012

REPORTED BY: Tammy M. Breed, CCR NO. 305
JOB NO.: 164929

Page 2	Page 4
<p>1 DEPOSITION OF PERSON MOST KNOWLEDGEABLE OF CASHMAN 2 EQUIPMENT COMPANY, KEITH LOZEAU, taken at 400 South Fourth 3 Street, Las Vegas, Nevada, on Tuesday, September 4, 2012, at 4 9:30 a.m., before Tammy M. Breed, Certified Court Reporter, in 5 and for the State of Nevada.</p> <p>6 7 APPEARANCES: 8 For the Plaintiff 9 JENNIFER R. ROBINSON, ESQ. 10 Pezzillo Robinson 11 6750 Via Austi Parkway 12 Suite 170 13 Las Vegas, Nevada 89119 14 (702) 233-4225 15 jrobinson@pezzillorobinson.com</p> <p>16 For the Defendants: 17 BRIAN W. BOSCHKE, ESQ. 18 SHERILLY A. BRISCOE, ESQ. 19 Cotton, Driggs, Welch, Holley 20 Woloson & Thompson 21 400 South Fourth Street 22 Third Floor 23 Las Vegas, Nevada 89101 24 (702) 791-0308 25 bboschke@nevadafirm.com SBRiscoe@nevadafirm.com</p>	<p>1 Las Vegas, Nevada; Tuesday, September 4, 2012 2 9:30 a.m. 3 -oOo- 4 Whereupon -- 5 KEITH LOZEAU 6 having been first duly sworn to testify to the truth, was 7 examined and testified as follows: 8 9 EXAMINATION 10 BY MR. BOSCHKE: 11 Q. Can you please state your full name for the record? 12 A. Keith Daniel Lozeau. 13 Q. You'd better spell the last name for the court 14 reporter. 15 A. Yes, L-O-Z-E-A-U. 16 Q. You ever been deposed before, Keith? 17 A. No. 18 Q. This is the first time? 19 A. Yes, sir. 20 Q. Great. I'll run through a couple of ground rules 21 with you. I'm sure you talked about this with your counsel 22 but -- and you are represented by counsel, is that correct, 23 Jennifer -- 24 A. Uh-huh. 25 Q. -- Robinson's here?</p>
Page 3	Page 5
<p>1 I N D E X 2 WITNESS: KEITH LOZEAU 3 EXAMINATION PAGE 4 BY: Mr. Boschke 4</p> <p>5 6 7 8 E X H I B I T S 9 EXHIBIT PAGE 10 Exhibit 1 Notice of 30(B)(6) Deposition of 9 11 Person Most Knowledgeable of 12 Cashman Equipment Company 13 Exhibit 2 Letter from Jennifer R. Robinson, 10 14 Esq., Dated 8/31/12 15 16 Exhibit 3 Stop Payment on a check to Cashman 35 17 Equipment in the amount of 18 \$755,893.89, Dated 4/29/11, Bates 19 CASH014 20 Exhibit 4 Application For Credit, Bates 51 21 CASH001 to 002 22 23 Exhibit 5 Invoices and Bill of Lading, Bates 54 24 CASH003 to 008 25 Exhibit 6 Subcontractor's Daily Log, The 60 Whiting-Turner Contracting Company, Bates WTC00070 to 71</p>	<p>1 A. Yes. 2 Q. First, the oath you just took from the court 3 reporter is the same oath you take in a court of law. It 4 carries with it the same obligations and penalties that the 5 oath would take in court. So I just want to make sure you 6 understand that before we get started. Okay? 7 A. Yes, sir. Yep. 8 Q. Okay. You're not going to be able to remember 9 everything that I ask you about today, I'm sure, and I don't 10 want you to guess at anything. I don't want you speculating 11 or guessing at the questions I'm asking. But I am entitled to 12 your best recollection. So to the extent that you remember 13 anything related to the questions I've asked, I'm entitled to 14 know that, but don't guess at something. If you don't know, 15 you don't know, just let me know that. Okay? 16 A. Okay. 17 Q. The court reporter is going to make a transcript 18 about what we're talking about today, my questions and your 19 answers. Couple things related to that. I will do my best 20 not to ask a follow-up question while you're still answering, 21 if you would do me the same courtesy of not answering when I'm 22 asking a question. She can't transcribe us both talking at 23 the same time. Okay? 24 A. Understood. 25 Q. Along the same lines, your lawyer may object, may</p>

Page 6

1 tell you not to respond to one of my questions. I don't think
2 I've got anything like that in here, but she may make an
3 objection for the record. Let her finish before you say
4 anything or -- and I'll try to do the same, give her the same
5 courtesy as well. Okay?

6 A. Fair enough.

7 Q. The court reporter can't transcribe head nods, head
8 shakes.

9 A. (Witness nodding.)

10 Q. Just like that.

11 A. Right. Understood. Understood.

12 Q. Audible responses are going to be great for her. If
13 you need me to clarify any of my questions, if there's
14 something I asked that you don't understand, which is very
15 likely at some point in the morning, just ask me to clarify
16 something because it's very likely that -- I know exactly what
17 I'm talk -- what I'm asking about and you're going to hear a
18 question that I think is really artfully asked of you, and
19 you're going to be like, I don't have any idea what you're
20 talking about, Brian. Please clarify that. And I'd be happy
21 to do that. Okay?

22 A. Okay. Thank you.

23 Q. This is not -- I know that we're under a little bit
24 of a time crunch today, you need to be somewhere this
25 afternoon. That said, I don't want this to be an endurance

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1 contest. If you need to run down the hallway to the restroom,
2 get something to drink, anything like that, we can take a
3 five-minute break. It's not a big deal. Just let me know and
4 say, hey, can we take a quick break, and we'll go off the
5 record and take a quick break. All right?

6 A. Cool.

7 Q. Kind of related to what I said earlier, your counsel
8 may make objections for the record at some point during this
9 proceeding. Unless she -- however, unless she instructs you
10 not to answer my question, let her make the objection. I may
11 or may not respond. And then go ahead and answer the question
12 at that point. Okay?

13 A. Okay.

14 Q. Cool.

15 Are you on any medication today that would prevent
16 you from giving your best testimony?

17 A. No.

18 Q. Is there any other reason why you can't give your
19 best testimony today?

20 A. No.

21 Q. Don't have a cold or a flu or anything?

22 A. Other than a three-day weekend, everything's fine.

23 Q. I've got that same problem working for me this
24 morning.

25 Let me ask you, other than speaking to your attorney

Page 8

1 have you done anything to prepare for this deposition this
2 morning?

3 A. I went through back -- excuse me. I went back
4 through some of my e-mails from the time period, but there was
5 a lot of things that were frankly verbal, um, leading up to a
6 lot of this very early on. So I -- there's not -- there
7 wasn't a lot of preparation I was able to do, so I had to do
8 some review of some e-mails but that's about it.

9 Q. Sure. And that's part of the reason that we're
10 taking a deposition today, because a lot of this was verbal
11 and there were meetings and whatnot and I just need to know
12 kind of what happened.

13 Other than your counsel have you spoke -- did you
14 speak to anybody about your deposition today?

15 A. No.

16 Q. Nobody at the company?

17 A. At Cashman?

18 Q. Yeah.

19 A. There's a couple people at Cashman that know I'm
20 here. My supervisor, Joel Larson, and Shane Norman, who
21 you've already deposed I think, so -- but other than that, no.

22 Q. Shane was the one I was kind of -- did you talk to
23 Shane at all about the substance of what you were coming here
24 to do today, or does he just know that you're here?

25 A. He just knows I'm here.

Page 9

1 Q. Anything substantive you talked about with anybody
2 at Cashman other than, hey, I've got to go take this
3 deposition? I'm going to this deposition, I'm going to be out
4 of the office for a few hours?

5 A. Yeah -- no.

6 Q. Okay. Did you look at -- other than the e-mails we
7 just talked about, did you look at any documents to prepare
8 for this deposition?

9 A. No.

10 MR. BOSCHEE: I'm going to mark as the first
11 exhibit, it's the amended, submitted depo notice,
12 (Exhibit No. 1 marked.)

13 Q. (BY MR. BOSCHEE) Take a look at this exhibit. This
14 is an amended deposition notice that we sent out, which is why
15 you're here today.

16 A. Uh-huh.

17 Q. Do you recall receiving a copy of this?

18 A. Yes, sir.

19 Q. Go to page 3.

20 A. (Witness complying.)

21 Q. Excluding items three and four, which we'll talk
22 about in just a second, are you -- to the best of your
23 understanding are you the person most knowledgeable from
24 Cashman with respect to items one, two, five, six, seven, and
25 eight? And take a second.

Page 10	Page 12
<p>1 A. Likely so.</p> <p>2 Q. Okay. I'm going to mark the next -- keep that in</p> <p>3 front of you.</p> <p>4 A. Okay.</p> <p>5 Q. I have another exhibit that I just received this</p> <p>6 morning. I'm literally going to ask you one question.</p> <p>7 (Exhibit No. 2 marked.)</p> <p>8 Q. (BY MR. BOSCHIE) Okay. I don't know that you've</p> <p>9 actually seen this letter before. You may have.</p> <p>10 A. Nope.</p> <p>11 Q. Okay. My question to you is, without going back to</p> <p>12 items three and four in your -- in the deposition notice,</p> <p>13 relates to insurance policies and insurance claims basically.</p> <p>14 My understanding from this letter is that you are not the</p> <p>15 person most knowledgeable from Cashman as to insurance-related</p> <p>16 issues; is that correct?</p> <p>17 A. That is correct.</p> <p>18 Q. Just to save us some time because I've now deposed</p> <p>19 two folks over at Cashman and I don't want to have to keep</p> <p>20 doing this, do you happen to know off the top of your head who</p> <p>21 I would need to talk about insurance-related issues, who that</p> <p>22 person might be?</p> <p>23 If you don't know, you don't know. That's fine.</p> <p>24 I'm just trying to save everybody a little bit of time going</p> <p>25 forward.</p>	<p>1 A. So I'm sorry to just give kind of an obtuse answer,</p> <p>2 but that's -- that's the situation.</p> <p>3 Q. No, that -- that stinks. Okay.</p> <p>4 Well, it could be -- it could be something where</p> <p>5 counsel may pick up the phone and ask a question or two and</p> <p>6 get to the bottom of this, but I don't want -- I'm certainly</p> <p>7 not going to drag him in for that.</p> <p>8 Okay. But other -- other than the insurance, who we</p> <p>9 may need to talk to Mike or Lee about, you're good to go on</p> <p>10 everything else in the depo -- in Exhibit 1 there?</p> <p>11 A. Yes, sir.</p> <p>12 Q. What is your position with Cashman?</p> <p>13 A. I am the sales and rental manager of the power</p> <p>14 division.</p> <p>15 Q. Okay. And how long have you had that position?</p> <p>16 A. Six years.</p> <p>17 Q. Okay. Did you have a different position with the</p> <p>18 company prior to that?</p> <p>19 A. I was just a sales rep.</p> <p>20 Q. Okay. What are your -- as -- as manager of the</p> <p>21 power division, what are your job responsibilities with that</p> <p>22 position for the last six years or so?</p> <p>23 A. All of our account managers statewide report to me,</p> <p>24 and basically I'm responsible for growing our sales and rental</p> <p>25 business.</p>
Page 11	Page 13
<p>1 A. There's one of two people.</p> <p>2 Q. Okay.</p> <p>3 A. And the only reason I say it's one of two people is</p> <p>4 we had some turnover. Our previous CFO would have been the</p> <p>5 person.</p> <p>6 Q. Uh-huh.</p> <p>7 A. Our new CFO was not present when all this happened.</p> <p>8 Q. Okay.</p> <p>9 A. So his name is Lee Vanderpool. The president of the</p> <p>10 company is Mike Pack, and Mike at the end of the day might be</p> <p>11 the best person to discuss insurance and that kind of --</p> <p>12 Q. Mike Pack was the CFO at the time?</p> <p>13 A. No, he is president.</p> <p>14 Q. Okay.</p> <p>15 A. And he has been president throughout.</p> <p>16 Q. Who was the CFO at the time?</p> <p>17 A. Jim Moore.</p> <p>18 Q. Jim Moore.</p> <p>19 A. And quite frankly, I'm not sure Jim Moore would be</p> <p>20 available to be deposed or not because he has terminal cancer.</p> <p>21 Q. That would probably be no.</p> <p>22 A. Yes.</p> <p>23 Q. Okay. I assume -- is that why he left the company?</p> <p>24 A. That is.</p> <p>25 Q. Okay.</p>	<p>1 Q. Okay. How long have you been employed with Cashman</p> <p>2 overall?</p> <p>3 A. Sorry, I have to think because I left for two years.</p> <p>4 Overall about 19 years.</p> <p>5 Q. Well, walk me through that. You started with</p> <p>6 Cashman when?</p> <p>7 A. '91. Left in '97.</p> <p>8 Q. Okay.</p> <p>9 A. Came back in '99. Been with them ever since.</p> <p>10 Q. What did you do with them from '91 to '97?</p> <p>11 A. I was a technician for a good part of the time, and</p> <p>12 when I left I was a salesperson.</p> <p>13 Q. What were your job responsibilities as technician?</p> <p>14 Walk me through a typical day in the life of a Cashman</p> <p>15 technician.</p> <p>16 A. Okay. We repair anything that we sell, and that's</p> <p>17 primary Caterpillar products but there -- there's some other</p> <p>18 products associated with that too. I worked on generators,</p> <p>19 electrical equipment, engines, some machinery. You know, the</p> <p>20 idea was to get things running before warranty repairs,</p> <p>21 startups, those kind of things.</p> <p>22 Q. Okay. And that was what you did before you become a</p> <p>23 sales rep?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Okay. And when did you kind of transition from tech</p>

<p style="text-align: right;">Page 14</p> <p>1 into sales?</p> <p>2 A. I believe it was 1995.</p> <p>3 Q. Okay. And then when you came back in '99, were you</p> <p>4 again a sales rep or --</p> <p>5 A. I was --</p> <p>6 Q. Okay.</p> <p>7 A. -- yes.</p> <p>8 Q. Okay. And you've had that until about six years</p> <p>9 ago?</p> <p>10 A. Correct.</p> <p>11 Q. Which would be 2006, 2007, sometime in there?</p> <p>12 A. Yes.</p> <p>13 Q. With respect to your current job, does your current</p> <p>14 job require any of your, I guess, technical background or your</p> <p>15 background as a technician? Does that come into play with</p> <p>16 what you do now?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. How so?</p> <p>19 A. What we do is -- the products and services that we</p> <p>20 sell -- everything is a very technical sale, so it is</p> <p>21 tremendously helpful to be able to fall back on that</p> <p>22 background and have an understanding when I have somebody</p> <p>23 telling me something in the field that they have going on that</p> <p>24 I -- I have a reasonable knowledge of the challenges that they</p> <p>25 have and what they need to do to fix them.</p>	<p style="text-align: right;">Page 16</p> <p>1 into that. And so they're not unfortunately universal to</p> <p>2 every project.</p> <p>3 Q. Okay. Well, I guess what I'm -- what I'm wondering,</p> <p>4 specifically with respect to this project, my understanding is</p> <p>5 that -- that there is some concerns or some issues with --</p> <p>6 with getting this -- at this stage, like tomorrow, getting</p> <p>7 this stuff started up and installed and running with these</p> <p>8 codes today. Could you -- could you explain to me what -- if</p> <p>9 you know, what your concerns are with respect to that?</p> <p>10 A. Only to the extent that we (indicating) discussed it</p> <p>11 on the phone, and there's -- there's two --</p> <p>12 MS. ROBINSON: I'm going to object --</p> <p>13 Q. (BY MR. BOSCHKEE) I don't want to know anything -- I</p> <p>14 don't want to know anything you discussed with Jennifer. I</p> <p>15 don't want to know anything that -- any attorney/client</p> <p>16 communication.</p> <p>17 MS. ROBINSON: And I'm going to object to the form</p> <p>18 of your question. Maybe it's a little vague. If you can</p> <p>19 rephrase. "Issues," I don't know.</p> <p>20 MR. BOSCHKEE: I'm sure -- okay. Concern was the</p> <p>21 real -- was the word I was looking at.</p> <p>22 Q. (BY MR. BOSCHKEE) You guys have some -- you guys</p> <p>23 have some codes that are required to, as I understand it, get</p> <p>24 the stuff over at City Hall up and running, correct?</p> <p>25 A. Typically, yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 Not to mention, prior to the sale I can have a</p> <p>2 discussion with architects and engineers and contractors and</p> <p>3 those kinds of things and talk them through what they're</p> <p>4 buying, why they're buying it, and what we're going to have</p> <p>5 to -- what challenges and opportunities we'll face during</p> <p>6 installation and start-up.</p> <p>7 Q. Okay. With respect to specifically the City Hall</p> <p>8 project -- and that's pretty much what we're going to be</p> <p>9 talking about today.</p> <p>10 A. Uh-huh.</p> <p>11 Q. -- do you have a general familiarity with the</p> <p>12 start-up -- well, your word -- start-up, installation, ah,</p> <p>13 requirements for -- for what's going on over there right now?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And what I'm thinking of specifically are --</p> <p>16 there's some codes that counsel and I are still -- still</p> <p>17 arguing about a little bit with the judge. But there's some</p> <p>18 codes that are -- as I understand, are required to get things</p> <p>19 up and running over there. Do you have a familiarity with</p> <p>20 that?</p> <p>21 A. Generally speaking, yes. And the reason I say</p> <p>22 generally speaking is --</p> <p>23 Q. That's fine.</p> <p>24 A. -- each municipality has their own rules and</p> <p>25 regulations. And then sometimes the design engineer has input</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Okay.</p> <p>2 A. And I say typically because I have no direct</p> <p>3 knowledge of the status of the equipment, what's been done,</p> <p>4 what's not been done --</p> <p>5 Q. Right.</p> <p>6 A. -- and what they're requiring.</p> <p>7 Q. Well, going back in time, assuming -- I don't want</p> <p>8 to say assuming but -- you guys at some point stopped working</p> <p>9 on this project for -- because of nonpayment, correct?</p> <p>10 A. Correct.</p> <p>11 Q. At that point before anything else had happened, you</p> <p>12 guys had some codes that would have been used to get the stuff</p> <p>13 started, installed, and running, correct?</p> <p>14 A. Codes can have two different definitions.</p> <p>15 Q. Tell me what they are. You're the technical guy and</p> <p>16 I'm not.</p> <p>17 A. So there's -- there's -- there's National Electrical</p> <p>18 Code and fire protection codes.</p> <p>19 Q. Sure.</p> <p>20 A. And those are -- those are code requirements that</p> <p>21 are regulations, laws. And then there's codes that are</p> <p>22 associated with communication protocols that we use for the</p> <p>23 equipment to be able to talk to each other. So there's -- I'm</p> <p>24 not sure which codes it is that they're asking about. That's</p> <p>25 where I'm at. I'm not sure -- I'm not sure what's holding</p>

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1 this them up at this point. I don't know.

2 Q. Okay. Well, I'm just thinking out loud here. Both
3 sets of those codes would probably be -- probably pretty handy
4 in terms of getting everything up and running, I would think,
5 wouldn't they?

6 A. The codes -- the protocols -- the communication
7 protocols for the equipment would be absolutely required. The
8 codes for the fire protection -- it's NFPA, National Fire
9 Protection Association, and the National Electrical Code and
10 Clark County fire code or City of Las Vegas fire code,
11 depending upon which it is, they often vary from job to job.

12 Q. Okay.

13 A. So it's hard for me to say if that's what they hold
14 up is, specifically what the hold up is. And what we do --
15 what would typically happen in a project like this is, once we
16 get to the latter stages of the job, there's meetings between
17 us and the contractor and the inspectors, and the inspectors
18 sort of lay out what specifically they're looking for to meet
19 the codes.

20 And then a lot of times we have to make adjustments
21 to our bills of materials or specifically how -- we may have
22 an image at the beginning of the job of how we're going to
23 address the codes. What that looks like at the end of the
24 project could be something very different.

25 Q. Okay.

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1 protocol and communications that make the system work.

2 If the load does exceed the rating of one generator
3 set and you need both generator sets, then you're -- then
4 those codes become absolutely necessary.

5 Q. Okay. I'm not -- I'm not an engineer or a
6 contractor, per se, but I've been over to City Hall. It's a
7 pretty big project. I mean, fair to say that it's going to --
8 it at least contemplates both generators being needed over
9 there, doesn't it? I mean it's...

10 A. It was certainly designed that way.

11 Q. Right.

12 A. It's -- that would be something the design engineer
13 could tell you better than I could.

14 Q. Sure.

15 But when -- when you guys were supplying the
16 equipment, it was certainly contemplated it was going to be --
17 that both generators were going to be used over there, wasn't
18 it?

19 A. Yes, but that could be for a different reason. In a
20 lot of cases they'll have two generator sets for redundancy.

21 Q. Sure.

22 A. So they won't -- the load doesn't exceed the
23 capacity of both generators -- or excuse me, of one generator.
24 You have the second generator in case the first generator
25 fails.

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1 A. Does that help?

2 Q. It does a little bit. I want to talk about the
3 protocol calls specifically, because I think I know what
4 you're talking about with fire codes. And that's kind of a
5 moving target a little bit.

6 A. Uh-huh.

7 Q. But the protocol codes, if those aren't -- if those
8 aren't in, the equipment can't kind of communicate with each
9 other. What is the net effect of that? I mean what -- what
10 happens if those codes aren't used at installation?

11 A. A qualified person might be able to make the
12 equipment work to a certain extent, but they probably wouldn't
13 be able to make it work to its full capability.

14 Q. Okay. Would there be -- I mean when you say it
15 wouldn't be able to work to its full capability, what are some
16 things that might not -- might not work? Would there be
17 safety concerns?

18 A. It depends.

19 Q. Okay.

20 A. And if the -- one of the things that we talked
21 about -- one of the -- one of the more important functions of
22 this system is to be able to parallel the two generator sets
23 together. If the building load doesn't exceed the capacity of
24 one generator, you could theoretically lock one generator out,
25 use just one generator, and you could bypass a lot of that

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1 Q. Kind of a backup?

2 A. And -- and -- and -- right. And one generator can
3 still carry the entire building. So -- and that's why I said
4 the design engineer would probably have to have a discussion
5 with you about that because I don't know if they had a -- if
6 they had two generators for capacity or two generators for
7 redundancy.

8 Q. Okay.

9 A. Two kind of different things.

10 Q. That makes sense. And it's a government job so
11 redundancy wouldn't be completely out of the question.

12 But assuming that -- if it wasn't -- if it wasn't a
13 redundancy situation, if it was actually two generators were
14 required, then those codes are absolutely going to be
15 necessary for them to communicate with each other?

16 A. That is correct.

17 Q. We may get back to some of that. I have completely
18 gone afield of my outline of questions, so I'm going to try to
19 get back on track here.

20 Before the City Hall project, how many times have
21 you worked with Mojave Electric?

22 A. Oh, boy.

23 Q. Estimate? I don't want you to have to count them on
24 your fingers.

25 A. Yeah. Probably a few dozen.

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<p>1 Q. Okay. How about Whiting-Turner?</p> <p>2 A. Indirectly, probably a dozen times. I say indirect</p> <p>3 because we don't usually deal directly with the general</p> <p>4 contractor.</p> <p>5 Q. Right. Usually deal with --</p> <p>6 A. Mojave Electrical.</p> <p>7 Q. -- with like --</p> <p>8 A. Yes.</p> <p>9 Q. Do you have any idea how many accounts you've opened</p> <p>10 for -- for Mojave off the top of your head?</p> <p>11 A. How many --</p> <p>12 Q. Shane had -- Shane had an estimate, and I was</p> <p>13 wondering if you maybe had a little more -- yeah, I mean how</p> <p>14 many different -- different specific accounts you've opened</p> <p>15 with -- with Mojave?</p> <p>16 A. Oh, you know what. I don't know.</p> <p>17 Q. Dozens?</p> <p>18 A. Well, I guess depends on how you look at it. Are</p> <p>19 you talking about physical accounts, or you talking about</p> <p>20 projects?</p> <p>21 Q. Projects?</p> <p>22 A. Oh, projects. Yeah, probably -- I'm going to say</p> <p>23 three dozen.</p> <p>24 Q. Okay. You personally worked on a lot of those</p> <p>25 projects?</p>	<p>1 Q. Okay.</p> <p>2 A. I mean there's -- there's conditional and there's</p> <p>3 unconditional.</p> <p>4 Q. Sure.</p> <p>5 A. So -- but we have -- again, more recently we've had</p> <p>6 situations where she would hold a check until we signed</p> <p>7 conditional and/or unconditional releases for unrelated</p> <p>8 projects, which is very -- well, let's just say it's not</p> <p>9 consistent --</p> <p>10 Q. Okay.</p> <p>11 A. -- with industry practice. And -- but to collect</p> <p>12 money we did what we had to do paperwork wise to satisfy what</p> <p>13 she was asking for. And this -- quite frankly, this is more</p> <p>14 of a Shane question than mine. He has more direct knowledge</p> <p>15 of a lot of that that was going on. But -- but I do know</p> <p>16 there was some irregularities, and we were really struggling</p> <p>17 with how to -- how to work through that process.</p> <p>18 Q. When you're describing -- and I talked to Shane</p> <p>19 about something related to this. And I don't -- if this is</p> <p>20 getting afield of your knowledge, please tell me. But when</p> <p>21 you're talking about, okay, there's payment due on this</p> <p>22 project and you've got a lien release for this. And basically</p> <p>23 you -- what you typically do in the industry is you swap check</p> <p>24 for a lien release, as I understand; is that right?</p> <p>25 A. For the same project?</p>
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<p>1 A. Yes.</p> <p>2 Q. Prior to this -- and obviously this is a bit of a --</p> <p>3 have you ever had any problems with Mojave prior to this</p> <p>4 incident?</p> <p>5 A. The only problem we ever had with Mojave -- and this</p> <p>6 has been more of a recent thing in the last couple of years --</p> <p>7 they've had somewhat of a different definition associated with</p> <p>8 lien releases. And at times they've asked us to sign lien</p> <p>9 releases when we still haven't received full payment. And</p> <p>10 that's -- it seems to be related to one specific person that</p> <p>11 they hired a couple years ago. And prior to that we never had</p> <p>12 a problem with Mojave ever.</p> <p>13 Q. Okay.</p> <p>14 A. Paid like clockwork.</p> <p>15 Q. Do you know that person's name off the top of your</p> <p>16 head?</p> <p>17 A. Her first name is Francis.</p> <p>18 Q. Okay.</p> <p>19 A. I do not know her last name.</p> <p>20 Q. You don't even need to tell me anymore.</p> <p>21 A. Okay.</p> <p>22 Q. I do know her last name.</p> <p>23 You guys use conditional lien releases though, don't</p> <p>24 you?</p> <p>25 A. Typically.</p>	<p>1 Q. For the same project, correct.</p> <p>2 A. Yes.</p> <p>3 Q. And what I under -- as I understand what you're</p> <p>4 saying is, okay, that's fine for this project. But then you</p> <p>5 gotta project over here, and they're holding your money on</p> <p>6 this one as well looking for -- looking for a lien release</p> <p>7 when you haven't been paid yet. Is that what you're telling</p> <p>8 me?</p> <p>9 A. It appeared from conversations that I had with Shane</p> <p>10 that that was what they were doing.</p> <p>11 Q. Okay. And how often did that happen?</p> <p>12 A. It seemed to happen on every job after she got</p> <p>13 hired.</p> <p>14 Q. Okay. I guess the obvious question to me is -- I</p> <p>15 mean why -- if -- if the payment wasn't made yet, if you guys</p> <p>16 weren't paid in full, why were you giving unconditional lien</p> <p>17 releases?</p> <p>18 MS. ROBINSON: I'm just going to object. It's going</p> <p>19 outside his notice for his person most knowledgeable. So are</p> <p>20 you asking him as the person most knowledgeable of Cashman, or</p> <p>21 did you already depay -- depose Shane as the person most</p> <p>22 knowledge on this issue, are you asking him for his own</p> <p>23 personal knowledge?</p> <p>24 MR. BOSCHEE: I'm asking for his own personal</p> <p>25 knowledge because he brought it up.</p>

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1 MS. ROBINSON: Right. That --
 2 MR. BOSCHEE: I mean that's -- I mean I understand.
 3 But Shane -- Shane painted a very different -- I mean not a
 4 very different, but Shane said something a little different.
 5 I just want to make sure that I understand exactly what --
 6 what this witness is talking about because I just want -- more
 7 of a clarification than anything.
 8 Q. (BY MR. BOSCHEE) To the best of your understanding
 9 why -- you know why -- why were doing -- why were you guys
 10 doing that?
 11 A. To the best of my understanding we had had a
 12 long-term relationship with Mojave Electric. We had no
 13 history of never not being paid. And so we felt like if
 14 that's what we needed to do to accommodate a valuable
 15 customer, then -- then we were willing to do that.
 16 Q. Okay. Again, to the best of your understanding,
 17 prior to this situation, we'll call it, did you guys ever have
 18 a payment problem with Mojave? Have you ever been not paid by
 19 Mojave?
 20 A. Never not paid, no.
 21 Q. Okay.
 22 A. Slow sometimes, but never not paid.
 23 Q. Right. Sometimes -- the situation we're talking
 24 about, you know, a little bit of slow pay, little bits, but
 25 never a non-payment issue, correct?

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1 A. Correct.
 2 Q. Okay. And again, you're usually one or two steps
 3 removed Whiting, but had you ever had this situation with
 4 Whiting before, just not getting paid?
 5 A. Not to my knowledge.
 6 Q. Okay. With respect to -- and again the -- the lien
 7 releases and the -- and the payment kind of Francis holding
 8 the checks, as I understand it, that resulted in a little bit
 9 of a slow -- a slowdown effect, but you guys always did get
 10 paid for the work that you performed prior to this project,
 11 right, as far as you know?
 12 A. As far as I know.
 13 Q. Okay. Now, on this project you guys, as I
 14 understand it, contracted directly with a company called CAM
 15 Consulting, right?
 16 A. Correct.
 17 Q. And they were -- I mean I always look for the
 18 politically correct way to say this, but I mean it's the term
 19 used in the industry I think, minority contractor, are you
 20 familiar with that?
 21 A. Yes.
 22 Q. That was their role here, correct --
 23 A. Yes.
 24 Q. -- CAM Consulting?
 25 A. Yes.

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1 Q. Are you familiar generally with the requirements for
 2 minority contracts? I mean why did they end up being used in
 3 this pro -- in projects like this?
 4 A. That's a broad question, but to --
 5 Q. In your experience?
 6 A. To make it sort of simple, a lot of government
 7 projects require a certain amount of equipment and services to
 8 be purchased by -- from, excuse me, minority entities. And --
 9 and I don't recall what the percentage was, but I can remember
 10 being told early on by -- by -- Peter Fergen is the vice
 11 president of Mojave that does a lot of their purchasing and
 12 those kinds of things. He told me very early on that we were
 13 -- that there was a percentage of the project that had to be
 14 purchased by -- from minority entities and their intention was
 15 to purchase this equipment through a minority entity.
 16 Q. Okay.
 17 A. So I -- so we -- does that answer your question?
 18 Q. I think so.
 19 You've dealt with minority contractors on other
 20 projects, correct?
 21 A. Yes. Not a lot, but yes.
 22 Q. Was this -- was this scenario or was this experience
 23 considerably different than your experiences on other projects
 24 with minority contractors, obviously other than not getting
 25 paid?

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1 A. The obvious exception?
 2 Q. Other than that how did you like the play,
 3 Mrs. Lincoln, but -- yeah, up to that point?
 4 A. You got me with the Mrs. Lincoln.
 5 Q. Sorry.
 6 A. It's okay.
 7 Um, no, I -- I would say in the few instances that
 8 we had to do -- I think the only thing that was different is
 9 in most cases we dealt with a larger company, as opposed to a
 10 very small entity such that CAM was.
 11 Q. Okay. Now, I talked to Shane a lot about the -- the
 12 -- kind of credit process and things like that. We'll talk
 13 about that very briefly in a few minutes. But as I
 14 understand, you worked with -- you were kind of on the ground
 15 and worked with CAM kind of directly in terms of the equipment
 16 transfer, is that fair, or not really?
 17 A. No, not really. I -- no.
 18 Q. Tell me what was your experience. What did you do
 19 with CAM?
 20 A. The only time I actually met Angelo was when we met
 21 over at Mojave's office to discuss transacting this deal
 22 through them.
 23 Q. Okay.
 24 A. And -- and actually I'm not even sure -- I don't
 25 even recall talking to him on the phone after that. It was a

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1 pretty straightforward discussion. We discussed the finances,
 2 the percentage, and came to an agreement, shook hands, and
 3 that was pretty much it.
 4 Q. That was that?
 5 A. Yeah.
 6 Q. Okay.
 7 A. In terms of equipment getting to the site, what I
 8 would call logistics of the project, everything was transacted
 9 directly with the Mojave folks.
 10 Q. Okay. That makes sense.
 11 Did you participate -- when I say "you" I mean you
 12 or anybody else at Cashman -- participate in the selection of
 13 CAM as the minority contractor here?
 14 A. Yes.
 15 Q. Okay. What -- how so? Walk me through the kind of
 16 picking them process, if you will. That was a terrible
 17 question but...
 18 A. No, that's okay. I'll do the best I can here.
 19 We had -- originally all of our equipment was going
 20 to be purchased through a company called NEDCO, which we had
 21 done this with before. And NEDCO's a large company and
 22 there's -- you know, there's generally no problems there. But
 23 they wanted -- this was a very tight competitive bid job.
 24 There was not a lot of money in there to be spiffing (sic)
 25 companies for pushing paper through their books. And what

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1 NEDCO wanted for a percentage was not going to be acceptable.
 2 So we were talking to another group that was just in
 3 the process of getting their disadvantaged business license,
 4 and they were -- they were experiencing delays getting that
 5 done. And Pete contacted me a couple of times and said, you
 6 know, what are we doing? Are -- is that group going to work?
 7 And you know it didn't seem like it was going to,
 8 And then he called me and said, listen, we had this
 9 guy come in. We're using him on a couple other things. Would
 10 you like to meet him? Maybe you could work something out with
 11 him. So -- and I'm not sure how the meeting was actually
 12 arranged. I don't know if he was already there. And -- but I
 13 went over there very shortly after the phone call and met
 14 Angelo at their office. And Pete introduced us in their
 15 conference room, and we sat down and had a discussion.
 16 Q. Okay. And after that discussion you were
 17 comfortable using, I guess CAM, but I mean Angelo? After you
 18 met him you were comfortable using them going forward?
 19 A. I'm not sure if comfortable is the right word. His
 20 documentation was in order. His story seemed legitimate. And
 21 by story he talked about being in the Army Rangers, which I
 22 guess maybe wasn't even the case. But he'd been wounded and
 23 different things, and so he had gotten licensed by this
 24 federal office to be a disadvantaged business. And you know
 25 seemed like -- certainly I think all of us as Americans want

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1 to support people who have come back from wars and those kinds
 2 of things. So it seemed like somebody that we want to try and
 3 do business with. If we have to put money in somebody's
 4 pocket, I would rather put money in somebody like that's
 5 pocket, rather than you know somebody that maybe doesn't need
 6 it quite so much.
 7 Q. Sure.
 8 A. Does that make sense?
 9 Q. Yeah. I think I understand what you're saying.
 10 A. Okay.
 11 Q. And I don't disagree with your rationale on that.
 12 Let me -- you had the meeting, and it's Mojave and
 13 you and Angelo. Did you have any conversations -- I know you
 14 didn't with Angelo, but did you have any conversations with
 15 anybody at Mojave -- okay, Angelo leaves -- kind of, okay, you
 16 left the room now I can talk about you behind your back
 17 conversation. Did you have any conversations like that with
 18 anybody at Mojave about Angelo and CAM and any concerns you
 19 might have using them, you personally?
 20 A. No, not really.
 21 Q. Okay.
 22 A. Not -- not -- not relative to concerns. It was
 23 basically, okay, he's willing to do it for what we're looking
 24 to spend. And so let's go forward, let's get paperwork
 25 written up. At that point the job was getting very

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1 compressed. We needed to get some paperwork going and do some
 2 different things or we were going to start missing some
 3 milestones.
 4 Q. Okay.
 5 A. So it was -- it was -- we jumped right into, let's
 6 get things going.
 7 Q. Time was getting tight at that point?
 8 A. Yes, sir.
 9 Q. Okay. Now, when I talked to Shane he -- he -- he
 10 discussed having some concerns about the credit or in his case
 11 lack of credit that CAM had. Did you ever have a conversation
 12 with Mr. Norman about that?
 13 A. Not specifically, no. I mean understanding was that
 14 there was going to be -- and this was something that Pete and
 15 I had talked about it -- that there was going to be an
 16 exchange of checks pretty -- I mean we understood the fact
 17 that -- that Angelo didn't have three quarters of a million
 18 dollars to lay out and then wait for payment. We understood
 19 that he was going to take payment from Mojave and then turn
 20 right around and cut Cashman a check for our portion. So
 21 there was -- I don't think there was ever any confusion in --
 22 in that regard. And that was our understanding of what was
 23 going to happen.
 24 You know, Shane in his typical process had -- had
 25 Angelo fill out a credit app. He also -- I'm pretty sure --

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<p>1 understood the same, and we moved forward.</p> <p>2 Q. I think you answered -- you indirectly answered</p> <p>3 this, but I just want to clarify. You had never worked with</p> <p>4 CAM or Angelo Carvalho before? Cashman hadn't before this</p> <p>5 project, had --</p> <p>6 A. We had not, that's correct.</p> <p>7 Q. Okay. And again, if you could quantify it, um,</p> <p>8 disadvantaged businesses, minority contractors, how often do</p> <p>9 you think you'd worked with them on other projects? I think</p> <p>10 the word you used was handful but -- less than ten?</p> <p>11 A. Definitely less than ten, probably less than five.</p> <p>12 Q. Just a couple of times?</p> <p>13 A. Yes.</p> <p>14 Q. Have you ever encountered anything like this? And I</p> <p>15 say the "anything like this," a failure to pay by a minority</p> <p>16 contractor?</p> <p>17 A. No.</p> <p>18 Q. Okay. Did you -- aside from what you knew or didn't</p> <p>19 know about CAM, you talked a little bit about Angelo</p> <p>20 personally. And he told you he was an Army Ranger and things</p> <p>21 like that. Did you know any -- did you ever know anything</p> <p>22 else about Angelo Carvalho personally, aside from he's working</p> <p>23 with this company, he's doing this? Did you do any other</p> <p>24 background check on him or anything like that?</p> <p>25 A. With the exception of verifying his status with</p>	<p>1 A. Yes, sir.</p> <p>2 Q. Okay. This is -- you recognize this as the check</p> <p>3 from CAM for the full 755,893.89, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And that was, as I understand from documents that</p> <p>6 have been filed and other things, that was the amount that --</p> <p>7 that you guys were owed on this project for the equipment</p> <p>8 provided, correct?</p> <p>9 A. I don't have our invoice in front of me, but I --</p> <p>10 it's -- I believe it's correct.</p> <p>11 Q. We'll look at those later, but it's close. Okay.</p> <p>12 As I understand it, Shane Norman received this</p> <p>13 check; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you have any understanding -- I talked to</p> <p>16 Shane about his, and you may not know. Do you have any</p> <p>17 understanding as to why you guys accepted a postdated check</p> <p>18 from Mr. Carvalho?</p> <p>19 A. I -- honestly, no.</p> <p>20 Q. Okay. Did he ever communicate anything directly to</p> <p>21 anybody at Cashman, you or otherwise, other than Shane, any</p> <p>22 reason why he would need to give you guys a postdated check?</p> <p>23 A. No.</p> <p>24 Q. Okay. Did you ever have any conversations with</p> <p>25 Shane Norman about the fact that you guys had accepted a</p>
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<p>1 the -- and I'm sorry, I'm forgetting the name of the</p> <p>2 government entity that he was -- he was sponsored by.</p> <p>3 Q. Sure.</p> <p>4 A. I -- with the exception of verifying that that</p> <p>5 letter was legit, had no other knowledge of him.</p> <p>6 Q. So basically just to summarize, just so I've got the</p> <p>7 lay of the land: Time's getting tight. NEDCO wasn't going to</p> <p>8 work out. You had someone else that was having a hard time</p> <p>9 getting a disadvantaged status; is that right?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. And get a call from Mojave. Say, hey, we</p> <p>12 worked with this guy on this other project. Why don't you</p> <p>13 come in and meet him, see if you have a comfort level. You go</p> <p>14 in, have the one meeting at Mojave's office. Everybody shakes</p> <p>15 hands. Submit the paperwork. And then you just kind of go</p> <p>16 forward from there --</p> <p>17 A. Yes, sir.</p> <p>18 Q. -- correct?</p> <p>19 Let's take a look at -- now things start getting --</p> <p>20 going south.</p> <p>21 (Exhibit No. 3 marked.)</p> <p>22 Q. (BY MR. BOSCHEE) I suspect you'll recognize this</p> <p>23 check. Take a second to look at it.</p> <p>24 A. I might be familiar with it.</p> <p>25 Q. I assume you've seen this check before?</p>	<p>1 postdated check from -- from CAM?</p> <p>2 A. No.</p> <p>3 Q. Okay. I'm guessing it's not something you typically</p> <p>4 do, Cashman typically does, accepting postdated checks in</p> <p>5 situations like this?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. Okay. You testified earlier that it was your --</p> <p>8 that everybody's understanding kind of was: Mojave's paying</p> <p>9 CAM, CAM's paying you guys, and that's going to be a fairly,</p> <p>10 you know, simultaneous process, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. Did it concern you that this check was dated</p> <p>13 a handful of days after -- well, let me ask you this: Do you</p> <p>14 have an understanding as to whether Mojave paid CAM the</p> <p>15 755,893? Do you have an understanding as to whether that</p> <p>16 actually happened?</p> <p>17 A. I believe that happened, yes.</p> <p>18 Q. Okay. And then --</p> <p>19 A. I haven't seen that check, so I -- but I believe</p> <p>20 it's happened.</p> <p>21 Q. Okay. I can get it for you as an exhibit, but I</p> <p>22 don't think it necessarily matters.</p> <p>23 And then CAM gives you guys a check, but it's dated</p> <p>24 a few days later. Did that give -- would that be something</p> <p>25 that would cause you -- typically in a situation like this</p>

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<p>1 cause you concern?</p> <p>2 MS. ROBINSON: I'm going to object to incomplete</p> <p>3 hypothetical, and he already stated he had no knowledge.</p> <p>4 MR. BOSCHEE: Well -- okay. I'm saying --</p> <p>5 THE WITNESS: I --</p> <p>6 MR. BOSCHEE: -- as to this personally but --</p> <p>7 THE WITNESS: I was on vacation when this</p> <p>8 happened --</p> <p>9 Q. (BY MR. BOSCHEE) Oh, okay.</p> <p>10 A. -- so I didn't know -- I didn't know any of this was</p> <p>11 even going on until I got back --</p> <p>12 Q. Okay.</p> <p>13 A. -- a week later.</p> <p>14 Q. You get back and there's a stop payment on this</p> <p>15 check, correct?</p> <p>16 A. Welcome back. Yes.</p> <p>17 Q. Exactly. Again, thank you for that vacation.</p> <p>18 Do you guys have -- I mean -- I say you guys, I keep</p> <p>19 saying that, I mean Cashman. Do you have a procedure,</p> <p>20 standard procedure, when a creditor fails to fund like -- as</p> <p>21 in a situation like this?</p> <p>22 A. You know, that's probably a question best asked of</p> <p>23 Shane.</p> <p>24 Q. Okay.</p> <p>25 A. I'm not really in the -- I'm not typically involved</p>	<p>1 A. That was my impression of what he answered.</p> <p>2 Q. Sure.</p> <p>3 These other jobs that you had worked on with</p> <p>4 disadvantaged owners, with minority contractors, on those jobs</p> <p>5 did you receive joint checks, or did it go the process like</p> <p>6 this where the minority contractor got paid and then paid you?</p> <p>7 A. Minority contractor got paid and paid us. We were</p> <p>8 usually dealing with people of -- of greater financial</p> <p>9 strength.</p> <p>10 Q. But the process --</p> <p>11 A. And quite frankly, this was easily the biggest job</p> <p>12 we had ever done in this process as well.</p> <p>13 Q. Right.</p> <p>14 A. We were usually working in the 30- to \$50,000 range.</p> <p>15 It was a completely different scale.</p> <p>16 Q. Three quarters of a million dollars was a little</p> <p>17 bit --</p> <p>18 A. Correct.</p> <p>19 Q. Was the outlier in that?</p> <p>20 A. Right.</p> <p>21 Q. But the process, the actual process, was the same in</p> <p>22 the other jobs as it was here where the minority contractor</p> <p>23 gets paid, then you get paid? Kind of, you know, one check,</p> <p>24 then another check?</p> <p>25 A. Correct.</p>
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<p>1 directly in the collections business.</p> <p>2 Q. Okay. Well, let me ask you a different way, because</p> <p>3 I did ask Shane this. Are you aware of any protections that</p> <p>4 the company has to try to protect itself from something like</p> <p>5 this happening?</p> <p>6 A. Certainly the lien process.</p> <p>7 Q. Right.</p> <p>8 A. You know, in a lot of cases, situation like this, we</p> <p>9 would ask for a joint check. And I believe we did. And</p> <p>10 again, this was Shane's, so I'm -- this is a discussion with</p> <p>11 Shane, so it's secondhand.</p> <p>12 Q. Sure.</p> <p>13 A. But my understanding is that he did ask to do a</p> <p>14 joint check and was told that that was a problem. And I'm not</p> <p>15 sure he was ever told why it was problem, but they didn't want</p> <p>16 to do it.</p> <p>17 Q. Okay. Were you ever told by anybody why a joint</p> <p>18 check was a problem?</p> <p>19 A. The one time I had a discussion with Pete Fergen</p> <p>20 about it early on he -- I think he had a concern that a joint</p> <p>21 check would create a -- what am I looking for -- a potential</p> <p>22 inconsistency in the process of using a disadvantaged</p> <p>23 business. He was afraid the paperwork wouldn't look</p> <p>24 appropriate.</p> <p>25 Q. Okay. These --</p>	<p>1 Q. Okay. As I understand it, no one else from Cashman</p> <p>2 ever accompanied Mr. Carvalho to a financial institution or</p> <p>3 anything like that, it was just Shane that was dealing with</p> <p>4 him directly, correct? As far as you know?</p> <p>5 A. As far as I know.</p> <p>6 Q. Now, going back to the joint check question, if you</p> <p>7 will, you worked on a few dozen projects with Mojave, have you</p> <p>8 ever gotten a joint check from Mojave on any of those</p> <p>9 projects? That you can recall?</p> <p>10 A. No, not that I can recall.</p> <p>11 Q. Okay. And they -- and I understand they wouldn't --</p> <p>12 again, Pete Fergen may have said -- but for whatever reason</p> <p>13 they didn't want to do a joint check on this project, and you</p> <p>14 guys proceeded anyway, right? I mean it wasn't -- that didn't</p> <p>15 cause you guys pause in not -- in not finishing -- you know,</p> <p>16 going forward and giving the lien release, did it?</p> <p>17 A. Did it not give us pause? It was certainly not what</p> <p>18 we would have preferred.</p> <p>19 Q. Okay.</p> <p>20 A. So to say that it -- it probably did give us a</p> <p>21 little bit of pause. But you know in -- in my discussions</p> <p>22 with Shane after the fact, as he said, you know, we don't</p> <p>23 usually have a problem with \$750,000 checks bouncing, it's</p> <p>24 usually the \$3,000 checks that bounce. So it just -- it just</p> <p>25 really at that point hadn't entered our mind that somebody</p>

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1 would do something like this.

2 Q. Okay. We'll get to this in a minute as well but --
3 you did supply an unconditional lien release in exchange for
4 -- not a joint check, but the check from CAM, correct?

5 A. I don't know. I wasn't there.

6 Q. That wasn't you?

7 A. That wasn't me.

8 Q. Do you have an understanding as to whether that
9 happened? I mean I don't -- we talked to Shane about this at
10 length but, . .

11 A. I don't know.

12 Q. Okay. In the absence of a joint check, are you
13 aware of any other precautions that you guys undertook at that
14 point?

15 A. Again, as far as I know the project was liened or
16 preliened.

17 Q. Okay.

18 A. Which, you know, usually is security enough on a
19 government project that you're going to get paid.

20 Q. Sure.

21 And a lot of these are -- these are probably going
22 to be pretty quick questions because I talked to Shane about
23 them a little bit, but you may have -- there were a couple
24 things that he wasn't able to identify. He said you might
25 know.

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1 A. Okay.

2 Q. Are you familiar with the steps that Cashman has
3 taken subsequent to the two bounced checks to obtain funds
4 from Mr. Carvalho?

5 A. You know, from a very high level. I know that I
6 personally went and knocked on his door one day. Shane and I
7 both knocked on his door one day. We tried some very direct
8 things to try and physically collect money. Not to threaten
9 the guy, but to you know compel him to pay. And those were
10 obviously unsuccessful.

11 But other than that when it reached the point of
12 where it was beginning to become apparent that there was
13 something not right, the first thing I did when I got back
14 from vacation is I heard about this, and I sent an e-mail to
15 Pete and I said should we be considering you guys stop payment
16 on his check, because we're -- and -- and he had changed his
17 e-mail address, he changed his phone number. All the
18 information that I had on him from his business card that he
19 gave me in our initial meeting was all invalid.

20 Q. Just so we're clear, when you say Pete, you mean
21 Pete Fergen?

22 A. Pete Fergen. Yep.

23 And so I e-mailed Pete and said, you know, we're
24 trying to reach him. We're not able to reach him. He's not
25 answering his phone. He's not answering his e-mails. Now it

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1 turned out that he had changed his phone numbers and e-mails
2 and I didn't know that. That's why he wasn't responding. Um,
3 well, I think.

4 But I did at that point ask Pete, do you guys want
5 to consider stopping payment on your check? And that was --
6 that was the first thing that came to my mind is if this guy
7 is going to scamper, you know, maybe we can do something real
8 quick to protect Mojave.

9 Q. Okay.

10 A. And so -- and I don't know -- we never verbally had
11 a conversation about it, and so I don't know what they talked
12 about internally --

13 Q. Okay.

14 A. -- with that. But that was -- I mean it was -- at
15 that point I was still in the mode of it's not too late, let's
16 see if we can do something to protect us both. Mojave had
17 been a tremendous partner to us for years. I didn't want to
18 see them get hurt either.

19 So -- and at that point that's what it -- it was
20 starting to look like because of this -- you know, this guy
21 was going to skip away with our money and go lay on a beach in
22 Tahiti. So that was -- that was step one.

23 And then we had some follow-up discussions. Pete
24 got us some updated contact information. And that was when
25 Shane and I started to get sort of aggressive with -- with

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1 trying to chase him down and collect the money. And it really
2 did -- you know, he told us some stories about being deployed
3 in Afghanistan and coming back in the middle of the night and
4 all kinds of other craziness. And we didn't -- his stories
5 were just plausible enough to be believable that the reason
6 why he was having these delays -- the reason he stopped
7 payment on the check was because we were sending him e-mails
8 concerned about the funding of the check and all kinds of
9 other things.

10 It was really -- at that point it seemed very
11 plausible that everything was just sort of a honest mistake
12 and as soon as we got him face to face and at a financial
13 institution he would be able to get us a check legitimately,
14 get us paid, and all those other things. And that's what
15 Shane attempted to do by going down to his bank with him with
16 the second check.

17 Q. Right.

18 A. And then -- and then he bailed at the last minute,
19 is my understanding. And that was when -- that was when the
20 game was really afoot.

21 Q. Okay. Other than the e-mail with Pete Fergen, did
22 you have any follow-up conversations with folks at Mojave
23 about, okay, this guy doesn't have any money in his bank
24 account. He's skipped off with the funds. What can we do?

25 A. I don't recall.

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1 Q. Okay.

2 A. I should, but I don't.

3 Q. Did you have any meetings with anybody at Mojave
4 about this issue?

5 A. I did not.

6 Q. Okay. Do you have any understanding -- other than
7 Shane, do you have any understanding as to whether anybody
8 else at Cashman did, had meetings with Mojave?

9 A. The only meeting we had with Mojave that I recall
10 specifically was -- now Shane was having discussions and those
11 kinds of things, and I'm sure you've got a record of those.

12 The only other meeting that we had was when we were
13 a good bit of the way down the road and we had told them that
14 we weren't going to perform startup on the equipment and those
15 kinds of things and things were starting to get sort of messy,
16 I sent an e-mail to Brian and to Troy. And I said, you know,
17 we've done a lot of projects together over the years -- and I
18 can't remember the exact words in my e-mail. I'm sure we
19 could find it.

20 But the gist of it was, we've done a lot of projects
21 over the years, we've had a lot of challenges, and we've
22 always been able to overcome them, can we get a few minutes of
23 your time to sit down and discuss this and see if there's some
24 place we can find some common ground and get this thing moving
25 forward.

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1 And I mean Troy called me within ten minutes of me
2 hitting the send button on the e-mail. He said, "Absolutely.
3 Come on down. Let's talk about it."

4 And I went down there with my boss, Joel Larson, and
5 Mike Pack, our president. And we met with Brian Bugney
6 (phonetic) and with Troy Nelson, and we discussed the
7 situation where it was and what we could do to get things
8 moving forward again somehow. And there really wasn't a whole
9 lot of resolution in that meeting. I mean certainly Mojave
10 had their stance and we had ours, and I don't think we really
11 made a lot of progress there.

12 Q. Well, let's walk through that a little bit. Let's
13 -- I want to follow up on that meeting because -- I may have
14 heard something different about that meeting.

15 But when you say Mojave had their stance and we had
16 our stance, specifically what do you mean by that?

17 A. You know, they wanted us to perform startup, and
18 Mike basically told them that we would be glad to perform
19 startup if they would cut us a check for \$755,000 we were owed
20 and we would perform startup.

21 Q. Okay. So at that point Cashman had not performed
22 the startup?

23 A. That is correct.

24 Q. Okay. Maybe getting back into the technician days,
25 what was required at that point in time to perform startup, if

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1 you recall?

2 A. You know, at that stage of the game it was still
3 pretty early on. Mojave would -- to kind of step through at a
4 real high level, Mojave would perform installation, which
5 involves putting the equipment in place, hooking it up,
6 verifying wiring, doing some different things against the
7 schematics that we provided them. It's a pretty
8 straightforward deal from their standpoint.

9 And then we have -- we have two stages to startup,
10 basically. We have a technician that goes out and verifies
11 that the installation is correct and everything was done
12 correctly. He verifies wiring and -- basically verifies
13 Mojave's work and makes sure that it's done to the factory
14 standard.

15 And the second part of startup is actually
16 physically starting to energize equipment, make equipment
17 work, activate the electronics, physically start running
18 equipment, setting up controls, adjusting controls, doing
19 different things. And it all -- there's a checklist that we
20 have to do on all the pieces of equipment. And that would be
21 the generators, the switchgear, the transfer switches and the
22 Mitsubishi UPS that are -- that we have checklists from the
23 factories that tell us the things that have to be done.

24 And we go through those checklists. And it's
25 basically just verifying that everything is operating

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1 correctly and there's no -- there's no defects in materials of
2 workmanship at that point. And then when we're done
3 performing those checklists, the customer signs a document
4 that they've received the equipment, it's in good running
5 order, and it now has a viable factory warranty.

6 Q. And those protocol codes that we talked about
7 earlier, about a half hour ago, that's part of that startup
8 process as well, isn't it?

9 A. That would have been part of that process, yes.

10 Q. Energizing and all that --

11 A. Uh-huh.

12 Q. -- okay.

13 And that's -- and none of that, the inspection of --
14 of the installation or the energizing startup, any of that,
15 that hadn't been done when you had the meeting with Mojave,
16 correct?

17 A. No.

18 Q. As to the equipment?

19 A. No.

20 Q. As I understand it, and correct me if I'm wrong
21 about this, but the equipment was delivered, but before you
22 guys could go back and inspect anything or do any of the
23 startup, you know, the energizing or anything, this -- this
24 check issue happened, and that was pretty much where you guys
25 stopped doing anything, correct?

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1 A. That is correct.
 2 Q. Okay. Are you familiar -- Shane talked about this a
 3 little bit, and I don't know if you're familiar with it or
 4 not. But there was -- you guys submitted this to the -- to
 5 the bad check department, I understand?
 6 A. Of the District Attorney's office?
 7 Q. Yes.
 8 A. Yes. Correct.
 9 Q. Okay.
 10 A. I'm not sure of the timing of that, but I know Shane
 11 was -- that was one of his first things that he, Shane did.
 12 Q. Are you familiar with what's happening in that case?
 13 I understand a Grand Jury was apparently called?
 14 A. I testified in front of a Grand Jury. That's the
 15 extent of what I know.
 16 Q. Do you know what the proceeding was that you
 17 testified at, what stage of the -- of the process that was in?
 18 A. I --
 19 Q. If you don't know, you don't know.
 20 A. I don't know.
 21 Q. Okay. That's fine.
 22 Do you have a general understanding of what's going
 23 -- what's happening with that case? Obviously, you testified
 24 so...
 25 A. With the exception of my testimony, I have none.

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1 Q. Okay. Has Mojave participated in that -- in that
 2 case at all, to the best of your knowledge?
 3 A. I don't know.
 4 Q. Okay, that's fine.
 5 I want to just get into the project briefly. I'm
 6 going to show you -- you're probably not going to know a lot
 7 about this document, but I'm going to show it to you anyway.
 8 A. Sure.
 9 (Exhibit No. 4 marked.)
 10 MS. ROBINSON: Can we take a break?
 11 MR. BOSCHEE: Sure. When we come back, we'll talk
 12 about Exhibit 4.
 13 (A brief recess was taken.)
 14 MR. BOSCHEE: Back on the record.
 15 Q. (BY MR. BOSCHEE) You understand you're still under
 16 oath?
 17 A. Yes, sir.
 18 Q. Okay. Off the record we had a ten-second
 19 conversation about Pete Fergen's position with Mojave. Could
 20 you tell me what that is?
 21 A. His -- he's a vice president. He manages a lot of
 22 their -- he manages most of their larger projects. He does
 23 their major product purchasing, handles a lot of logistics,
 24 and has several folks work for him that handle the -- that
 25 handle the direct logistics for him.

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1 Q. Okay. And he was someone that you dealt with? He's
 2 someone at Mojave you personally dealt with a fair amount?
 3 A. For a lot of years, yes.
 4 Q. Right. Okay.
 5 Before we broke I marked CAT application for credit
 6 for CAM Consulting as Exhibit 4. You recognize this document?
 7 A. I do.
 8 Q. Did you see this document prior to using CAM on this
 9 job? Did you review this document --
 10 A. No.
 11 Q. -- I know Shane did?
 12 A. No.
 13 Q. Okay. But you had an understanding that an
 14 Application For Credit was filled out by CAM, correct?
 15 A. I had an understanding, yes.
 16 Q. Because otherwise if they didn't you wouldn't have
 17 been able to use them on -- use them going forward, could you?
 18 A. Right. Even the fact that it wasn't necessarily the
 19 understanding that it was going to be a credit transaction, so
 20 to speak, we weren't extending them 30-day terms -- even when
 21 we deal with somebody on a cash basis, we have them fill out
 22 these applications so we have their pertinent information and
 23 they sign, you know, that they're going to comply with our
 24 terms and conditions and those kinds of things.
 25 Q. Yeah, you anticipated my next question, which is,

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1 even though this was a cash transaction, you're still going to
 2 have a minority contractor in a situation like this fill out
 3 the credit application so that you've got the information --
 4 A. Yes --
 5 Q. -- correct?
 6 A. -- sir.
 7 Q. Okay. And in this case, they filled out -- as I
 8 understand the process, they fill out the Application For
 9 Credit and then there's the -- the invoicing starts taking
 10 place from you to them, correct? I mean, there's nothing --
 11 there's nothing in between that is there?
 12 A. I --
 13 Q. As far as --
 14 A. You know, honestly I'm not sure. Ordinarily there
 15 is a process of, you know, checking trade references and those
 16 kinds of things. And I'm honestly not sure if Shane did that
 17 in this case or not, understanding that it was going to be
 18 sort of a check exchange. So I don't know the answer to that.
 19 Q. Okay. And we did talk to Shane about that. I don't
 20 think it necessarily matters for what we're talking about.
 21 But I guess what I'm asking is: There wasn't -- there isn't
 22 some other document that transpires between the credit
 23 application and the beginning of invoicing that I just haven't
 24 seen, is there, between you and CAM?
 25 A. That -- a purchase order.

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1 Q. Right.
 2 A. Right. That's it.
 3 Q. Let's go to the first invoice or an invoice.
 4 (Exhibit No. 5 marked.)
 5 Q. (BY MR. BOSCHEE) These are -- Exhibit 5, take a
 6 look at them -- are some invoices that I'm guessing are going
 7 to look familiar to you I hope.
 8 A. Yes.
 9 Q. Okay. Followed up with -- we've got the Bill of
 10 Lading in the back?
 11 A. Bill of Lading.
 12 Q. I assume you are familiar with these documents?
 13 A. Yes.
 14 Q. Now, just to be clear about something, did -- to the
 15 best of your understanding, Cashman ever enter any contract
 16 directly with Mojave on this project?
 17 A. I don't know how to answer that question. And the
 18 reason I say that is because the purchase order was a Mojave
 19 Electric purchase order. It was on their letterhead. And I
 20 believe the line said, Care of CAM Consulting or something --
 21 Q. Okay.
 22 A. -- along those lines. So I guess I'm not sure how
 23 to answer that.
 24 Q. Well, let me ask you -- let me ask you a better
 25 question: There's no -- there's no signed written contract

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1 between Cashman and Mojave that I just haven't seen for this
 2 project, is there?
 3 A. With the exception of that purchase order that --
 4 Q. The purchase order, right.
 5 A. No.
 6 Q. As a part of -- of the overall -- of the overall
 7 agreement between CAM, Cashman, and Mojave, could you just
 8 tell me generally what was the scope of work that Cashman was
 9 going to perform on this project, kind of start to finish?
 10 A. Okay. We would take the purchase order and provide
 11 what we call submittals, which is basically a technical
 12 description of the equipment we proposed to provide. And we
 13 provide those submittals to Mojave Electric, and they provide
 14 those to Whiting-Turner, who in turn provides them to the
 15 architects and engineers that design the building.
 16 And basically everybody just reviews everybody's
 17 scope of work and what they're proposing to use to make sure
 18 it meets with their specifications and requirements. And I
 19 don't know the specific details relative to this because I'm
 20 not the person that directly reviews those anymore. But I
 21 believe there was a few questions relative to some of our
 22 equipment that the engineers came back with, but there was
 23 nothing -- they were all of a very minor nature. And -- and I
 24 believe we addressed those questions.
 25 And we received a release from Mojave Electric to go

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1 ahead -- the release basically signals us, go ahead and order
 2 the equipment. So we went ahead and ordered equipment. The
 3 equipment gets built, produced, modified in some cases, and
 4 then delivered to the site. And that's the Bills of
 5 Lading --
 6 Q. Sure.
 7 A. -- that are on here. And we delivered the
 8 generators and the transfer switches, the paralleling gear and
 9 the UPS to the site, coordinating with -- I believe Chris
 10 Meyers is the project manager on this job for Mojave. And
 11 we -- our project manager handled all the logistics with
 12 Chris, getting everything to the site when they needed it,
 13 where they needed it.
 14 Mojave unloads the equipment, installs the
 15 equipment, as we discussed earlier.
 16 Q. Right.
 17 A. When the equipment's all installed, they call us out
 18 to perform startup. And I kind of outlined that process as
 19 well. And at the end of all of that when the successful
 20 startup is completed, we complete the paperwork that we submit
 21 to Caterpillar and Mitsubishi that states that the startup was
 22 completed by a factory-certified technician, everything
 23 conforms to their requirements as far as the installation
 24 goes, and we're good to start the warranty at that time on all
 25 both those pieces of -- or three of those pieces of equipment.

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1 Q. Okay.
 2 A. That's pretty much it. I -- as I said earlier, some
 3 of the, I guess what I would call fine-tuning of the project,
 4 how they're going to comply with the fire department as far as
 5 alarms and their fire command room and some different things,
 6 a lot of that stuff is somewhat of a fluid situation. And
 7 when we get to the end -- we have an idea at the beginning how
 8 we're going to address that, but sometimes what we plan on
 9 doing at the beginning is not exactly what happens at the end.
 10 And so we -- we, you know, typically participate in
 11 some meetings. We discuss how we intend to address whatever
 12 it is they're asking for. And then we go through the process
 13 of doing that. It's usually not a tremendously big deal.
 14 Q. That was very thorough. It was a good answer to my
 15 very vague question.
 16 We discussed earlier the scope and you just
 17 discussed the scope involved the installation of the st -- the
 18 startup primarily of a lot of this equipment down the line a
 19 little bit. And that never happened, correct, because of the
 20 check?
 21 A. Right.
 22 Q. Right.
 23 A. We put an all stop to everything.
 24 Q. Sure.
 25 Now, looking at this exhibit -- looking at the Bill

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1 of Lading first -- Bills of Lading, you see at the top there
2 it says -- the date on there is 1/17/11. Does that comport
3 generally with your recollection of when most of this
4 equipment was delivered? January, early February of 2011?
5 A. Without having my calendar in front of me it seems
6 right.

7 Q. Okay. The reason I ask -- and then we'll move on to
8 the next -- because the first two invoices which constitute,
9 you know, the majority -- it's actually the first three pages
10 of this exhibit, you've got the first invoice there for
11 598,936.26?

12 A. Uh-huh.

13 Q. And then the 156,627.92. And they're both dated
14 February of 2011, February 1st of 2011. Again, does that
15 comport generally with your understanding of when this
16 equipment was delivered to the site?

17 A. The February 1st date or the January 17th?

18 Q. Well, either one. I mean I guess -- let me ask you
19 a better question.

20 A. Because we have two different things here.

21 Q. Sure.

22 A. The January 17th I'm going to say is probably the
23 date that the equipment left the factory, and then the
24 February 1st date is probably pretty close to when the stuff
25 actually arrived on the site.

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1 Q. Okay.

2 A. Does that make sense?

3 Q. Yeah, and that's what I was going to ask you?

4 A. Okay.

5 Q. The Bill of Lading is probably when the stuff
6 leaves. And then sometime before February 1st is when the
7 equipment arrives on the site, because then you send the
8 invoice out because the equipment's been delivered --

9 A. That is correct.

10 Q. -- correct?

11 Okay. So that's most of it, it looks like. And
12 then I've got another one that's the fourth page in. It looks
13 like some miscellaneous lugs essentially were -- were
14 delivered for \$329.71, it looks like March 25, 2011. Do you
15 have a specific recollection of that?

16 A. I have no idea.

17 Q. Okay. But per your understanding, almost all of the
18 equipment, other than maybe these lugs, all of that stuff was
19 delivered to the site a little bit before February 1st, 2011;
20 is that right?

21 A. Yes.

22 Q. Okay. Sitting here -- and if you add -- I'll
23 represent to you if you add the three invoices up -- we talked
24 about this earlier. I did the math, and I'm not very good at
25 this, but I'm guess -- it comes out to 755,893.89. Do you

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1 have an understanding of whether Cashman delivered any
2 materials or did any additional work on -- on the City Hall
3 project after the -- you know, after March of 2011?

4 A. The only thing that I know of is we have a -- we
5 have a factory project manager for paralleling gear
6 specifically who visited the site sometime after this, just to
7 review the installation and those kinds of things. And I
8 don't remember the specific date.

9 Q. When you say after this?

10 A. Right.

11 Q. Is that after the installation or after delivery?

12 A. After delivery.

13 Q. Okay. Would it have been shortly after the
14 delivery?

15 A. Pretty shortly.

16 Q. I'll introduce another exhibit. This might help.
17 (Exhibit No. 6 marked.)

18 Q. (BY MR. BOSCHÉE) Exhibit 6, I will represent is --
19 is what appear would be my client's daily log.

20 A. Okay.

21 Q. Okay. This is the last -- if you take a look -- and
22 we've got some -- we've got some dates on here. And it's got,
23 (as read): Description of work performed. It's kind of hard
24 to read. And this goes into -- this is that right -- this is
25 between, if you look at the dates, January 20th, January 21st,

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1 after the Bill of Lading, but before the invoice.

2 January 21st, this is the last record that my client
3 has of Cashman actually being onsite. Do you have any
4 understanding or documentation that Cashman was onsite after
5 this, after January 21st?

6 A. I don't because that gentleman doesn't work for
7 Cashman, he works for the factory.

8 Q. Okay.

9 A. So I -- and I couldn't tell you what the date was,
10 I couldn't tell you what the date was.

11 Q. Okay.

12 MS. ROBINSON: Can you clarify who you mean by "my
13 client"?

14 MR. BOSCHÉE: Oh, I'm sorry.

15 MS. ROBINSON: Who you're identifying, because you
16 have so many.

17 MR. BOSCHÉE: I understand.

18 You've got -- what you've got here is a -- is a
19 Whiting-Turner document. I believe this was actually filled
20 out by Mojave.

21 MS. ROBINSON: Oh.

22 MR. BOSCHÉE: By the subcontractor. And the reason
23 I say that is because it's a Subcontractor's Daily Log, and it
24 says, (as read): Trade, Mojave.

25 Q. (BY MR. BOSCHÉE) So someone from the factory came

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1 out in the -- you know, shortly after delivery of the stuff to
2 inspect it, but you don't have any knowledge or documentation
3 that anybody from Cashman was actually onsite or delivered any
4 materials after January 21st of 2011, do you?

5 A. Not to my knowledge.

6 Q. Okay. Do you have any -- again, there's the factory
7 person that came out -- I understand the factory person is not
8 a Cashman employee, correct?

9 A. That is correct.

10 Q. Okay. Do you have any -- any record or knowledge of
11 any work that Cashman performed after January 21st of 2011?

12 A. I don't.

13 Q. Kind of what I'm getting at is, we talked about the
14 fact that there was a bunch of stuff that was going to happen,
15 but then the check incident happened so you guys never got to
16 the inspection and then the -- the startup. So after delivery
17 of this stuff, January 20th and 21st, you guys were done, you
18 guys didn't do any other work on this project, correct?

19 A. Right. At that point we're in a wait mode for
20 Mojave to contact us and let us know they want us out to the
21 site.

22 Q. Sure.

23 And then the -- the check unfortunateness happens
24 and then that was that?

25 A. Right.

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1 Q. So the scope of work that we talked about earlier
2 that include the startup and everything, there's no -- we're
3 not -- we don't have any dispute between us, you guys didn't
4 complete the scope of work that you had originally agreed to
5 do, correct?

6 A. Correct.

7 Q. Because you didn't get paid?

8 A. Right.

9 Q. Right. Okay.

10 And the work that was left to be completed, just so
11 I've got this clear in my mind, was you guys were going to go
12 out inspect the installation that Mojave and/or whoever had
13 done with the equipment and then perform the startup, correct?

14 A. Correct.

15 Q. And that was going to involve those protocol codes
16 that we talked about earlier, correct?

17 A. That would involve -- that would be part of it, yes.

18 Q. Okay. Did you guys receive -- do you recall
19 receiving a demand from Mojave to complete the work -- to
20 complete your scope of work? Does that ring a bell?

21 A. I'm not sure about a demand. I got an e-mail
22 asking.

23 Q. Let's start there.

24 A. Yeah. I got an e-mail asking and -- and I, you
25 know -- from Pete Fergen.

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1 Q. Okay.

2 A. And I said, you know, we're not in a position to be
3 able to do that. We got to work this money thing out first
4 and then we'll be out.

5 Q. Sure.

6 Was that e-mail before or after you had the meeting
7 with Brian and Troy?

8 A. Before.

9 Q. Okay. So Pete sends you an e-mail saying, hey, you
10 know got this problem, but we really need you to come out and
11 get the inspection and startup done. You say, no, you know
12 this money issue is a big deal. And then sometime after that
13 you send an e-mail to Troy. Troy calls you up. You guys go
14 and have a meeting, but that doesn't resolve it either,
15 correct?

16 A. Correct.

17 Q. Okay. And just so I understand, the reason you guys
18 -- when I say "you guys," you being part of the
19 decision-making process, I'm assuming, did not do the
20 inspection and startup is because you didn't get paid,
21 correct?

22 A. Correct.

23 Q. Were there any other issues that you -- I mean --
24 and again, you know, other issues besides the \$755,000 you --
25 but were there any other issues or reasons that you wouldn't

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1 have gone out and done the inspection or the startup?

2 A. No.

3 Q. Did you receive any complaints from Mojave about the
4 quality or functioning of the materials that were provided?

5 A. No.

6 Q. Okay. Do you recall anybody at Mojave ever
7 requesting repair of any of the equipment that was provided?
8 Does that ring a bell?

9 A. No.

10 Q. You personally didn't -- don't have knowledge of
11 that?

12 A. Don't recall that.

13 Q. Then obviously the follow-up of that would be: You
14 don't recall ever actually going out and repairing any of the
15 equipment out at the job site, do you?

16 A. No.

17 Q. Okay. Because again, January 21st that's -- you
18 guys haven't gone back out there to do any inspection,
19 installation, or repair any other work out there, have you?

20 A. Not to my knowledge.

21 Q. Okay. Do you have an understanding -- did anybody
22 at Mojave communicate to you they were going to try to hire
23 some folks, other contractors, to complete your work?

24 A. Yes.

25 Q. Who communicated that to you?

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<p>1 A. Pete Fergen.</p> <p>2 Q. What did Pete tell you?</p> <p>3 A. He said first he was going to contact some</p> <p>4 neighboring CAT dealers to see if they could get one of them</p> <p>5 to do it. And then -- and that was sort of the end of our</p> <p>6 conversation in that regard because it -- because the</p> <p>7 understanding is that only an authorized Caterpillar dealer</p> <p>8 can start this equipment up.</p> <p>9 Q. Okay.</p> <p>10 A. So I -- when -- when we started hearing rumors that</p> <p>11 maybe there was an independent company out there starting it</p> <p>12 up, I was not aware that they we're looking at hiring an</p> <p>13 independent.</p> <p>14 Q. Okay. When you are talking to Pete and had the</p> <p>15 meeting with Brian and Troy -- I want to be -- I want to be</p> <p>16 clear about this so I -- so I know. There was no dispute that</p> <p>17 you guys weren't -- that you weren't paid, that CAM's check</p> <p>18 bounced. Why were they asking you -- or what were they</p> <p>19 communicating to you that they want -- as a reason to go out</p> <p>20 there and finish the job?</p> <p>21 A. You know, our discussions at that point were</p> <p>22 basically it needs to be done.</p> <p>23 Q. Okay.</p> <p>24 A. They have obligations to Whiting-Turner. Whiting-</p> <p>25 Turner has obligations to the owner. And they -- you know, it</p>	<p>1 Q. Understand. And I'm not going to have you look at a</p> <p>2 document that you haven't seen.</p> <p>3 Were you -- did you play any part in -- in the lien</p> <p>4 process in terms of getting the process started or anything</p> <p>5 else, or was that all Shane?</p> <p>6 A. Pretty much all Shane. The only thing -- the only</p> <p>7 part of that process that our department has is we provide the</p> <p>8 customer with a form to fill out with the prelien information</p> <p>9 so we have all the interested parties' information and those</p> <p>10 kinds of thing. Other than that, I -- after that, it's pretty</p> <p>11 much Shane's department's --</p> <p>12 Q. Okay.</p> <p>13 A. -- rodeo.</p> <p>14 Q. Okay. The lien's dated April 26th, 2011 and signed</p> <p>15 under a notary. Do you have any reason to dispute that date</p> <p>16 as the lien date? I mean does that comport with your</p> <p>17 understanding of when you guys liened the project -- or I</p> <p>18 mean --</p> <p>19 MS. ROBINSON: I'm going to --</p> <p>20 Q. (BY MR. BOSCHEE) -- gave the lease -- gave the</p> <p>21 release? Because we're going to look at the Right to Lien in</p> <p>22 a second.</p> <p>23 A. I guess I have no comment.</p> <p>24 Q. Okay.</p> <p>25 A. I don't know.</p>
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<p>1 needed to be done.</p> <p>2 Q. Okay. During those meetings, those communications,</p> <p>3 did they articulate to you that, well, we did pay. We paid</p> <p>4 CAM, so the work needs to get done and you guys need to figure</p> <p>5 out what to do with CAM? Was part of the rationale, if you</p> <p>6 will?</p> <p>7 A. I'm not sure if that was specifically spoken --</p> <p>8 Q. Okay.</p> <p>9 A. -- but I -- that was certainly the implication.</p> <p>10 Q. Okay. And sitting here right now -- again we talked</p> <p>11 about this earlier -- but you don't -- you don't have any --</p> <p>12 you don't dispute that Mojave paid CAM, do you?</p> <p>13 A. I -- without having direct knowledge of it, I don't</p> <p>14 necessarily dispute it.</p> <p>15 Q. Okay. And we talked earlier, you didn't actually do</p> <p>16 the exchange, but there was an unconditional lien release</p> <p>17 provided for this work, correct?</p> <p>18 A. I -- it looks like you have it there so I'm --</p> <p>19 Q. I do. I'm going to show it to you.</p> <p>20 A. I've never -- I've not seen it.</p> <p>21 Q. You've never seen it?</p> <p>22 A. I have not.</p> <p>23 Q. Okay.</p> <p>24 A. I don't -- that's a Shane Norman -- that's his</p> <p>25 department and their function that takes care of that.</p>	<p>1 Q. You just don't know?</p> <p>2 A. Right.</p> <p>3 Q. Okay. Well, let's take a look. Maybe you don't --</p> <p>4 maybe you don't know this, I've got a Notice of Right to Lien.</p> <p>5 Have you ever seen that document before?</p> <p>6 A. I have not.</p> <p>7 Q. Did you provide any equipment -- any equipment? You</p> <p>8 did provide equipment.</p> <p>9 Did you provide the information with respect to</p> <p>10 getting that process started, the Right to Lien?</p> <p>11 A. Again --</p> <p>12 MS. ROBINSON: I object, he -- asked and answered.</p> <p>13 MR. BOSCHEE: Well, he said he --</p> <p>14 Q. (BY MR. BOSCHEE) He (sic) said that your company</p> <p>15 provided some information with respect to the release and --</p> <p>16 and the lien itself. The prelien information --</p> <p>17 A. Right.</p> <p>18 Q. -- like what did you -- what did you provide in</p> <p>19 terms of the prelien?</p> <p>20 A. The prelien is essentially -- I haven't seen the</p> <p>21 form in a while, to tell you the truth. But the last time I</p> <p>22 saw it, it's basically a list of the interested contractors on</p> <p>23 the job, the owner, names, addresses, contacts. There's</p> <p>24 really not much else to it.</p> <p>25 Q. And you didn't -- you've never actually seen the --</p>

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<p>1 the Notice of Right to Lien for -- with respect to this 2 project, have you? 3 A. I have not. 4 Q. Well, then I'm not going to ask you about it. 5 Have you ever seen the lien, the actual Notice of 6 Lien for this project? 7 A. I have not. 8 Q. Did you participate in any way, shape, or form with 9 putting that document together? 10 A. Again, with the exception of the prelien process, 11 no. 12 Q. Okay. This document -- this Notice of Lien is dated 13 June 21st, 2011, signed by Shane Norman. Do you have any 14 reason to -- and it looks like it was recorded on -- the next 15 day, June 22nd, 201 by Ms. Robinson. Do you have any reason 16 to doubt that that's the date the lien was recorded? Any 17 reason to dispute that? 18 A. No. 19 Q. Okay. Follow-up question, I'm going back again off 20 my own line: Do you have an understanding as to why you guys 21 didn't give a conditional lien release with respect to the 22 755,000, as opposed to an unconditional lien release? 23 A. I don't. 24 MS. ROBINSON: Objection, asked and answered. 25 Q. (BY MR. BOSCHÉE) Or was that a -- was that a -- was</p>	<p>1 and then an unconditional release being given once the 2 minority contractor's check cleared your financial 3 institution, or was it just, it got paid, here's the 4 unconditional release, if you know? 5 A. I don't know. That's a Shane question. Sorry. 6 Q. Okay, yeah. And I think we did ask Shane that 7 question, but anyway. 8 MS. BRISCOE: He said you would know. 9 MR. BOSCHÉE: He did say you would know. 10 MS. ROBINSON: I don't recall that actually. 11 MR. BOSCHÉE: He did. Well, I've got his transcript 12 here. 13 Q. (BY MR. BOSCHÉE) But he said you might know that. 14 A. That's -- that's typically his. 15 I -- I can tell you, if you take the minority 16 contractor out of it -- 17 Q. Yeah. 18 A. -- if we're dealing directly with a contractor, 19 ordinarily the conditional release is provided upon -- we 20 usually get paid in stages on a job like this, and they'll 21 hold what's called a retention. And we'll get -- we'll sign a 22 conditional release on the payment -- the majority payment, 23 and we won't provide the unconditional until the retention is 24 paid. 25 Q. Until the thing's paid in full?</p>
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<p>1 that a decision you were part of? 2 A. Again, I was on vacation. 3 Q. Okay. 4 A. So that was a Shane decision. 5 Q. Okay. You were completely out of the loop on that? 6 A. That is correct. 7 Q. On the other projects you had worked on or that you 8 were a part of with the disadvantaged business owners or 9 minority contractors where the check was cut and then the next 10 check was cut to you guys, did you provide unconditional lien 11 releases on those projects, if you know? 12 A. If we liened the project, at some point we would 13 have had to provide an unconditional release to close out the 14 job. 15 Q. Okay. 16 A. So logic says yes, we have. I'm not -- I don't see 17 them very often. 18 Q. Right. 19 Let me -- let me ask you another way. On those 20 other projects -- we talked about the process, right. There's 21 -- the minority contractor gets a check, and then they cut a 22 check to you guys, correct? 23 A. (Witness nodding.) 24 Q. Do you have an understanding as to whether a 25 conditional release was given upon the first check being cut</p>	<p>1 A. Right. 2 Q. But in this case, the 755 was -- was the entirety of 3 -- was essentially the entirety of the payment -- 4 A. It's -- yeah -- 5 Q. -- per the invoice? 6 A. I'm trusting your math. 7 Q. Right. Don't make that mistake the second time 8 but -- but it is, that's the correct number. 9 Is that -- and that would -- given that there's no 10 necessary retention at that point going forward, would that 11 be -- that would be a typical reason -- you don't know 12 specifically as to this project, but that would typically be a 13 reason to give the unconditional instead of the conditional, 14 because there's no retention to hold back? 15 A. Correct. 16 Q. Okay. 17 A. That would make sense. 18 Q. Do you have any knowledge of a claim made to 19 Whiting-Turner with respect to this amount owed? 20 A. I don't. 21 Q. You don't. That was again -- that was a Shane issue 22 completely? 23 A. Yeah. Yep. 24 Q. So sitting here right now you're not -- you're not 25 familiar with the 90-day -- what's typically termed the 90-day</p>

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<p>1 notice to the general contractor, with respect to this?</p> <p>2 A. That was something that Shane was working with Mike</p> <p>3 on, and I -- frankly I'm not -- I wasn't involved.</p> <p>4 Q. Okay. That would be something -- if -- if there was</p> <p>5 something that Shane didn't know in his deposition about that</p> <p>6 that would be something I would need to talk to Mike about?</p> <p>7 A. Mike Pack.</p> <p>8 Q. The president?</p> <p>9 A. The president of our company.</p> <p>10 Q. Okay.</p> <p>11 A. I guess so, yes.</p> <p>12 Q. Okay. Sitting here right now are -- and this is the</p> <p>13 only -- I'll represent this is -- this is a document disclosed</p> <p>14 because I -- I don't have any other ones.</p> <p>15 Are you aware of any -- of any other notices that</p> <p>16 were sent to Whiting-Turner, other than perhaps this 90-day</p> <p>17 notice? I mean did you personally communicate anything to</p> <p>18 Whiting-Turner, i.e., we didn't get paid. You know, we're</p> <p>19 going to make a claim on your bond. Anything like that?</p> <p>20 A. I did not.</p> <p>21 Q. Okay. That again would have been Shane and Mike,</p> <p>22 theoretically, or Mike?</p> <p>23 A. Yes, I -- for want of a -- I'm not sure.</p> <p>24 Q. Okay. The 90-day notice that was provided to</p> <p>25 Whiting-Turner is again -- it's at that same -- this one is</p>	<p>1 like a really straight up guy. Can probably get us where we</p> <p>2 need to go on this project.</p> <p>3 Q. Okay.</p> <p>4 A. I'm paraphrasing, but I -- pretty close.</p> <p>5 Q. I understand. And it's been awhile, so remember</p> <p>6 specific words in a conversation is difficult. I get that.</p> <p>7 But during that conversation that kind of led you to</p> <p>8 the meeting with them, did he articulate that they had any</p> <p>9 kind of a special working relationship or that they had a</p> <p>10 personal relationship with Angelo Carvalho, other than just</p> <p>11 working on some projects with him?</p> <p>12 A. No.</p> <p>13 Q. Now, Cashman -- you guys -- Cashman has also brought</p> <p>14 a claim in this case for fraudulent transfer against Mojave.</p> <p>15 Are you familiar with that?</p> <p>16 A. I'm not.</p> <p>17 Q. You're not?</p> <p>18 A. No.</p> <p>19 Q. Okay. So asking you about the factual basis for</p> <p>20 that is probably -- probably something you're not going to</p> <p>21 know about.</p> <p>22 Let me ask you this: To the extent that any</p> <p>23 investigation was performed after the fact, after the check</p> <p>24 didn't clear, as to other business dealings between Mojave and</p> <p>25 CAM Consulting, would you have been involved in that?</p>
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<p>1 June 24th, 2011. Do you have -- sitting here right now, do</p> <p>2 you have any knowledge or information as to -- as to any</p> <p>3 notices that were provided to Whiting-Turner prior to that?</p> <p>4 A. No, I don't.</p> <p>5 Q. Okay. Do you sitting here right now have any</p> <p>6 knowledge of any notices that were provided to any surety</p> <p>7 companies, Whiting or Mojave's, at any point during this</p> <p>8 process?</p> <p>9 A. No direct knowledge.</p> <p>10 Q. Okay. And who -- if anybody had that direct</p> <p>11 knowledge would it be Shane or Mike?</p> <p>12 A. Yes.</p> <p>13 Q. I want to go back to the initial meeting and -- the</p> <p>14 meeting with Angelo and you and Mojave. Specifically to the</p> <p>15 best you can recall, what did -- and was that -- was that with</p> <p>16 Pete or was it with Troy or Brian?</p> <p>17 A. It was with Peter.</p> <p>18 Q. Okay. Specifically, what did Pete tell you about</p> <p>19 their relationship or their working relationship on the other</p> <p>20 projects with CAM Consulting?</p> <p>21 A. Almost nothing.</p> <p>22 Q. Okay.</p> <p>23 A. He basically just introduced us and said that we've</p> <p>24 been -- we've had -- he -- I think he said something to the</p> <p>25 effect of, we're working with him on some other things. Seems</p>	<p>1 A. The only knowledge I had of any sort of prior</p> <p>2 relationship between Mojave and CAM was when we got -- when we</p> <p>3 subpoenaed CAM's financial records and bank statements and</p> <p>4 there were payments made to Mojave that appeared to be for</p> <p>5 transactions prior to this one. But that's the extent of what</p> <p>6 I know.</p> <p>7 Q. Okay. Did you -- after you got those bank</p> <p>8 statements, did you perform any follow-up investigation beyond</p> <p>9 that as to the other jobs or what the source of those payments</p> <p>10 would be?</p> <p>11 A. No. And when we sat in that meeting with Brian and</p> <p>12 Troy, you know Mike mentioned those transactions specifically.</p> <p>13 I think sort of -- he didn't want to -- I'm not sure why he</p> <p>14 didn't want to ask directly. But he didn't want to ask</p> <p>15 directly about them. But he did mention those transactions.</p> <p>16 And Brian and Troy pretty much just didn't acknowledge one way</p> <p>17 or the other their knowledge of those transactions.</p> <p>18 Q. I got to follow up on that because I don't -- when</p> <p>19 you say they didn't acknowledge one way or another, I mean --</p> <p>20 let me -- let me see if I understand this. What</p> <p>21 specifically did Mike ask them about those other payments?</p> <p>22 A. I believe Mike said something to the effect of that</p> <p>23 -- you know, the transactions we see on here, we see a couple</p> <p>24 of payments to Mojave for -- and they were large dollar</p> <p>25 amounts.</p>

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1 Q. Uh-huh.
 2 A. And Brian and Troy basically just didn't say
 3 anything.
 4 Q. They didn't deny them? They didn't tell -- say they
 5 were for another job? They didn't say anything?
 6 A. They didn't acknowledge.
 7 Q. Did they just sit there silently and not say
 8 anything about that question? It's a pretty loaded question.
 9 I mean I -- they didn't say a word?
 10 A. They did not say a word.
 11 Q. Did either of them say, well, we're just not going
 12 to talk about that or we're just not going to address that,
 13 that's apples and oranges, or I mean they literally didn't say
 14 anything?
 15 A. They did not acknowledge it.
 16 Q. I'm just imagining Troy Nelson sitting in a room not
 17 saying anything upon a question like that. I'm having a hard
 18 time reconciling that but...
 19 A. He's not the kind of guy to hold back on something.
 20 And that was why it was sort of noteworthy. That's why I
 21 remember it specifically is -- you know, Troy's not -- well,
 22 you know him. He's -- he's not a -- he's not somebody who's
 23 not a forthcoming person. And that was -- that's why it
 24 sticks in my mind, because it was so out of character.
 25 Q. Well, did you or Mike follow up with any questions

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1 about those checks after the non-response?
 2 A. No. We moved on to talking about other things
 3 relative specifically to this project.
 4 Q. Like what?
 5 A. How do we go forward?
 6 Q. And at that point you reached an impasse because
 7 there was no way to go forward?
 8 A. That is correct.
 9 Q. You guys, as I understand it -- as I understand the
 10 topic, Mojave wants you to go forward because it needs to get
 11 done. You guys aren't going to go forward do the ins -- or do
 12 the checklist and then do the startup, provide the codes,
 13 because you weren't paid, correct?
 14 A. Correct.
 15 Q. Okay. You're a tech guy, so I'm going to ask you a
 16 little bit of a technical question. And we're still arguing
 17 about this with the judge a little bit but...
 18 If Cashman has to go in and provide those protocol
 19 codes at this stage in the game, does that -- what concerns
 20 would you have about doing that today?
 21 A. Concerns? None from a technical standpoint.
 22 Q. Okay.
 23 A. I mean there's no physical reason why we wouldn't be
 24 able to do that. It's just -- it's proprietary information.
 25 It's privileged and --

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1 Q. You haven't been paid?
 2 A. Correct.
 3 Q. Okay. But from an actual just going in there and
 4 putting the codes in and getting the stuff communicating, like
 5 physically there's no real issue there, you just don't want to
 6 do it because you haven't gotten paid, right?
 7 A. That is correct.
 8 MR. BRISCOE: Let me take two minutes, review my
 9 notes, and we might be able to get you out of here pretty
 10 quick.
 11 THE WITNESS: Okay.
 12 (A brief recess was taken.)
 13 MR. BOSCHEE: Back on the record. We'll be quick.
 14 THE WITNESS: No problem. I appreciate it.
 15 Q. (BY MR. BOSCHEE) You understand you're still under
 16 oath?
 17 A. Yes, sir.
 18 Q. Factory guy came out and inspected the site at some
 19 point. You don't know -- we don't have dates, that's fine.
 20 Did he ever provide you a report that you recall?
 21 A. Not us.
 22 Q. Okay. Who did he provide it to?
 23 A. Back to the factory.
 24 Q. Okay. Did you ever have a conversation with the
 25 factory guy about what he saw out there or anything like that?

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1 A. Had a conversation with him, it was -- you know, it
 2 was basically, the equipment is installed. It looks like it's
 3 being installed correctly. But that was -- it was still very
 4 early --
 5 Q. Right.
 6 A. -- stages, so there wasn't anything really done yet.
 7 It was more -- honestly, I think he wanted a weekend in Vegas.
 8 So -- I hate to say it but...
 9 Q. I can't hate him for that.
 10 But it was early on in the process. He just went
 11 out, looked at it, said things are going smoothly, chow?
 12 A. Right.
 13 Q. When you talked to Pete initially about CAM and he
 14 said they were working on other jobs with CAM, did he tell you
 15 what other jobs they were working on with him?
 16 A. He did not.
 17 Q. Okay. But you knew that they were working -- you
 18 knew that Pete was working on at least a couple other jobs
 19 with CAM before that meeting, right?
 20 A. Yes.
 21 Q. The meeting -- the one meeting with all three of
 22 them?
 23 A. Right. Yes.
 24 Q. Okay. And did he articulate any problems that they
 25 had had with CAM on any other projects?

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- 1 A. No, he did not.
 2 Q. Did he talk about any -- any money that was due and
 3 owing on those other jobs during that meeting?
 4 A. We did not even -- didn't have that in depth of a
 5 discussion.
 6 Q. Didn't get to that. Okay.
 7 We talked about the fact that you haven't seen the
 8 prelien notice and you haven't even seen the lien, per se, but
 9 one thing that Shane did identify you as knowing is, who's
 10 going to figure out the amount of the mechanic's lien. Would
 11 that be you or would that be someone else at Cashman that
 12 would determine the amount that Cashman's going to lien for?
 13 A. It would be probably somewhat of a joint discussion.
 14 Q. Okay.
 15 A. Certainly myself and the account manager on the job
 16 have the most direct knowledge of what work -- what costs go
 17 into the total makeup of the job, if that's -- I think that's
 18 what you're asking.
 19 Q. Well, I am, and that's why -- I guess what I'm
 20 getting at it is, okay, we've got a \$755,893.89 lien on this
 21 project. Did you participate in coming to that number?
 22 A. Yes.
 23 Q. Who else participated in coming to that number?
 24 A. My account manager.
 25 Q. And so who did you provide that number to? I mean

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- 1 obviously you didn't see the lien, you didn't see the prelien,
 2 but the information was provided to somebody. Who did you
 3 provide that to?
 4 A. Within Cashman?
 5 Q. Yeah. Right.
 6 A. In other words, for them to be able to generate that
 7 paper?
 8 Q. Right.
 9 A. Shane.
 10 Q. Oh.
 11 A. And I'm going to guess that he just did it off the
 12 invoice --
 13 Q. Okay.
 14 A. -- or invoices.
 15 Q. Sure.
 16 But you were involved in coming up with the number?
 17 A. Yes, sir.
 18 Q. Okay. Let's say a 755,893.89 bowl of gold coins
 19 fell in your lap today and you were able to go out and
 20 complete the project, get the inspection and the startup done.
 21 How much time would that take?
 22 A. Difficult to say without having a knowledge of the
 23 condition of the site. Now, I'm assuming that it's pretty
 24 late in the construction stages. So assuming that everything
 25 is -- the table is set, so to speak --

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- 1 Q. Uh-huh.
 2 A. -- and everything is ready and everything that
 3 Mojave did was done correctly and all those other things, you
 4 know, a typical time frame for a project like this would be
 5 two weeks.
 6 Q. Okay.
 7 A. Maybe three.
 8 Q. Two to three weeks.
 9 Would that be the same as had -- I mean, let's say
 10 CAM's doesn't -- let's say he's got sufficient funds back in
 11 the day and you guys had gone out and done the inspection when
 12 -- when Mojave called, and the startup. Would that time frame
 13 be the same at that point as it is now, or would it take a
 14 little longer or shorter?
 15 A. Hard to say. Likely longer, only because -- if
 16 you've ever been on a construction site, it's kind of a mad
 17 house. And there's people running all over the place and
 18 doing different things and everything gets sort of fragmented.
 19 And there's probably -- there probably would have been days in
 20 there where we would not be able to get our work done.
 21 So we would say, you know something, where you are
 22 with your situation, we can't get any work done today so we're
 23 not going to have a technician out there. So if the -- the
 24 time -- the total time frame should be the same. Well, I
 25 shouldn't say that. The net time frame would be the same.

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- 1 The total would probably be something longer, maybe four
 2 weeks.
 3 Q. Sure.
 4 We're kind of talking about the same thing. If it
 5 would take you 14 days, and right now you could do it 14
 6 consecutive days, back a -- you know, a year ago it would have
 7 maybe taken you 14 days with breaks?
 8 A. Correct.
 9 Q. Okay. How much expense would -- would -- ballpark
 10 would Cashman incur on that process?
 11 A. You know, it depends a lot on how much is done
 12 correctly at the site.
 13 Q. Right.
 14 A. It can vary pretty widely. I -- man, I don't recall
 15 how much we had in there for startup.
 16 Q. Okay.
 17 A. I mean we can take a literal sense of it and -- two
 18 guys for 14 days and do the math at \$110 an hour --
 19 Q. Sure.
 20 A. -- and come up with a number. But that's just the
 21 -- that's just the man hours. It doesn't count if we had to
 22 purchase any materials or anything. So I don't -- I don't
 23 think I can answer that accurately.
 24 Q. So you don't know what the hard cost would be
 25 because it would depend on whether everything was installed

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1 correctly?

2 A. And -- right.

3 Q. And then rest of it would be man hours. And then
4 it's just a question of two people, 14 days, X amount per
5 hour, figuring that math out?

6 A. Right. And then -- and then as we discussed
7 earlier, the last part of that is working out the final
8 details. How -- how is the communication with the
9 building going to work, how is the communication with fire
10 command going to work, those kinds of things that get hammered
11 out in the latter stages of the process. So there could be a
12 variance there in cost as well.

13 Q. Okay. Well, how -- when you say a variance in cost,
14 I mean how much variance are we talking about there? I mean
15 ballpark? It doesn't seem like a lot, but I -- you know.

16 A. Well, you know, it depends --

17 Q. Yeah.

18 A. -- if -- if they want some high-level communications
19 at a digital level, I mean that's a 5-, \$6,000 process.

20 Q. Okay. Not a high cost relative to what we're
21 talking about in this case?

22 A. Relative to three quarters of a million dollars not
23 high.

24 Q. Well, 5-, \$6,000, not insignificant either?

25 A. Right.

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1 Q. So I mean you would have to come out-of-pocket
2 for -- okay.

3 Just specifically talking about the installation of
4 the protocol codes, how much time is that going to take? If
5 it has to happen? If it...

6 A. You know I really can't answer. And the reason I
7 can't answer is when I was a technician, we didn't have all
8 these digital communications. So I can tell you that we have
9 to go all the way back to the beginning. It's not something
10 you can pick up in the middle and do just that. We have to go
11 back to the very beginning and start from ground zero and work
12 through the checklist process that Caterpillar gives us to get
13 to that point where we start getting things communicating with
14 each other.

15 Q. Okay. And to go back from the beginning and go
16 through the checklist, how -- I mean, approximately how long
17 is that going to take?

18 A. That's 14 days.

19 Q. That's 14 days?

20 A. Yep.

21 Q. Well, so what you're saying is you can't -- as I
22 understand this, you can't install the protocol codes without
23 doing the whole startup?

24 A. Correct.

25 Q. Okay.

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1 A. Whatever has been done out there, and I don't know
2 what has or has not been done, is -- is -- how do I say
3 this -- is inconsequential. It doesn't make any difference
4 what they did or didn't do. From Caterpillar and Mitsubishi's
5 on the UPS side's standpoint, none of that work was done by a
6 factory-authorized rep. So all of that has to be done by a
7 factory-authorized rep. So -- and because our folks don't
8 know what was done or what was not done you can't -- you can't
9 try and pick up somebody else's work in the middle. They're
10 going to have to start from the beginning and go all the way
11 through the process.

12 Q. Okay.

13 A. And if that doesn't happen -- well, two things could
14 happen. Number one, it could be done incorrectly. A step
15 could be missed, and that could be expensive. The second part
16 is there won't be a viable warranty on any of the products
17 until that is done.

18 Q. Okay. Sitting here right now though, you don't know
19 whether a factory-authorized representative has been out there
20 and done any of that work, do you?

21 A. I'm relatively sure that that has not happened.

22 Q. Based on?

23 A. Based on discussions we had with Mitsubishi as far
24 as them dispatching somebody. They were not going to dispatch
25 anybody without our knowledge. And they say that they

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1 haven't.

2 Q. Okay.

3 A. And as far as Caterpillar goes our -- we've had --
4 we have very specific what we call sales and service
5 agreements with Caterpillar. And if another dealer is going
6 to come in and work in our territory, perform any sort of work
7 whatsoever, they need to notify us that they're going to be in
8 our territory working. And we've had no CAT dealer notify us
9 that they were going to be working on the job.

10 So could somebody have snuck in and done it?

11 Q. Sure.

12 A. Yes. It's not very likely.

13 Q. Okay. Have you had communications with anybody at
14 Caterpillar about not wanting anyone else to come in and do
15 that, primary because you guys haven't -- or are owed a lot of
16 money on this project?

17 A. I don't recall.

18 Q. How about Mitsubishi, communications with them along
19 those same lines?

20 A. I --

21 Q. I.E., don't let -- don't let someone else come in
22 and do this because we're owed a lot of money and -- and we
23 want to get paid?

24 A. Yeah, I don't recall -- yeah, no, I don't recall
25 having that conversation.

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1	Q. But nobody from Caterpillar or Mitsubishi could do	1	CERTIFICATE OF DEPONENT
2	anything with the protocol codes? That's something that you	2	PAGE LINE CHANGE REASON
3	guys would have to do, because like you said earlier, I think	3	
4	it's proprietary?	4	
5	A. Correct.	5	
6	Q. All right. And the other kind of question I had--	6	
7	it's kind of random -- when you say the factory guy, which	7	
8	factory?	8	
9	A. We have several involved. What -- carry a couple of	9	
10	different terms. Their official name at this point is	10	
11	Caterpillar Switchgear. It use to be known as Intelligent	11	
12	Switchgear Organization. And then it was known as CAT ISO	12	
13	(phonetic) for awhile during a transition period. But their	13	
14	official title now is Caterpillar Switchgear.	14	
15	Q. Okay.	15	
16	A. And it's a division of Caterpillar. And they	16	
17	have -- they have their own people that go out and do site	17	
18	inspections and project management and those kinds of things	18	
19	It's a very -- very technical business that most dealers don't	19	I, KEITH LOZEAU, deponent herein, do hereby certify
20	have the real ability to support, so they have factory folks	20	and declare the within and foregoing transcription to be my
21	that help out.	21	deposition in said action, under penalty of perjury; that I
22	Q. Okay. That was -- that was where I was going. I	22	have read, corrected and do hereby affix my signature to said
23	wasn't sure where -- which of the factories he came from.	23	deposition.
24	We talked about a lot of subjects today and a lot of	24	
25	specific things. Is there anything else about your	25	KEITH LOZEAU, Deponent
Page 91		Page 93	
1	involvement with the City Hall project and specifically	1	REPORTER'S CERTIFICATE
2	relating to your dealings with Mojave Electric that I did not	2	
3	ask you about today, but that you feel are important to my	3	I, Tammy M. Breed, CSR No. 305, Certified
4	understanding of what -- what the dynamic here is, issues	4	Reporter, certify:
5	going forward?	5	That the foregoing proceedings were taken before me
6	A. No.	6	at the time and place therein set forth, at which time the
7	MS. ROBINSON: Object, form of the question.	7	witness was put under oath by me;
8	THE WITNESS: No.	8	That the testimony of the witness, the
9	MR. BOSCHEE: Okay, I don't have any further	9	questions propounded, and all objections and statements made
10	questions.	10	at the time of the examination were recorded stenographically
11	I'm assuming Jennifer doesn't have any questions?	11	by me and were thereafter transcribed;
12	MS. ROBINSON: No.	12	That the foregoing is a true and correct transcript
13	(Signature requested.)	13	of my shorthand notes so taken.
14	(The proceedings concluded at 11:36 a.m.)	14	I further certify that I am not a relative or
15		15	employee of any attorney of the parties, nor financially
16		16	interested in the action.
17		17	I declare under penalty of perjury under the laws of
18		18	Nevada that the foregoing is true and correct.
19		19	Dated this 5th day of September, 2012.
20		20	
21		21	
22		22	
23		23	TAMMY M. BREED, C.C.R. No. 305
24		24	
25		25	

EXHIBIT E

DISTRICT COURT
CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY,)
a Nevada corporation,)
)
Plaintiff,)
)
vs.) CASE NO. A642583
) DEPT. NO. 32
) (Consolidated with A653029)
CAM CONSULTING, INC., a)
Nevada corporation; ANGELO)
CARVALHO, an individual;)
JANEL RENNIE aka JANEL)
CARVALHO, an individual;)
WEST EDNA ASSOCIATES, LTD.)
dba MOJAVE ELECTRIC, a)
Nevada corporation; WESTERN)
SURETY COMPANY, a surety;)
THE WHITING TURNER)
CONTRACTING COMPANY, a)
Maryland corporation;)
FIDELITY AND DEPOSIT)
COMPANY OF MARYLAND, a)
surety; TRAVELERS CASUALTY)
AND SURETY COMPANY OF)
AMERICA, a surety; DOES)
1-10, inclusive; and ROE)
CORPORATIONS 1-10,)
inclusive,)
)
Defendants.)
)
AND RELATED MATTERS.)
)

DEPOSITION OF SHANE NORMAN
THURSDAY, AUGUST 16, 2012
9:43 A.M.

AT 400 SOUTH FOURTH STREET, THIRD FLOOR
LAS VEGAS, NEVADA

REPORTED BY: MICHELLE R. FERREYRA-MAREZ, CCR No. 876
JOB NO. 163701

Page 2	Page 4
<p>1 DEPOSITION OF SHANE NORMAN, 2 taken at 400 South Fourth Street, Third Floor, 3 Las Vegas, Nevada, on THURSDAY, AUGUST 16, 2012, at 4 9:43 a.m., before Michelle R. Ferreyra-Marez, Certified 5 Court Reporter, in and for the State of Nevada. 6 APPEARANCES: 7 For the Plaintiff: 8 PEZZILLO ROBINSON 9 BY: JENNIFER R. ROBINSON, ESQ. 10 6725 Via Austi Parkway 11 Suite 290 12 Las Vegas, NV 89119 13 (702) 233-4225 14 (702) 233-4252 Fax 15 jrobinson@pezzilorobinson.com 16 17 For Defendants West Edna, Ltd., dba Mojave Electric, 18 Western Surety Company, The Whiting Turner Contracting 19 Company and Fidelity and Deposit Company of Maryland, 20 Travelers Casualty and Surety Company of America: 21 COTTON, DRIGGS, WALCH, HOLLEY, WOLOSIN & 22 THOMPSON 23 BY: BRIAN BOSCHEE, ESQ. 24 BY: SHERILLY A. BRISCOE, ESQ. 25 400 South Fourth Street Third Floor Las Vegas, Nevada 89101 (702) 791-0303 (702) 791-1912 Fax SBRiscoe@nevadafirm.com For Defendant Janel Rennie aka Janel Carvalho: COLEMAN LAW ASSOCIATES BY: EDWARD COLEMAN, ESQ. 6615 S. Eastern Avenue Suite 108 Las Vegas, Nevada 89119 (702) 699-9000 (702) 699-9006 Fax mail@coleman4law.com</p>	<p>1 LAS VEGAS, NEVADA, THURSDAY, AUGUST 16, 2012; 2 9:43 A.M. 3 -000- 4 (In an off-the-record discussion held prior to the 5 commencement of the deposition proceedings, counsel 6 agreed to waive the court reporter requirements under 7 Rule 30(b)(4) of the Nevada Rules of Civil Procedure.) 8 9 Whereupon, 10 SHANE NORMAN, 11 having been first duly sworn to testify to the truth, 12 the whole truth and nothing but the truth, was examined 13 and testified as follows: 14 15 EXAMINATION 16 BY MR. BOSCHEE: 17 Q. Good morning, could you please state and spell 18 your last name for the record? 19 A. Shane Norman, S-h-a-n-e, N-o-r-m-a-n. 20 Q. And you are appearing today pursuant to a 21 request we made of your counsel for the person most 22 knowledgeable from Cashman Equipment; is that correct? 23 A. That is true. 24 Q. My name is Brian Boschree. I'm counsel for a 25 bunch of the defendants, particularly Mojave, Whiting</p>
Page 3	Page 5
<p>1 INDEX 2 WITNESS: SHANE NORMAN 3 EXAMINATION PAGE 4 Examination By Mr. Boschree 4 5 6 INDEX TO EXHIBITS 7 Exhibit Page 8 1 Check dated April 29, 2011 31 9 from CAM Consulting to Cashman 10 Equipment 11 2 Credit application submitted 61 12 by CAM Consulting 13 3 Invoices and bills of lading 66 14 4 Unconditional waiver and 78 15 release upon final payment 16 5 Notice of right to lien 85 17 6 Mechanic's lien 87 18 7 90-day notice sent to Whiting 91 19 Turner 20 21 22 23 24 25</p>	<p>1 Turner, in the litigation filed in District Court. Go 2 ahead, I'm sorry. 3 A. Are you representing Mojave and Whiting Turner 4 and Forest City? 5 Q. Well, Whiting Turner, Mojave - 6 MS. BRISCOE: Fidelity. 7 MR. BOSCHEE: Fidelity. I'm trying to think 8 of all of the sureties. 9 MS. ROBINSON: All the sureties. 10 BY MR. BOSCHEE: 11 Q. All the sureties. 12 MS. BRISCOE: Not Forest City. 13 MR. BOSCHEE: No. 14 MS. ROBINSON: Forest City is out because of 15 the lien release. 16 BY MR. BOSCHEE: 17 Q. Right. And I'm not representing CAM or the 18 Carvalhos. They have separate counsel, Mr. Coleman. 19 A. Sure. 20 MR. COLEMAN: I represent Janel Rennie. 21 THE WITNESS: Okay. 22 MS. ROBINSON: But not Angelo Carvalho. 23 MR. COLEMAN: No. 24 MR. BOSCHEE: Right. 25</p>

<p style="text-align: right;">Page 6</p> <p>1 BY MR. BOSCHEE:</p> <p>2 Q. And I'm here for the deposition today that is</p> <p>3 regarding the litigation that's been filed in the state</p> <p>4 court I'm sure you are fairly familiar with. Let me</p> <p>5 ask you right out of the gate, have you been deposed</p> <p>6 before?</p> <p>7 A. No.</p> <p>8 Q. I'm sorry. Let me give you a quick rundown of</p> <p>9 what we're going to do today. It's actually pretty</p> <p>10 simple. I'm assuming that you're represented by</p> <p>11 counsel, Ms. Robinson?</p> <p>12 A. Yes.</p> <p>13 Q. You may have gone through the ground rules</p> <p>14 with her before this, but let me just run through a few</p> <p>15 things. I'm going to ask you some questions. You are</p> <p>16 going to provide answers, and the court reporter is</p> <p>17 going to transcribe them. I don't want you to guess at</p> <p>18 anything. If there's something that you don't know or</p> <p>19 something you don't you understand, just tell me.</p> <p>20 There's a good chance that's going to happen. Just</p> <p>21 tell me, and I will do my best to clarify. And if you</p> <p>22 don't know, you don't know. That said, I am entitled</p> <p>23 to your best recollection of what you do remember about</p> <p>24 the events that we're going to talk about. So to the</p> <p>25 extent that you remember something, I am entitled to</p>	<p style="text-align: right;">Page 8</p> <p>1 something to drink, get a cookie, go to the restroom,</p> <p>2 whatever you need to do, just let me know and we will</p> <p>3 take a quick break and go off the record. I don't want</p> <p>4 you to, you know, be uncomfortable because we're</p> <p>5 putting you through the grinder here. This is not to</p> <p>6 be that. Okay? Do you understand?</p> <p>7 A. Okay, yes. No water boarding. Got you.</p> <p>8 Q. Exactly.</p> <p>9 Are you currently taking any medication that</p> <p>10 will impede your ability to testify?</p> <p>11 A. No.</p> <p>12 Q. Is there any other reason why you wouldn't be</p> <p>13 able to give your best testimony today?</p> <p>14 A. No.</p> <p>15 Q. There's also going to be times when counsel</p> <p>16 or the other, I don't know about Mr. Coleman, but your</p> <p>17 counsel may make an objection. I may make an objection</p> <p>18 if Mr. Coleman is asking questions. Let the objection</p> <p>19 play out. But unless your counsel instructs you not to</p> <p>20 answer, most likely we'll be making the objection for</p> <p>21 the record, and you will still have to answer the</p> <p>22 question after the objections are finished. Okay?</p> <p>23 A. Okay.</p> <p>24 Q. Cool. I think that's about the end of the</p> <p>25 introductory boring stuff.</p>
<p style="text-align: right;">Page 7</p> <p>1 that. Do you understand that?</p> <p>2 A. Uh-huh.</p> <p>3 Q. The oath that you just took form the court</p> <p>4 reporter is the same oath that you would take in a</p> <p>5 court of law. I think actually you may have just taken</p> <p>6 last week in another hearing. It carries with it the</p> <p>7 same duties and penalties that the oath would take in</p> <p>8 court. Do you understand that?</p> <p>9 A. Yes.</p> <p>10 Q. I'm going to do my best to get a complete</p> <p>11 transcript of the proceedings today, so it's important</p> <p>12 that when I'm asking questions you not talk, and when</p> <p>13 you are answering my questions, I not interrupt you,</p> <p>14 because the court reporter can't transcribe us both</p> <p>15 talking at the same time. Okay?</p> <p>16 Also, the court reporter needs audible answers</p> <p>17 so yes, no, or whatever. But like head nods and</p> <p>18 shaking your head no, she can't transcribe that so. Do</p> <p>19 you understand that?</p> <p>20 A. Yeah.</p> <p>21 Q. That ideally will give us a clear record.</p> <p>22 Also, this is not meant to be an endurance</p> <p>23 contest by any stretch of the imagination. I'll do my</p> <p>24 best to get us out of here as efficiently as possible.</p> <p>25 But if you need to take a break, get some water, get</p>	<p style="text-align: right;">Page 9</p> <p>1 Did you do anything to prepare for the</p> <p>2 deposition this morning?</p> <p>3 A. Not necessarily for this one, no.</p> <p>4 Q. When you say "not necessarily for this one,"</p> <p>5 did you review anything for anything else in the case?</p> <p>6 A. Well, we were in court last week, and we have</p> <p>7 CAM/Angelo Carvalho stuff going on as well, so --</p> <p>8 Q. Right. And just so -- I know what you are</p> <p>9 talking about, but I want to make sure that we have a</p> <p>10 clear record of what you are talking about. The</p> <p>11 proceeding in court last week was a prove-up hearing on</p> <p>12 some damages against CAM and Carvalho; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And you reviewed some documents in conjunction</p> <p>15 with that hearing?</p> <p>16 A. Uh-huh.</p> <p>17 Q. What did you review?</p> <p>18 A. Some documents, I mean, time lines, you know,</p> <p>19 looked at the invoices, that kind of thing.</p> <p>20 Q. Do you remember specifically any other</p> <p>21 documents that you looked at?</p> <p>22 A. I --I have a three ring binder with probably</p> <p>23 about 300 pages in it, so --</p> <p>24 Q. Okay.</p> <p>25 A. -- just thumbed through them all.</p>

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1 Q. I'm sure the answer to this is yes because
2 I've seen hundreds and hundreds of pages of documents
3 for these. Of all the documents that you reviewed for
4 that hearing and then I would assume kind of spill over
5 into today, that's all stuff that's been produced in
6 this litigation; correct?

7 A. Yes.

8 Q. Other than counsel, did you talk to anybody
9 about the -- let's start with the prove-up hearing on
10 Friday, did you talk to anyone about that?

11 A. My attorney.

12 Q. Other than your attorney?

13 A. No.

14 Q. Did you talk to anybody about your deposition
15 today, about what -- you know, the subjects you were
16 going to testify about or anything?

17 A. Yeah. Other than my attorney, no.

18 Q. Other than the documents you looked at for the
19 prove-up hearing, did you look at anything else in
20 preparation for the deposition today, in the last five
21 days, I guess it has been?

22 A. No. I haven't reviewed the file.

23 Q. Well generally, what I'm going to be asking
24 you about, I'm sure you know, is the questions about
25 the City Hall project, generally --

Page 12

1 A. Fifteen years.

2 Q. And briefly, I mean, real Reader's Digest, I
3 mean, as brief as you can, give me your educational
4 background.

5 A. I graduated in finance from Utah State
6 University 15 years ago or so. I graduated from the
7 graduate school of Credit and Finance Management at
8 Dartmouth about two years ago. And I'm a certified
9 credit executive, which is the highest of three
10 certifications for credit managers.

11 Q. When did you get that certification?

12 A. At the same time I graduated from the graduate
13 school.

14 Q. So within the last couple of years?

15 A. Yeah. It's probably been two years now.

16 Q. The specific date is not important. I just
17 kind of want to get a general idea.

18 Walk me through, I have a pretty good idea,
19 but, again, for the record and just so we're clear,
20 what are your job responsibilities as a credit manager
21 for Cashman?

22 A. Extending lines of credit, maintaining those
23 lines of credit, collecting on receivables, reminding
24 customers who forget or fail to pay us, working out
25 complicated deals, including legal issues. I also

Page 11

1 A. Sure.

2 Q. -- and kind of how this whole thing
3 transpired. But first, I just want to get a little bit
4 of background with Cashman. What is your position with
5 Cashman?

6 A. My title is credit manager.

7 Q. I'm going to refer to your company as Cashman
8 going forward so I don't have to say the whole thing
9 out. How long have you been the credit manager?

10 A. Six and a half years.

11 Q. Did you have any positions with Cashman prior
12 to that?

13 A. No.

14 Q. Did you work as a credit manager with any
15 other company prior to coming to Cashman?

16 A. Yes.

17 Q. Who was that?

18 A. Komatsu Equipment Company. Spelled,
19 K-o-m-a-t-s-u.

20 Q. How long did you work there?

21 A. Three years.

22 Q. How long -- and I'll say construction
23 industry, generally, but you have been a credit manager
24 in the construction industry, how long have you been in
25 this field?

Page 13

1 provide or facilitate retail financing options for our
2 customers who are purchasing our equipment.

3 Q. Okay.

4 A. Posting cash, a little bit of treasury
5 management. I have also been on the strategic planning
6 committee for our company.

7 Q. What is the strategic planning that you do
8 with your company? What do you do in conjunction with
9 that?

10 A. What our company is going to look like in ten
11 years, what we want to be.

12 Q. How many people are on that committee?

13 A. The executive level, 10 or so.

14 Q. Including you?

15 A. Actually, I'm -- I'm not on that committee
16 now. I was as of three months ago.

17 Q. Did you step down from the committee?

18 A. They decided to do it in a different fashion,
19 the president, so I'm out. How's that?

20 Q. They decided to take the executive in a
21 different direction?

22 A. Yes.

23 Q. I like that.

24 So over the entire six-plus years you have
25 worked as a credit manager for Cashman, those job

Page 14	Page 16
<p>1 responsibilities have remained fairly static? They 2 have been what you have done? 3 A. Yes. 4 Q. I guess -- I'm trying to think of a good way 5 to say this. City Hall project, I'm going to refer to 6 construction project. You understand what I'm saying 7 when I say construction project? 8 A. Yes. 9 Q. How many projects like that have you been 10 involved in in Las Vegas in the six and a half years 11 with Cashman? 12 A. That's difficult to answer. 13 Q. Okay. 14 A. Every single one of our customers has anywhere 15 between one and, I don't know, 100 jobs at any one 16 given time. And we have 2000-plus active customers. 17 Q. Okay. 18 A. And so I'm involved in, you know, the credit 19 and finance side of things, not necessarily associated 20 with the job and project funding. For instance, like a 21 Mojave or Whiting Turner, that I'm involved in 22 entertaining the, you know, credit perils of our 23 customers as opposed to their jobs. So a lot. 24 Q. Yes. 25 A. But -- but not directly so.</p>	<p>1 Q. How about Whiting Turner? 2 A. Whiting Turner is a direct customer of ours as 3 well, but not -- not anywhere to the Mojave volume 4 levels. 5 Q. Fair to say that a company like Whiting Turner 6 is maybe one step removed and you deal with more like 7 the Mojaves and then they deal with Whiting more? 8 A. That is a fair statement, yes. 9 Q. And I'm going to ask -- we will get into more 10 detail on this later, but how about CAM, before this 11 project, have you ever dealt with them before? 12 A. No. 13 Q. How about Angelo Carvalho, have you ever dealt 14 with any entities that he was involved in before? 15 A. No. 16 Q. Or him personally? 17 A. No. 18 Q. He had personally never been a customer? 19 A. No. 20 Q. And I'm paraphrasing a little bit, but 21 obviously we had a situation with this project. 22 A. That's an understatement. 23 Q. I think that's a fair statement, but there was 24 an issue where there was a payment made and then 25 obviously you guys didn't get paid. Have you ever had</p>
Page 15	Page 17
<p>1 Q. Let me see if I can clarify that. I think I 2 know what you are saying, and I probably asked a bad 3 question knowing what your company does, basically. 4 But whereas a lot of contractors and subcontractors 5 kind of deal project to project, you guys deal more 6 with customers who are working on different projects 7 all over the place. Is that a fair representation? 8 A. That is a fair statement. 9 Q. And many of those customers work on projects 10 in Las Vegas; is that right? 11 A. Yes. 12 Q. How many -- well, has Mojave Electric been a 13 customer of Cashman's? 14 A. Yes. 15 Q. On how many projects would you say? 16 A. I -- I -- I couldn't tell you. Mojave has 17 been a long-standing prominent customer of ours on the 18 power generation side of our business for a long time. 19 Q. Quite a few? 20 A. Yes. 21 Q. In fact, you have worked with Mojave Electric, 22 I mean, from the finance and credit side a number of 23 times in the last six and a half years; is that fair to 24 say? 25 A. Oh, yes.</p>	<p>1 that type of problem with Mojave on any other project 2 in all the times they had been a customer of yours? 3 A. No. 4 Q. Were you having -- 5 A. Well, let me -- let me -- let me restate that. 6 Q. Sure. 7 A. We have never had a Mojave check bounce. 8 Q. Okay. 9 A. Let's just say that, not clear the bank. 10 Q. How about a situation like this? And, again, 11 very specifically like this where, you know, materials 12 are supplied, Mojave pays somebody, and then you guys 13 are left kind of holding the bill, has anything like 14 that that you can recall ever happened? 15 A. With Mojave, no. 16 Q. How about Whiting Turner? 17 A. No. 18 Q. So with respect to a situation like what 19 happened here, this is kind of the first time that 20 that's ever happened with Mohave as a customer fair? 21 A. Fair. 22 Q. Now on this project, as I understand it, 23 Cashman had a contract directly with CAM; is that 24 right? 25 A. It -- that's not a clear and concise yes or no</p>

<p style="text-align: right;">Page 18</p> <p>1 because that's debatable.</p> <p>2 Q. Well, I guess I'll let you go ahead -- I'm not</p> <p>3 trying to trick you.</p> <p>4 A. Right.</p> <p>5 Q. Explain to me what your understanding of the</p> <p>6 relationship between Cashman and CAM and then</p> <p>7 ultimately Mojave was?</p> <p>8 A. Initially, our quotes and the job that we</p> <p>9 quoted that we provided all the information was</p> <p>10 directly to Mojave. I don't know exactly how long that</p> <p>11 process was, but it was greater than six months.</p> <p>12 Q. Okay.</p> <p>13 A. In preparation for the project coming up. We</p> <p>14 obviously won the bid. I don't know at what point in</p> <p>15 time, but it is my understanding that just before</p> <p>16 invoicing CAM, Angelo Carvalho came up as a result of</p> <p>17 Mojave demanding that we utilize a disadvantaged</p> <p>18 business owner to route the transaction between us and</p> <p>19 Mojave due to federally mandated statutes of using</p> <p>20 disadvantage business owners or minority owned owners.</p> <p>21 Q. Let me follow up on something. You just</p> <p>22 indicated that Mojave demanded that CAM be used.</p> <p>23 A. (Witness nods.)</p> <p>24 Q. What is your basis for that statement, that it</p> <p>25 was a Mojave demand?</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Okay.</p> <p>2 A. So -- so, yes, Mojave referred CAM Consulting</p> <p>3 and introduced us. How's that?</p> <p>4 Q. So, again, just trying to get to the bottom of</p> <p>5 this, it's your understanding that Mojave wanted to use</p> <p>6 CAM Consulting; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And that the disadvantaged business owner that</p> <p>9 they wanted to use was CAM and they introduced CAM, I</p> <p>10 guess it was Keith, with your company?</p> <p>11 A. Uh-huh.</p> <p>12 Q. And that's how CAM got involved?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know why Mojave or anyone on that</p> <p>15 project would have wanted to use a disadvantaged</p> <p>16 business owner?</p> <p>17 A. I -- I don't know specifically why Mojave</p> <p>18 wanted to, but I do know there are federally mandated</p> <p>19 statutes of -- tied with monetary funds from the</p> <p>20 federal government that mandates a certain percentage</p> <p>21 of jobs to be done with disadvantaged business owners</p> <p>22 or minority owned businesses.</p> <p>23 Q. So getting back to, I just want to clarify</p> <p>24 this. I don't want to beat a dead horse, but when you</p> <p>25 said that Mojave wanted to use a disadvantaged business</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Mojave did not want us to invoice them</p> <p>2 directly. They wanted us to route it through another</p> <p>3 entity.</p> <p>4 Q. Do you have any understanding, independent</p> <p>5 understanding, as to how CAM got involved in this</p> <p>6 project in the first place?</p> <p>7 A. I do. Keith Lozeau, who also works for</p> <p>8 Cashman Equipment Company, was referred to him by</p> <p>9 someone at Mojave. I don't know who that is.</p> <p>10 Q. So let me just clarify, because maybe I didn't</p> <p>11 understand what you said, and that's very likely. It's</p> <p>12 your understanding that CAM was referred to Mojave for</p> <p>13 use on this project?</p> <p>14 MS. ROBINSON: I think that misstates.</p> <p>15 Objection.</p> <p>16 BY MR. BOSCHEE:</p> <p>17 Q. That's why I said -- I didn't understand what</p> <p>18 you said. Could you --</p> <p>19 A. Let me -- let me -- let me clarify.</p> <p>20 Q. Sure.</p> <p>21 A. Mojave requested that we use a third-party</p> <p>22 disadvantaged business owner. They suggested CAM</p> <p>23 Consulting, as they had been using them themselves as</p> <p>24 well as a couple other vendors had been using them to</p> <p>25 deal with Mojave's project directly.</p>	<p style="text-align: right;">Page 21</p> <p>1 owner, do you have any independent knowledge as to</p> <p>2 whether that was something that Mojave wanted to do or</p> <p>3 if that was something that somebody up the chain needed</p> <p>4 to do and requested of Mojave?</p> <p>5 A. I don't have any direct knowledge of that.</p> <p>6 Q. It's just when the need for disadvantaged</p> <p>7 business owner arose, from wherever it arose from</p> <p>8 wherever, Mojave recommended CAM and then they</p> <p>9 introduced CAM to you?</p> <p>10 A. Yes.</p> <p>11 Q. Again, that was the first time you had ever</p> <p>12 worked with CAM or Angelo Carvalho; correct?</p> <p>13 A. Correct.</p> <p>14 Q. You didn't play any part in the selection of</p> <p>15 CAM as the disadvantaged business owner?</p> <p>16 A. I did not.</p> <p>17 Q. With respect to the requirement for the</p> <p>18 disadvantaged business owner, did you guys have any</p> <p>19 role in that process at all, other than Mojave</p> <p>20 introduces CAM to you and then you guys use them? Did</p> <p>21 you interview CAM?</p> <p>22 A. Keith Lozeau is more knowledgeable about that.</p> <p>23 Q. Okay.</p> <p>24 A. But, yes, Keith Lozeau did meet with Angelo</p> <p>25 Carvalho at one point in time.</p>

Page 22

1 Q. Well, given that -- and maybe this would be
2 something more directed to you as kind of the finance
3 business guy --

4 A. Sure.

5 Q. -- given that you have a long-standing
6 relationship with Mojave.

7 A. Uh-huh.

8 Q. And so I'm guessing you guys doing business
9 and invoicing Mojave wasn't anything to give you any
10 heartburn; correct?

11 A. No.

12 Q. But now you got this third party intermediary,
13 this disadvantaged business owner kind of coming in the
14 middle of that relationship, and you are going to be
15 invoicing them. Did you have any -- did you run any
16 kind of credit check on CAM?

17 A. I did.

18 Q. And what did that turn up?

19 A. Limited credit information.

20 Q. I'm not a credit guy. You are going to have
21 to tell me what that means.

22 A. Well, I'm -- I'm likely not at liberty to
23 discuss his credit --

24 Q. I understand.

25 A. -- powers.

Page 23

1 Q. I understand.

2 A. However, there was not much credit information
3 where with -- to make a good credit decision based on
4 that. I would liken it to -- his business credit was a
5 fellow coming out of college. You have no real
6 history.

7 Q. You hope not anyway.

8 A. Yeah.

9 Q. I think I did, unfortunately.

10 A. How about high school?

11 Q. But did you guys have any -- were there any
12 criteria that you had or that Cashman had when looking
13 at CAM as to, Okay. Yes, we're comfortable
14 using -- you know, invoicing them and then getting paid
15 ultimately by Mojave? Did you have any criteria that
16 you were looking at and said, Yes, they are okay. Or
17 No, they are not okay?

18 A. Yes, I do have criteria.

19 Q. What are they?

20 A. Well, they're written now, but before, it was
21 just my experience. And again, it's -- the criteria is
22 that you have a reasonable, acceptable set of credit
23 information on your business that -- that would merit
24 that type of transaction.

25 Q. Did CAM?

Page 24

1 A. No.

2 Q. Is the reason that that unwritten criteria
3 became a written criteria? Is it at least in part due
4 to this situation?

5 A. No.

6 Q. It was just something that you guys felt that
7 it would probably be good to put on pen to paper?

8 A. Yeah.

9 Q. Given the paucity we will say of information,
10 of credit information of CAM, did this cause you any
11 concern about entering into this arrangement where you
12 were invoicing them instead of Mojave?

13 A. Yes.

14 Q. Did you discuss those concerns with Mojave?

15 A. No. I discussed them with Keith, our liaison
16 to Mojave.

17 Q. What was the substance of those conversations?

18 A. I'm concerned.

19 Q. I'm looking more for -- I kind of got that.

20 A. Yeah, I'm concerned. I mean, that was what it
21 boiled down to, I'm concerned. But because of our
22 long-standing relationship with Mojave and because the
23 fact that we hadn't, like we mentioned before, hadn't
24 had any other issues and the money was still coming
25 from Mojave and the units were being delivered as we

Page 25

1 spoke and it was required of us to invoice them, we
2 went ahead and did what we did.

3 Q. And maybe I'll end up having to talk to Keith
4 about this at some point, but when you expressed your
5 concern to Keith, what did he respond? I mean, what
6 did he say? Did he just kind of blow it off and say,
7 No. Mojave is a good customer. We can do this. Did
8 he echo your concerns?

9 A. Yes, he echoed my concerns. However, again,
10 it really fell back to the strength of our relationship
11 and the credit promise of Mojave.

12 Q. Sure.

13 Did you or Keith ever have this conversation
14 with Mojave that you know of where you discussed in
15 particular your concerns with CAM's lack of credit to
16 Mojave and a conversation along the lines of, I guess
17 what I am looking for, Is there someone else we can use
18 or some other disadvantaged business owner that we can
19 use because we just don't have a lot of credit on these
20 guys and we are not really comfortable with it? Did
21 that conversation ever take place?

22 A. Not directly with Mojave that I had.

23 Q. Okay.

24 A. If Keith had it, that would be a
25 different -- that would be a question for him. I don't

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<p>1 know that he had that.</p> <p>2 Q. Do you have an understanding as to whether a</p> <p>3 conversation along those lines took place?</p> <p>4 A. I don't know.</p> <p>5 Q. Keith would be the person that would have had</p> <p>6 that conversation?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ever have any conversations with</p> <p>9 Mojave regarding -- I mean, obviously before the</p> <p>10 unfortunateness, we'll call it. But did you ever have</p> <p>11 any conversations with Mojave about the use of CAM on</p> <p>12 this project, you personally?</p> <p>13 A. No.</p> <p>14 Q. You have worked with disadvantaged business</p> <p>15 owners before, though; correct?</p> <p>16 A. Yes.</p> <p>17 Q. How often?</p> <p>18 A. It's not a common occurrence, but it is often</p> <p>19 enough to where it does happen on an occasional basis.</p> <p>20 How's that for a lack of better specificity? It</p> <p>21 happens. And -- and -- and it does work.</p> <p>22 Q. What types of projects generally have you guys</p> <p>23 worked with this type of minority contractor or</p> <p>24 disadvantaged business owner?</p> <p>25 A. Federal projects often associated with the</p>	<p>1 Q. -- disadvantaged business owners for other</p> <p>2 reasons, but not necessarily -- they're direct</p> <p>3 customers. You haven't used them in a situation like</p> <p>4 this, where an existing customer kind of pulls someone</p> <p>5 in --</p> <p>6 A. Right.</p> <p>7 Q. -- and slots them in?</p> <p>8 Have you ever encountered this type of an</p> <p>9 issue, and, again, this type of issue what we are</p> <p>10 talking about in this lawsuit, with a disadvantaged</p> <p>11 business owner's failure to pay.</p> <p>12 A. No, not that I can recall. And never of</p> <p>13 this -- definitely never this level of, I guess, high</p> <p>14 volume. How is that?</p> <p>15 Q. Certainly nothing that resulted in litigation?</p> <p>16 A. I wouldn't say that.</p> <p>17 Q. Okay.</p> <p>18 A. I wouldn't go that far. Again, we have quite</p> <p>19 a few customers; there are customers that don't pay us,</p> <p>20 for whatever reason. We do take them down the legal</p> <p>21 path.</p> <p>22 Q. Okay.</p> <p>23 A. And some of those customers are designated as</p> <p>24 minority owned, disadvantaged in some way, shape, or</p> <p>25 form.</p>
Page 27	Page 29
<p>1 military or, you know, federally funded, you know,</p> <p>2 municipal projects, that kind of thing.</p> <p>3 Q. Sure. Which again would make sense --</p> <p>4 A. Yes.</p> <p>5 Q. -- because those are where the requirements</p> <p>6 come from?</p> <p>7 A. Yeah.</p> <p>8 Q. Have you ever worked with a disadvantaged</p> <p>9 owner, minority contractor on a private project, not a</p> <p>10 Public Works or federal project?</p> <p>11 A. Well, you should know that many of our</p> <p>12 contractors that are really good customers are already</p> <p>13 designated as minority contractors.</p> <p>14 Q. Oh, okay.</p> <p>15 A. They are owned by a woman or they're owned by</p> <p>16 a minority or they have been disadvantaged in some way,</p> <p>17 shape, or form.</p> <p>18 Q. Okay.</p> <p>19 A. So we deal with them on a regular basis.</p> <p>20 Q. Okay.</p> <p>21 A. And -- but not specifically for in behalf of</p> <p>22 this purpose here. Does that make sense?</p> <p>23 Q. It does. You have customers that are</p> <p>24 deemed --</p> <p>25 A. That are designated, yes.</p>	<p>1 Q. But those would be, again, like we were just</p> <p>2 classifying, those are more of a direct relationship,</p> <p>3 not a situation like this?</p> <p>4 A. Not -- not -- not one that was presented to us</p> <p>5 at the time of -- you know, that was inserted in kind</p> <p>6 of the last minute like this.</p> <p>7 Q. So CAM enters the equation at the 11th hour.</p> <p>8 Obviously you guys had some dealings with them because</p> <p>9 you are invoicing them directly?</p> <p>10 A. Uh-huh.</p> <p>11 Q. How would you classify your dealing? Describe</p> <p>12 for me what your dealings were like with CAM.</p> <p>13 A. Well, honestly, not that I haven't been honest</p> <p>14 previously, I guess, but --</p> <p>15 Q. Thank you for clarifying that.</p> <p>16 A. Our -- our -- now, we're talking about the</p> <p>17 truth. Our dealings with CAM were limited, because we</p> <p>18 mainly dealt with Mojave directly.</p> <p>19 Q. Okay.</p> <p>20 A. And Mojave, in my estimation, in my several</p> <p>21 phone calls and my contact with them, were</p> <p>22 basically -- her name was Francis at Mojave, Francis</p> <p>23 McCombs. And she was quite close with Angelo Carvalho,</p> <p>24 and she was the one that generally conversed with him.</p> <p>25 Q. Okay.</p>

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1 A. And -- yeah. So our dealings weren't
2 necessarily directly with CAM. They were still
3 primarily with Francis --
4 Q. Okay.
5 A. -- though we had the ability to talk to him,
6 although he was difficult to get ahold of for some
7 other reasons we can probably get into later.
8 Q. I will represent to you that he's still
9 difficult to get ahold of in certain instances.
10 A. Well, I think when exactly where he is now.
11 Q. Well, actually, yes and no.
12 So how many direct interactions would you say
13 you had with Angelo or anybody at CAM?
14 A. I met with him twice personally.
15 Q. Okay.
16 A. Most of the -- and -- and via phone was less
17 than five times.
18 Q. What were the occasions that you had to meet
19 with him personally?
20 A. Well, the first one was to exchange the check
21 for release. And then the second one was at his home
22 to have him write me another check as the first one was
23 stop paid.
24 Q. Let's talk about that. I figured you were
25 going to get into that. That's why I pulled that

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1 exhibit out.
2 MR. BOSCHEE: I'll mark this as Exhibit I.
3 (Exhibit I marked.)
4 BY MR. BOSCHEE:
5 Q. Go ahead and take a look at that. I'll
6 represent to you, this is a check in the amount of
7 \$755,893.89 dated April 29, 2011, looks like from CAM
8 Consulting to Cashman Equipment. Do you recognize this
9 check?
10 A. Yes.
11 Q. Let's talk about it for a second. You said
12 just a few minutes ago that this was the check that you
13 exchanged with Angelo for the unconditional lien
14 release; correct?
15 A. Yes.
16 Q. We will look at that in a few minutes, but my
17 question being the unconditional lien release was
18 signed and notarized by you, I believe, on April 26th.
19 Does that ring a bell?
20 A. Yes.
21 Q. And you provided that to Carvalho on -- was it
22 on that date?
23 A. I don't know that it was the 26th exactly, but
24 it is a couple of days before this --
25 Q. Okay.

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1 A. -- check.
2 Q. Well, I guess that's really my question.
3 Carvalho gave you a postdated check; right?
4 A. Yes.
5 Q. Did he tell you why he needed to do that?
6 A. Well, to clarify, I did not realize that he
7 had given me a postdated check.
8 Q. Oh, okay.
9 A. Not until subsequently. However, he did state
10 that he wanted me to hold on to the check for two days
11 to give it time to clear. Because in the past, with
12 such big balances, his bank has held on to the funds
13 and wouldn't release them to him. And frankly, that
14 makes sense.
15 Q. It does. I understand that.
16 A. That's -- that's a common occurrence.
17 Q. Right.
18 Is it fairly common, I guess common is
19 probably the wrong word, but would you say it's fairly
20 common for you guys to get a check and then have
21 someone ask you to hold it for a day or two for that
22 reason?
23 A. It is some -- somewhat common.
24 Q. It didn't alarm you that Angelo asked you to
25 hold on to this check for a couple days?

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1 A. No. He told me that there was nothing in his
2 bank account, other than the check that he
3 received -- was receiving from Mojave at the same time
4 from the same meeting that I met him and that he has
5 yet to deposit it, and then the bank would hold on to
6 it and then it would take a day or two for the bank to
7 release the funds or make -- or -- or -- I guess I
8 don't know if release the funds is right, but to make
9 them available. How's that?
10 Q. Yes. That's understandable.
11 A. And that is -- and that is a common
12 occurrence.
13 Q. I understand what you're saying. A lot of
14 banks -- I know Wells Fargo does the same thing. Or if
15 you put too much money in the bank, they're only going
16 to release a portion of it immediately --
17 A. Exactly.
18 Q. -- and make you sit for a couple of days.
19 Let me ask you this, though. Did it concern
20 you that Angelo Carvalho told you when he got his check
21 that this was the only money in CAM Consulting's bank
22 account?
23 A. No.
24 Q. That didn't concern you?
25 A. No. And the reason why is because I knew

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1 Mojave was paying him a larger portion than what this
 2 check was and that he was solely a pass-through source.
 3 It didn't surprise me at all that he didn't really have
 4 any -- enough -- enough money to -- you know, for this
 5 check to clear, to clarify.
 6 Q. What made you think Mojave was paying more
 7 than the \$755,893?
 8 A. Well, because there were several other vendors
 9 involved.
 10 Q. Okay.
 11 A. I wasn't the only vendor that met with him
 12 that day, from what I understand.
 13 Q. So you understood that Mojave wrote CAM a
 14 larger check than this, and this was just him paying
 15 your portion of that?
 16 A. Yes.
 17 Q. Did Carvalho tell you that?
 18 A. Yes.
 19 Q. Off the top of your head, I mean, do you
 20 remember what other vendors were there that day?
 21 A. I do. Well, I don't -- I can't vouch for them
 22 actually being there.
 23 Q. I understand.
 24 A. But I do know that he did write -- or -- or
 25 receive payment for two other vendors. One was QED,

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1 and the other one was -- I would be guessing. If I
 2 recollect correctly, it's Consolidated Electrical
 3 Systems, but --
 4 Q. And if it's not, don't worry. I'm not going
 5 to impeach you with that of all things. That's fine.
 6 A. That can be verified through Angelo Carvalho's
 7 bank statements.
 8 Q. Sure.
 9 So obviously this check has a stop payment on
 10 it --
 11 A. Yes.
 12 Q. -- correct?
 13 Who requested that? How did this become a
 14 stop payment situation? Walk me through that process.
 15 A. Well, I know for a fact that Angelo Carvalho
 16 did it, because he told me himself when I met with him
 17 the second time at his home.
 18 Q. Why?
 19 A. He said that Keith Lozeau had called him
 20 asking him for payment, who also, again, works for
 21 Cashman, and Keith did not realize that I had picked up
 22 this check.
 23 Q. So Carvalho's story was that someone else at
 24 Cashman had asked him for payment and didn't realize
 25 that you had gotten this check, so he stopped payment

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1 on this check to give payment to Keith theoretically or
 2 to pay it some other way?
 3 A. I -- I -- I don't know about the last part,
 4 but, yes, he was unsure of where his first check was is
 5 his story.
 6 Q. Interesting. Okay. Mr. Carvalho is an
 7 interesting guy.
 8 Do you have an understanding of when Mojave
 9 paid CAM?
 10 A. Yes. That same day that CAM paid me.
 11 Q. A few days earlier or a few days before the
 12 29th --
 13 A. Yes.
 14 Q. -- or a couple of days?
 15 And you said it's not uncommon for you guys to
 16 hold on to a check for a couple of days to let it clear
 17 a bank; correct?
 18 A. For the bank to release the funds, yes.
 19 Q. Well, yes, right. That's not uncommon?
 20 A. It's not uncommon.
 21 Q. Accepting a postdated check in a situation
 22 like this is not something that would necessarily cause
 23 you any angst?
 24 MS. ROBINSON: I think that misstates previous
 25 testimony. Objection.

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1 THE WITNESS: Well --
 2 BY MR. BOSCHEE:
 3 Q. That's fine.
 4 A. Again, I did not know it was a postdated
 5 check, so I didn't knowingly accept a postdated check.
 6 However, he did ask me to hold on to the check for a
 7 couple of days.
 8 Q. You guys don't -- I mean, I say you guys, but
 9 Cashman, it's not a standard business practice to
 10 accept postdated checks, is it?
 11 A. Not a standard. I -- I wouldn't -- I wouldn't
 12 say that, no.
 13 Q. Okay.
 14 A. We have lots of checks. I mean, most
 15 everybody pays us with checks, sending them directly to
 16 our lockbox. Those are obviously not postdated because
 17 those are automatically posted into our -- when we do
 18 accept payments from customers and sometimes on
 19 occasions, they ask us to hold on to the check for a
 20 couple days. It's not uncommon.
 21 Q. So on the 26th or 27th of April, you have an
 22 understanding that Mojave has written a check to CAM,
 23 money is in the bank, Carvalho asks you to hold on to
 24 this particular check for a couple of days so the bank
 25 will release the funds?

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<p>1 A. Right.</p> <p>2 Q. And you say okay and only find out later that</p> <p>3 there's an issue; is that fair?</p> <p>4 A. Yes.</p> <p>5 Q. When did you guys -- when did you or when did</p> <p>6 someone else from Cashman actually take this check to</p> <p>7 the bank?</p> <p>8 A. We didn't take it to the bank. We had a</p> <p>9 desktop deposit.</p> <p>10 Q. Okay.</p> <p>11 A. I believe it was either Friday -- Friday -- I</p> <p>12 think this April 29th, if I'm not mistaken, 2011, is a</p> <p>13 Friday. I think that's the date that we deposited it</p> <p>14 in our desktop deposit.</p> <p>15 Q. Okay.</p> <p>16 A. There was no taking it to the bank.</p> <p>17 Q. I'm not readily familiar with that. I mean,</p> <p>18 I'm not as familiar as you are with desktop deposit,</p> <p>19 but typically my experience has been that when you do</p> <p>20 something on Friday like that, it hits the bank a lot</p> <p>21 of times on Monday. Is that your experience or does it</p> <p>22 usually hit that same day?</p> <p>23 A. Well, and I don't mean to be nitpicky, but</p> <p>24 when you say "hit the bank," you need to clarify that.</p> <p>25 Q. Sure.</p>	<p>1 account is not of super huge significance that the bank</p> <p>2 would put a hold on it.</p> <p>3 Q. Right. I would imagine you have a revolving</p> <p>4 balance in your account of more than \$700,000, I hope.</p> <p>5 A. It's significantly more than that, yeah.</p> <p>6 Q. So when were you notified that there was a</p> <p>7 problem? I mean, did the bank notify you or did</p> <p>8 Carvalho notify you?</p> <p>9 A. No. Carvalho did not notify us. The bank</p> <p>10 notified us. And I don't know what -- this says 5/4 is</p> <p>11 the date.</p> <p>12 Q. I have a date of 5/4, yes. That's why I</p> <p>13 asked.</p> <p>14 A. Yeah. I don't know that we were notified that</p> <p>15 day, but that was the day that it was returned by our</p> <p>16 bank. And not necessarily -- when I say returned to</p> <p>17 us, that doesn't necessarily mean they notified us, but</p> <p>18 it was stamped returned. It was shortly thereafter,</p> <p>19 though.</p> <p>20 Q. Did the bank just tell you there was</p> <p>21 insufficient funds to cover the check?</p> <p>22 A. Yeah.</p> <p>23 Q. Okay.</p> <p>24 A. No. No. They just said it was -- right here,</p> <p>25 return reason, stop payment. Not insufficient funds.</p>
Page 39	Page 41
<p>1 A. When does that hit -- are -- are you asking</p> <p>2 when does that hit Angelo's account?</p> <p>3 Q. Yes. That's probably the better question.</p> <p>4 A. I don't know the answer to that, but we</p> <p>5 generally receive funds and access to the funds the</p> <p>6 same day that we deposit it from our bank. Now, what</p> <p>7 day it's presented to Angelo Carvalho's bank is -- I</p> <p>8 don't know.</p> <p>9 Q. Even in --</p> <p>10 A. I believe it's the same day, actually, or a</p> <p>11 Saturday, but I don't think that it would be a Monday.</p> <p>12 But it depends upon the bank and it depends upon the</p> <p>13 type of transaction --</p> <p>14 Q. Sure.</p> <p>15 A. -- lots of things out of both our hands.</p> <p>16 Q. One of those things being presumably the</p> <p>17 amount of the check. Would a check in this amount</p> <p>18 typically be available for you the same day?</p> <p>19 A. Well, our bank releases all of our -- does not</p> <p>20 put a hold on any of our funds.</p> <p>21 Q. Okay.</p> <p>22 A. And this is a large check for us. But, again,</p> <p>23 in the whole scheme of things --</p> <p>24 Q. I understand.</p> <p>25 A. -- for us is not -- going through our bank</p>	<p>1 Q. That's fair with this particular check.</p> <p>2 So you get the stop payment back from your</p> <p>3 bank. What do you do next? And I assume this is you</p> <p>4 handling this?</p> <p>5 A. Yes. Well, I do have a staff and -- and, you</p> <p>6 know, they help me out. However, the first order of</p> <p>7 business was to try to contact Angelo to have him, you</p> <p>8 know, sort it out, and we were unable to.</p> <p>9 Q. Okay.</p> <p>10 A. In the first meeting that I exchanged the</p> <p>11 check, he mentioned that he was leaving the next day</p> <p>12 for Afghanistan on another military mission.</p> <p>13 Q. Did you have an understanding of whether he</p> <p>14 was or was not actually in the military at that time?</p> <p>15 A. At that point in time, I was under the</p> <p>16 impression that he was in the military because that's</p> <p>17 what he told me.</p> <p>18 Q. Okay.</p> <p>19 A. That he had -- and -- and the reason for that</p> <p>20 is it took a while for us to get this check after</p> <p>21 invoicing, which wasn't the plan --</p> <p>22 Q. Okay.</p> <p>23 A. -- because he was away on an assignment in the</p> <p>24 Middle East somewhere.</p> <p>25 Q. Okay.</p>

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<p>1 A. And -- and that was told to us by Francis 2 McCombs at Mojave. 3 Q. Okay. 4 A. And so when he finally came back into town is 5 when we had that first meeting. 6 Q. Okay. 7 A. And then he stated in that meeting that he was 8 going to be gone for another 45 days starting the day 9 after. 10 Q. So then at that point he's back, but he's 11 leaving again. You at this point know there's a 12 problem? 13 A. Yes. 14 Q. What did you do? Or what was the next thing 15 you did? 16 A. Well, we -- we attempted to get ahold of him 17 on his e-mail address, because he was fairly good about 18 returning emails, even in spite of him being overseas, 19 allegedly, is what he told us. And we were unable 20 to -- we tried phone calls, we tried him directly via 21 e-mail, we tried Mojave. It wasn't working. 22 Q. Generally, when you have a creditor or 23 situation like this that fails to fund -- 24 A. Uh-huh. 25 Q. -- do you guys have a procedure for dealing</p>	<p>1 A. Uh-huh. 2 Q. -- did he do anything to try to make this 3 good? I mean what -- 4 A. Well -- 5 Q. Because I have read somewhere, either in a 6 declaration of yours or in something that you went with 7 him to the bank. Was that during this meeting or a 8 different meeting? 9 A. Well, I need to clarify quite a bit of that. 10 Q. Okay. 11 A. And -- and -- and if you don't mind, 12 Jennifer -- she can obviously object to me saying more 13 or less than I ought to, but we should probably back up 14 to how I got the second meeting to happen. 15 Q. Sure. 16 A. So, again, not able to contact him, no this, 17 no that, and that drags on for several weeks. I can't 18 tell you exactly how many weeks it was afterwards. But 19 in my research in trying to find him, I find him, I 20 find his name listed with another company that was 21 recently formed in California with another businessman 22 who does glazing, which is glass buildings. 23 Q. Right. 24 A. And he has his own company, and they formed 25 a -- a -- again, a disadvantaged business together with</p>
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<p>1 with that? 2 A. Well, we contact the customer directly to try 3 and make good on it. 4 Q. Sure. So that's the ideal situation. Then 5 when you have a situation like that where the guy is 6 off traversing whatever, do you have kind of a backup? 7 Do you have another -- like a secondary, Okay. We 8 can't get ahold of the customer. Now what? 9 A. As far as a written policy, no. 10 Q. But as the credit manager for Cashman, do you 11 have something that you typically do when a situation 12 arises like this? 13 A. Well, this is not a typical situation, to be 14 honest with you. We don't have checks of this 15 magnitude bounce that I can ever recall. Or bounce, I 16 guess that's not the right word. Or stop payment. 17 Become nonsufficient -- or non -- don't yield funds. 18 How's that? That's probably the best word. That's 19 what we did is we went after -- directly after Angelo 20 Carvalho and tried to get Mojave to put a stop payment 21 on their check to him. 22 Q. But by the time you did that, it was too late, 23 wasn't it? 24 A. Yeah. They said it wasn't possible. 25 Q. Now in this second meeting with Carvalho --</p>	<p>1 Angelo being one of the owners, with the idea that they 2 could run federally -- you know, for the same purposes 3 of this. I got ahold of several folks within that 4 company who then finally referred me to the owner, of 5 whom I spoke with who happened to be in Vegas, who 6 happened to have just met with Angelo Carvalho the day 7 before. And this is the same time when Angelo has gone 8 dark and supposedly overseas. 9 So I meet -- I -- I go to his house the next 10 morning, and about 8:00 o'clock or so I start knocking 11 for about 20 minutes, and he finally answers the door. 12 And he states that he had just got in at 1:00 or so in 13 the morning at Nellis from another assignment overseas. 14 He does make out another check at my behest, and this 15 is when he tells me that he put the stop payment on it 16 for whatever reason -- 17 Q. Okay. 18 A. -- for the reason I mentioned prior. And he 19 gives me another check, after a half hour of him 20 humming. I then go down to Nevada State Bank, of which 21 that's the bank that it was written on. 22 Q. Yes. 23 A. Yes. And ask them to make it a bank check so 24 that the funds would be guaranteed to us, and they 25 could take the funds out of his account immediately so</p>

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1 we wouldn't have to deal with this again. They were
2 unable to because the check -- and I don't have a copy
3 of this check and I will tell you why in a minute.
4 They were unable to because the check -- you see here
5 on this check it says 7558, you know, 9389?

6 Q. Right.

7 A. He wrote the next check out the same way, but
8 the bank said because it didn't say 755,893, they said
9 that that check was no good. So I then went to a
10 different Nevada State Bank, just to see how consistent
11 they would be, and the next Nevada State Bank would not
12 issue me a cashier's check or a bank check because they
13 said there were nonsufficient funds in his account.

14 Q. Okay.

15 A. So I took the check back and met with him
16 again. So I guess there were three meetings, but the
17 two and three were the same, within an hour of each
18 other.

19 Q. Yes.

20 A. And asked him to write me a check for what was
21 left in the account, assuming that it might be off by
22 100 bucks or maybe a couple thousand or some odd thing.
23 And -- and, you know, so I handed him back the check so
24 he could write one and write it out correctly this
25 time. And he called his bank. Again, it took him

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1 forever to do this. He called his bank and found out
2 there was only \$800 left in the account. At that point
3 in time, I said I would walk -- because he said he
4 didn't know what was going on. He called his banker to
5 try to figure it out. He said he would go to the bank
6 and go do this. So I insisted that I go with him to
7 the bank. He says, Well, it's more complicated than
8 that, blah, blah, blah, so why don't I just call you
9 back in a half hour or so after I have met with him
10 initially.

11 So I waited there nearby. I went to an IHOP
12 and had a late breakfast. I -- while I waited for his
13 call. He called and said someone had -- and I actually
14 have the text. I'm more than happy to show you guys
15 what he said. But he called the first time saying he's
16 still trying to figure it out. And I should back up.
17 I'm -- I'm having a hard time recollecting exactly.
18 But I did receive a phone call from him, I have a
19 voicemail from him, and I do have a text message from
20 him. And I believe that shortly after I actually
21 talked to him via phone, but I'm having a hard time
22 separating what I gleaned from the text, the voice
23 message, and when I actually talked to him on the
24 phone.

25 Q. Sure.

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1 A. But the gist of it was there was no money in
2 the account, which confirmed the 800 bucks. That the
3 money had been switched over to a Wells Fargo account
4 electronically, and he did not do it. He didn't know
5 who did it. Somebody else got access to his bank
6 account. And so after that phone conversation, text
7 message, and voicemail that day, I have never had
8 contact with him since --

9 Q. Okay.

10 A. -- despite efforts. How's that?

11 Q. Does Cashman as a business, do you guys have
12 protections in place for situations like this?

13 A. We do as much as legally possible to protect
14 ourselves in various different forms.

15 Q. Like what?

16 A. Well, mechanic's, preliminary notices, UCCs,
17 credit agreements that hold folks -- or their feet to
18 the fire.

19 Q. Okay.

20 A. But in the case of obvious fraud, then
21 we're -- that -- that we have alleged and that is going
22 to be hopefully proven in court on the Angelo Carvalho
23 case directly, which is why he is on house arrest,
24 it's, as you can imagine, somewhat difficult to --

25 Q. No, I understand that. I was looking more

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1 generally, kind of, you know.

2 A. One of the other things that we do is joint
3 checks. And in this case, we requested a joint check
4 from Francis because of the issues with getting ahold
5 of CAM --

6 Q. Sure.

7 A. -- and she refused to do that, which is not
8 abnormal for her to refuse to do a lot of things for
9 us, just the way that Francis treated us at Mojave.

10 Q. Well, let's talk about that a little bit. You
11 asked Mojave for a joint check; right?

12 A. Francis McCombs.

13 Q. And Francis wouldn't give you one?

14 A. Correct.

15 Q. Did she tell you why?

16 A. No. I -- I was not in that conversation.
17 That was one of my staff, and it was a verbal
18 conversation, not -- not email. So I -- unfortunately.

19 Q. Okay.

20 A. So I do not know why she said that.

21 Q. You said it was not uncommon for Francis to
22 not give you a joint check?

23 A. No. Mojave has never given us a joint check,
24 that I am aware of. I -- I guess I shouldn't say
25 never, but not in the recent past that I -- that I'm

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<p>1 aware of.</p> <p>2 Q. Do you always request a joint check?</p> <p>3 A. No.</p> <p>4 Q. I was going to say, in situations where</p> <p>5 they're dealing with you as a customer, I wouldn't</p> <p>6 think it would be necessary.</p> <p>7 A. No, we don't really have to have that. I</p> <p>8 mean, there's not a real good reason for it. But in</p> <p>9 this case, there was a very good reason.</p> <p>10 Q. Well, when did you request the joint check?</p> <p>11 A. Before we were paid -- or before we were</p> <p>12 attempted to be paid. How's that?</p> <p>13 Q. Before that first meeting where he handed you</p> <p>14 the check?</p> <p>15 A. Yes. Well, Francis had asked us to sign an</p> <p>16 unconditional release prior to actually having the</p> <p>17 money or the payment, which we objected to and said</p> <p>18 we'd only do it as long as we had the check.</p> <p>19 Q. That's where I guess I'm having a little bit</p> <p>20 of disconnect. So Francis wants you guys to sign an</p> <p>21 unconditional final lien; correct?</p> <p>22 A. Well, and -- and the reason was because Mojave</p> <p>23 was under the gun to get paid themselves, and Angelo</p> <p>24 was nowhere to be found, so he couldn't sign any</p> <p>25 releases himself. So they were having problems getting</p>	<p>1 A. Yes.</p> <p>2 Q. And you did that even though you had limited</p> <p>3 credit information on CAM and they asked you to hold</p> <p>4 the check for a couple of days?</p> <p>5 A. Yes.</p> <p>6 Q. You still did have any issue giving them the</p> <p>7 unconditional lien release?</p> <p>8 A. Well, if -- if -- you may not be aware, and</p> <p>9 obviously you are fairly aware of what releases mean or</p> <p>10 don't mean, and -- and then there is always -- it's</p> <p>11 debatable and arguable, but from my understanding and</p> <p>12 education, that if a check does not clear, then the</p> <p>13 lien release becomes invalid.</p> <p>14 Q. Okay.</p> <p>15 A. So based on my -- and, again, you know,</p> <p>16 obviously you guys can debate that until kingdom come,</p> <p>17 but my education, that's what that tells me. So I am</p> <p>18 not as concerned about signing an unconditional release</p> <p>19 in accepting a check, because I believe, and that's</p> <p>20 what my education tells me, that if that check does not</p> <p>21 clear for whatever reason that my release I have given</p> <p>22 out is voided.</p> <p>23 Q. Do you guys use conditional releases?</p> <p>24 A. We use conditionals and unconditionals.</p> <p>25 Q. Okay.</p>
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<p>1 paid -- well, I guess I shouldn't state what I assume.</p> <p>2 Q. Right.</p> <p>3 A. But, generally, that's the reason for that,</p> <p>4 but --</p> <p>5 Q. But they asked you for an unconditional final</p> <p>6 lien release, which you ultimately signed?</p> <p>7 A. I -- I don't know if it was an unconditional</p> <p>8 final but an unconditional progress at the -- the</p> <p>9 least.</p> <p>10 Q. And your position is, Well, we are not going</p> <p>11 to do that until we have a check; correct?</p> <p>12 A. Correct.</p> <p>13 Q. But Mojave refused to give you a joint check?</p> <p>14 A. Yes. Francis McCombs at Mojave.</p> <p>15 Q. Why did you issue the unconditional lien</p> <p>16 release when you didn't have a joint check that you had</p> <p>17 asked for?</p> <p>18 A. Well, because I had this check.</p> <p>19 Q. So you getting the check from CAM was enough</p> <p>20 for you to hand over the lien release?</p> <p>21 A. Yes.</p> <p>22 Q. That gave you enough comfort?</p> <p>23 A. Yes.</p> <p>24 Q. Why is that? Is it because you knew Mojave</p> <p>25 had tendered the funds?</p>	<p>1 A. Conditionals are used prior to receiving the</p> <p>2 check --</p> <p>3 Q. Right.</p> <p>4 A. -- so they know how much to write the check</p> <p>5 for, basically.</p> <p>6 Q. Well, that was my question, I guess. Given</p> <p>7 that you weren't going to be able to put this money in</p> <p>8 your account for a handful of days, why didn't you give</p> <p>9 a conditional release pending the money actually</p> <p>10 hitting your bank account and then give the</p> <p>11 unconditional?</p> <p>12 A. Because of the reason I previously stated.</p> <p>13 Generally, it's -- it's -- it's a swap check for</p> <p>14 a -- an unconditional final.</p> <p>15 Q. I understand. But this was a little -- but</p> <p>16 this situation was a little bit unique in that you have</p> <p>17 got this kind of intermediary between you and your</p> <p>18 client that you hadn't really worked with before. Did</p> <p>19 you guys consider using a conditional lien release for</p> <p>20 that reason?</p> <p>21 A. No. We based our -- our -- my assurances on</p> <p>22 your client's, you know, credit perils and the fact</p> <p>23 that they have never bounced a check to anybody.</p> <p>24 Therefore, there was no reason that their funds would</p> <p>25 not be good.</p>

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1 Q. Now, you may not know the answer to the
2 question, and if you don't that's fine. I would think
3 you might, but do you guys have insurance for this type
4 of thing?
5 A. Loss and fraud?
6 Q. Yes.
7 A. I believe we do have insurance for -- I don't
8 know about fraud, but -- but loss, we are fully
9 insured.
10 Q. So did you at any point alert your carrier
11 about these events?
12 A. I don't know that we have.
13 Q. Okay.
14 A. Again, that's -- that's our CFO's
15 responsibility.
16 Q. Who is your CFO?
17 A. His name is Lee Vanderpool. At the time it
18 was Jim Moore.
19 Q. But as the finance guy, would they let you
20 know if they -- in a situation like this where you've
21 got a loss, and a good sized loss, you know, three
22 quarter of a million dollar loss.
23 A. Very significant.
24 Q. Exactly. If they did contact your insurance
25 carrier and there was some process going on there to

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1 A. Yes.
2 MR. BOSCHKE: Can we take a quick three-minute
3 break?
4 MS. ROBINSON: Sure.
5 (A short break was taken.)
6 MR. BOSCHKE: Back on the record.
7 BY MR. BOSCHKE:
8 Q. You understand that you are still under oath?
9 A. I do.
10 MR. BOSCHKE: For the record, Mr. Coleman has
11 decided to leave us, so he is no longer part of the
12 deposition. And, therefore, I am guessing he will not
13 be asking any questions at the conclusion of my
14 questions.
15 BY MR. BOSCHKE:
16 Q. Back to Angelo, at this point, you know the
17 money isn't in the bank account. It has been
18 transferred to -- apparently by somebody to a Wells
19 Fargo account. Did he tell you anything about that
20 Wells Fargo account? Did he represent anything at that
21 time about what that account was?
22 A. I -- I can read you the text.
23 Q. No. I mean, if you can recall, you recall.
24 It's not --
25 A. Oh, no. I have been saving this text for a

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1 try to recoup some or all of it, that's something they
2 would let you know, wouldn't they?
3 A. Yes. And, therefore, again, I can't state for
4 sure that we -- that we have filed a claim or not.
5 I -- I -- to my knowledge. I don't believe we have.
6 Q. Okay. And --
7 A. And, again, you are saying a loss. I mean --
8 Q. This is a little bit different than a loss. I
9 understand that.
10 A. This is -- yeah.
11 Q. This is fairly fairly darn variety fraud.
12 But that said, the best to your knowledge,
13 whether a claim has been filed or not, your insurance
14 carrier hasn't done anything with respect to this or
15 you would probably know about that; right?
16 A. I -- I would -- again, I have -- I don't know.
17 I don't know that we have filed a claim. I don't know
18 that we have not filed a claim. If you are asking my
19 best judgment, I don't believe we have filed one.
20 Q. I guess my last question, though, was more
21 along the lines of you don't know if a claim was filed.
22 But if a claim had been filed and the insurance carrier
23 had done something, kicked some money in or something,
24 that would be something, as a finance guy, you would
25 get notice of, wouldn't you?

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1 really long time. I would really like to get it off my
2 phone.
3 Q. Okay.
4 A. All right. Here. Hang on a second. It's
5 going to take a minute for me to find it. There it is.
6 Okay. And I -- any news -- okay. May 19th, Could you
7 meet at the bank in the morning? May 19th, Mojave
8 didn't do anything wrong. It's on my end. There was a
9 transfer into another bank, and I am waiting for an
10 answer. I do know it is a Wells Fargo account. And
11 then there's several texts from me trying to get more
12 information after that and nothing.
13 Q. Nothing?
14 A. So that's the extent of what I know about the
15 Wells Fargo account.
16 Q. And that was pretty much the last
17 communication you had with him, the voicemail, the
18 text, and then the brief conversation; correct?
19 A. Yes.
20 Q. Prior to filing the complaint, what steps did
21 Cashman take to try to get this money back from
22 Carvalho?
23 A. I filed a -- a -- a complaint. I don't know
24 how I would classify it as a -- a complaint or a notice
25 at the bad check division down in the basement of the

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<p>1 courthouse over there.</p> <p>2 Q. Okay.</p> <p>3 A. And then put in the notices and whatnot and</p> <p>4 filed that there with the DA's office.</p> <p>5 Q. We talked about it briefly in the last hour,</p> <p>6 but what has transpired with that effort from the bad</p> <p>7 check division?</p> <p>8 A. Well, they went through the procedures and</p> <p>9 issued a -- a warrant, and he didn't show and one thing</p> <p>10 led to another. We confirmed several times that he was</p> <p>11 not in the military from a third-party source, and then</p> <p>12 Jennifer had something going on to where she would</p> <p>13 check periodically and then the -- the most recent one</p> <p>14 popped up that he was and -- rather he re-enlisted or</p> <p>15 however that works, but he was in New Jersey, was it?</p> <p>16 MS. ROBINSON: I think so.</p> <p>17 THE WITNESS: And she tracked down his</p> <p>18 commanding officer, and he was extradited -- I don't</p> <p>19 know if extradited is the right word, but he was sent</p> <p>20 here. And -- I don't know what all the proper legal</p> <p>21 words are, but from what I understand, he is now on</p> <p>22 house arrest.</p> <p>23 BY MR. BOSCHKEE:</p> <p>24 Q. He came back on a bus as I understand it,</p> <p>25 which was probably a lot of fun.</p>	<p>1 of charging, I believe. I'm not going to testify to</p> <p>2 that.</p> <p>3 BY MR. BOSCHKEE:</p> <p>4 Q. Well, that's what I was going to say. I don't</p> <p>5 know. Where I was going with that is do you know if he</p> <p>6 was actually formally at this point been charged?</p> <p>7 A. I -- I don't know the answer to that.</p> <p>8 Q. All you know is you testified before the grand</p> <p>9 jury and that was that?</p> <p>10 A. Yeah.</p> <p>11 Q. I want to go back to the City Hall project,</p> <p>12 and I'm going to recover some of the things we talked</p> <p>13 about a little bit. I'm going to try not to repeat</p> <p>14 myself, but I want to kind of establish a little bit of</p> <p>15 a timeline.</p> <p>16 A. Yes.</p> <p>17 Q. So you talked a little bit earlier about you</p> <p>18 did a credit check on CAM. Do you remember that?</p> <p>19 A. I did.</p> <p>20 Q. Okay.</p> <p>21 A. I mean, I do remember.</p> <p>22 Q. Well, I'm going to put a document in front of</p> <p>23 you and see if this refreshes your recollection.</p> <p>24 A. I don't remember what I found.</p> <p>25 MR. BOSCHKEE: This will be Exhibit 2. I'll</p>
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<p>1 So the bad check division has followed through</p> <p>2 to the point where now he is on house arrest, and</p> <p>3 that's as far as it has gone with them, as far as you</p> <p>4 know?</p> <p>5 A. I did testify in front of a grand jury a</p> <p>6 couple of weeks ago.</p> <p>7 Q. Do you know what that proceeding was for?</p> <p>8 A. For -- for -- in efforts to -- for the case.</p> <p>9 Q. Let me clarify that. Was that an indictment</p> <p>10 hearing or was that a formal sentencing hearing, do you</p> <p>11 recall, do you know?</p> <p>12 A. There wasn't any sentencing going on.</p> <p>13 Q. Okay.</p> <p>14 A. It was the grand jury doing -- I -- I don't</p> <p>15 know. I testified in front of them. I -- I just</p> <p>16 assumed that it was for the final purposes. I'm sure</p> <p>17 Jennifer can --</p> <p>18 Q. Yes, it's fine. I'm not going to throw a</p> <p>19 bunch of legal terms at you. I mean, I may not even</p> <p>20 understand.</p> <p>21 A. Oh, try me.</p> <p>22 Q. But did it seem more of like a preliminary</p> <p>23 hearing or was it more on the merits?</p> <p>24 MS. ROBINSON: I'm going to object. Asked and</p> <p>25 answered. It's a grand jury, so it's for the purposes</p>	<p>1 just throw Mr. Coleman's copy in the pile,</p> <p>2 (Exhibit 2 marked.)</p> <p>3 BY MR. BOSCHKEE:</p> <p>4 Q. Take a second and skim through this and the</p> <p>5 next page. Do you recognize this document?</p> <p>6 A. I do.</p> <p>7 Q. Is this the application that was submitted to</p> <p>8 you by CAM?</p> <p>9 A. Yes.</p> <p>10 Q. Would this have been the document that you</p> <p>11 would have reviewed? When I say you, you personally or</p> <p>12 someone on your staff with respect to determining CAM's</p> <p>13 credit worthiness?</p> <p>14 A. Yes.</p> <p>15 Q. Now, fairly standard practice to accept a</p> <p>16 credit application like this from a potential customer;</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. And then typically, depending on what happens</p> <p>20 with your credit check, then you follow it up with</p> <p>21 sending out invoices to the new client; correct? Or to</p> <p>22 the, I guess, prospective client?</p> <p>23 A. It -- I mean, I would follow up sending</p> <p>24 invoices for or -- or -- or goods and services if</p> <p>25 I -- I don't know. You probably ought to restate that</p>

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<p>1 question a little bit.</p> <p>2 Q. Sure. An application for credit is given to</p> <p>3 you?</p> <p>4 A. Right.</p> <p>5 Q. You run the credit check; right?</p> <p>6 A. Right.</p> <p>7 Q. Whether, you know, assurances or good credit</p> <p>8 or otherwise, you determine to proceed forward with</p> <p>9 this potential customer? Let's assume that; correct?</p> <p>10 A. Okay.</p> <p>11 MS. ROBINSON: Can I object? Are you asking</p> <p>12 hypothetically or are you asking specifically about</p> <p>13 CAM?</p> <p>14 MR. BOSCHIE: Hypothetically.</p> <p>15 MS. ROBINSON: Okay.</p> <p>16 BY MR. BOSCHIE:</p> <p>17 Q. And after that, you would begin invoicing the</p> <p>18 client; correct?</p> <p>19 A. If -- if -- if I -- yes, I mean, once -- once</p> <p>20 the account is established, then -- then providing</p> <p>21 goods and services followed up by invoices is generally</p> <p>22 how that works.</p> <p>23 Q. Sure. Let me ask you this: Between the</p> <p>24 application for credit and the invoicing for goods and</p> <p>25 services when you set up the account as you said, is</p>	<p>1 more other agreements, not that I'm aware of.</p> <p>2 Q. So basically this and then the invoices was</p> <p>3 the agreement that you had with CAM; right?</p> <p>4 A. Again, I -- I mean, this -- this is the</p> <p>5 agreement I have with CAM and they signed, and really</p> <p>6 this is an application for credit and it lists terms</p> <p>7 and conditions. But as far as an agreement whether or</p> <p>8 not to bill or not to bill him was -- was a different</p> <p>9 decision. Does that make sense?</p> <p>10 Q. It does. But I guess what I am asking</p> <p>11 is -- so let's follow up on that. It was a different</p> <p>12 decision. When you say that, what do you mean by that?</p> <p>13 A. Well, what I mean by that, that -- that</p> <p>14 transaction was, you know, kind of a Mojave</p> <p>15 instigated -- our -- based on our relationship with</p> <p>16 Mojave to proceed with the, you know, the invoicing of</p> <p>17 CAM.</p> <p>18 Q. Sure.</p> <p>19 A. This -- this didn't really tell us that it's</p> <p>20 okay to invoice CAM, not necessarily. This is</p> <p>21 just -- how do you say, a formality.</p> <p>22 Q. That --</p> <p>23 A. So we can set the customer up in the system</p> <p>24 and bill it to the right name.</p> <p>25 Q. I think we're talking around each other</p>
Page 63	Page 65
<p>1 there any other documentation between you and the</p> <p>2 client, typically?</p> <p>3 A. Well, yes. And it really depends upon what</p> <p>4 type of transactions we're doing.</p> <p>5 Q. Sure. How about with this transaction, was</p> <p>6 there anything else between the application for credit</p> <p>7 and your invoicing CAM?</p> <p>8 A. Well, there was quite a bit of documentation</p> <p>9 between us and Mojave leading up to this because those</p> <p>10 were -- that's -- that's the reason for the</p> <p>11 application.</p> <p>12 Q. Sure.</p> <p>13 A. So there was quite a bit of documentation, of</p> <p>14 which I'm pretty sure you guys have.</p> <p>15 Q. Yes. And I guess that's what I'm -- and I'm</p> <p>16 not really talking about that. I know that there was a</p> <p>17 lot of communication and documentation between yourself</p> <p>18 and Mojave. I'm talking, Okay. Mojave -- you know,</p> <p>19 cat out of the bag. We need to use this disadvantaged</p> <p>20 owner. Here's CAM Consulting. You have CAM submit</p> <p>21 this credit application, they do, and then between this</p> <p>22 time and the time you start actually invoicing CAM, was</p> <p>23 there any other documentation that you recall entering</p> <p>24 into between Cashman and CAM?</p> <p>25 A. As far as any more credit agreements or any</p>	<p>1 because I think we're basically saying the same thing.</p> <p>2 You've got a good relationship with Mojave, you haven't</p> <p>3 had any problems?</p> <p>4 A. Well, I --</p> <p>5 Q. Well, you haven't had problems like this?</p> <p>6 A. None of this -- none of this magnitude.</p> <p>7 Q. Haven't had a bounced check, I think was your</p> <p>8 testimony earlier?</p> <p>9 A. Yes.</p> <p>10 Q. CAM comes in, fills out the credit</p> <p>11 application. Based upon your relationship with Mojave</p> <p>12 and to some extent this credit application, you set CAM</p> <p>13 up in the system for an account; correct?</p> <p>14 A. Well, define account.</p> <p>15 Q. Well, you tell me what you did. You get the</p> <p>16 application for credit. How did you start invoicing</p> <p>17 that?</p> <p>18 A. I would be happy to.</p> <p>19 Q. Sure.</p> <p>20 A. We set them up with an account number. We did</p> <p>21 not give them a charge account, meaning we're okay with</p> <p>22 collecting the money after the fact. We wanted our</p> <p>23 money as -- as close to delivery as possible.</p> <p>24 Q. Right. Okay.</p> <p>25 A. So --</p>

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<p>1 Q. We'll get into that, too. Because in this 2 case, the money didn't come as close to delivery as I'm 3 sure you guys would normally like. But there was no 4 other paperwork filled out by CAM? 5 A. Not that I'm aware of. 6 Q. Before you started invoicing them? 7 A. I -- well, I mean, if there were any other 8 purchase orders issued, I'm not aware of it. 9 Q. I understand that. But between you guys, they 10 fill this out, you give them an account number, and you 11 start invoicing them? 12 A. Right. 13 Q. Done. Okay. 14 Let's talk about the invoices and some of the 15 timing issues that have flowed from that. 16 MR. BOSCHEE: We'll mark this as 17 Exhibit -- collectively these documents as Exhibit 3. 18 (Exhibit 3 marked.) 19 BY MR. BOSCHEE: 20 Q. Take a second and skim through them if you 21 want to. I think it's Cash 003 through Cash 00 -- I 22 think we stopped at 8. It is some invoices and I want 23 to say a couple of bills of lading. I'll tell you most 24 of my questions will be about the invoices. 25 A. Okay.</p>	<p>1 supply agreement or anything? 2 A. No. There's no master agreement that I am 3 aware of. 4 Q. Let's take a look at the first invoice. It 5 looks like it's dated February 1, 2011. And total 6 amount of equipment, this one looks like it's 7 \$598,3 -- I'm sorry, \$598,936.26; is that right? 8 A. That's what I read as well. 9 Q. And then the next invoice on CASH005, same 10 date on the invoice, 2/1/11, and this is for 11 \$156,627.92. And then right after that, there's a, you 12 know, smaller one it looks like from March for \$329.71; 13 is that right? 14 A. That's what I read. 15 Q. What was the scope of work that Cashman agreed 16 to with respect to this project? 17 A. How -- what do you mean by that? 18 Q. Well, what were you guys doing? Were you 19 supplying materials? 20 A. We supplied these items here. They are for 21 backup electrical power sources and systems for 22 obviously -- for the project. 23 Q. And I know there was some disagreement 24 apparently last week and on Friday about this. Did the 25 scope of your work, to your understanding, include</p>
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<p>1 Q. Do you recognize these documents? 2 A. I do. 3 Q. The first two pages of this appear to 4 be -- well, let me stop there. Let me ask you another 5 question that just popped into my head. 6 For this project, did Cashman ever enter into 7 a contract directly with Mojave? 8 A. We had quoted them, and they had accepted the 9 quote. 10 Q. Right. 11 A. So I guess you could call that a contract of 12 some sort. 13 Q. Written contract? 14 A. Yeah. I think there was written stuff signed 15 by both parties. 16 Q. I guess what I am saying is you didn't have a 17 contractor/subcontractor signed contract. You did this 18 typical quote them, they accept kind of your standard 19 practice with Mojave; correct? 20 A. Yes. 21 Q. I guess I'm wondering, there's not some 22 written document out there between you and Mojave that 23 I haven't seen in this litigation, is there? 24 A. Not that I am aware of. 25 Q. A subcontractor agreement or some type of a</p>	<p>1 installation of anything? 2 A. Yes. That was to be part of it, installation 3 and startup. 4 Q. And that was part of what was billed for on 5 these invoices. 6 A. Yes. Now -- now, keep in mind, the 7 installation is not something that you just do in one 8 day. 9 Q. I understand. 10 A. I mean, it happened from start to not quite 11 finish. 12 Q. If you know, when did you start -- well, I'll 13 represent to you the three invoices, the three sets of 14 invoices that we just looked at, you know, we can break 15 out the calculator if you want, but it totaled 16 \$755,893.89. 17 A. Yeah, it should. 18 Q. There aren't any other invoices for work or 19 materials that you are aware of that were provided, are 20 there? 21 A. Not that I'm aware of. 22 Q. I only ask that because that was the same 23 amount that you were supposed to be paid; right? 24 A. Yes. 25 Q. When did you guys start delivering and</p>

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<p>1 installing equipment to this project, do you recall?</p> <p>2 MS. ROBINSON: I'm going to object to the form</p> <p>3 of the question. If you can define what you mean by</p> <p>4 "install." Because I don't know that it's completely</p> <p>5 clear that we're all talking about the same --</p> <p>6 MR. BOSCHEE: Well, he said install. That's</p> <p>7 why I used that word.</p> <p>8 BY MR. BOSCHEE:</p> <p>9 Q. I mean, I'll ask multiple questions, and maybe</p> <p>10 we can clear it up this way. When did you guys start</p> <p>11 supplying equipment for this project?</p> <p>12 A. How about asking -- how about, when did you</p> <p>13 deliver the equipment?</p> <p>14 Q. Fair enough. That was going to be my next</p> <p>15 question.</p> <p>16 A. The answer is multiple dates, because there's</p> <p>17 multiple units here.</p> <p>18 Q. Okay.</p> <p>19 A. And I don't know the dates all specifically,</p> <p>20 though I think we probably have some documentation that</p> <p>21 will support those dates.</p> <p>22 Q. Sure.</p> <p>23 A. I know there's pictures and whatnot out there,</p> <p>24 but not all the stuff was delivered on the same date.</p> <p>25 And it was -- and delivery was -- yes. It was kind of</p>	<p>1 small -- smaller -- I'm guessing because it's only 329</p> <p>2 bucks -- that was invoiced on March 25, 2011. Do you</p> <p>3 know what this is?</p> <p>4 A. Well, I -- I can read what the invoice says.</p> <p>5 It says lugs, which are generally some type of bolts.</p> <p>6 Q. Right. Well, let me ask you this: Did</p> <p>7 Cashman do any work on this project after -- I mean,</p> <p>8 work on the project, you know, on site? Did you guys</p> <p>9 do any work on the project after February 1, 2011, that</p> <p>10 you are aware of?</p> <p>11 A. Oh, I don't -- I don't know for a fact.</p> <p>12 Q. Okay.</p> <p>13 A. I don't know that -- I don't know the answer</p> <p>14 to that. That would be a Keith question.</p> <p>15 Q. Okay. Keith would be the guy to ask.</p> <p>16 Other than these lug bolts, it doesn't appear</p> <p>17 any equipment was delivered to the project after</p> <p>18 February 1st of 2011; is that fair?</p> <p>19 A. You know, I -- I -- I'm having a hard time</p> <p>20 with all the delivery stuff because I don't have all</p> <p>21 that stuff in front of me.</p> <p>22 Q. Sure.</p> <p>23 A. And I don't recollect when all the exact dates</p> <p>24 were. But suffice it to say, the major pieces were</p> <p>25 delivered prior to the invoice.</p>
Page 71	Page 73
<p>1 a range of dates.</p> <p>2 Q. And then --</p> <p>3 A. These are -- these are very large units. They</p> <p>4 take cranes to, you know, drop them off and set them in</p> <p>5 the right place. And -- yeah. So this is kind of a</p> <p>6 big deal.</p> <p>7 Q. I have been over there. This is a lot of big</p> <p>8 stuff.</p> <p>9 And I understand we're dealing with a range of</p> <p>10 dates, but the equipment was delivered before you sent</p> <p>11 the invoice to CAM, wasn't it?</p> <p>12 A. I don't know that that is entirely true, but I</p> <p>13 believe the major pieces were.</p> <p>14 Q. And the reason I asked that, like is, for</p> <p>15 example, I'm not looking for a specific, you know, this</p> <p>16 piece was delivered on January 20th and this piece was</p> <p>17 delivered -- I truthfully don't care, but if you have</p> <p>18 got an invoice here that's sent out on 2/1/11, fair to</p> <p>19 say that most of the equipment, be it in December,</p> <p>20 January, was delivered by the time this invoice went</p> <p>21 out, correct?</p> <p>22 A. I -- yes. I think that is accurate.</p> <p>23 Q. And so the two sets of invoices go out on</p> <p>24 February 1st. Fair to assume that all that equipment</p> <p>25 was delivered. And then we have got this one kind of</p>	<p>1 Q. Prior to the invoice?</p> <p>2 A. And that's part of the invoice practice for</p> <p>3 soes and all sorts of things. Things have to get</p> <p>4 delivered and accepted before you can invoice.</p> <p>5 Q. Sure.</p> <p>6 And things need to be delivered and accepted</p> <p>7 before you can invoice. And then you testified that</p> <p>8 installation was also part of the job. Was that done</p> <p>9 in conjunction with the delivery?</p> <p>10 A. When you say "installation," are you meaning</p> <p>11 startup and making the whole system functional and</p> <p>12 workable as per the specs?</p> <p>13 Q. You tell me what your understanding of</p> <p>14 installation is.</p> <p>15 A. Well, that -- the making of the entire system</p> <p>16 work and -- and functional as per the specs, that</p> <p>17 is -- that dollar amount is included in this.</p> <p>18 Q. What is the timing of that? Does it happen</p> <p>19 right around the same time that the equipment is</p> <p>20 delivered?</p> <p>21 A. No.</p> <p>22 Q. Or is there a fair gap?</p> <p>23 A. There is a significant gap. Again, questions</p> <p>24 more likely for Keith --</p> <p>25 Q. Sure.</p>

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<p>1 A. -- but I think I can answer a little bit, is 2 there are certain points in that timeframe that we will 3 go out there and do whatever for whatever. You know, 4 because everything is a process and everything goes in 5 stages. 6 Q. Right. 7 A. So, no, it's not just a we drop everything 8 off, leave for six months, and then come back on a day, 9 and turn on the switch. 10 Q. Okay. 11 A. I believe it's -- you know, it's an ongoing, 12 but there's more that happens towards the end when 13 everything is getting ready to start up. 14 Q. And, again, you may or may not know the answer 15 to this. This may be another Keith question, but the 16 installation is included in the invoicing, I think is 17 what you said earlier; correct? 18 A. Well -- 19 MS. ROBINSON: I'm going to object. Asked and 20 answered. 21 THE WITNESS: Yeah. 22 BY MR. BOSCHEE: 23 Q. This is actually not -- I'm not trying to 24 trick you. I have a follow-up question. I just want 25 to make sure that's what your understanding is?</p>	<p>1 A. Yes. Significantly. 2 Q. So CAM at this point had been billed for it, 3 it's been part of their bill, but their service hasn't 4 been completed yet -- or the service hasn't been 5 completed yet, is the better way to say it? 6 A. True. 7 Q. Do you know when -- and maybe this is a Keith 8 question -- when's the last time that Cashman was on 9 this project actually performing work? 10 A. Don't know. 11 Q. Do you have a general idea of March, April, 12 earlier? 13 A. I -- I couldn't tell you. I really don't 14 know. 15 Q. And the only reason they were out there until 16 April is that's when things blew up? 17 A. Right. 18 Q. You guys didn't do any work after that, did 19 you? 20 A. Again, I couldn't tell you. We didn't -- I 21 mean, again, we have a -- well, had a better, let's 22 say, relationship with Mojave. And so in spite of 23 everything that happened, we were still contracting 24 with them on some other jobs and some other work, and I 25 don't know that we absolutely stopped everything at</p>
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<p>1 A. Well, what I understand is -- is the startup 2 is -- you know, the finishing off the process. I mean, 3 whatever you want to call it, whether it's installation 4 or -- the reason I hesitate using that word because 5 it's -- obviously we were trying -- we were trying to 6 sort that out last week. Everybody -- we were kind of 7 trying to make sure we knew what that meant, and I 8 don't know if it was clear. But, yes. The entire 9 machinery that we have sold to them, we did include in 10 this balance to be all functionable and workable 11 according to all the codes and everything that needs to 12 be done. 13 Q. Okay. 14 A. Codes of the city and state that require for 15 occupancy. 16 Q. And we won't use the word "installation," but 17 getting the equipment workable and operational, all of 18 that would be done before you would invoice CAM, 19 wouldn't it? 20 A. No. 21 Q. It wouldn't be? 22 A. No. 23 Q. So the equipment is delivered, the invoice is 24 sent, but the startup, getting it functional that goes 25 on past February 1, 2011?</p>	<p>1 that point until at a later point in time. But, again, 2 I don't know that we had people out there at this site 3 subsequent to that either. 4 Q. So just so I have got my timeline correct, it 5 looks like the majority of equipment was delivered 6 prior to February of 2011, but you are not sure when 7 the startup and all the workup was done, was completed 8 and when you guys were actually off the project? 9 A. Well, that's -- that's not really a fair 10 question. 11 Q. Okay. 12 A. I mean, you were talking about delivery -- 13 Q. Sure. 14 A. -- so, yes. 15 Q. Delivery, we got that? 16 A. But as far as the startup and all the rest of 17 that stuff, I -- I don't know how much of that was done 18 prior to us exiting the premises or -- or not coming 19 back. I don't know. 20 Q. Okay. That's fair. 21 A. But I do know that there is some left to do. 22 Q. Right. Yes. Talked about that last week. 23 But Keith would be someone who would be a person with 24 knowledge on that subject; correct? 25 A. Yes.</p>

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1 Q. Now, the three invoices that we saw, we talked
2 about this earlier. It's your understanding that
3 Mojave cut a check for at least the amount of these
4 three invoices, and your understanding it was actually
5 more than that to CAM; correct?

6 A. Yes.

7 Q. And based upon that, you provided what we're
8 going to look at next, this waiver and release upon
9 final payment?

10 A. Well, the reason I know that that check was
11 more is because I have seen his bank records, and we
12 know for a fact that it was.

13 Q. You know now that it was?

14 A. Right.

15 Q. After the fact, you have seen --

16 A. Right. But -- but at the time I knew, too,
17 because there was -- again, there was another couple of
18 vendors involved.

19 Q. Sure. That makes sense.

20 A. Not that that really matters.

21 Q. I want to take a look at this and not spend
22 too much time on this.

23 MR. BOSCHEE: This will be the next exhibit,
24 whatever number we're on. I think we're on 4.
25 (Exhibit 4 marked.)

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1 BY MR. BOSCHEE:

2 Q. Take a quick look at this. And I'm guessing
3 you have seen it before?

4 A. I have.

5 Q. Now, you testified earlier, if my recollection
6 is correct, that you swapped this document with
7 Carvalho for the check; correct?

8 A. Yes.

9 Q. And this was signed and notarized by
10 somebody --

11 A. Debra Caldwell.

12 Q. -- on April 26, 2010; correct?

13 A. Yes. That's what it states.

14 Q. Does that refresh your recollection as to the
15 date of the swap or it could have been that day or the day
16 after?

17 A. Yeah. It could have been that day or the day
18 after.

19 Q. We talked about your understanding of
20 unconditional waiver and releases and that they can
21 be -- that if the check bounces, you can terminate them
22 or void them; correct?

23 A. Correct.

24 Q. And we talked about use potentially of a
25 conditional waiver and release under different

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1 circumstances, do you recall that?

2 A. I do.

3 Q. Have you guys changed the way that you do
4 things or your policy with respect to swapping
5 unconditional lien releases for checks as a result of
6 this incident or do you still do things the same way
7 you have always done them?

8 A. No, we have not changed. We do -- we still do
9 the things the same way we have always done them.

10 Q. Did you guys complete the work on this
11 project?

12 A. I thought we just covered that.

13 Q. The work that you agreed to perform. The
14 deliver, and then the startup and installation?

15 A. Well, yeah. We -- we just -- we just covered
16 that and the fact that --

17 Q. Right.

18 A. -- yes, there's still something out there left
19 to be done.

20 Q. Could you -- I asked the question and I just
21 made a note of it. Do you know what's left to be
22 completed, other than obviously the installation and
23 the safety codes?

24 MS. ROBINSON: I'm going to object. Asked and
25 answered. And I think he previously testified as to

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1 what you're asking.

2 THE WITNESS: Yeah.

3 BY MR. BOSCHEE:

4 Q. I don't think he did. I don't think he
5 clarified. That's why I made a note of it. I don't
6 think he clarified what still needs to be done. That's
7 why I asked again. Again, I'm not trying to trick you.

8 A. I can answer that. I can simply state it's
9 what we call a startup --

10 Q. Okay.

11 A. -- which basically is the final phase
12 of -- of, you know, the -- the sale, making everything
13 workable and functional.

14 Q. Something just occurred to me that everybody
15 in this room knows what you mean by startup, but
16 someone else reading this transcript, maybe a judge or
17 somebody, might not. What do you mean when you are
18 talking about startup? Explain it very -- like I have
19 never been in the construction field or never been to a
20 job site. What do you mean by that?

21 A. Well, I'm going to let Keith answer that
22 question.

23 Q. Okay.

24 A. Because, again, I'm -- I'm the person most
25 knowledgeable about the deal in its entirety, but about

DISTRICT COURT
CLARK COUNTY, NEVADA

CONDENSED
TRANSCRIPT

CASHMAN EQUIPMENT COMPANY,)
a Nevada corporation,)

Plaintiff,)

vs.)

CASE NO. A642583

DEPT. NO. 32

(Consolidated with A653029)

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

Defendants.)

AND RELATED MATTERS.)

DEPOSITION OF SHANE NORMAN

THURSDAY, AUGUST 16, 2012

9:43 A.M.

AT 400 SOUTH FOURTH STREET, THIRD FLOOR
LAS VEGAS, NEVADA

REPORTED BY: MICHELLE R. FERREYRA-MAREZ, CCR No. 876
JOB NO. 163701

Page 2

1 DEPOSITION OF SHANE NORMAN,
2 taken at 400 South Fourth Street, Third Floor,
3 Las Vegas, Nevada, on THURSDAY, AUGUST 16, 2012, at
4 9:43 a.m., before Michelle R. Ferreyra-Marez, Certified
5 Court Reporter, in and for the State of Nevada.

APPEARANCES:

For the Plaintiff:

6 PEZZILLO ROBINSON
7 BY: JENNIFER R. ROBINSON, ESQ.
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12 (702) 233-4252 Fax
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14 For Defendants West Edna, Ltd., dba Mojave Electric,
15 Western Surety Company, The Whiting Turner Contracting
16 Company and Fidelity and Deposit Company of Maryland,
17 Travelers Casualty and Surety Company of America:

18 COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON &
19 THOMPSON
20 BY: BRIAN BOSCHKE, ESQ.
21 BY: SHEMILLY A. BRISCOE, ESQ.
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LAS VEGAS, NEVADA, THURSDAY, AUGUST 16, 2012;

9:43 A.M.

-000-

(In an off-the-record discussion held prior to the
commencement of the deposition proceedings, counsel
agreed to waive the court reporter requirements under
Rule 30(b)(4) of the Nevada Rules of Civil Procedure.)

Whereupon,

SHANE NORMAN,

having been first duly sworn to testify to the truth,
the whole truth and nothing but the truth, was examined
and testified as follows:

EXAMINATION

BY MR. BOSCHKE:

Q. Good morning, could you please state and spell
your last name for the record?

A. Shane Norman, S-h-a-n-e, N-o-r-m-a-n.

Q. And you are appearing today pursuant to a
request we made of your counsel for the person most
knowledgeable from Cashman Equipment; is that correct?

A. That is true.

Q. My name is Brian Boschke. I'm counsel for a
bunch of the defendants, particularly Mojave, Whiting

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1 INDEX
2 WITNESS: SHANE NORMAN
3 EXAMINATION PAGE
4 Examination By Mr. Boschke 4

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7 90-day notice sent to Whiting Turner	91

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Turner, in the litigation filed in District Court. Go
ahead, I'm sorry.

A. Are you representing Mojave and Whiting Turner
and Forest City?

Q. Well, Whiting Turner, Mojave -

MS. BRISCOE: Fidelity.

MR. BOSCHKE: Fidelity. I'm trying to think
of all of the sureties.

MS. ROBINSON: All the sureties.

BY MR. BOSCHKE:

Q. All the sureties.

MS. BRISCOE: Not Forest City.

MR. BOSCHKE: No.

MS. ROBINSON: Forest City is out because of
the lien release.

BY MR. BOSCHKE:

Q. Right. And I'm not representing CAM or the
Carvalhos. They have separate counsel, Mr. Coleman.

A. Sure.

MR. COLEMAN: I represent Janel Rennie.

THE WITNESS: Okay.

MS. ROBINSON: But not Angelo Carvalho.

MR. COLEMAN: No.

MR. BOSCHKE: Right.

¶

3 (Pages 6 to 9)

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1 BY MR. BOSCHEE:

2 Q. And I'm here for the deposition today that is
3 regarding the litigation that's been filed in the state
4 court I'm sure you are fairly familiar with. Let me
5 ask you right out of the gate, have you been deposed
6 before?

7 A. No.

8 Q. I'm sorry. Let me give you a quick rundown of
9 what we're going to do today. It's actually pretty
10 simple. I'm assuming that you're represented by
11 counsel, Ms. Robinson?

12 A. Yes.

13 Q. You may have gone through the ground rules
14 with her before this, but let me just run through a few
15 things. I'm going to ask you some questions. You are
16 going to provide answers, and the court reporter is
17 going to transcribe them. I don't want you to guess at
18 anything. If there's something that you don't know or
19 something you don't you understand, just tell me.
20 There's a good chance that's going to happen. Just
21 tell me, and I will do my best to clarify. And if you
22 don't know, you don't know. That said, I am entitled
23 to your best recollection of what you do remember about
24 the events that we're going to talk about. So to the
25 extent that you remember something, I am entitled to

1 something to drink, get a cookie, go to the restroom,
2 whatever you need to do, just let me know and we will
3 take a quick break and go off the record. I don't want
4 you to, you know, be uncomfortable because we're
5 putting you through the grinder here. This is not to
6 be that. Okay? Do you understand?

7 A. Okay, yes. No water boarding. Got you.

8 Q. Exactly.

9 Are you currently taking any medication that
10 will impede your ability to testify?

11 A. No.

12 Q. Is there any other reason why you wouldn't be
13 able to give your best testimony today?

14 A. No.

15 Q. There's also going to be times when counsel
16 or the other, I don't know about Mr. Coleman, but your
17 counsel may make an objection. I may make an objection
18 if Mr. Coleman is asking questions. Let the objection
19 play out. But unless your counsel instructs you not to
20 answer, most likely we'll be making the objection for
21 the record, and you will still have to answer the
22 question after the objections are finished. Okay?

23 A. Okay.

24 Q. Cool. I think that's about the end of the
25 introductory boring stuff.

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1 that. Do you understand that?

2 A. Uh-huh.

3 Q. The oath that you just took from the court
4 reporter is the same oath that you would take in a
5 court of law. I think actually you may have just taken
6 last week in another hearing. It carries with it the
7 same duties and penalties that the oath would take in
8 court. Do you understand that?

9 A. Yes.

10 Q. I'm going to do my best to get a complete
11 transcript of the proceedings today, so it's important
12 that when I'm asking questions you not talk, and when
13 you are answering my questions, I not interrupt you,
14 because the court reporter can't transcribe us both
15 talking at the same time. Okay?

16 Also, the court reporter needs audible answers
17 so yes, no, or whatever. But like head nods and
18 shaking your head no, she can't transcribe that so. Do
19 you understand that?

20 A. Yeah.

21 Q. That ideally will give us a clear record.

22 Also, this is not meant to be an endurance
23 contest by any stretch of the imagination. I'll do my
24 best to get us out of here as efficiently as possible.
25 But if you need to take a break, get some water, get

1 Did you do anything to prepare for the
2 deposition this morning?

3 A. Not necessarily for this one, no.

4 Q. When you say "not necessarily for this one,"
5 did you review anything for anything else in the case?

6 A. Well, we were in court last week, and we have
7 CAM/Angelo Carvalho stuff going on as well, so -

8 Q. Right. And just so - I know what you are
9 talking about, but I want to make sure that we have a
10 clear record of what you are talking about. The
11 proceeding in court last week was a prove-up hearing on
12 some damages against CAM and Carvalho; correct?

13 A. Yes.

14 Q. And you reviewed some documents in conjunction
15 with that hearing?

16 A. Uh-huh.

17 Q. What did you review?

18 A. Some documents, I mean, time lines, you know,
19 looked at the invoices, that kind of thing.

20 Q. Do you remember specifically any other
21 documents that you looked at?

22 A. I - I have a three ring binder with probably
23 about 300 pages in it, so -

24 Q. Okay.

25 A. - just thumbed through them all.

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1 Q. I'm sure the answer to this is yes because
 2 I've seen hundreds and hundreds of pages of documents
 3 for these. Of all the documents that you reviewed for
 4 that hearing and then I would assume kind of spill over
 5 into today, that's all stuff that's been produced in
 6 this litigation; correct?
 7 A. Yes.
 8 Q. Other than counsel, did you talk to anybody
 9 about the -- let's start with the prove-up hearing on
 10 Friday, did you talk to anyone about that?
 11 A. My attorney.
 12 Q. Other than your attorney?
 13 A. No.
 14 Q. Did you talk to anybody about your deposition
 15 today, about what -- you know, the subjects you were
 16 going to testify about or anything?
 17 A. Yeah. Other than my attorney, no.
 18 Q. Other than the documents you looked at for the
 19 prove-up hearing, did you look at anything else in
 20 preparation for the deposition today, in the last five
 21 days, I guess it has been?
 22 A. No. I haven't reviewed the file.
 23 Q. Well generally, what I'm going to be asking
 24 you about, I'm sure you know, is the questions about
 25 the City Hall project, generally --

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1 A. Fifteen years.
 2 Q. And briefly, I mean, real Reader's Digest, I
 3 mean, as brief as you can, give me your educational
 4 background.
 5 A. I graduated in finance from Utah State
 6 University 15 years ago or so. I graduated from the
 7 graduate school of Credit and Finance Management at
 8 Dartmouth about two years ago. And I'm a certified
 9 credit executive, which is the highest of three
 10 certifications for credit managers.
 11 Q. When did you get that certification?
 12 A. At the same time I graduated from the graduate
 13 school.
 14 Q. So within the last couple of years?
 15 A. Yeah. It's probably been two years now.
 16 Q. The specific date is not important. I just
 17 kind of want to get a general idea.
 18 Walk me through, I have a pretty good idea,
 19 but, again, for the record and just so we're clear,
 20 what are your job responsibilities as a credit manager
 21 for Cashman?
 22 A. Extending lines of credit, maintaining those
 23 lines of credit, collecting on receivables, reminding
 24 customers who forget or fail to pay us, working out
 25 complicated deals, including legal issues. I also

Page 11

1 A. Sure.
 2 Q. -- and kind of how this whole thing
 3 transpired. But first, I just want to get a little bit
 4 of background with Cashman. What is your position with
 5 Cashman?
 6 A. My title is credit manager.
 7 Q. I'm going to refer to your company as Cashman
 8 going forward so I don't have to say the whole thing
 9 out. How long have you been the credit manager?
 10 A. Six and a half years.
 11 Q. Did you have any positions with Cashman prior
 12 to that?
 13 A. No.
 14 Q. Did you work as a credit manager with any
 15 other company prior to coming to Cashman?
 16 A. Yes.
 17 Q. Who was that?
 18 A. Komatsu Equipment Company. Spelled,
 19 K-o-m-a-t-s-u.
 20 Q. How long did you work there?
 21 A. Three years.
 22 Q. How long -- and I'll say construction
 23 industry, generally, but you have been a credit manager
 24 in the construction industry, how long have you been in
 25 this field?

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1 provide or facilitate retail financing options for our
 2 customers who are purchasing our equipment.
 3 Q. Okay.
 4 A. Posting cash, a little bit of treasury
 5 management. I have also been on the strategic planning
 6 committee for our company.
 7 Q. What is the strategic planning that you do
 8 with your company? What do you do in conjunction with
 9 that?
 10 A. What our company is going to look like in ten
 11 years, what we want to be.
 12 Q. How many people are on that committee?
 13 A. The executive level, 10 or so.
 14 Q. Including you?
 15 A. Actually, I'm -- I'm not on that committee
 16 now. I was as of three months ago.
 17 Q. Did you step down from the committee?
 18 A. They decided to do it in a different fashion,
 19 the president, so I'm out. How's that?
 20 Q. They decided to take the executive in a
 21 different direction?
 22 A. Yes.
 23 Q. I like that.
 24 So over the entire six-plus years you have
 25 worked as a credit manager for Cashman, those job

5 (Pages 14 to 17)

Page 14	Page 16
<p>1 responsibilities have remained fairly static? They 2 have been what you have done? 3 A. Yes. 4 Q. I guess -- I'm trying to think of a good way 5 to say this. City Hall project, I'm going to refer to 6 construction project. You understand what I'm saying 7 when I say construction project? 8 A. Yes. 9 Q. How many projects like that have you been 10 involved in in Las Vegas in the six and a half years 11 with Cashman? 12 A. That's difficult to answer. 13 Q. Okay. 14 A. Every single one of our customers has anywhere 15 between one and, I don't know, 100 jobs at any one 16 given time. And we have 2000-plus active customers. 17 Q. Okay. 18 A. And so I'm involved in, you know, the credit 19 and finance side of things, not necessarily associated 20 with the job and project funding. For instance, like a 21 Mojave or Whiting Turner, that I'm involved in 22 entertaining the, you know, credit perils of our 23 customers as opposed to their jobs. So a lot. 24 Q. Yes. 25 A. But -- but not directly so.</p>	<p>1 Q. How about Whiting Turner? 2 A. Whiting Turner is a direct customer of ours as 3 well, but not -- not anywhere to the Mojave volume 4 levels. 5 Q. Fair to say that a company like Whiting Turner 6 is maybe one step removed and you deal with more like 7 the Mojaves and then they deal with Whiting more? 8 A. That is a fair statement, yes. 9 Q. And I'm going to ask -- we will get into more 10 detail on this later, but how about CAM, before this 11 project, have you ever dealt with them before? 12 A. No. 13 Q. How about Angelo Carvalho, have you ever dealt 14 with any entities that he was involved in before? 15 A. No. 16 Q. Or him personally? 17 A. No. 18 Q. He had personally never been a customer? 19 A. No. 20 Q. And I'm paraphrasing a little bit, but 21 obviously we had a situation with this project. 22 A. That's an understatement. 23 Q. I think that's a fair statement, but there was 24 an issue where there was a payment made and then 25 obviously you guys didn't get paid. Have you ever had</p>
Page 15	Page 17
<p>1 Q. Let me see if I can clarify that. I think I 2 know what you are saying, and I probably asked a bad 3 question knowing what your company does, basically. 4 But whereas a lot of contractors and subcontractors 5 kind of deal project to project, you guys deal more 6 with customers who are working on different projects 7 all over the place. Is that a fair representation? 8 A. That is a fair statement. 9 Q. And many of those customers work on projects 10 in Las Vegas; is that right? 11 A. Yes. 12 Q. How many -- well, has Mojave Electric been a 13 customer of Cashman's? 14 A. Yes. 15 Q. On how many projects would you say? 16 A. I -- I -- I couldn't tell you. Mojave has 17 been a long-standing prominent customer of ours on the 18 power generation side of our business for a long time. 19 Q. Quite a few? 20 A. Yes. 21 Q. In fact, you have worked with Mojave Electric, 22 I mean, from the finance and credit side a number of 23 times in the last six and a half years; is that fair to 24 say? 25 A. Oh, yes.</p>	<p>1 that type of problem with Mojave on any other project 2 in all the times they had been a customer of yours? 3 A. No. 4 Q. Were you having -- 5 A. Well, let me -- let me -- let me restate that. 6 Q. Sure. 7 A. We have never had a Mojave check bounce. 8 Q. Okay. 9 A. Let's just say that, not clear the bank. 10 Q. How about a situation like this? And, again, 11 very specifically like this where, you know, materials 12 are supplied, Mojave pays somebody, and then you guys 13 are left kind of holding the bill, has anything like 14 that that you can recall ever happened? 15 A. With Mojave, no. 16 Q. How about Whiting Turner? 17 A. No. 18 Q. So with respect to a situation like what 19 happened here, this is kind of the first time that 20 that's ever happened with Mojave as a customer fair? 21 A. Fair. 22 Q. Now on this project, as I understand it, 23 Cashman had a contract directly with CAM; is that 24 right? 25 A. It -- that's not a clear and concise yes or no</p>

Page 18

1 because that's debatable.

2 Q. Well, I guess I'll let you go ahead - I'm not
3 trying to trick you.

4 A. Right.

5 Q. Explain to me what your understanding of the
6 relationship between Cashman and CAM and then
7 ultimately Mojave was?

8 A. Initially, our quotes and the job that we
9 quoted that we provided all the information was
10 directly to Mojave. I don't know exactly how long that
11 process was, but it was greater than six months.

12 Q. Okay.

13 A. In preparation for the project coming up. We
14 obviously won the bid. I don't know at what point in
15 time, but it is my understanding that just before
16 invoicing CAM, Angelo Carvalho came up as a result of
17 Mojave demanding that we utilize a disadvantaged
18 business owner to route the transaction between us and
19 Mojave due to federally mandated statutes of using
20 disadvantage business owners or minority owned owners.

21 Q. Let me follow up on something. You just
22 indicated that Mojave demanded that CAM be used.

23 A. (Witness nods.)

24 Q. What is your basis for that statement, that it
25 was a Mojave demand?

Page 19

1 A. Mojave did not want us to invoice them
2 directly. They wanted us to route it through another
3 entity.

4 Q. Do you have any understanding, independent
5 understanding, as to how CAM got involved in this
6 project in the first place?

7 A. I do. Keith Lozeau, who also works for
8 Cashman Equipment Company, was referred to him by
9 someone at Mojave. I don't know who that is.

10 Q. So let me just clarify, because maybe I didn't
11 understand what you said, and that's very likely. It's
12 your understanding that CAM was referred to Mojave for
13 use on this project?

14 MS. ROBINSON: I think that misstates.
15 Objection.

16 BY MR. BOSCHEE:

17 Q. That's why I said - I didn't understand what
18 you said. Could you -

19 A. Let me - let me - let me clarify.

20 Q. Sure.

21 A. Mojave requested that we use a third-party
22 disadvantaged business owner. They suggested CAM
23 Consulting, as they had been using them themselves as
24 well as a couple other vendors had been using them to
25 deal with Mojave's project directly.

Page 20

1 Q. Okay.

2 A. So - so, yes, Mojave referred CAM Consulting
3 and introduced us. How's that?

4 Q. So, again, just trying to get to the bottom of
5 this, it's your understanding that Mojave wanted to use
6 CAM Consulting; correct?

7 A. Yes.

8 Q. And that the disadvantaged business owner that
9 they wanted to use was CAM and they introduced CAM, I
10 guess it was Keith, with your company?

11 A. Uh-huh.

12 Q. And that's how CAM got involved?

13 A. Yes.

14 Q. Do you know why Mojave or anyone on that
15 project would have wanted to use a disadvantaged
16 business owner?

17 A. I - I don't know specifically why Mojave
18 wanted to, but I do know there are federally mandated
19 statutes of - tied with monetary funds from the
20 federal government that mandates a certain percentage
21 of jobs to be done with disadvantaged business owners
22 or minority owned businesses.

23 Q. So getting back to, I just want to clarify
24 this. I don't want to beat a dead horse, but when you
25 said that Mojave wanted to use a disadvantaged business

Page 21

1 owner, do you have any independent knowledge as to
2 whether that was something that Mojave wanted to do or
3 if that was something that somebody up the chain needed
4 to do and requested of Mojave?

5 A. I don't have any direct knowledge of that.

6 Q. It's just when the need for disadvantaged
7 business owner arose, from wherever it arose from
8 wherever, Mojave recommended CAM and then they
9 introduced CAM to you?

10 A. Yes.

11 Q. Again, that was the first time you had ever
12 worked with CAM or Angelo Carvalho; correct?

13 A. Correct.

14 Q. You didn't play any part in the selection of
15 CAM as the disadvantaged business owner?

16 A. I did not.

17 Q. With respect to the requirement for the
18 disadvantaged business owner, did you guys have any
19 role in that process at all, other than Mojave
20 introduces CAM to you and then you guys use them? Did
21 you interview CAM?

22 A. Keith Lozeau is more knowledgeable about that.

23 Q. Okay.

24 A. But, yes, Keith Lozeau did meet with Angelo
25 Carvalho at one point in time.

7 (Pages 22 to 25)

Page 22	Page 24
<p>1 Q. Well, given that -- and maybe this would be</p> <p>2 something more directed to you as kind of the finance</p> <p>3 business guy --</p> <p>4 A. Sure.</p> <p>5 Q. -- given that you have a long-standing</p> <p>6 relationship with Mojave.</p> <p>7 A. Uh-huh.</p> <p>8 Q. And so I'm guessing you guys doing business</p> <p>9 and invoicing Mojave wasn't anything to give you any</p> <p>10 heartburn; correct?</p> <p>11 A. No.</p> <p>12 Q. But now you got this third party intermediary,</p> <p>13 this disadvantaged business owner kind of coming in the</p> <p>14 middle of that relationship, and you are going to be</p> <p>15 invoicing them. Did you have any -- did you run any</p> <p>16 kind of credit check on CAM?</p> <p>17 A. I did.</p> <p>18 Q. And what did that turn up?</p> <p>19 A. Limited credit information.</p> <p>20 Q. I'm not a credit guy. You are going to have</p> <p>21 to tell me what that means.</p> <p>22 A. Well, I'm -- I'm likely not at liberty to</p> <p>23 discuss his credit --</p> <p>24 Q. I understand.</p> <p>25 A. -- powers.</p>	<p>1 A. No.</p> <p>2 Q. Is the reason that that unwritten criteria</p> <p>3 became a written criteria? Is it at least in part due</p> <p>4 to this situation?</p> <p>5 A. No.</p> <p>6 Q. It was just something that you guys felt that</p> <p>7 it would probably be good to put on pen to paper?</p> <p>8 A. Yeah.</p> <p>9 Q. Given the paucity we will say of information,</p> <p>10 of credit information of CAM, did this cause you any</p> <p>11 concern about entering into this arrangement where you</p> <p>12 were invoicing them instead of Mojave?</p> <p>13 A. Yes.</p> <p>14 Q. Did you discuss those concerns with Mojave?</p> <p>15 A. No. I discussed them with Keith, our liaison</p> <p>16 to Mojave.</p> <p>17 Q. What was the substance of those conversations?</p> <p>18 A. I'm concerned.</p> <p>19 Q. I'm looking more for -- I kind of got that.</p> <p>20 A. Yeah, I'm concerned. I mean, that was what it</p> <p>21 boiled down to, I'm concerned. But because of our</p> <p>22 long-standing relationship with Mojave and because the</p> <p>23 fact that we hadn't, like we mentioned before, hadn't</p> <p>24 had any other issues and the money was still coming</p> <p>25 from Mojave and the units were being delivered as we</p>
Page 23	Page 25
<p>1 Q. I understand.</p> <p>2 A. However, there was not much credit information</p> <p>3 where with -- to make a good credit decision based on</p> <p>4 that. I would liken it to -- his business credit was a</p> <p>5 fellow coming out of college. You have no real</p> <p>6 history.</p> <p>7 Q. You hope not anyway.</p> <p>8 A. Yeah.</p> <p>9 Q. I think I did, unfortunately.</p> <p>10 A. How about high school?</p> <p>11 Q. But did you guys have any -- were there any</p> <p>12 criteria that you had or that Cashman had when looking</p> <p>13 at CAM as to, Okay. Yes, we're comfortable</p> <p>14 using -- you know, invoicing them and then getting paid</p> <p>15 ultimately by Mojave? Did you have any criteria that</p> <p>16 you were looking at and said, Yes, they are okay. Or</p> <p>17 No, they are not okay?</p> <p>18 A. Yes, I do have criteria.</p> <p>19 Q. What are they?</p> <p>20 A. Well, they're written now, but before, it was</p> <p>21 just my experience. And again, it's -- the criteria is</p> <p>22 that you have a reasonable, acceptable set of credit</p> <p>23 information on your business that -- that would merit</p> <p>24 that type of transaction.</p> <p>25 Q. Did CAM?</p>	<p>1 spoke and it was required of us to invoice them, we</p> <p>2 went ahead and did what we did.</p> <p>3 Q. And maybe I'll end up having to talk to Keith</p> <p>4 about this at some point, but when you expressed your</p> <p>5 concern to Keith, what did he respond? I mean, what</p> <p>6 did he say? Did he just kind of blow it off and say,</p> <p>7 No. Mojave is a good customer. We can do this. Did</p> <p>8 he echo your concerns?</p> <p>9 A. Yes, he echoed my concerns. However, again,</p> <p>10 it really fell back to the strength of our relationship</p> <p>11 and the credit promise of Mojave.</p> <p>12 Q. Sure.</p> <p>13 Did you or Keith ever have this conversation</p> <p>14 with Mojave that you know of where you discussed in</p> <p>15 particular your concerns with CAM's lack of credit to</p> <p>16 Mojave and a conversation along the lines of, I guess</p> <p>17 what I am looking for, Is there someone else we can use</p> <p>18 or some other disadvantaged business owner that we can</p> <p>19 use because we just don't have a lot of credit on these</p> <p>20 guys and we are not really comfortable with it? Did</p> <p>21 that conversation ever take place?</p> <p>22 A. Not directly with Mojave that I had.</p> <p>23 Q. Okay.</p> <p>24 A. If Keith had it, that would be a</p> <p>25 different -- that would be a question for him. I don't</p>

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<p>1 know that he had that.</p> <p>2 Q. Do you have an understanding as to whether a</p> <p>3 conversation along those lines took place?</p> <p>4 A. I don't know.</p> <p>5 Q. Keith would be the person that would have had</p> <p>6 that conversation?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ever have any conversations with</p> <p>9 Mojave regarding -- I mean, obviously before the</p> <p>10 unfortunateness, we'll call it. But did you ever have</p> <p>11 any conversations with Mojave about the use of CAM on</p> <p>12 this project, you personally?</p> <p>13 A. No.</p> <p>14 Q. You have worked with disadvantaged business</p> <p>15 owners before, though; correct?</p> <p>16 A. Yes.</p> <p>17 Q. How often?</p> <p>18 A. It's not a common occurrence, but it is often</p> <p>19 enough to where it does happen on an occasional basis.</p> <p>20 How's that for a lack of better specificity? It</p> <p>21 happens. And -- and -- and it does work.</p> <p>22 Q. What types of projects generally have you guys</p> <p>23 worked with this type of minority contractor or</p> <p>24 disadvantaged business owner?</p> <p>25 A. Federal projects often associated with the</p>	<p>1 Q. -- disadvantaged business owners for other</p> <p>2 reasons, but not necessarily -- they're direct</p> <p>3 customers. You haven't used them in a situation like</p> <p>4 this, where an existing customer kind of pulls someone</p> <p>5 in --</p> <p>6 A. Right.</p> <p>7 Q. -- and slots them in?</p> <p>8 Have you ever encountered this type of an</p> <p>9 issue, and, again, this type of issue what we are</p> <p>10 talking about in this lawsuit, with a disadvantaged</p> <p>11 business owner's failure to pay.</p> <p>12 A. No, not that I can recall. And never of</p> <p>13 this -- definitely never this level of, I guess, high</p> <p>14 volume. How is that?</p> <p>15 Q. Certainly nothing that resulted in litigation?</p> <p>16 A. I wouldn't say that.</p> <p>17 Q. Okay.</p> <p>18 A. I wouldn't go that far. Again, we have quite</p> <p>19 a few customers; there are customers that don't pay us,</p> <p>20 for whatever reason. We do take them down the legal</p> <p>21 path.</p> <p>22 Q. Okay.</p> <p>23 A. And some of those customers are designated as</p> <p>24 minority owned, disadvantaged in some way, shape, or</p> <p>25 form.</p>
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<p>1 military or, you know, federally funded, you know,</p> <p>2 municipal projects, that kind of thing.</p> <p>3 Q. Sure. Which again would make sense --</p> <p>4 A. Yes.</p> <p>5 Q. -- because those are where the requirements</p> <p>6 come from?</p> <p>7 A. Yeah.</p> <p>8 Q. Have you ever worked with a disadvantaged</p> <p>9 owner, minority contractor on a private project, not a</p> <p>10 Public Works or federal project?</p> <p>11 A. Well, you should know that many of our</p> <p>12 contractors that are really good customers are already</p> <p>13 designated as minority contractors.</p> <p>14 Q. Oh, okay.</p> <p>15 A. They are owned by a woman or they're owned by</p> <p>16 a minority or they have been disadvantaged in some way,</p> <p>17 shape, or form.</p> <p>18 Q. Okay.</p> <p>19 A. So we deal with them on a regular basis.</p> <p>20 Q. Okay.</p> <p>21 A. And -- but not specifically for in behalf of</p> <p>22 this purpose here. Does that make sense?</p> <p>23 Q. It does. You have customers that are</p> <p>24 deemed --</p> <p>25 A. That are designated, yes.</p>	<p>1 Q. But those would be, again, like we were just</p> <p>2 classifying, those are more of a direct relationship,</p> <p>3 not a situation like this?</p> <p>4 A. Not -- not -- not one that was presented to us</p> <p>5 at the time of -- you know, that was inserted in kind</p> <p>6 of the last minute like this.</p> <p>7 Q. So CAM enters the equation at the 11th hour.</p> <p>8 Obviously you guys had some dealings with them because</p> <p>9 you are invoicing them directly?</p> <p>10 A. Uh-huh.</p> <p>11 Q. How would you classify your dealing? Describe</p> <p>12 for me what your dealings were like with CAM.</p> <p>13 A. Well, honestly, not that I haven't been honest</p> <p>14 previously, I guess, but --</p> <p>15 Q. Thank you for clarifying that.</p> <p>16 A. Our -- our -- now, we're talking about the</p> <p>17 truth. Our dealings with CAM were limited, because we</p> <p>18 mainly dealt with Mojave directly.</p> <p>19 Q. Okay.</p> <p>20 A. And Mojave, in my estimation, in my several</p> <p>21 phone calls and my contact with them, were</p> <p>22 basically -- her name was Francis at Mojave, Francis</p> <p>23 McCombs. And she was quite close with Angelo Carvalho,</p> <p>24 and she was the one that generally conversed with him.</p> <p>25 Q. Okay.</p>

9 (Pages 30 to 33)

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1 A. And -- yeah. So our dealings weren't
 2 necessarily directly with CAM. They were still
 3 primarily with Francis --
 4 Q. Okay.
 5 A. -- though we had the ability to talk to him,
 6 although he was difficult to get ahold of for some
 7 other reasons we can probably get into later.
 8 Q. I will represent to you that he's still
 9 difficult to get ahold of in certain instances.
 10 A. Well, I think when exactly where he is now.
 11 Q. Well, actually, yes and no.
 12 So how many direct interactions would you say
 13 you had with Angelo or anybody at CAM?
 14 A. I met with him twice personally.
 15 Q. Okay.
 16 A. Most of the -- and -- and via phone was less
 17 than five times.
 18 Q. What were the occasions that you had to meet
 19 with him personally?
 20 A. Well, the first one was to exchange the check
 21 for release. And then the second one was at his home
 22 to have him write me another check as the first one was
 23 stop paid.
 24 Q. Let's talk about that. I figured you were
 25 going to get into that. That's why I pulled that

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1 exhibit out.
 2 MR. BOSCHEE: I'll mark this as Exhibit 1.
 3 (Exhibit 1 marked.)
 4 BY MR. BOSCHEE:
 5 Q. Go ahead and take a look at that. I'll
 6 represent to you. This is a check in the amount of
 7 \$755,893.89 dated April 29, 2011, looks like from CAM
 8 Consulting to Cashman Equipment. Do you recognize this
 9 check?
 10 A. Yes.
 11 Q. Let's talk about it for a second. You said
 12 just a few minutes ago that this was the check that you
 13 exchanged with Angelo for the unconditional lien
 14 release; correct?
 15 A. Yes.
 16 Q. We will look at that in a few minutes, but my
 17 question being the unconditional lien release was
 18 signed and notarized by you, I believe, on April 26th.
 19 Does that ring a bell?
 20 A. Yes.
 21 Q. And you provided that to Carvalho on -- was it
 22 on that date?
 23 A. I don't know that it was the 26th exactly, but
 24 it is a couple of days before this --
 25 Q. Okay.

1 A. -- check.
 2 Q. Well, I guess that's really my question.
 3 Carvalho gave you a postdated check; right?
 4 A. Yes.
 5 Q. Did he tell you why he needed to do that?
 6 A. Well, to clarify, I did not realize that he
 7 had given me a postdated check.
 8 Q. Oh, okay.
 9 A. Not until subsequently. However, he did state
 10 that he wanted me to hold on to the check for two days
 11 to give it time to clear. Because in the past, with
 12 such big balances, his bank has held on to the funds
 13 and wouldn't release them to him. And frankly, that
 14 makes sense.
 15 Q. It does. I understand that.
 16 A. That's -- that's a common occurrence.
 17 Q. Right.
 18 Is it fairly common, I guess common is
 19 probably the wrong word, but would you say it's fairly
 20 common for you guys to get a check and then have
 21 someone ask you to hold it for a day or two for that
 22 reason?
 23 A. It is some -- somewhat common.
 24 Q. It didn't alarm you that Angelo asked you to
 25 hold on to this check for a couple days?

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1 A. No. He told me that there was nothing in his
 2 bank account, other than the check that he
 3 received -- was receiving from Mojave at the same time
 4 from the same meeting that I met him and that he has
 5 yet to deposit it, and then the bank would hold on to
 6 it and then it would take a day or two for the bank to
 7 release the funds or make -- or -- or -- I guess I
 8 don't know if release the funds is right, but to make
 9 them available. How's that?
 10 Q. Yes. That's understandable.
 11 A. And that is -- and that is a common
 12 occurrence.
 13 Q. I understand what you're saying. A lot of
 14 banks -- I know Wells Fargo does the same thing. Or if
 15 you put too much money in the bank, they're only going
 16 to release a portion of it immediately --
 17 A. Exactly.
 18 Q. -- and make you sit for a couple of days.
 19 Let me ask you this, though. Did it concern
 20 you that Angelo Carvalho told you when he got his check
 21 that this was the only money in CAM Consulting's bank
 22 account?
 23 A. No.
 24 Q. That didn't concern you?
 25 A. No. And the reason why is because I knew

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1 Mojave was paying him a larger portion than what this
2 check was and that he was solely a pass-through source.
3 It didn't surprise me at all that he didn't really have
4 any -- enough -- enough money to -- you know, for this
5 check to clear, to clarify.
6 Q. What made you think Mojave was paying more
7 than the \$755,893?
8 A. Well, because there were several other vendors
9 involved.
10 Q. Okay.
11 A. I wasn't the only vendor that met with him
12 that day, from what I understand.
13 Q. So you understood that Mojave wrote CAM a
14 larger check than this, and this was just him paying
15 your portion of that?
16 A. Yes.
17 Q. Did Carvalho tell you that?
18 A. Yes.
19 Q. Off the top of your head, I mean, do you
20 remember what other vendors were there that day?
21 A. I do. Well, I don't -- I can't vouch for them
22 actually being there.
23 Q. I understand.
24 A. But I do know that he did write -- or -- or
25 receive payment for two other vendors. One was QED,

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1 and the other one was -- I would be guessing. If I
2 recollect correctly, it's Consolidated Electrical
3 Systems, but --
4 Q. And if it's not, don't worry. I'm not going
5 to impeach you with that of all things. That's fine.
6 A. That can be verified through Angelo Carvalho's
7 bank statements.
8 Q. Sure.
9 So obviously this check has a stop payment on
10 it --
11 A. Yes.
12 Q. -- correct?
13 Who requested that? How did this become a
14 stop payment situation? Walk me through that process.
15 A. Well, I know for a fact that Angelo Carvalho
16 did it, because he told me himself when I met with him
17 the second time at his home.
18 Q. Why?
19 A. He said that Keith Lozeau had called him
20 asking him for payment, who also, again, works for
21 Cashman, and Keith did not realize that I had picked up
22 this check.
23 Q. So Carvalho's story was that someone else at
24 Cashman had asked him for payment and didn't realize
25 that you had gotten this check, so he stopped payment

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1 on this check to give payment to Keith theoretically or
2 to pay it some other way?
3 A. I -- I -- I don't know about the last part,
4 but, yes, he was unsure of where his first check was is
5 his story.
6 Q. Interesting. Okay. Mr. Carvalho is an
7 interesting guy.
8 Do you have an understanding of when Mojave
9 paid CAM?
10 A. Yes. That same day that CAM paid me.
11 Q. A few days earlier or a few days before the
12 29th --
13 A. Yes.
14 Q. -- or a couple of days?
15 And you said it's not uncommon for you guys to
16 hold on to a check for a couple of days to let it clear
17 a bank; correct?
18 A. For the bank to release the funds, yes.
19 Q. Well, yes, right. That's not uncommon?
20 A. It's not uncommon.
21 Q. Accepting a postdated check in a situation
22 like this is not something that would necessarily cause
23 you any angst?
24 MS. ROBINSON: I think that misstates previous
25 testimony. Objection.

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1 THE WITNESS: Well --
2 BY MR. BOSCHEE:
3 Q. That's fine.
4 A. Again, I did not know it was a postdated
5 check, so I didn't knowingly accept a postdated check.
6 However, he did ask me to hold on to the check for a
7 couple of days.
8 Q. You guys don't -- I mean, I say you guys, but
9 Cashman, it's not a standard business practice to
10 accept postdated checks, is it?
11 A. Not a standard. I -- I wouldn't -- I wouldn't
12 say that, no.
13 Q. Okay.
14 A. We have lots of checks. I mean, most
15 everybody pays us with checks, sending them directly to
16 our lockbox. Those are obviously not postdated because
17 those are automatically posted into our -- when we do
18 accept payments from customers and sometimes on
19 occasions, they ask us to hold on to the check for a
20 couple days. It's not uncommon.
21 Q. So on the 26th or 27th of April, you have an
22 understanding that Mojave has written a check to CAM,
23 money is in the bank, Carvalho asks you to hold on to
24 this particular check for a couple of days so the bank
25 will release the funds?

11 (Pages 38 to 41)

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<p>1 A. Right.</p> <p>2 Q. And you say okay and only find out later that</p> <p>3 there's an issue; is that fair?</p> <p>4 A. Yes.</p> <p>5 Q. When did you guys -- when did you or when did</p> <p>6 someone else from Cashman actually take this check to</p> <p>7 the bank?</p> <p>8 A. We didn't take it to the bank. We had a</p> <p>9 desktop deposit.</p> <p>10 Q. Okay.</p> <p>11 A. I believe it was either Friday -- Friday -- I</p> <p>12 think this April 29th, if I'm not mistaken, 2011, is a</p> <p>13 Friday. I think that's the date that we deposited it</p> <p>14 in our desktop deposit.</p> <p>15 Q. Okay.</p> <p>16 A. There was no taking it to the bank.</p> <p>17 Q. I'm not readily familiar with that. I mean,</p> <p>18 I'm not as familiar as you are with desktop deposit,</p> <p>19 but typically my experience has been that when you do</p> <p>20 something on Friday like that, it hits the bank a lot</p> <p>21 of times on Monday. Is that your experience or does it</p> <p>22 usually hit that same day?</p> <p>23 A. Well, and I don't mean to be nitpicky, but</p> <p>24 when you say "hit the bank," you need to clarify that.</p> <p>25 Q. Sure.</p>	<p>1 account is not of super huge significance that the bank</p> <p>2 would put a hold on it.</p> <p>3 Q. Right. I would imagine you have a revolving</p> <p>4 balance in your account of more than \$700,000, I hope.</p> <p>5 A. It's significantly more than that, yeah.</p> <p>6 Q. So when were you notified that there was a</p> <p>7 problem? I mean, did the bank notify you or did</p> <p>8 Carvalho notify you?</p> <p>9 A. No. Carvalho did not notify us. The bank</p> <p>10 notified us. And I don't know what -- this says 5/4 is</p> <p>11 the date.</p> <p>12 Q. I have a date of 5/4, yes. That's why I</p> <p>13 asked.</p> <p>14 A. Yeah. I don't know that we were notified that</p> <p>15 day, but that was the day that it was returned by our</p> <p>16 bank. And not necessarily -- when I say returned to</p> <p>17 us, that doesn't necessarily mean they notified us, but</p> <p>18 it was stamped returned. It was shortly thereafter,</p> <p>19 though.</p> <p>20 Q. Did the bank just tell you there was</p> <p>21 insufficient funds to cover the check?</p> <p>22 A. Yeah.</p> <p>23 Q. Okay.</p> <p>24 A. No. No. They just said it was -- right here,</p> <p>25 return reason, stop payment. Not insufficient funds.</p>
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<p>1 A. When does that hit -- are -- are you asking</p> <p>2 when does that hit Angelo's account?</p> <p>3 Q. Yes. That's probably the better question.</p> <p>4 A. I don't know the answer to that, but we</p> <p>5 generally receive funds and access to the funds the</p> <p>6 same day that we deposit it from our bank. Now, what</p> <p>7 day it's presented to Angelo Carvalho's bank is -- I</p> <p>8 don't know.</p> <p>9 Q. Even in --</p> <p>10 A. I believe it's the same day, actually, or a</p> <p>11 Saturday, but I don't think that it would be a Monday.</p> <p>12 But it depends upon the bank and it depends upon the</p> <p>13 type of transaction --</p> <p>14 Q. Sure.</p> <p>15 A. -- lots of things out of both our hands.</p> <p>16 Q. One of those things being presumably the</p> <p>17 amount of the check. Would a check in this amount</p> <p>18 typically be available for you the same day?</p> <p>19 A. Well, our bank releases all of our -- does not</p> <p>20 put a hold on any of our funds.</p> <p>21 Q. Okay.</p> <p>22 A. And this is a large check for us. But, again,</p> <p>23 in the whole scheme of things --</p> <p>24 Q. I understand.</p> <p>25 A. -- for us is not -- going through our bank</p>	<p>1 Q. That's fair with this particular check.</p> <p>2 So you get the stop payment back from your</p> <p>3 bank. What do you do next? And I assume this is you</p> <p>4 handling this?</p> <p>5 A. Yes. Well, I do have a staff and -- and, you</p> <p>6 know, they help me out. However, the first order of</p> <p>7 business was to try to contact Angelo to have him, you</p> <p>8 know, sort it out, and we were unable to.</p> <p>9 Q. Okay.</p> <p>10 A. In the first meeting that I exchanged the</p> <p>11 check, he mentioned that he was leaving the next day</p> <p>12 for Afghanistan on another military mission.</p> <p>13 Q. Did you have an understanding of whether he</p> <p>14 was or was not actually in the military at that time?</p> <p>15 A. At that point in time, I was under the</p> <p>16 impression that he was in the military because that's</p> <p>17 what he told me.</p> <p>18 Q. Okay.</p> <p>19 A. That he had -- and -- and the reason for that</p> <p>20 is it took a while for us to get this check after</p> <p>21 invoicing, which wasn't the plan --</p> <p>22 Q. Okay.</p> <p>23 A. -- because he was away on an assignment in the</p> <p>24 Middle East somewhere.</p> <p>25 Q. Okay.</p>

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1 A. And -- and that was told to us by Francis
2 McCombs at Mojave.
3 Q. Okay.
4 A. And so when he finally came back into town is
5 when we had that first meeting.
6 Q. Okay.
7 A. And then he stated in that meeting that he was
8 going to be gone for another 45 days starting the day
9 after.
10 Q. So then at that point he's back, but he's
11 leaving again. You at this point know there's a
12 problem?
13 A. Yes.
14 Q. What did you do? Or what was the next thing
15 you did?
16 A. Well, we -- we attempted to get ahold of him
17 on his e-mail address, because he was fairly good about
18 returning emails, even in spite of him being overseas,
19 allegedly, is what he told us. And we were unable
20 to -- we tried phone calls, we tried him directly via
21 e-mail, we tried Mojave. It wasn't working.
22 Q. Generally, when you have a creditor or
23 situation like this that fails to fund --
24 A. Uh-huh.
25 Q. -- do you guys have a procedure for dealing

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1 with that?
2 A. Well, we contact the customer directly to try
3 and make good on it.
4 Q. Sure. So that's the ideal situation. Then
5 when you have a situation like that where the guy is
6 off traversing whatever, do you have kind of a backup?
7 Do you have another -- like a secondary, Okay. We
8 can't get ahold of the customer. Now what?
9 A. As far as a written policy, no.
10 Q. But as the credit manager for Cashman, do you
11 have something that you typically do when a situation
12 arises like this?
13 A. Well, this is not a typical situation, to be
14 honest with you. We don't have checks of this
15 magnitude bounce that I can ever recall. Or bounce, I
16 guess that's not the right word. Or stop payment.
17 Become nonsufficient -- or non -- don't yield funds.
18 How's that? That's probably the best word. That's
19 what we did is we went after -- directly after Angelo
20 Carvalho and tried to get Mojave to put a stop payment
21 on their check to him.
22 Q. But by the time you did that, it was too late,
23 wasn't it?
24 A. Yeah. They said it wasn't possible.
25 Q. Now in this second meeting with Carvalho --

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1 A. Uh-huh.
2 Q. -- did he do anything to try to make this
3 good? I mean what --
4 A. Well --
5 Q. Because I have read somewhere, either in a
6 declaration of yours or in something that you went with
7 him to the bank. Was that during this meeting or a
8 different meeting?
9 A. Well, I need to clarify quite a bit of that.
10 Q. Okay.
11 A. And -- and -- and if you don't mind,
12 Jennifer -- she can obviously object to me saying more
13 or less than I ought to, but we should probably back up
14 to how I got the second meeting to happen.
15 Q. Sure.
16 A. So, again, not able to contact him, no this,
17 no that, and that drags on for several weeks. I can't
18 tell you exactly how many weeks it was afterwards. But
19 in my research in trying to find him, I find him, I
20 find his name listed with another company that was
21 recently formed in California with another businessman
22 who does glazing, which is glass buildings.
23 Q. Right.
24 A. And he has his own company, and they formed
25 a -- a -- again, a disadvantaged business together with

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1 Angelo being one of the owners, with the idea that they
2 could run federally -- you know, for the same purposes
3 of this. I got ahold of several folks within that
4 company who then finally referred me to the owner, of
5 whom I spoke with who happened to be in Vegas, who
6 happened to have just met with Angelo Carvalho the day
7 before. And this is the same time when Angelo has gone
8 dark and supposedly overseas.
9 So I meet -- I -- I go to his house the next
10 morning, and about 8:00 o'clock or so I start knocking
11 for about 20 minutes, and he finally answers the door.
12 And he states that he had just got in at 1:00 or so in
13 the morning at Nellis from another assignment overseas.
14 He does make out another check at my behest, and this
15 is when he tells me that he put the stop payment on it
16 for whatever reason --
17 Q. Okay.
18 A. -- for the reason I mentioned prior. And he
19 gives me another check, after a half hour of him
20 humming. I then go down to Nevada State Bank, of which
21 that's the bank that it was written on.
22 Q. Yes.
23 A. Yes. And ask them to make it a bank check so
24 that the funds would be guaranteed to us, and they
25 could take the funds out of his account immediately so

1 we wouldn't have to deal with this again. They were
2 unable to because the check -- and I don't have a copy
3 of this check and I will tell you why in a minute.
4 They were unable to because the check -- you see here
5 on this check it says 7558, you know, 9389?

6 Q. Right.

7 A. He wrote the next check out the same way, but
8 the bank said because it didn't say 755,893, they said
9 that that check was no good. So I then went to a
10 different Nevada State Bank, just to see how consistent
11 they would be, and the next Nevada State Bank would not
12 issue me a cashier's check or a bank check because they
13 said there were nonsufficient funds in his account.

14 Q. Okay.

15 A. So I took the check back and met with him
16 again. So I guess there were three meetings, but the
17 two and three were the same, within an hour of each
18 other.

19 Q. Yes.

20 A. And asked him to write me a check for what was
21 left in the account, assuming that it might be off by
22 100 bucks or maybe a couple thousand or some odd thing.
23 And -- and, you know, so I handed him back the check so
24 he could write one and write it out correctly this
25 time. And he called his bank. Again, it took him

1 A. But the gist of it was there was no money in
2 the account, which confirmed the 800 bucks. That the
3 money had been switched over to a Wells Fargo account
4 electronically, and he did not do it. He didn't know
5 who did it. Somebody else got access to his bank
6 account. And so after that phone conversation, text
7 message, and voicemail that day, I have never had
8 contact with him since --

9 Q. Okay.

10 A. -- despite efforts. How's that?

11 Q. Does Cashman as a business, do you guys have
12 protections in place for situations like this?

13 A. We do as much as legally possible to protect
14 ourselves in various different forms.

15 Q. Like what?

16 A. Well, mechanic's, preliminary notices, UCCs,
17 credit agreements that hold folks -- or their feet to
18 the fire.

19 Q. Okay.

20 A. But in the case of obvious fraud, then
21 we're -- that -- that we have alleged and that is going
22 to be hopefully proven in court on the Angelo Carvalho
23 case directly, which is why he is on house arrest,
24 it's, as you can imagine, somewhat difficult to --

25 Q. No, I understand that. I was looking more

1 forever to do this. He called his bank and found out
2 there was only \$800 left in the account. At that point
3 in time, I said I would walk -- because he said he
4 didn't know what was going on. He called his banker to
5 try to figure it out. He said he would go to the bank
6 and go do this. So I insisted that I go with him to
7 the bank. He says, Well, it's more complicated than
8 that, blah, blah, blah, so why don't I just call you
9 back in a half hour or so after I have met with him
10 initially.

11 So I waited there nearby. I went to an IHOP
12 and had a late breakfast. I -- while I waited for his
13 call. He called and said someone had -- and I actually
14 have the text. I'm more than happy to show you guys
15 what he said. But he called the first time saying he's
16 still trying to figure it out. And I should back up.
17 I'm -- I'm having a hard time recollecting exactly.
18 But I did receive a phone call from him, I have a
19 voicemail from him, and I do have a text message from
20 him. And I believe that shortly after I actually
21 talked to him via phone, but I'm having a hard time
22 separating what I gleaned from the text, the voice
23 message, and when I actually talked to him on the
24 phone.

25 Q. Sure.

1 generally, kind of, you know.

2 A. One of the other things that we do is joint
3 checks. And in this case, we requested a joint check
4 from Francis because of the issues with getting ahold
5 of CAM --

6 Q. Sure.

7 A. -- and she refused to do that, which is not
8 abnormal for her to refuse to do a lot of things for
9 us, just the way that Francis treated us at Mojave.

10 Q. Well, let's talk about that a little bit. You
11 asked Mojave for a joint check; right?

12 A. Francis McCombs.

13 Q. And Francis wouldn't give you one?

14 A. Correct.

15 Q. Did she tell you why?

16 A. No. I -- I was not in that conversation.
17 That was one of my staff, and it was a verbal
18 conversation, not -- not email. So I -- unfortunately.

19 Q. Okay.

20 A. So I do not know why she said that.

21 Q. You said it was not uncommon for Francis to
22 not give you a joint check?

23 A. No. Mojave has never given us a joint check,
24 that I am aware of. I -- I guess I shouldn't say
25 never, but not in the recent past that I -- that I'm

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1 aware of.
 2 Q. Do you always request a joint check?
 3 A. No.
 4 Q. I was going to say, in situations where
 5 they're dealing with you as a customer, I wouldn't
 6 think it would be necessary.
 7 A. No, we don't really have to have that. I
 8 mean, there's not a real good reason for it. But in
 9 this case, there was a very good reason.
 10 Q. Well, when did you request the joint check?
 11 A. Before we were paid -- or before we were
 12 attempted to be paid. How's that?
 13 Q. Before that first meeting where he handed you
 14 the check?
 15 A. Yes. Well, Francis had asked us to sign an
 16 unconditional release prior to actually having the
 17 money or the payment, which we objected to and said
 18 we'd only do it as long as we had the check.
 19 Q. That's where I guess I'm having a little bit
 20 of disconnect. So Francis wants you guys to sign an
 21 unconditional final lien; correct?
 22 A. Well, and -- and the reason was because Mojave
 23 was under the gun to get paid themselves, and Angelo
 24 was nowhere to be found, so he couldn't sign any
 25 releases himself. So they were having problems getting

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1 paid -- well, I guess I shouldn't state what I assume.
 2 Q. Right.
 3 A. But, generally, that's the reason for that,
 4 but --
 5 Q. But they asked you for an unconditional final
 6 lien release, which you ultimately signed?
 7 A. I -- I don't know if it was an unconditional
 8 final but an unconditional progress at the -- the
 9 least.
 10 Q. And your position is, Well, we are not going
 11 to do that until we have a check; correct?
 12 A. Correct.
 13 Q. But Mojave refused to give you a joint check?
 14 A. Yes. Francis McCombs at Mojave.
 15 Q. Why did you issue the unconditional lien
 16 release when you didn't have a joint check that you had
 17 asked for?
 18 A. Well, because I had this check.
 19 Q. So you getting the check from CAM was enough
 20 for you to hand over the lien release?
 21 A. Yes.
 22 Q. That gave you enough comfort?
 23 A. Yes.
 24 Q. Why is that? Is it because you knew Mojave
 25 had tendered the funds?

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1 A. Yes.
 2 Q. And you did that even though you had limited
 3 credit information on CAM and they asked you to hold
 4 the check for a couple of days?
 5 A. Yes.
 6 Q. You still did have any issue giving them the
 7 unconditional lien release?
 8 A. Well, if -- if -- you may not be aware, and
 9 obviously you are fairly aware of what releases mean or
 10 don't mean, and -- and then there is always -- it's
 11 debatable and arguable, but from my understanding and
 12 education, that if a check does not clear, then the
 13 lien release becomes invalid.
 14 Q. Okay.
 15 A. So based on my -- and, again, you know,
 16 obviously you guys can debate that until kingdom come,
 17 but my education, that's what that tells me. So I am
 18 not as concerned about signing an unconditional release
 19 in accepting a check, because I believe, and that's
 20 what my education tells me, that if that check does not
 21 clear for whatever reason that my release I have given
 22 out is voided.
 23 Q. Do you guys use conditional releases?
 24 A. We use conditionals and unconditionals.
 25 Q. Okay.

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1 A. Conditionals are used prior to receiving the
 2 check --
 3 Q. Right.
 4 A. -- so they know how much to write the check
 5 for, basically.
 6 Q. Well, that was my question, I guess. Given
 7 that you weren't going to be able to put this money in
 8 your account for a handful of days, why didn't you give
 9 a conditional release pending the money actually
 10 hitting your bank account and then give the
 11 unconditional?
 12 A. Because of the reason I previously stated.
 13 Generally, it's -- it's -- it's a swap check for
 14 a -- an unconditional final.
 15 Q. I understand. But this was a little -- but
 16 this situation was a little bit unique in that you have
 17 got this kind of intermediary between you and your
 18 client that you hadn't really worked with before. Did
 19 you guys consider using a conditional lien release for
 20 that reason?
 21 A. No. We based our -- our -- my assurances on
 22 your client's, you know, credit perils and the fact
 23 that they have never bounced a check to anybody.
 24 Therefore, there was no reason that their funds would
 25 not be good.

15 (Pages 54 to 57)

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<p>1 Q. Now, you may not know the answer to the 2 question, and if you don't that's fine. I would think 3 you might, but do you guys have insurance for this type 4 of thing? 5 A. Loss and fraud? 6 Q. Yes. 7 A. I believe we do have insurance for -- I don't 8 know about fraud, but -- but loss, we are fully 9 insured. 10 Q. So did you at any point alert your carrier 11 about these events? 12 A. I don't know that we have. 13 Q. Okay. 14 A. Again, that's -- that's our CFO's 15 responsibility. 16 Q. Who is your CFO? 17 A. His name is Lee Vanderpool. At the time it 18 was Jim Moore. 19 Q. But as the finance guy, would they let you 20 know if they -- in a situation like this where you've 21 got a loss, and a good sized loss, you know, three 22 quarter of a million dollar loss. 23 A. Very significant. 24 Q. Exactly. If they did contact your insurance 25 carrier and there was some process going on there to</p>	<p>1 A. Yes. 2 MR. BOSCHEE: Can we take a quick three-minute 3 break? 4 MS. ROBINSON: Sure. 5 (A short break was taken.) 6 MR. BOSCHEE: Back on the record. 7 BY MR. BOSCHEE: 8 Q. You understand that you are still under oath? 9 A. I do. 10 MR. BOSCHEE: For the record, Mr. Coleman has 11 decided to leave us, so he is no longer part of the 12 deposition. And, therefore, I am guessing he will not 13 be asking any questions at the conclusion of my 14 questions. 15 BY MR. BOSCHEE: 16 Q. Back to Angelo, at this point, you know the 17 money isn't in the bank account. It has been 18 transferred to -- apparently by somebody to a Wells 19 Fargo account. Did he tell you anything about that 20 Wells Fargo account? Did he represent anything at that 21 time about what that account was? 22 A. I -- I can read you the text. 23 Q. No. I mean, if you can recall, you recall. 24 It's not -- 25 A. Oh, no. I have been saving this text for a</p>
Page 55	Page 57
<p>1 try to recoup some or all of it, that's something they 2 would let you know, wouldn't they? 3 A. Yes. And, therefore, again, I can't state for 4 sure that we -- that we have filed a claim or not. 5 I -- I -- to my knowledge, I don't believe we have. 6 Q. Okay. And -- 7 A. And, again, you are saying a loss. I mean -- 8 Q. This is a little bit different than a loss. I 9 understand that. 10 A. This is -- yeah. 11 Q. This is fairly fairly darn variety fraud. 12 But that said, the best to your knowledge, 13 whether a claim has been filed or not, your insurance 14 carrier hasn't done anything with respect to this or 15 you would probably know about that; right? 16 A. I -- I would -- again, I have -- I don't know. 17 I don't know that we have filed a claim. I don't know 18 that we have not filed a claim. If you are asking my 19 best judgment, I don't believe we have filed one. 20 Q. I guess my last question, though, was more 21 along the lines of you don't know if a claim was filed. 22 But if a claim had been filed and the insurance carrier 23 had done something, kicked some money in or something, 24 that would be something, as a finance guy, you would 25 get notice of, wouldn't you?</p>	<p>1 really long time. I would really like to get it off my 2 phone. 3 Q. Okay. 4 A. All right. Here. Hang on a second. It's 5 going to take a minute for me to find it. There it is. 6 Okay. And I -- any news -- okay. May 19th, Could you 7 meet at the bank in the morning? May 19th, Mojave 8 didn't do anything wrong. It's on my end. There was a 9 transfer into another bank, and I am waiting for an 10 answer. I do know it is a Wells Fargo account. And 11 then there's several texts from me trying to get more 12 information after that and nothing. 13 Q. Nothing? 14 A. So that's the extent of what I know about the 15 Wells Fargo account. 16 Q. And that was pretty much the last 17 communication you had with him, the voicemail, the 18 text, and then the brief conversation; correct? 19 A. Yes. 20 Q. Prior to filing the complaint, what steps did 21 Cashman take to try to get this money back from 22 Carvalho? 23 A. I filed a -- a -- a complaint. I don't know 24 how I would classify it as a -- a complaint or a notice 25 at the bad check division down in the basement of the</p>

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1 courthouse over there.

2 Q. Okay.

3 A. And then put in the notices and whatnot and
4 filed that there with the DA's office.

5 Q. We talked about it briefly in the last hour,
6 but what has transpired with that effort from the bad
7 check division?

8 A. Well, they went through the procedures and
9 issued a -- a warrant, and he didn't show and one thing
10 led to another. We confirmed several times that he was
11 not in the military from a third-party source, and then
12 Jennifer had something going on to where she would
13 check periodically and then the -- the most recent one
14 popped up that he was and -- rather he re-enlisted or
15 however that works, but he was in New Jersey, was it?

16 MS. ROBINSON: I think so.

17 THE WITNESS: And she tracked down his
18 commanding officer, and he was extradited -- I don't
19 know if extradited is the right word, but he was sent
20 here. And -- I don't know what all the proper legal
21 words are, but from what I understand, he is now on
22 house arrest.

23 BY MR. BOSCHEE:

24 Q. He came back on a bus as I understand it,
25 which was probably a lot of fun.

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1 So the bad check division has followed through
2 to the point where now he is on house arrest, and
3 that's as far as it has gone with them, as far as you
4 know?

5 A. I did testify in front of a grand jury a
6 couple of weeks ago.

7 Q. Do you know what that proceeding was for?

8 A. For -- for -- in efforts to -- for the case.

9 Q. Let me clarify that. Was that an indictment
10 hearing or was that a formal sentencing hearing, do you
11 recall, do you know?

12 A. There wasn't any sentencing going on.

13 Q. Okay.

14 A. It was the grand jury doing -- I -- I don't
15 know. I testified in front of them. I -- I just
16 assumed that it was for the final purposes. I'm sure
17 Jennifer can --

18 Q. Yes, it's fine. I'm not going to throw a
19 bunch of legal terms at you. I mean, I may not even
20 understand.

21 A. Oh, try me.

22 Q. But did it seem more of like a preliminary
23 hearing or was it more on the merits?

24 MS. ROBINSON: I'm going to object. Asked and
25 answered. It's a grand jury, so it's for the purposes

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1 of charging, I believe. I'm not going to testify to
2 that.

3 BY MR. BOSCHEE:

4 Q. Well, that's what I was going to say. I don't
5 know. Where I was going with that is do you know if he
6 was actually formally at this point been charged?

7 A. I -- I don't know the answer to that.

8 Q. All you know is you testified before the grand
9 jury and that was that?

10 A. Yeah.

11 Q. I want to go back to the City Hall project,
12 and I'm going to recover some of the things we talked
13 about a little bit. I'm going to try not to repeat
14 myself, but I want to kind of establish a little bit of
15 a timeline.

16 A. Yes.

17 Q. So you talked a little bit earlier about you
18 did a credit check on CAM. Do you remember that?

19 A. I did.

20 Q. Okay.

21 A. I mean, I do remember.

22 Q. Well, I'm going to put a document in front of
23 you and see if this refreshes your recollection.

24 A. I don't remember what I found.

25 MR. BOSCHEE: This will be Exhibit 2. J11

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1 just throw Mr. Coleman's copy in the pile.
2 (Exhibit 2 marked.)

3 BY MR. BOSCHEE:

4 Q. Take a second and skim through this and the
5 next page. Do you recognize this document?

6 A. I do.

7 Q. Is this the application that was submitted to
8 you by CAM?

9 A. Yes.

10 Q. Would this have been the document that you
11 would have reviewed? When I say you, you personally or
12 someone on your staff with respect to determining CAM's
13 credit worthiness?

14 A. Yes.

15 Q. Now, fairly standard practice to accept a
16 credit application like this from a potential customer;
17 correct?

18 A. Yes.

19 Q. And then typically, depending on what happens
20 with your credit check, then you follow it up with
21 sending out invoices to the new client; correct? Or to
22 the, I guess, prospective client?

23 A. It -- I mean, I would follow up sending
24 invoices for or -- or -- or goods and services if

25 I -- I don't know. You probably ought to restate that

17 (Pages 62 to 65)

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1 question a little bit.

2 Q. Sure. An application for credit is given to
3 you?

4 A. Right.

5 Q. You run the credit check; right?

6 A. Right.

7 Q. Whether, you know, assurances or good credit
8 or otherwise, you determine to proceed forward with
9 this potential customer? Let's assume that; correct?

10 A. Okay.

11 MS. ROBINSON: Can I object? Are you asking
12 hypothetically or are you asking specifically about
13 CAM?

14 MR. BOSCHEE: Hypothetically.

15 MS. ROBINSON: Okay.

16 BY MR. BOSCHEE:

17 Q. And after that, you would begin invoicing the
18 client; correct?

19 A. If -- if -- if I -- yes. I mean, once -- once
20 the account is established, then -- then providing
21 goods and services followed up by invoices is generally
22 how that works.

23 Q. Sure. Let me ask you this: Between the
24 application for credit and the invoicing for goods and
25 services when you set up the account as you said, is

1 more other agreements, not that I'm aware of.

2 Q. So basically this and then the invoices was
3 the agreement that you had with CAM; right?

4 A. Again, I -- I mean, this -- this is the
5 agreement I have with CAM and they signed, and really
6 this is an application for credit and it lists terms
7 and conditions. But as far as an agreement whether or
8 not to bill or not to bill him was -- was a different
9 decision. Does that make sense?

10 Q. It does. But I guess what I am asking
11 is -- so let's follow up on that. It was a different
12 decision. When you say that, what do you mean by that?

13 A. Well, what I mean by that, that -- that
14 transaction was, you know, kind of a Mojave
15 instigated -- our -- based on our relationship with
16 Mojave to proceed with the, you know, the invoicing of
17 CAM.

18 Q. Sure.

19 A. This -- this didn't really tell us that it's
20 okay to invoice CAM, not necessarily. This is
21 just -- how do you say, a formality.

22 Q. That --

23 A. So we can set the customer up in the system
24 and bill it to the right name.

25 Q. I think we're talking around each other.

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1 there any other documentation between you and the
2 client, typically?

3 A. Well, yes. And it really depends upon what
4 type of transactions we're doing.

5 Q. Sure. How about with this transaction, was
6 there anything else between the application for credit
7 and your invoicing CAM?

8 A. Well, there was quite a bit of documentation
9 between us and Mojave leading up to this because those
10 were -- that's -- that's the reason for the
11 application.

12 Q. Sure.

13 A. So there was quite a bit of documentation, of
14 which I'm pretty sure you guys have.

15 Q. Yes. And I guess that's what I'm -- and I'm
16 not really talking about that. I know that there was a
17 lot of communication and documentation between yourself
18 and Mojave. I'm talking, Okay. Mojave -- you know,
19 cat out of the bag. We need to use this disadvantaged
20 owner. Here's CAM Consulting. You have CAM submit
21 this credit application, they do, and then between this
22 time and the time you start actually invoicing CAM, was
23 there any other documentation that you recall entering
24 into between Cashman and CAM?

25 A. As far as any more credit agreements or any

1 because I think we're basically saying the same thing.

2 You've got a good relationship with Mojave, you haven't
3 had any problems?

4 A. Well, I --

5 Q. Well, you haven't had problems like this?

6 A. None of this -- none of this magnitude.

7 Q. Haven't had a bounced check, I think was your
8 testimony earlier?

9 A. Yes.

10 Q. CAM comes in, fills out the credit
11 application. Based upon your relationship with Mojave
12 and to some extent this credit application, you set CAM
13 up in the system for an account; correct?

14 A. Well, define account.

15 Q. Well, you tell me what you did. You get the
16 application for credit. How did you start invoicing
17 that?

18 A. I would be happy to.

19 Q. Sure.

20 A. We set them up with an account number. We did
21 not give them a charge account, meaning we're okay with
22 collecting the money after the fact. We wanted our
23 money as -- as close to delivery as possible.

24 Q. Right. Okay.

25 A. So --

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1 Q. We'll get into that, too. Because in this
2 case, the money didn't come as close to delivery as I'm
3 sure you guys would normally like. But there was no
4 other paperwork filled out by CAM?
5 A. Not that I'm aware of.
6 Q. Before you started invoicing them?
7 A. I -- well, I mean, if there were any other
8 purchase orders issued, I'm not aware of it.
9 Q. I understand that. But between you guys, they
10 fill this out, you give them an account number, and you
11 start invoicing them?
12 A. Right.
13 Q. Done. Okay.
14 Let's talk about the invoices and some of the
15 timing issues that have flowed from that.
16 MR. BOSCHEE: We'll mark this as
17 Exhibit -- collectively these documents as Exhibit 3.
18 (Exhibit 3 marked.)
19 BY MR. BOSCHEE:
20 Q. Take a second and skim through them if you
21 want to. I think it's Cash 003 through Cash 00 -- I
22 think we stopped at 8. It is some invoices and I want
23 to say a couple of bills of lading. I'll tell you most
24 of my questions will be about the invoices.
25 A. Okay.

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1 Q. Do you recognize these documents?
2 A. I do.
3 Q. The first two pages of this appear to
4 be -- well, let me stop there. Let me ask you another
5 question that just popped into my head.
6 For this project, did Cashman ever enter into
7 a contract directly with Mojave?
8 A. We had quoted them, and they had accepted the
9 quote.
10 Q. Right.
11 A. So I guess you could call that a contract of
12 some sort.
13 Q. Written contract?
14 A. Yeah. I think there was written stuff signed
15 by both parties.
16 Q. I guess what I am saying is you didn't have a
17 contractor/subcontractor signed contract. You did this
18 typical quote them, they accept kind of your standard
19 practice with Mojave; correct?
20 A. Yes.
21 Q. I guess I'm wondering, there's not some
22 written document out there between you and Mojave that
23 I haven't seen in this litigation, is there?
24 A. Not that I am aware of.
25 Q. A subcontractor agreement or some type of a

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1 supply agreement or anything?
2 A. No. There's no master agreement that I am
3 aware of.
4 Q. Let's take a look at the first invoice. It
5 looks like it's dated February 1, 2011. And total
6 amount of equipment, this one looks like it's
7 \$598,3 -- I'm sorry, \$598,936.26; is that right?
8 A. That's what I read as well.
9 Q. And then the next invoice on CASH005, same
10 date on the invoice, 2/1/11, and this is for
11 \$156,627.92. And then right after that, there's a, you
12 know, smaller one it looks like from March for \$329.71;
13 is that right?
14 A. That's what I read.
15 Q. What was the scope of work that Cashman agreed
16 to with respect to this project?
17 A. How -- what do you mean by that?
18 Q. Well, what were you guys doing? Were you
19 supplying materials?
20 A. We supplied these items here. They are for
21 backup electrical power sources and systems for
22 obviously -- for the project.
23 Q. And I know there was some disagreement
24 apparently last week and on Friday about this. Did the
25 scope of your work, to your understanding, include

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1 installation of anything?
2 A. Yes. That was to be part of it, installation
3 and startup.
4 Q. And that was part of what was billed for on
5 these invoices.
6 A. Yes. Now -- now, keep in mind, the
7 installation is not something that you just do in one
8 day.
9 Q. I understand.
10 A. I mean, it happened from start to not quite
11 finish.
12 Q. If you know, when did you start -- well, I'll
13 represent to you the three invoices, the three sets of
14 invoices that we just looked at, you know, we can break
15 out the calculator if you want, but it totaled
16 \$755,893.89.
17 A. Yeah, it should.
18 Q. There aren't any other invoices for work or
19 materials that you are aware of that were provided, are
20 there?
21 A. Not that I'm aware of.
22 Q. I only ask that because that was the same
23 amount that you were supposed to be paid; right?
24 A. Yes.
25 Q. When did you guys start delivering and

19 (Pages 70 to 73)

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1 installing equipment to this project, do you recall?

2 MS. ROBINSON: I'm going to object to the form
3 of the question. If you can define what you mean by
4 "install." Because I don't know that it's completely
5 clear that we're all talking about the same --

6 MR. BOSCHEE: Well, he said install. That's
7 why I used that word.

8 BY MR. BOSCHEE:

9 Q. I mean, I'll ask multiple questions, and maybe
10 we can clear it up this way. When did you guys start
11 supplying equipment for this project?

12 A. How about asking -- how about, when did you
13 deliver the equipment?

14 Q. Fair enough. That was going to be my next
15 question.

16 A. The answer is multiple dates, because there's
17 multiple units here.

18 Q. Okay.

19 A. And I don't know the dates all specifically,
20 though I think we probably have some documentation that
21 will support those dates.

22 Q. Sure.

23 A. I know there's pictures and whatnot out there,
24 but not all the stuff was delivered on the same date.

25 And it was -- and delivery was -- yes. It was kind of

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1 small -- smaller -- I'm guessing because it's only 329
2 bucks -- that was invoiced on March 25, 2011. Do you
3 know what this is?

4 A. Well, I -- I can read what the invoice says.
5 It says lugs, which are generally some type of bolts.

6 Q. Right. Well, let me ask you this: Did
7 Cashman do any work on this project after -- I mean,
8 work on the project, you know, on site? Did you guys
9 do any work on the project after February 1, 2011, that
10 you are aware of?

11 A. Oh, I don't -- I don't know for a fact.

12 Q. Okay.

13 A. I don't know that -- I don't know the answer
14 to that. That would be a Keith question.

15 Q. Okay. Keith would be the guy to ask.

16 Other than these lug bolts, it doesn't appear
17 any equipment was delivered to the project after
18 February 1st of 2011; is that fair?

19 A. You know, I -- I -- I'm having a hard time
20 with all the delivery stuff because I don't have all
21 that stuff in front of me.

22 Q. Sure.

23 A. And I don't recollect when all the exact dates
24 were. But suffice it to say, the major pieces were
25 delivered prior to the invoice.

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1 a range of dates.

2 Q. And then --

3 A. These are -- these are very large units. They
4 take cranes to, you know, drop them off and set them in
5 the right place. And -- yeah. So this is kind of a
6 big deal.

7 Q. I have been over there. This is a lot of big
8 stuff.

9 And I understand we're dealing with a range of
10 dates, but the equipment was delivered before you sent
11 the invoice to CAM, wasn't it?

12 A. I don't know that that is entirely true, but I
13 believe the major pieces were.

14 Q. And the reason I asked that, like is, for
15 example, I'm not looking for a specific, you know, this
16 piece was delivered on January 20th and this piece was
17 delivered -- I truthfully don't care, but if you have
18 got an invoice here that's sent out on 2/1/11, fair to
19 say that most of the equipment, be it in December,
20 January, was delivered by the time this invoice went
21 out; correct?

22 A. I -- yes. I think that is accurate.

23 Q. And so the two sets of invoices go out on
24 February 1st. Fair to assume that all that equipment
25 was delivered. And then we have got this one kind of

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1 Q. Prior to the invoice?

2 A. And that's part of the invoice practice for
3 soes and all sorts of things. Things have to get
4 delivered and accepted before you can invoice.

5 Q. Sure.

6 And things need to be delivered and accepted
7 before you can invoice. And then you testified that
8 installation was also part of the job. Was that done
9 in conjunction with the delivery?

10 A. When you say "installation," are you meaning
11 startup and making the whole system functional and
12 workable as per the specs?

13 Q. You tell me what your understanding of
14 installation is.

15 A. Well, that -- the making of the entire system
16 work and -- and functional as per the specs, that
17 is -- that dollar amount is included in this.

18 Q. What is the timing of that? Does it happen
19 right around the same time that the equipment is
20 delivered?

21 A. No.

22 Q. Or is there a fair gap?

23 A. There is a significant gap. Again, questions
24 more likely for Keith --

25 Q. Sure.

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1 A. -- but I think I can answer a little bit, is
2 there are certain points in that timeframe that we will
3 go out there and do whatever for whatever. You know,
4 because everything is a process and everything goes in
5 stages.

6 Q. Right.

7 A. So, no, it's not just a we drop everything
8 off, leave for six months, and then come back on a day,
9 and turn on the switch.

10 Q. Okay.

11 A. I believe it's -- you know, it's an ongoing,
12 but there's more that happens towards the end when
13 everything is getting ready to start up.

14 Q. And, again, you may or may not know the answer
15 to this. This may be another Keith question, but the
16 installation is included in the invoicing, I think is
17 what you said earlier; correct?

18 A. Well --

19 MS. ROBINSON: I'm going to object. Asked and
20 answered.

21 THE WITNESS: Yeah.

22 BY MR. BOSCHEE:

23 Q. This is actually not -- I'm not trying to
24 trick you. I have a follow-up question. I just want
25 to make sure that's what your understanding is?

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1 A. Well, what I understand is -- is the startup
2 is -- you know, the finishing off the process. I mean,
3 whatever you want to call it, whether it's installation
4 or -- the reason I hesitate using that word because
5 it's -- obviously we were trying -- we were trying to
6 sort that out last week. Everybody -- we were kind of
7 trying to make sure we knew what that meant, and I
8 don't know if it was clear. But, yes. The entire
9 machinery that we have sold to them, we did include in
10 this balance to be all functionable and workable
11 according to all the codes and everything that needs to
12 be done.

13 Q. Okay.

14 A. Codes of the city and state that require for
15 occupancy.

16 Q. And we won't use the word "installation," but
17 getting the equipment workable and operational, all of
18 that would be done before you would invoice CAM,
19 wouldn't it?

20 A. No.

21 Q. It wouldn't be?

22 A. No.

23 Q. So the equipment is delivered, the invoice is
24 sent, but the startup, getting it functional that goes
25 on past February 1, 2011?

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1 A. Yes. Significantly.

2 Q. So CAM at this point had been billed for it,
3 it's been part of their bill, but their service hasn't
4 been completed yet -- or the service hasn't been
5 completed yet, is the better way to say it?

6 A. True.

7 Q. Do you know when -- and maybe this is a Keith
8 question -- when's the last time that Cashman was on
9 this project actually performing work?

10 A. Don't know.

11 Q. Do you have a general idea of March, April,
12 earlier?

13 A. I -- I couldn't tell you. I really don't
14 know.

15 Q. And the only reason they were out there until
16 April is that's when things blew up?

17 A. Right.

18 Q. You guys didn't do any work after that, did
19 you?

20 A. Again, I couldn't tell you. We didn't -- I
21 mean, again, we have a -- well, had a better, let's
22 say, relationship with Mojave. And so in spite of
23 everything that happened, we were still contracting
24 with them on some other jobs and some other work, and I
25 don't know that we absolutely stopped everything at

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1 that point until at a later point in time. But, again,
2 I don't know that we had people out there at this site
3 subsequent to that either.

4 Q. So just so I have got my timeline correct, it
5 looks like the majority of equipment was delivered
6 prior to February of 2011, but you are not sure when
7 the startup and all the workup was done, was completed
8 and when you guys were actually off the project?

9 A. Well, that's -- that's not really a fair
10 question.

11 Q. Okay.

12 A. I mean, you were talking about delivery --

13 Q. Sure.

14 A. -- so, yes.

15 Q. Delivery, we got that?

16 A. But as far as the startup and all the rest of
17 that stuff, I -- I don't know how much of that was done
18 prior to us exiting the premises or -- or not coming
19 back. I don't know.

20 Q. Okay. That's fair.

21 A. But I do know that there is some left to do.

22 Q. Right. Yes. Talked about that last week.

23 But Keith would be someone who would be a person with
24 knowledge on that subject; correct?

25 A. Yes.

21 (Pages 78 to 81)

Page 78	Page 80
<p>1 Q. Now, the three invoices that we saw, we talked 2 about this earlier. It's your understanding that 3 Mojave cut a check for at least the amount of these 4 three invoices, and your understanding it was actually 5 more than that to CAM; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And based upon that, you provided what we're 8 going to look at next, this waiver and release upon 9 final payment?</p> <p>10 A. Well, the reason I know that that check was 11 more is because I have seen his bank records, and we 12 know for a fact that it was.</p> <p>13 Q. You know now that it was?</p> <p>14 A. Right.</p> <p>15 Q. After the fact, you have seen --</p> <p>16 A. Right. But -- but at the time I knew, too, 17 because there was -- again, there was another couple of 18 vendors involved.</p> <p>19 Q. Sure. That makes sense.</p> <p>20 A. Not that that really matters.</p> <p>21 Q. I want to take a look at this and not spend 22 too much time on this.</p> <p>23 MR. BOSCHKE: This will be the next exhibit, 24 whatever number we're on. I think we're on 4. 25 (Exhibit 4 marked.)</p>	<p>1 circumstances, do you recall that?</p> <p>2 A. I do.</p> <p>3 Q. Have you guys changed the way that you do 4 things or your policy with respect to swapping 5 unconditional lien releases for checks as a result of 6 this incident or do you still do things the same way 7 you have always done them?</p> <p>8 A. No, we have not changed. We do -- we still do 9 the things the same way we have always done them.</p> <p>10 Q. Did you guys complete the work on this 11 project?</p> <p>12 A. I thought we just covered that.</p> <p>13 Q. The work that you agreed to perform. The 14 deliver, and then the startup and installation?</p> <p>15 A. Well, yeah. We -- we just -- we just covered 16 that and the fact that --</p> <p>17 Q. Right.</p> <p>18 A. -- yes, there's still something out there left 19 to be done.</p> <p>20 Q. Could you -- I asked the question and I just 21 made a note of it. Do you know what's left to be 22 completed, other than obviously the installation and 23 the safety codes?</p> <p>24 MS. ROBINSON: I'm going to object. Asked and 25 answered. And I think he previously testified as to</p>
Page 79	Page 81
<p>1 BY MR. BOSCHKE:</p> <p>2 Q. Take a quick look at this. And I'm guessing 3 you have seen it before?</p> <p>4 A. I have.</p> <p>5 Q. Now, you testified earlier, if my recollection 6 is correct, that you swapped this document with 7 Carvalho for the check; correct?</p> <p>8 A. Yes.</p> <p>9 Q. And this was signed and notarized by 10 somebody --</p> <p>11 A. Debra Caldwell.</p> <p>12 Q. -- on April 26, 2010; correct?</p> <p>13 A. Yes. That's what it states.</p> <p>14 Q. Does that refresh your recollection as to the 15 date of the swap or it could have been that day or the 16 day after?</p> <p>17 A. Yeah. It could have been that day or the day 18 after.</p> <p>19 Q. We talked about your understanding of 20 unconditional waiver and releases and that they can 21 be -- that if the check bounces, you can terminate them 22 or void them; correct?</p> <p>23 A. Correct.</p> <p>24 Q. And we talked about use potentially of a 25 conditional waiver and release under different</p>	<p>1 what you're asking.</p> <p>2 THE WITNESS: Yeah.</p> <p>3 BY MR. BOSCHKE:</p> <p>4 Q. I don't think he did. I don't think he 5 clarified. That's why I made a note of it. I don't 6 think he clarified what still needs to be done. That's 7 why I asked again. Again, I'm not trying to trick you.</p> <p>8 A. I can answer that. I can simply state it's 9 what we call a startup --</p> <p>10 Q. Okay.</p> <p>11 A. -- which basically is the final phase 12 of -- of, you know, the -- the sale, making everything 13 workable and functional.</p> <p>14 Q. Something just occurred to me that everybody 15 in this room knows what you mean by startup, but 16 someone else reading this transcript, maybe a judge or 17 somebody, might not. What do you mean when you are 18 talking about startup? Explain it very -- like I have 19 never been in the construction field or never been to a 20 job site. What do you mean by that?</p> <p>21 A. Well, I'm going to let Keith answer that 22 question.</p> <p>23 Q. Okay.</p> <p>24 A. Because, again, I'm -- I'm the person most 25 knowledgeable about the deal in its entirety, but about</p>

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1 the specifics and startup, I'm not a power generation
2 person. I don't know what that all entails. But
3 suffice it to say, to -- to make it workable and
4 functionable according to all the -- the codes of the
5 building codes.
6 Q. And I wasn't looking for the technical specs
7 that Keith might be able to give me. I was looking
8 for -- you've used the word "startup" a handful of
9 times. I just wan to make sure the record is clear for
10 a layperson reading it, what you mean by startup when
11 you are referring to that, and I think you just
12 answered it.
13 A. Yeah. And that process generally happens
14 toward the latter part of the project.
15 Q. And some of that still needs to be completed;
16 correct?
17 A. Yes.
18 Q. Now, at some point after all this
19 unfortunateness happens, you guys did leave the
20 project; correct, Cashman? You stopped working?
21 A. Again, I don't know -- I mean, we did not
22 finish and complete.
23 Q. Right.
24 A. Everything that -- the startup, if that makes
25 sense. I don't -- I don't know what point -- at what

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1 A. I don't -- I don't recall those documents
2 stating anything like that. Not that they didn't, I
3 just -- I just haven't seen them or reviewed them in
4 the recent past.
5 Q. Do you ever recall, either from our office or
6 directly from Mojave -- and this may come directly from
7 Mojave -- requesting a repair of any of the materials,
8 any of the equipment that Cashman had provided?
9 A. I don't recall.
10 Q. Would that be something that Keith might be
11 better -- would he have handled that or would that be
12 something that you dealt with?
13 A. No. That probably would have been him,
14 but -- primarily. However, all it would take is simply
15 reviewing the document, and I could answer the
16 question.
17 Q. Well, let's talk about the -- at some point
18 when the payment wasn't made, you guys decided that
19 going the mechanic's lien route is what needed to
20 happen; correct?
21 A. Yeah, absolutely.
22 Q. We will mark the next one in line. And,
23 again, I suspect -- I don't know, but this may
24 be -- you may or may not have any recollection of any
25 of this.

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1 point that was or what that even actually means, but,
2 yes, we did not come back and finish everything.
3 Q. And that may be a better question for Keith,
4 but I just wanted to kind of get to my next thing.
5 Do you recall receiving a demand or any kind
6 of communication from Mojave to come back and finish up
7 what was still left to be done?
8 A. I believe you guys sent some legal
9 correspondence demanding that we do that.
10 Q. Okay.
11 A. Do -- is that the case?
12 Q. Well, I'll represent to you that I think you
13 got it from both Mojave and perhaps our office.
14 A. Okay.
15 Q. But you recall receiving a demand request from
16 Mojave to finish up; right?
17 A. Yes.
18 Q. You didn't do that; right?
19 A. No.
20 Q. You didn't go back there after receiving that
21 demand, did you?
22 A. Not that I am aware of, no.
23 Q. Do you recall in the demands that you received
24 Mojave having issues with the quality or functioning of
25 the materials that had been provided by Cashman?

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1 MR. BOSCHEE: This is Exhibit 5, I believe.
2 (Exhibit 5 marked.)
3 BY MR. BOSCHEE:
4 Q. Take a look at this document. It's entitled
5 notice of right to lien. It's typically referred to as
6 prelien notice. Do you recognize this document?
7 A. I do.
8 Q. It says it was prepared by CMA Forms Filing
9 Service. Does that ring a bell?
10 A. Yes.
11 Q. Is that something that you guys use a lot?
12 A. Yes.
13 Q. This wasn't something that was prepared
14 by -- and I don't want to know any communications, per
15 se. This wasn't anything that was prepared by counsel,
16 was it?
17 A. No.
18 Q. It's not something that you would typically
19 hire your attorney to put together, is it?
20 A. As much as we love her, no. She's too
21 expensive.
22 Q. Exactly. I was going to say that's not just a
23 Jennifer issue.
24 To the best of your understanding and
25 recollection, is this the only prelien notice that you

23 (Pages 86 to 89)

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<p>1 guys provided to this project?</p> <p>2 A. To my knowledge, yes.</p> <p>3 Q. This was served, it looks like on the</p> <p>4 parties -- and if you look midway down the page, this</p> <p>5 might refresh your recollection -- served on the</p> <p>6 parties by mail on about April 20, 2011; is that</p> <p>7 correct?</p> <p>8 A. That's what it states, yes.</p> <p>9 Q. Why did you guys decide to do a prelien notice</p> <p>10 at this time before you had even gotten the check?</p> <p>11 What kind of spurred this on in your decision-making</p> <p>12 process?</p> <p>13 A. The issues at hand.</p> <p>14 Q. What issues were at hand at that point?</p> <p>15 A. The nonpayment.</p> <p>16 Q. The nonpayment -- explain yourself. I'm</p> <p>17 missing what you're --</p> <p>18 A. We had not been paid yet.</p> <p>19 Q. The invoices were a little old?</p> <p>20 A. Yes. And Angelo was not present.</p> <p>21 Q. When the rubber hit the road and Angelo</p> <p>22 finally showed up on the 27th-ish, give or take, 26th,</p> <p>23 27th, and you swapped the check for the release, you</p> <p>24 didn't release the prelien notice or anything, did you?</p> <p>25 You kept it in place?</p>	<p>1 of a mechanic's lien that you guys recorded?</p> <p>2 A. Yeah.</p> <p>3 Q. And this one, this one you did have counsel</p> <p>4 assist you with; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. I don't want to get into communications that</p> <p>7 you had with Jennifer at all. I really don't. Let me</p> <p>8 ask you this: Who determined the amount of the</p> <p>9 original contract in line 1? Was that you or your</p> <p>10 counsel?</p> <p>11 A. I -- I sent her all the paperwork and -- and</p> <p>12 told her how much it was.</p> <p>13 Q. So the determination of the amount of the lien</p> <p>14 was something that you guys determined and then --</p> <p>15 A. Yes.</p> <p>16 Q. -- forwarded on?</p> <p>17 And that was based on the invoices we looked</p> <p>18 at --</p> <p>19 A. Yes.</p> <p>20 Q. -- about an hour ago; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Materials supplied, that included the startup,</p> <p>23 whatever we want to call it, installation, startup,</p> <p>24 getting the stuff working; correct?</p> <p>25 A. Yes.</p>
Page 87	Page 89
<p>1 A. Well, there's -- there's no -- I mean, it's a</p> <p>2 notice.</p> <p>3 Q. I understand.</p> <p>4 A. There's no release or anything required to</p> <p>5 these. It's just a notice.</p> <p>6 Q. I guess what I am getting at is -- I</p> <p>7 understand what you are saying. You didn't send</p> <p>8 anything to any of the folks saying, Okay. We're paid,</p> <p>9 we're good, don't worry about it?</p> <p>10 A. No. I mean, not in regards to --</p> <p>11 Q. It's not something that you would typically do</p> <p>12 anyway, is it?</p> <p>13 A. No, not like that.</p> <p>14 Q. I'm going to show you the next one, which is</p> <p>15 the lien.</p> <p>16 (Exhibit 6 marked.)</p> <p>17 BY MR. BOSCHEE:</p> <p>18 Q. I'm guessing you recognize this document?</p> <p>19 A. I do.</p> <p>20 Q. Is that your signature at the bottom of the</p> <p>21 page?</p> <p>22 A. Yes.</p> <p>23 Q. And on the next page?</p> <p>24 A. Yes, indeed.</p> <p>25 Q. Does this appear to be a true and correct copy</p>	<p>1 Q. Did you at that time have any reason to</p> <p>2 believe that that number was not accurate?</p> <p>3 A. No.</p> <p>4 Q. Sitting here right now, do you have any reason</p> <p>5 to believe that number might not be accurate?</p> <p>6 A. No.</p> <p>7 Q. You testified earlier that the startup,</p> <p>8 getting everything working, was part of what you</p> <p>9 invoiced for, and in particular, on February 1, 2011;</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. That's part of what's in that invoicing? But</p> <p>13 it wasn't done yet because that happens as a process</p> <p>14 over the course of the project; correct?</p> <p>15 A. Yes.</p> <p>16 Q. And then you told me that there's still some</p> <p>17 of that that needs to be done because, you know, you</p> <p>18 guys just didn't finish it; correct, primarily because</p> <p>19 of what happened here?</p> <p>20 A. Yes.</p> <p>21 Q. So you would agree with me, wouldn't you, that</p> <p>22 the \$755,893.89 includes at least some services, some</p> <p>23 startup services you guys haven't actually performed</p> <p>24 yet, wouldn't you?</p> <p>25 A. Yes.</p>

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1 Q. But you still included it in your notice of
 2 lien?
 3 A. Yes.
 4 Q. Do you have an intention to perform those
 5 services at some point?
 6 A. Yes.
 7 Q. When?
 8 A. When we're paid.
 9 Q. Okay.
 10 A. Did you expect that?
 11 Q. I did expect that.
 12 And to the extent, if for whatever reason you
 13 guys don't get paid as a result of this lawsuit or
 14 hopefully for everybody Mr. Carvalho winning the
 15 lottery, those services aren't going to be performed
 16 until you actually get the money; right? You are not
 17 going to go back out there, other than what the court
 18 apparently ordered you to do on Friday, but you aren't
 19 going to go out there and perform additional services
 20 on this project, are you, until you get this money?
 21 A. That is our plan, yes.
 22 Q. Okay.
 23 A. Unless other legal ramifications present
 24 themselves.
 25 Q. I understand.

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1 Do you have anything else you want to tell me
 2 about the amount of the lien, the \$755,893.89 that you
 3 believe, other than what we just talked about, you have
 4 no other issues with the amount, do you?
 5 A. No. It's the sum of invoices that we have
 6 given.
 7 Q. Well, around the same time, I think you guys
 8 served, if I'm not mistaken, a notice to the general
 9 contractor; correct? I'm going to show it to you. I'm
 10 just asking.
 11 (Exhibit 7 marked.)
 12 BY MR. BOSCHÉE:
 13 Q. I will represent to you that I'm fairly
 14 certain that that's Jennifer's signature on the bottom
 15 of the page, having seen it a couple of times, but have
 16 you seen this document before?
 17 A. Yeah.
 18 Q. Do you recognize it?
 19 A. Uh-huh.
 20 Q. This is a true and correct copy of the 90-day
 21 notice that was sent to Whiting Turner; is that right?
 22 A. I believe so, yes.
 23 Q. And was this notice sent in an effort to
 24 preserve a claim against Whiting surety?
 25 A. Yes.

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1 Q. Date on the notice June 24, 2011, is that
 2 accurate, to the best of your knowledge?
 3 A. Yes.
 4 Q. No other notices were served before this date,
 5 were they?
 6 A. I don't know that to be true.
 7 Q. Have you seen any?
 8 A. Not that I am aware of.
 9 Q. In fact, this is the only 90 day notice to the
 10 general that you have ever actually seen; is that
 11 correct?
 12 A. Yes.
 13 Q. And -- disregard that. I was going to ask a
 14 bad question and I'm not going to.
 15 A. Thank goodness.
 16 Q. Exactly. I have asked plenty of bad ones
 17 already.
 18 You have -- and, again, I'm going to try to
 19 steer this away from legal conclusions as best I can,
 20 but Cashman has brought a claim in this lawsuit for
 21 fraudulent transfer against Mojave. Do you have an
 22 understanding of that, that that claim has been
 23 asserted?
 24 A. Yes.
 25 Q. Factually, what is the basis, sitting here

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1 right now, your understanding, what factual basis do
 2 you have for asserting that claim?
 3 A. Would you like me to answer that?
 4 MS. ROBINSON: No. You can answer it to the
 5 best of your knowledge.
 6 BY MR. BOSCHÉE:
 7 Q. To the best of your knowledge.
 8 MS. ROBINSON: But if you don't have a clear
 9 understanding --
 10 BY MR. BOSCHÉE:
 11 Q. And then I'll follow-up with some other
 12 questions as to elements if you don't.
 13 A. There were checks cut back to Angelo Carvalho
 14 in significant amounts that we believe some of those
 15 funds should have been ours, if not all of them.
 16 Q. Checks cut to Carvalho or checks from
 17 Carvalho?
 18 A. Checks cut from Carvalho back to Mojave.
 19 Q. Those were two checks, if memory serves;
 20 correct?
 21 A. (Witness nods.)
 22 Q. Right around the same dates we're talking
 23 about, end of April?
 24 A. Yes, yes.
 25 Q. What investigation have you done with respect

25 (Pages 94 to 97)

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<p>1 to those checks and the job that they came from, if 2 any? 3 A. I -- we were limited to what Mojave has 4 supplied us. 5 Q. Do you have an understanding as to what job 6 they relate to? 7 A. Again, our information directly comes from 8 Mojave. 9 Q. What has Mojave told you about those checks? 10 A. They said they were in relation to something 11 else. 12 Q. Another job? 13 A. Yes. 14 Q. Who told you that, Francis again? 15 A. No. That came from a -- I don't recall when 16 we got that information. There was -- there was a 17 meeting between our president and Keith Lozeau and an 18 owner of Mojave. I forget what his name is right off 19 the bat. 20 Q. Troy Nelson? 21 A. I believe it was with Troy and Brian Bugney 22 (phonetic). There were several things that came out of 23 that meeting. It could have been -- resulted from that 24 meeting. There was also -- 25 Q. While you have got that in your train of</p>	<p>1 flag goes up. And so at some point, you or somebody 2 else contacts Mojave and says, Hey, what's up with 3 this? 4 A. Yeah. And we have not really gotten a clear 5 response as to what it really is. 6 Q. When you say "we haven't got a clear detail," 7 what response have you gotten? 8 A. Based on -- again, if my recollection serves 9 me well, and it's secondhand. 10 Q. I understand. And Keith -- I maybe have to 11 ask him about that. 12 A. No. It's Keith and my president -- 13 Q. Sure. 14 A. -- that it was -- was not related to this job, 15 which we don't entirely feel is true. 16 Q. Why not? 17 A. Well -- 18 Q. I mean, what is the basis for your belief? 19 A. Again, the timing of the checks. I mean, that 20 he wrote those checks upon receiving his check from 21 Mojave. 22 Q. Okay. 23 A. All one check, from what I understand, in 24 that -- in that instance, and he didn't have enough 25 money to pay him until he got his check from Mojave,</p>
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<p>1 thought, what else came out of that meeting, if you 2 recall? 3 A. That we didn't receive payment. 4 Q. Obviously. 5 A. So not much. 6 Q. I think we will all agree on that point, but 7 anything else? What else did you guys talk about 8 during that meeting? 9 A. I was not present. I was out on vacation, so 10 I was not there. 11 Q. But you are fairly certain that these two 12 checks came up in that meeting? 13 A. Yes. 14 Q. Have you personally had any conversations with 15 anybody at Mojave about these two checks? 16 A. No, I have not. 17 Q. And the entire source of your information 18 regarding these two checks and why they were paid comes 19 from what you've gleaned from Mojave; correct? 20 A. Well, the way when about the checks is Angelo 21 Carvalho's bank records. 22 Q. Right. 23 A. So that's -- that's where that is. 24 Q. So you get the bank records from Carvalho and 25 you see these checks going back to Mojave and a red</p>	<p>1 which was -- I mean, there's -- there's a -- there's a 2 kind of a series of check that come into CAM prior to 3 that. But this was the big one, and this is the time 4 that he paid it back, which we feel was -- timing meant 5 that that was really our money from Mojave. 6 Q. But you testified earlier that you have an 7 understanding that Mojave wrote a check in the amount 8 greater than the amount that was owed to Cashman to 9 Carvalho at that point; right? 10 A. Yes. 11 Q. So at least theoretically, he could have had 12 enough money to pay it back if there was money owed to 13 Mojave. He could have paid both of you, theoretically; 14 right? 15 A. Well, he should have been able to pay all of 16 us theoretically, yes. 17 Q. This other job that Mojave articulated or told 18 you or indicated that this money was for, have you guys 19 looked into that job at all? Have you done any 20 independent investigation? 21 A. We -- we don't know what job that is. We 22 don't have any details that I'm aware of. 23 Q. Mojave never told you what job it was? 24 A. I -- I don't -- I don't know. 25 Q. Okay.</p>

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<p>1 A. Whether or not they told somebody else, I am 2 not aware of, but I don't know. 3 Q. In your meetings with Carvalho, let's start 4 there, meetings and telephone conversations? 5 A. Uh-huh. 6 Q. Did he ever explain what his relationship was 7 with Mojave? 8 A. Other than he had been -- I mean, he actually 9 showed me the checks that he had signed and sent to the 10 two other vendors in the second deal, which meant that 11 he was the disadvantaged business owner entity for 12 several other vendors in relation to Mojave's dealings. 13 But other than that, I don't know. 14 Q. So he showed you checks where he had kind of, 15 where Carvalho and CAM -- 16 A. I'm sorry, to clarify, copies of checks. 17 Q. Sure. Where he had been in this position 18 before, where he had been the disadvantaged business 19 owner used by Mojave on other projects; correct? 20 A. I don't know that they were other projects. I 21 think this one was -- this project? 22 Q. This project? 23 A. Yes. 24 Q. Did you talk to anybody at Mojave about what 25 their relationship was with CAM or Carvalho or why they</p>	<p>1 documents we've seen of kind of a conspiracy between 2 Mojave and Angelo Carvalho and CAM with respect to this 3 project; is that right? Is that your understanding? 4 A. Yeah. We -- we believe -- again, to restate, 5 we believe that those funds that CAM wrote a check back 6 to Mojave should -- should be ours. 7 Q. Okay. 8 A. And that's where we think the misdeeds are. 9 Q. But sitting here right now, you don't have any 10 knowledge or understanding of any kind of special 11 interpersonal relationship between Mojave and CAM or 12 anybody at Mojave and Angelo Carvalho, do you? 13 A. I -- I do know that -- I forget. I don't know 14 with which individual at Mojave it was. It wasn't 15 Francis. It was -- I believe it was one of the 16 owners -- 17 Q. Okay. 18 A. -- had a relationship with him and he was the 19 one that referred Keith, our guy, to CAM. And, in 20 fact, when Keith did meet with CAM, it was at Mojave's 21 office. 22 Q. You don't remember who that was? 23 A. I -- I don't recall. Keith would know. 24 Q. Okay. I'll ask Keith about that. 25 But, I mean, sitting here right now, your</p>
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<p>1 wanted to use this particular entity? 2 A. No. 3 Q. Did Francis ever indicate anything other than 4 she had a friendship with Carvalho? 5 A. She -- she was a point of contact and was able 6 to talk to him on a regular basis and a fountain of 7 information when it came to tracking him down. 8 Q. With respect to that, obviously you contacted 9 Mojave when the funds didn't clear, and there was \$800 10 left in the bank account; correct? 11 A. Yes. 12 Q. Did Francis or anyone else at Mojave offer any 13 suggestions as to how to get to this guy or how to get 14 funds out of this guy or what he had been doing? 15 A. Again, my perspective was, Hey, can we put a 16 stop payment on the check? Let's see what we can do to 17 get that done. I don't know that they offered any 18 suggestions. I don't recollect them making any 19 suggestions. 20 Q. Okay. 21 A. I would have -- anything. 22 Q. Help. I understand. 23 So you've also -- I think there's -- and I 24 don't want to get into any legal terms, but there's 25 this kind of idea in the allegations and some of the</p>	<p>1 understanding -- again, for the limited purpose of the 2 person most knowledgeable for the subjects listed -- 3 A. Uh-huh. 4 Q. -- but sitting here right now, your basis for 5 the conspiracy, fraudulent transfer type accusations, 6 allegations that have been made -- 7 A. Uh-huh. 8 Q. -- is really only those two checks being cut 9 and the timing of them; isn't that right? 10 A. Yes. 11 Q. And you have done no other investigation as to 12 why those checks were cut or the job that they were cut 13 for? 14 A. No. I mean, again, we are limited to what 15 Mojave is willing to provide, and we have not received 16 any additional evidence on that. 17 Q. Sure. 18 MR. BOSCHEE: If I can take about two minutes, 19 I want to go back over my notes. I think we're just 20 about done. 21 MS. ROBINSON: Okay. 22 (A short break was taken.) 23 MR. BOSCHEE: Back on the record. 24 BY MR. BOSCHEE: 25 Q. You understand you are still under oath?</p>

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1 A. I do.

2 Q. Couple of just cleanup that I probably know
3 the answers to but you talked about the fact that you
4 did not set up a charge account with CAM. Do you
5 remember talking about that?

6 A. I did.

7 Q. What is a charge account?

8 A. Something where you buy now, pay later.

9 Q. And you buy now, pay later, how exactly is
10 that different than the arrangement you did set up with
11 CAM?

12 A. Well, we didn't never receive the money.

13 Q. I understand.

14 A. So it ended up being that way, but that's not
15 the way it was intended.

16 Q. It was intended to be relatively immediate
17 payment?

18 A. Yes.

19 Q. Why didn't you set up the charge account with
20 CAM?

21 A. I didn't feel they had enough credit to open
22 up a \$755,000 line of credit for a brand new customer I
23 have never heard of before with limited credit
24 information.

25 Q. Sure. But setting up a charge account

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1 wouldn't have really benefited Cashman in this
2 situation?

3 A. It -- it wouldn't have changed what the
4 outcome would have -- well, would have, should have,
5 could have, but it wouldn't have had any bearing on
6 what happened.

7 Q. In an effort in trying to avoid another
8 deposition and maybe get away with this with a
9 subpoena, do you know who your insurance carrier is?

10 A. No.

11 Q. Okay.

12 A. Well, I mean I -- I know who our agent is,
13 it's Jenkins Athens.

14 Q. But you don't know who you are insured with?
15 Because we would send a subpoena to them asking them
16 for the claim information, but if you don't know, you
17 don't know.

18 A. If you would like a written statement from my
19 CFO, we could do that.

20 Q. Or we could send something over.

21 MS. ROBINSON: Send a request over.

22 BY MR. BOSCHEE:

23 Q. We'll send a request over. I was just hoping
24 you might know off the top of your head, so we could
25 send a subpoena out to the insurance, but it's fine.

1 That's not the end of the world either.

2 Other than that, the last question I always
3 ask, and your counsel is almost certainly going to
4 object because Brian always objects, are there any
5 other topics that you are planning to testify about in
6 this case that we have not discussed today at this
7 deposition?

8 MS. ROBINSON: I'm going to object that that's
9 not really a question, but go ahead.

10 THE WITNESS: I -- I -- I mean, I don't know.
11 We just take it day by day.

12 BY MR. BOSCHEE:

13 Q. I understand that. But I guess what I am
14 saying is are there any other areas of knowledge or
15 information that you have that you are planning to
16 relate to the Court or testify about at trial in this
17 case that we have not discussed at this deposition
18 today?

19 A. I think our deposition has been fairly full
20 bodied, but I -- I don't know -- I don't know what else
21 I could testify to. I mean, there's probably some
22 little things here and there, but I don't -- I
23 couldn't --

24 Q. But no major topic areas, though?

25 A. Well, we discussed the nonpayment and how that

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1 came about and that kind of stuff. So, I mean, there
2 are probably a lot of other aspects to the case, but
3 none that I'm --

4 Q. I just wanted to make sure --

5 A. Unless you have anything specifically you
6 would like to add or whatever, but --

7 Q. No. We have gotten -- I mean, there are a lot
8 of specific things that I may need information from
9 other folks about, but I just wanted to make sure there
10 was no other broad topics that you are like, Oh, well,
11 actually, I know all this stuff about this other area.
12 I just want to make sure we have covered everything.

13 A. Well, like I said, there's a lot of aspects to
14 the case.

15 Q. Sure.

16 A. But I can't -- I can't say whether we have
17 covered them all or not. I guess that's your opinion.

18 MR. BOSCHEE: Okay. I have no further
19 questions. Your counsel may ask you questions, but I
20 doubt it.

21 MS. ROBINSON: No questions.

22 MR. BOSCHEE: Okay.

23 (Thereupon, the deposition concluded at
24 11:52 a.m.)
25

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1 CERTIFICATE OF DEPONENT

2 PAGE LINE CHANGE REASON

3 _____
 4 _____
 5 _____
 6 _____
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____

13 * * * * *

14
 15 I, SHANE NORMAN, deponent herein, do hereby certify and
 16 declare under the penalty of perjury the within and
 17 foregoing transcription to be my deposition in said
 18 action, that I have read, corrected and do hereby affix
 19 my signature to said deposition.
 20
 21
 22

23 _____
 24 SHANE NORMAN, Deponent
 25

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

4 I, Michelle R. Ferreyra-Marez, a Certified Court
 5 Reporter licensed by the State of Nevada, do hereby
 6 certify. That I reported the deposition of SHANE
 7 NORMAN, commencing on THURSDAY, AUGUST 16, 2012, at
 8 9:43 a.m.

9 That prior to being deposed, the witness was
 10 duly sworn by me to testify to the truth. That I
 11 thereafter transcribed my said stenographic notes into
 12 written form, and that the typewritten transcript is a
 13 complete, true and accurate transcription of my said
 14 stenographic notes, and that a request has been made to
 15 review the transcript.

16 I further certify that I am not a relative,
 17 employee or independent contractor of counsel or of any
 18 of the parties involved in the proceeding, nor a person
 19 financially interested in the proceeding, nor do I have
 20 any other relationship that may reasonably cause my
 21 impartiality to be questioned.

22 IN WITNESS WHEREOF, I have set my hand in my
 23 office in the County of Clark, State of Nevada, this
 24 30th day of August, 2012.

25 _____
 MICHELLE R. FERREYRA-MAREZ, CCR No. 876

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15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 CASHMAN EQUIPMENT COMPANY, a
18 Nevada corporation,

19 Plaintiff,

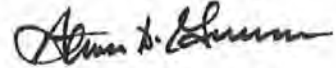
20 vs.

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

Defendants.

AND ALL RELATED MATTERS.

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CLERK OF THE COURT

CASE NO.: A642583

DEPT.: 32

Consolidated with Case No.: A653029

NOTICE OF APPEAL

Comes Now, Plaintiff, CASHMAN EQUIPMENT COMPANY ("CASHMAN"), by and through its counsel of record, PEZZILLO ROBINSON, and hereby gives notice that CASHMAN,

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1 pursuant to NRAP 3A(b)(3) and NRAP 4, files this Notice of Appeal, appealing to the Nevada
2 Supreme Court from the Order Granting Counterclaimants' Motion for Mandatory Injunction to
3 Procure Codes, entered in this matter by the Honorable Judge Rob Bare on or about August 10, 2012
4 and noticed on August 13, 2012. *See* Exhibit "1", attached hereto.

5
6 DATED: September 13, 2012

PEZZILLO ROBINSON

7
8 By: 

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CERTIFICATE OF SERVICE

The undersigned, an employee of the law firm of PEZZILLO ROBINSON, hereby certifies that on September 13, 2012, a true and correct copy of the foregoing document, **NOTICE OF APPEAL**, was served by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

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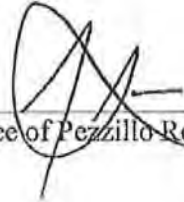
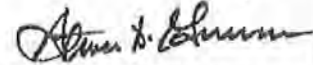

An Employee of Pezzillo Robinson

EXHIBIT 1



CLERK OF THE COURT

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

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 CASHMAN EQUIPMENT COMPANY, a
20 Nevada corporation,

21 Plaintiff,

22 v.

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

Defendants.

AND RELATED MATTERS.

Case No: A642583
Dept. No.: 32

NOTICE OF ENTRY OF ORDER

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

1 Dated this 13th day of August, 2012.

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

4 

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

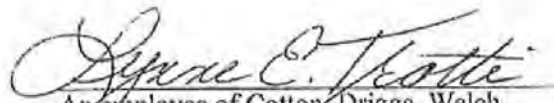
CERTIFICATE OF MAILING

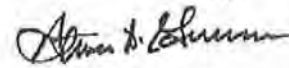
I HEREBY CERTIFY that, on the 13th day of August, 2012 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**, postage prepaid and addressed to:

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

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

17 **Plaintiff,**

18 **v.**

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

Defendants.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

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

AND RELATED MATTERS.

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

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

7 **FINDINGS OF FACT**

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

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

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

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

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

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

20 **CONCLUSIONS OF LAW**

21 **THE COURT FINDS:**

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

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

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

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

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

4 ORDER

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

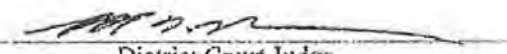
8 IT IS FURTHER ORDERED Cashman Equipment Company install the switchgear codes
9 on the City Hall Project; and

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

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

15 IT IS SO ORDERED.

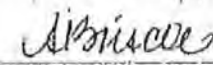
16 Dated this 10 day of August, 2012.

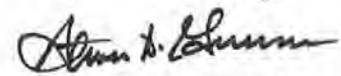
17
18 
District Court Judge

19 Respectfully submitted by:

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

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

22 
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27 Fidelity and Deposit Company of Maryland,
Travelers Casualty and Surety Company of
28 America, Counterclaimant and Crossclaimant



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

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

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

Defendants.

AND RELATED MATTERS.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

MOTION TO EXPUNGE OR REDUCE MECHANIC'S LIEN

COMES NOW, Defendant/Counterclaimant WESTERN SURETY COMPANY,
("Western"), a surety, and WEST EDNA ASSOCIATES, LTD. dba MOJAVE ELECTRIC, a

1 Nevada corporation, ("Mojave")¹ by and through their attorneys of record, Brian W. Boschee,
2 Esq. and Shemilly A. Briscoe, Esq. of the law firm of COTTON, DRIGGS, WALCH, HOLLEY,
3 WOLOSON & THOMPSON, move this Honorable Court to expunge, or drastically reduce, the
4 Notice of Lien recorded by Cashman Equipment Company ("Plaintiff" or "Cashman") on June
5 22, 2011, as Instrument No. 201106220002156 of the Official Records of Clark County, Nevada
6 ("the Lien"), attached as **Exhibit "A."** In addition, pursuant to NRS 108.2275(6) (a) and (b),
7 Western seeks an award of attorney's fees and costs incurred for bringing this Motion as the Lien
8 was recorded without reasonable cause and is excessive. This Application is based upon NRS
9 108.2275, the Exhibits, the attached Memorandum of Points and Authorities, the papers
10 previously filed with the Court in this matter, and any oral argument the Court entertains during
11 the hearing on this matter.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. Introduction**

14 In Nevada, to avoid the need for injunctive or declaratory relief, the legislature adopted
15 NRS 108.2275, providing a statutory right to expunge or reduce a frivolous or excessive lien at a
16 hearing to be held no less than 15 and no more than 30 days after a motion is filed. In this matter,
17 Cashman recorded the Lien against the Property, and Mojave obtained a Bond from Western
18 Surety to release the Property from said Lien. According to Cashman's Lien, the amount due is
19 \$755,893.89 or the total amount of the contract. However, Cashman's work has not been
20 completed on the project, and more importantly, a lien for this amount was not properly stated by
21 Cashman. Specifically, Cashman failed to timely serve a Notice of Right to Lien ("Pre-Lien")
22 pursuant to NRS Chapter 108.245 in March of 2011 and instead served it in April of 2011. A
23 Pre-Lien covers costs included in a proper lien for the preceding 31 days. As a result, the only
24 costs documented by Cashman that are covered by the lien statute occurred in March of 2011, in
25 the amount of \$329.00. Therefore, the claim amount of Cashman's Lien is completely
26 unsupported by the facts of this case and the lien should be expunged or reduced to reflect the

27 ¹ Western Surety Company is seeking relief due to the Bond which has taken the place of the Owner's rights to the
28 Property. Mojave is also a movant due to its payment of the legal fees and the bond in this litigation.

1 proper sum. Further, Defendants are entitled to an award of fees and costs for bringing this action
2 and the fees and costs incurred to date based upon the Lien claim. Cashman has maintained this
3 action without proper support and made every step of the litigation costly to Defendants. The
4 Court must preserve the parties' rights under the law and expunge Cashman's Lien.

5 **II. Statement of Facts**

6 The facts are undisputed that FC/LW Vegas LLC and LWTIC Successor LLC, care of
7 Forest City Enterprises, is the owner of certain real property (the "Property") located at 518 S. 1st
8 St., Las Vegas, Nevada. Whiting Turner Contracting Company, Inc. is the prime contractor on
9 the City Hall Construction Project (the "Project") that is located at the Property and the subject
10 of this action. Cashman entered into an agreement whereby Cashman was to provide electrical
11 generator equipment which Mojave Electric would install on the Project. Cashman delivered the
12 majority of the equipment and Mojave paid CAM Consulting, Co. ("CAM") a minority
13 contractor, who was to in turn make immediate payment to Cashman. Instead of the traditional
14 transaction, CAM absconded with the funds, and Cashman has brought the pending action to
15 recover payment for the equipment.

16 According to its documents and testimony, Cashman delivered the materials in January
17 and February of 2011.² Cashman then served its Notice of Right to Lien or Pre-Lien notice on
18 April 20, 2011.³ Cashman recorded a mechanic's lien against the Property on June 22, 2011 in
19 the amount of 755,893.89 as Instrument No. 201106220002158.⁴ The Owner required that
20 Mojave obtain a Release Bond to release the Property from said lien, because Mojave had
21 contracted to keep the property free of encumbrances. Mojave did record a bond of release from
22 Western Surety for one and half times the amount of Cashman's lien as NRS Chapter 108
23 requires.⁵

24
25 ² See COD invoices for the equipment dated January 31, 2011 and February 1, 2011 in the amount of \$755,564.18
attached as **Exhibit C**. See also, deposition testimony of *Keith Lozeau* attached as **Exhibit D**, p. 58-59.

26 ³ See **Exhibit B** Pre-Lien Notice; see also Deposition of Cashman PMK Shane Norman attached as **Exhibit E** p.85,
and 86 LL. 1-8.

27 ⁴ See **Exhibit A**.

28 ⁵ See **Exhibit F**.

1 According to Cashman's Lien, the amount due for work performed is \$755,893.89 which
2 is equal to the total amount of Cashman's contract.⁶ However, Cashman admitted in its
3 deposition, the Project work has not been completed as of date⁷ and, more importantly, the Lien
4 was not properly secured by Cashman. Specifically, Cashman failed to timely serve a Notice of
5 Right to Lien pursuant to NRS Chapter 108, 245 to cover the vast majority of the cost included
6 in the Lien.⁸ The total amount of \$755,564.18 was incurred by Cashman on January 31, 2011 and
7 February 1, 2011, several months before the Pre-Lien notice was properly served.⁹ Therefore, the
8 amount of Cashman's Lien is completely unsupported by the facts of this case, and the Lien
9 should be expunged or reduced to reflect the proper sum demonstrated of \$329.71 for an invoice
10 in March of 2011.¹⁰ Further, the Court must order the Bond be released by Western, because the
11 lien is not valid, and Cashman should be ordered to pay all fees and costs incurred by Plaintiffs
12 in bringing this Motion.

13 **III. Argument**

14 **A. Cashman's Pre-Lien Notice Fails to Support its Lien**

15 NRS Chapter 108 provides the statutory framework governing the recording and
16 enforcement of mechanics liens. The statutes are in derogation of the common law and therefore,
17 must be strictly construed by the court:

18 'The mechanic's lien is a creature of statute, unknown to the
19 common law. Strict compliance with the statutes creating the
20 remedy is therefore required before a party is entitled to any
21 benefits occasioned by its existence ...If one pursues his statutory
22 remedy...he implies full compliance with statutory prerequisites
23 giving rise to the cause of action.'

24 ⁶ See Deposition of Cashman PMK Shane Norman attached as **Exhibit E** p. 87, L. 25 through 91 L. 6; *see also*
25 Notice of Lien attached as **Exhibit A**.

26 ⁷ *Id.*

27 ⁸ See NRS 108.245, "[a] lien claimant who is required by this section to give a notice of right to lien to an owner and
28 who gives such a notice has a right to lien for materials or equipment furnished or for work or services performed in
the 31 days before the date the notice of right to lien is given and for the materials or equipment furnished or for
work or services performed anytime thereafter until the completion of the work of improvement." Cashman's Pre-
Lien wasn't served until April 20th or approximately 2 months later.

⁹ See COD slips attached as **Exhibit C**; *see also* testimony of Keith Lozeau admitting the timing of the work and
timing of the notice.

¹⁰ **Exhibit C**.

1 Schofield v. Copeland Lumbar Yards, Inc., 101 Nev. 83, 84, 692 P. 2d 519, 520 (1985)(quoting
2 Fisher Bros., Inc. v. Harrah Realty Co., 92 Nev. 65, 545 P. 2d 203 (1976)). Furthermore, the
3 claimant bears the burden of proving the amount of the lien claim. Sherman Gardens Co. v.
4 Longley, 87 Nev. 558, 566, 491 P. 2d. 48, 54 (1971). Based on the foregoing, Cashman bears the
5 burden of proving to the Court that the amount of its Lien is not excessive and lienable under
6 Nevada law. Cashman cannot meet this burden.

7 First, the purpose of the Pre-Lien notice requirements provided by NRS 108.245 is to put
8 the owner on notice of work and materials furnished by third persons with whom the owner has
9 no direct contact. Matter of Stanfield, 6 B.R. 265, 269 (Bankr.D.Nev.1980). Nevada Statutes
10 requires that all persons who desire to claim a lien in accordance with the statutes must provide a
11 Notice of Right to Lien to the owner at any time after the first delivery of material or first
12 performance of work. NRS 108.245. The lien claimant must give such a notice for materials or
13 equipment furnished or for work or services performed **in the 31 days before the date the**
14 **notice** in order to include those amounts within its mechanic's lien. *Id.* Cashman did not serve its
15 Pre-Lien until April 20, 2011 and the Owner Forrest City had no knowledge of Cashman's work
16 on this project as a sub-subcontractor to Mojave.

17 Therefore, as a matter of law, Cashman's failure to timely serve its Pre-Lien notice
18 invalidates the Lien and defeat its lien claims. Also, Cashman's Lien is grossly exaggerated and
19 is not in good faith. The burden of establishing good faith in filing a lien claim that is grossly
20 exaggerated is upon the claimant. R&L Supply, LTD v. Evangelical Lutheran Good Samaritan
21 Society, 462 N.W. 2d 515, 518 (1990); See also Legge Industries v. Joseph Kusner Hebrew
22 Academy/JKHA, 756 A. 2d 608 (N.J. Supr. 2000) ("a willful overstatement connotes an intent to
23 recover that to which the claimant knows he is not entitled; in other words, a claim made in bad
24 faith"). NRS 108.2275(1) states the procedure for an owner to challenge an excessive or
25 frivolous lien and authorizes the Court to expunge a lien if the lien is **frivolous or made without**
26 **reasonable cause**.

27 Western asserts that the amount of work or materials supplied by Cashman has a value of
28 considerably less than the approximate \$755,893.89 claimed, in the approximate amount of

1 \$329.17.¹¹ Cashman has admitted that the work is incomplete and there have been multiple
2 motions filed related to that work.¹² **Where there is a willful exaggeration in the amount of**
3 **the lien, the entire lien is forfeited.** Goodman v. Del-Sa-Co Foods, Inc., 257 N.Y.S. 2d 142,
4 143 (N.Y. App. 1965). Cashman's Lien is overstated. See also Wolters Village Management Co.
5 v. Merchants and Planters National Bank of Sherman, 223 F.2d 793, 801-802 (5th Cir. 1955)
6 (where lien claims included a substantial amount of work never performed it was invalid);
7 Wigham Excavating Co. v. Colorado Federal Savings and Loan Assn., 796 P.2d 23, 25 (1990) (a
8 lien statement which included amounts not due to construction efforts was a fraudulent lien
9 statement which required forfeiture).

10 In summary, Cashman has improperly liened for work that remains unperformed and for
11 amounts that fall outside of its allowable costs pursuant to the Pre-Lien notice that was untimely
12 served. As a result, Cashman's lien should be expunged and the Bond lien released.

13 **B. Defendants are entitled to an Award of Fees and Costs**

14 NRS 108.2275 governs the procedure by which the party seeking the expungement or
15 reduction may obtain relief for fees if the lien is frivolous or excessive. NRS 108.2275(6) (a) and
16 (b) direct that the court will award "costs and reasonable attorney fees to the applicant for
17 bringing a motion." Because Cashman's Lien should be expunged or in the least drastically
18 reduced, Defendants are entitled to an award of fees and costs for bringing this action and the
19 fees and costs incurred to date based upon the Lien claim. This entire litigation has been
20 predicated upon the Lien, and Mojave has been forced to exhaust vast resources to bond the
21 Property and the work separately to the tune of almost \$1.5 million dollars when Cashman did
22 not fulfill the statutory requirements to form the basis of the Lien and has known that all along.

23 As a result, Mojave has been forced to fight this litigation brought in bad faith and
24 Cashman has continuously played on this Court's heartstrings while conveniently ignoring its
25 failures to protect itself with common sense measures and compliance with statutory

26
27 ¹¹ \$329.17 is the amount of the sole invoice disclosed that falls within the dates of the Pre-Lien service coverage by
law in March 2011; **Exhibit C**.

28 ¹² See Deposition of Cashman PMK Shane Norman attached as **Exhibit E**, p. 87, L. 25 through 91 L. 6.

1 requirements to secure its Lien. Aside from its failure to handle the Pre-Lien in accordance with
2 NRS 108.245, Cashman has also failed to handle its transactions appropriately across the board
3 on this Project. Notably, the PMKs for Cashman made admissions that Cashman did not
4 complete proper due diligence on CAM Consulting Inc. ("CAM").¹³ In fact, once they realized
5 that Angelo Carvalho had virtually no credit history whatsoever, Cashman did not open a credit
6 account with him or complete any proper background checking.¹⁴

7 Q. But now you got this third party intermediary, this disadvantaged business owner
8 kind of coming in the middle of that relationship, and you are going to be invoicing them. Did
9 you have any -- did you run any kind of credit check on CAM?

10 A. I did.

11 Q. And what did that turn up?

12 A. Limited credit information.

13 Q. I'm not a credit guy. You are going to have to tell me what that means.

14 A. Well, I'm -- I'm likely not at liberty to discuss his credit --

15 Q. I understand.

16 A. However, there was not much credit information where with -- to make a good
17 credit decision based on that. I would liken it to -- his business credit was a fellow coming out of
18 college. You have no real history....

19 Q. But did you guys have any -- **were there any criteria that you had or that**
20 **Cashman had when looking at CAM** as to, Okay. Yes, we're comfortable using -- you know,
21 invoicing them and then getting paid ultimately by Mojave? Did you have any criteria that you
22 were looking at and said, Yes, they are okay. Or No, they are not okay?

23 A. Yes, I do have criteria.

24 Q. What are they?

25 A. Well, they're written now, but before, it was just my experience. And again, it's -
26 - **the criteria is that you have a reasonable, acceptable set of credit information on your**

27 ¹³ See Exhibit E, p. 22-24.

28 ¹⁴ *Id.*

1 approximately 14 days for the amount of roughly \$30,000 even assuming there
2 are complications.

3 Therefore, Cashman is not entitled to an additional bond and more likely should have the bond
4 reduced.

5 The Court had an opportunity to review the facts supporting the injunction, and the Court
6 made its ruling based upon its careful review, not just of the moving papers and exhibits, but also
7 counsel's argument during the initial hearing and the following prove up hearing. The arguments
8 presented in this motion are a third bite at the apple, and Cashman's bad faith is demonstrated
9 when it states that it will not complete the install without full payment. This Motion is meant
10 only to further delay the completion with no new substantive facts or evidence and must be
11 denied in total.

12 II. STATEMENT OF PERTINENT FACTS

13 On or about, July 18, 2012, Counterclaimants filed the Motion for Preliminary Injunction
14 to Procure Codes on Order Shortening Time or in the Alternative Application for Writ of
15 Possession.¹ The Motion stated specific bullet point requests for: 1) installation of the codes, and
16 2) to restrain Cashman from further re-entry onto the City Hall Project.² An Opposition was filed
17 July 26, 2012 and a Reply was filed July 31, 2012, fully briefing the nature of the issues and the
18 necessity for expediency due to the potential safety issues in the City Hall and the inability to
19 close the project without Cashman's start up.³

20 On August 10, 2012, this Court granted Counterclaimants' Motion and stated that
21 Counterclaimants had established that an injunction was necessary and had shown a hardship.
22 The Court further ordered that Mojave obtain a separate bond in the amount of \$200,000.00
23 specifically related to the work to be completed and potential warranty issues. Mojave
24 immediately obtained the appropriate bond and filed it on August 9, 2012. Although the relief
25 requested was clear in the moving papers, Cashman then refused to sign the order drafted by

26 ¹ Motion attached as Exhibit "1."

27 ² *Id.*

28 ³ *Id.*

1 Counterclaimants and stated that they would not complete the work and that the Court had not
2 ordered such relief.⁴ As a result, competing orders were submitted and this issue was again
3 revisited at the prove up hearing related to the default judgment of Angelo Carvalho on August
4 10, 2012. The Court reheard argument related to the inefficiency of the bond and refusal to
5 install by Cashman. The Court again ordered that the injunction was appropriate, the bond was a
6 reasonable amount and that the install should be completed despite potential warranty issues
7 (which are only speculative at this point).⁵

8 Despite these orders, the PMKs for Cashman, Keith Lozeau and Shane Norman, stated
9 plainly in their respective depositions, that Cashman would not complete the work without
10 payment.⁶ Mr. Lozeau also testified as to the actual work required to complete the startup
11 requested:

12 —we have two stages to start up, basically. We have a technician
13 that goes out and verifies that the installation is correct and
14 everything was done correctly. He verifies wiring and -- basically
15 verifies Mojave's work and makes sure that it's done to the factory
16 standard. And the second part of startup is actually physically
17 starting to energize equipment, make equipment work, activate the
18 electronics, physically start running equipment, setting up controls,
19 adjusting controls, doing different things. And it all -- there's a
20 checklist that we have to do on all the pieces of equipment. And
21 that would be the generators, the switchgear, the transfer switches
22 and the Mitsubishi UPS that are -- that we have checklists from the
23 factories that tell us the things that have to be done. And we go
24 through those checklists. And it's basically just verifying that
25 everything is operating correctly and there's no -- there's no defects
26 in materials of workmanship at that point. And then when we're
27 done performing those checklists, the customer signs a document
28 that they've received the equipment, it's in good running order, and
it now has a viable factory warranty.

Q. And those protocol codes that we talked about earlier, about a
half hour ago, that's part of that startup process as well, isn't it?

A. That would have been part of that process, yes.⁷

⁴ These arguments are pursuant to discussion with counsel, but were also argued in open court at the prove up hearing.

⁵ See *Minute Order* dated August 3, 2012.

⁶ See *Deposition of Keith Lozeau* (attached as *Exhibit "2"*), p. 64-65, ll. 23-25 and 1-2; p. 79, ll. 9-14. See also, *Deposition of Shane Norman* (attached as *Exhibit "3"*), p. 89, ll. 21-25; p. 90, ll. 1-8.

⁷ *Id.*, p. 48-49, ll. 9-25, 1-9.

1 The testimony demonstrates that the process is simple, straightforward. The deposition
2 also clarified that the work will cost Cashman approximately \$30,000 at most with a \$5,000-
3 \$6,000 variance.⁸ Lozeau aptly refers to the above work as the “fine tuning of the project.”⁹ It
4 also remains undisputed that Mojave has already paid in full for this work and received an
5 unconditional release.¹⁰

6 I. STANDARD FOR RECONSIDERATION

7 EDCR 2.24 permits the Court to rehear and reconsider a matter previously decided when
8 there is a “reasonable probability that the court may have arrived at an erroneous conclusion or
9 overlooked some important question necessary to a full and proper understanding of the case.”¹¹
10 In a concise and non-argumentative manner, such petition should direct attention to some
11 controlling matter which the court has overlooked or misapprehended.”¹² “A party seeking
12 reconsideration of a ruling of the court,...must file a motion for such relief within 10 days after
13 service of written notice of the order or judgment unless the time is shortened or enlarged by
14 order.” See E.D.C.R. 2.24(b).

15 II. ARGUMENT

16 A. Cashman’s Motion is Improper and Unnecessary

17 Contrary to Cashman’s assertions, this Motion is brought *only* because Cashman does not
18 agree with the Court’s ruling. Counterclaimants have met the burden, and shown: 1) the
19 reasonable probability of success based upon the purpose of the equipment, the potential public
20 safety issues and the inability of parties to replace the system without start up,¹³ 2) irreparable
21 harm to the parties who cannot close the project and liability impacts faced by
22

23 ⁸ *Id.*, p. 84-87.

24 ⁹ *Id.*, p. 57, ll. 2-3.

25 ¹⁰ *Id.*, p. 37, ll. 7-17. See *Deposition of Shane Norman*, p. 51, ll. 24-25 and p. 52, l.1.

26 ¹¹ *State v. Fitch*, 68 Nev. 422, 233 P. 2d 1070, 1072 (1951); accord, *Moore v. City of Las Vegas*, 92 Nev. 402, 551 P.
2d 244, 246 (1976) (citing *Geller v. McCown*, 64 Nev. 102, 178 P. 2d 380, 381 (1947)).

27 ¹² *Matter of Ross*, 99 Nev. 657, 668 P. 2d 1089 (1983).

28 ¹³ *Motion for Injunction*, p. 7-8.

1 Counterclaimants,¹⁴ 3) balance of hardship due to the failure of operations in the BAS System,¹⁵
2 and 4) that Mojave bonded around the entire lien in the amount of \$1.2 million, and this work
3 specifically for \$200,000 although it already paid for the work. The facts are specific as to the
4 failure of Cashman to startup the equipment and the potential dangers that face the parties
5 (including Cashman) without startup.

6 Furthermore, Cashman nitpicks the language of the bond and order when these
7 typographical issues could easily have been resolved by counsel had it been brought to Mojave's
8 attention by email or telephone call. As discussed below, this injunction was appropriate and
9 entered after careful consideration of the facts by this Court. Cashman's unsupportable position
10 to avoid this work despite the Court Order is contemptuous and should be recognized as a
11 desperate and unjustifiable attempt to garner more security and extort more money and time from
12 Counterclaimants.

13 **1. Counterclaimants Clearly Showed a Likelihood of Success on the Merits and**
14 **The Bond Entered was More than Sufficient to Cover the Work to Be Performed**

15 Counterclaimants' success on the merits is assured due to the plain facts operating here.
16 As explained in the prior briefing and hearing, the City Hall Building Operating System ("BAS")
17 is not fully operable and the inhabitants of the building remain at risk as long as the startup is
18 incomplete.¹⁶ Specifically, the BAS System controls the HVAC for the City Building as well as
19 other electrical operations necessary to the health and welfare of the inhabitants. Despite
20 Cashman's misguided allegations, a step-by-step instruction manual is not required to understand
21 that the startup is important, and that an equipment failure would subject all of the parties to
22 unnecessary litigation. In fact, Cashman President Keith Lozeau states that the "codes—the
23 protocols—the communication protocols for the equipment would be absolutely required."¹⁷ The
24 Project cannot be closed as it stands, and the electrical systems must be brought into compliance
25 with the overall project design. Cashman is the only party who possesses the necessary codes and

26 ¹⁴ *Id.*, p. 8-9.

27 ¹⁵ *Id.*, p. 9-10.

28 ¹⁶ See *Declarations* attached to the *Motion for Injunction*.

¹⁷ See *Deposition of Keith Lozeau*, p. 18, ll. 2-11.

1 knows how to complete the work and avoid any catastrophic failures.¹⁸ Therefore, a reasonable
2 likelihood of success can easily be shown.

3 Mojave has gone to great expense and headache to find a contractor who could start the
4 equipment, without success. Neither Mojave, nor Whiting, nor the City can replace the entire
5 system due to the time, expense, and unique nature of the equipment and all of these parties are
6 irreparably harmed by Cashman's failure to complete.¹⁹ Other less obvious impacts previously
7 reported to the Court include: costs to extend and maintain insurance perpetually, inspections and
8 testing related to the issues, and duplicitous litigation.²⁰

9 Cashman now argues that Mojave must deal directly with CAM due to the contract at
10 issue and Mojave's "failure to issue a joint check"- a mantra counsel keeps reciting in every
11 paper. However, this argument fails based upon the evidence, because it was never contemplated
12 that CAM would complete the install, nor does CAM have the capability to do so as the minority
13 contractor. Cashman was well aware of its obligations when it met with Mojave to discuss the
14 contract and the use of a minority contractor.²¹ Further, Cashman has testified that Mojave never
15 has issued a joint check on any project, and that it is customary that a joint check is not issued on
16 any project that includes a minority contractor.²² This testimony completely deflates Cashman's
17 repeated assertions that Mojave acted recklessly or negligently, and instead shows that
18 everything Mojave did on this project was status quo, and Angelo Carvalho acted independently
19 to Cashman's detriment. Cashman also does not dispute that payment was made in full by
20 Mojave.²³ And while Mojave does not agree with Carvalho's course of action,²⁴ Cashman must
21 acknowledge an obligation to the safety of the public. Mojave must get this project completed
22

23 ¹⁸ See *Motion for Injunction*, p. 8-9.

24 ¹⁹ See *Motion for Injunction*, p. 9.

25 ²⁰ *Id.*

26 ²¹ See *Deposition of Keith Lozeau*, p. 30, ll. 1-9.

27 ²² *Id.*, p. 39-40, ll. 17-25; p. 41, ll. 6-10; see also *Deposition of Shane Norman*, p. 49, ll. 21-25.

28 ²³ See *Deposition of Keith Lozeau*, p. 37, ll. 7-17.

²⁴ Lozeau testifies multiple times as to the good business relationship with Mojave. "Mojave had been a tremendous business partner...I didn't want to see them get hurt either." P. 44, ll. 14-22.

1 and allow the payment issues to be appropriately sorted through this litigation.

2 Notably, Cashman has testified that it possesses a specific checklist that outlines the work
3 to be performed and that, *if paid*, Cashman could easily complete the work at very little cost with
4 two men over a 14-day period with a potential \$5,000-\$6,000 variance.²⁵ Keith Lozeau stated
5 that the sole reason for not completing the work was payment and he had no technical concerns
6 about completion:

7 Q. If Cashman has to go in and provide those protocol codes
8 at this stage in the game, does that -- what concerns would you
have about doing that today?

9 A. Concerns? None from a technical standpoint.

10 Q. Okay.

11 A. I mean there's no physical reason why we wouldn't be able
12 to do that. It's just -- it's proprietary information.

13 Q. You haven't been paid?

14 A. Correct.

15 Q. Okay. But from an actual just going in there and putting the
16 codes in and getting the stuff communicating, like physically
there's no real issue there, you just don't want to do it because you
haven't gotten paid, right?

17 A. That is correct.²⁶ [emphasis added].

18 Basically, the equipment requires verification, codes and standard energizing at low cost
19 to Cashman. Thus, the balance of hardship clearly weighs in favor of Counterclaimants and an
20 injunction is appropriate.

21 The Mojave bond of \$200,000 is sufficient to cover any unknown issue that might be
22 encountered here. Arguments to the contrary do not have a valid basis because Cashman
23 admitted the cost to complete the work is minimal. Further, Counterclaimants have every
24 motivation to complete the work and bring the building into compliance. The equipment is in
25 operation, but just not fully functional because the final steps must be completed. Any argument
26 that Mojave would harm the equipment or cause a dysfunction for Cashman lacks common

27 ²⁵ *Id.*, p. 85, ll. 9-18 and p. 86, ll. 6-19.

28 ²⁶ *Id.*, p. 79, ll. 9-25 and p. 80, ll. 1-7.

1 sense, because this only increases Counterclaimants' already exorbitant costs to resolve the issue.

2 Finally, the Order entered for the injunction as well as the bond was prepared in haste due
3 to the exigency of the issue, but was reviewed by Cashman's counsel, who conveniently did not
4 dispute that language cited in its *Motion*. This Order language can be easily amended to include
5 the term "likelihood of success" should the Court require such an amendment. Moreover,
6 Mojave can make any editorial changes to the Bond in order to effectuate the Court's Order and
7 had counsel brought this issue to the forefront, it could have been easily resolved. Cashman's
8 arguments on this point are with an obvious intention to revive issues already determined by this
9 Court and do not serve as a basis to deny relief.

10 In sum, the law and evidence for an injunction was provided and repeated herein, and the
11 Court discussed the issues at length during the first hearing and follow up hearing. Accordingly,
12 Cashman fails to show a clear error occurred and its Motion is improper.

13 **2. Counterclaimants Are Entitled To An Award Of Attorney's Fees For Having To**
14 **Oppose Cashman's Frivolous Motion**

15 Cashman has made no attempt to resolve the simple typographical issues and has failed to
16 provide any new facts or arguments. The Motion was brought for the sole purpose to delay these
17 proceedings and to avoid completing the work. An award of attorneys' fees as sanctions under
18 EDCR 7.60 is appropriate here because a prevailing party is entitled to attorneys' fees where
19 "[a]n attorney or a party without just cause: presents to the court a motion or an opposition to a
20 motion which is obviously frivolous, unnecessary and unwarranted."²⁷

21 Not only are there no grounds that support granting reconsideration,²⁸ Cashman misstates
22 the Court's ruling and reargues the same issues already covered by the prior pleadings and
23 hearings. All of Cashman's arguments were previously briefed and rejected by this Court.
24 Further, both of Cashman's PMKs admitted in their respective depositions that Cashman would
25 **never** complete the work²⁹ without payment. Cashman has made every step of this litigation

26 ²⁷ EDCR 7.60(4)(b)(1).

27 ²⁸ Frivolous claims are greatly discouraged by the Court. *See, e.g.*, NRCp 11, NRS 18.010.

28 ²⁹ *See Deposition of Keith Lozeau*, p. 64-65, ll. 23-25 and ll. 1-2; p. 79, ll. 9-14; p. 79-80.

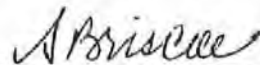
1 more difficult and expensive than necessary for all parties involved. The Motion is completely
2 frivolous and without merit. Accordingly, Counterclaimants respectfully request an award of
3 attorneys' fees for having to oppose this Motion.

4 **IV. Conclusion**

5 As the Court can plainly see from this Opposition, Counterclaimants' Motion for
6 Injunction was submitted with ample support and the Court had the opportunity to review the
7 elements required for an injunction prior to making a determination as to whether the
8 Counterclaimants were entitled. The Court made the sound decision that the Plaintiff was entitled
9 to injunctive relief, that they showed a likelihood of success and a potential for harm to the City
10 and the parties. That decision was neither clearly erroneous nor miscommunicated, yet all parties
11 are forced to again revisit this issue. Plaintiff has presented no new facts or arguments to warrant
12 reconsideration. Further, new evidence highlights Cashman's bad faith and determination to
13 avoid completing any work despite the order. Thus, the instant Motion should be denied in its
14 entirety and attorney's fees should be issued to Mojave.

15 Dated this 17th day of September, 2012.

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

18 

19 BRIAN W. BOSCH, ESQ.
20 Nevada Bar No. 7612
21 SHELILLY A. BRISCOE, ESQ.
22 Nevada Bar No. 9985
23 400 South Fourth Street, Third Floor
24 Las Vegas, Nevada 89101

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

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that, on the 7th day of September, 2012 and pursuant to
3 NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing
4 **OPPOSITION TO MOTION FOR RECONSIDERATION OF ORDER GRANTING IN**
5 **PART COUNTERCLAIMANTS' MOTION FOR PRELIMINARY INJUNCTION TO**
6 **PROCURE CODES OR ALTERNATIVELY MOTION FOR CLARIFICATION AND**
7 **REQUEST FOR ORDER SHORTENING TIME**, postage prepaid and addressed to:

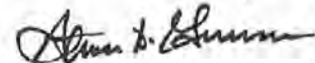
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19 *Attorneys for Element Iron and Design*

20 
21 An employee of Cotton, Driggs, Walch,
22 Holley, Woloson & Thompson
23
24
25
26
27
28

EXHIBIT 1



CLERK OF THE COURT

0008

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

DISTRICT COURT

CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a
Nevada corporation,

Plaintiff,

v.

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

Defendants.

AND RELATED MATTERS.

Case No.: A642583
Dept. No.: 32
(Consolidated with Case No. A653029)

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

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

1 TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, ("Travelers") a
2 surety, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ("Fidelity")
3 (Collectively "Counterclaimants"), by and through their attorneys of record, Brian W. Boschee,
4 Esq., and Shemilly A. Briscoe, Esq. of the law firm COTTON, DRIGGS, WALCH, WOLOSON,
5 HOLLEY & THOMPSON, move this Honorable Court, pursuant to NRCP 65(b) for a
6 Mandatory Injunction ("Motion") against Plaintiff CASHMAN EQUIPMENT COMPANY
7 ("Cashman") to procure codes related to the switchgear equipment or, in the alternative, apply to
8 the Court for a Writ of Possession.

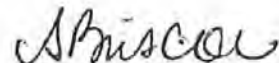
9 Specifically, the Plaintiffs request that this Court enter an order requiring Cashman to:

- 10 1. Provide and reinstall the codes for the parallel Switchgear that interface with the
11 Building Automated System ("BAS") as their Agreement provides; and
- 12 2. Restraining Cashman, their employees, agents, and affiliated companies from re-
13 entering the Project and tampering any further with the equipment and codes.

14 Counterclaimants request that the Court enter an Order Shortening Time for a hearing on
15 the instant Motion on the grounds that immediate relief is required to prevent further irreparable
16 harm to the Counterclaimants and the City of Las Vegas. The City will not deem the project
17 complete until the codes are entered; thus the project is paralyzed. This Motion and Request for
18 an Order Shortening Time is made based on NRCP 65, EDCR 2.26, NRS 31.850, the pleadings
19 on file herein, the Declarations attached hereto, and the Points and Authorities set forth below.

20 Dated this 16th day of July 2012.

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

23 

24 BRIAN W. BOSCHKEE, ESQ.
25 Nevada Bar No. 7612
26 SHEMILLY A. BRISCOE, ESQ.
27 Nevada Bar No. 9985
28 400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

1 ORDER SHORTENING TIME

2 Good cause appearing therefore:

3 IT IS HEREBY ORDERED that the foregoing Counterclaimants' Motion for Mandatory
4 Injunction to Procure Codes on Order Shortening Time or, In The Alternative, Application for
5 Writ of Possession shall be heard on the 3rd day of August, 2012 at the hour of 9:00 a.m.
6 in Department 32 of the above-entitled Court. Any opposition shall be filed by

7 July 26, 2012, with a courtesy copy to chambers at the time
8 DATED: July 17, 2012.

9 of filing. Any reply shall
10 be filed by July 31, 2012,

11 with a courtesy copy to chambers at the time of filing. @
12 AFFIDAVIT OF SHEMILLY A. BRISCOE, ESQ., PURSUANT TO EDCR 2.26

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

DISTRICT COURT JUDGE

13 STATE OF NEVADA)
14) ss:
15 COUNTY OF CLARK)

16 SHEMILLY A. BRISCOE, ESQ., having been duly sworn and under all penalties of
17 perjury, deposes and says:

18 1. I am an attorney duly licensed to practice law in the State of Nevada. I am a
19 member of the law firm of Cotton, Driggs, Walch, Holley, Woloson & Thompson, counsel for
20 the Counterclaimants in the above-entitled matter. I have personal knowledge of all matters
21 contained herein and am competent to testify thereto.

22 2. The Counterclaimants bring this Motion for Mandatory Injunction to Procure
23 Codes on Order Shortening Time or, in the alternative, Application for Writ of Possession (the
24 "Motion"). The Motion is based upon the declarations of the factual assertions of Mojave
25 (Exhibit "A") and Whiting (Exhibit "B"), as well as the attached exhibits.

26 3. As set forth in the Motion, Cashman has intentionally withheld vital codes that
27 have rendered the BAS at the City Hall Project useless. Cashman's actions have halted
28 completion on the City Hall Project, due to the potential failure to diagnose utility issues without
the codes.

4. As set forth in the Motion, Cashman is in breach of their agreement and are
holding the codes hostage. These codes are unique and cannot be acquired any other way.

1 5. I sent a letter of demand to Cashman's counsel and was denied the codes.
2 6. I subpoenaed the codes from CAT, a material supplier of Cashman, but was
3 informed that CAT provided the codes to Cashman with the equipment and no longer has
4 possession of the codes.
5 7. The City should be permitted completion, and if the Court is not willing to grant a
6 mandatory injunction, Cashman should show cause why a Writ of Possession should not issue in
7 this matter.
8 8. Counterclaimants will be immediately and irreparably harmed if the codes are not
9 provided.
10 9. Due to the immediacy and ongoing harm being suffered by the Counterclaimants
11 and the City of Las Vegas, the Counterclaimants respectfully request that this Court consider this
12 Motion on time shorter than ordinarily permitted by applicable rules and return the project to
13 status quo.

14 FURTHER YOUR AFFIANT SAYETH NAUGHT.

15
16 *S. Briscoe*
17 _____
18 SHEMILLY A. BRISCOE, ESQ.

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

20 *Carmen M. Mitello*
21 _____
22 NOTARY PUBLIC



1 POINTS AND AUTHORITIES

2 I. INTRODUCTION

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

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

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

II. STATEMENT OF FACTS¹

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

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

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

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

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

³ See Declaration of Shemilly Briscoe pursuant to EDCR 2.26.

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

8 **III. LEGAL ARGUMENT**

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

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

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

26 ///

27
28 ⁴ See Exhibit "C."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27

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

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

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

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

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

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

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

23
24 ⁶ **NRS 31.850 Requisites of affidavit by plaintiff.** Where a delivery is claimed, an affidavit shall be made by the
plaintiff, or by someone in his behalf, and filed with the court showing:

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

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

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

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

5. The actual value of the property.

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

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

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

19 **F. CONCLUSION**


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

27 _____ (continued)
28

1 to hold the codes going forward.

2 Dated this 16th day of July, 2012.

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

5 
6 BRIAN W. BOSCH, ESQ.
7 Nevada Bar No. 7612
8 SHELLEY A. BRISCOE, ESQ.
9 Nevada Bar No. 9985
10 400 South Fourth Street, Third Floor
11 Las Vegas, Nevada 89101

12 *Attorneys for Defendants, Counterclaimants and*
13 *Crossclaimants*

14
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27
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EXHIBIT A

1 **DECL**

2 BRIAN W. BOSCHKEE, ESQ.

3 Nevada Bar No. 7612

4 E-mail: bboschkee@nevadafirm.com

5 SHEMILLY A. BRISCOE, ESQ.

6 Nevada Bar No. 9985

7 E-mail: SBriscoe@nevadafirm.com

8 COTTON, DRIGGS, WALCH,

9 HOLLEY, WOLOSON & THOMPSON

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

Facsimile: 702/791-1912

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

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 CASHMAN EQUIPMENT COMPANY, a
16 Nevada corporation,

17 Plaintiff,

18 v.

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

Defendants.

AND RELATED MATTERS.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 longer had possession of the codes.

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

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

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

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

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

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

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

17 Dated this 10th day of July, 2012.

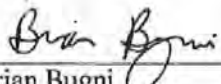
18
19  VP-Finance
20 Brian Bugni

EXHIBIT B

1 **DECL**

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

3 Nevada Bar No. 7612

4 E-mail: bboschke@nevadafirm.com

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

6 Nevada Bar No. 9985

7 E-mail: sbriscoe@nevadafirm.com

8 **COTTON, DRIGGS, WALCH,**

9 **HOLLEY, WOLOSON & THOMPSON**

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

Facsimile: 702/791-1912

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

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **CASHMAN EQUIPMENT COMPANY, a**
13 **Nevada corporation,**

14 **Plaintiff,**

15 **v.**

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

Defendants.

AND RELATED MATTERS.

Case No.: A642583

Dept. No.: 32

(Consolidated with Case No. A653029)

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

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

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

1 CONTRACTING COMPANY ("Whiting").

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

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

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

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

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

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

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

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

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

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

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

26 Dated this 10th day of July, 2012.


27
28 
Paul Schmitt

EXHIBIT C



SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

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

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

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

VICTORIA L. NELSON
JEFFREY R. ALBRECHTS
DEAN S. BENNETT
ANDREW J. GLENDON
OLIVER J. PANGHERNI
BRIAN W. BOSCHKE
BRYCE K. EARL
ODONIA M. ATANOH

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

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

CHARLES L. TITUS
(1948 - 2009)

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

September 14, 2011

Via U.S. and Certified Mail

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

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

Dear Jennifer:

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

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

September 14, 2011
Page 2

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

Thank you,

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON


Shemilly A. Briscoe

SAB:sab
Enclosure

C 3

Inst #: 201109130003721
Fees: \$17.00
N/C Fee: \$25.00
09/13/2011 02:59:40 PM
Receipt #: 911471
Requestor:
SANTORO DRIGGS ETAL
Recorded By: OSA Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN# 139-34-31-021

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

Bond for Release of
Mechanic's Lien

Type of Document

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

Recording Requested by:

Sherrilly A. Briscoe, Esq.

Return Documents To:

Name Sherrilly A. Briscoe

Address 400 S. 4th, 3rd FL

City/State/Zip LV, NV 89101

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

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

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

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

JA 0000533

BOND FOR RELEASE OF MECHANIC'S LIEN

BOND NUMBER: 58685401

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

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

See Attached Exhibit "A"

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

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

Mojave Electric

By: Troy Nelson

Western Surety Company

By: Kelly M. Lamb, Attorney-In-Fact

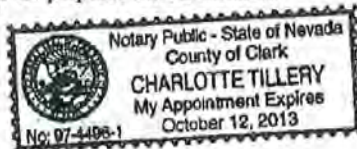
State of Nevada }

County of Clark }

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

State of Nevada }

County of Clark }

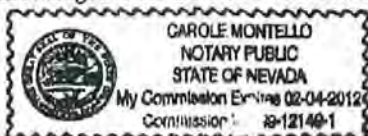


Charlotte Tillery

Notary Public

My Commission Expires: _____

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



Carole Montello

Notary Public

My Commission Expires: February 4, 2012

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

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

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

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

- In Unlimited Amounts -

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

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

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



WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

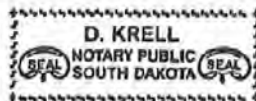
State of South Dakota
County of Minnehaha

} ss

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

My commission expires

November 30, 2012



D. Krell, Notary Public

CERTIFICATE

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



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary



PEZZILLO ROBINSON

Brian J. Pezzillo *
Jennifer R. Lloyd-Robinson *
George E. Robinson *
Marisa L. Blaska *
Lance D. Banks *

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

September 19, 2011

VIA FACSIMILE ONLY - 702-791-1912

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

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

Dear Shemilly:

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

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

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

*Licensed in Nevada
*Licensed in New Mexico
*Licensed in California

Sep. 19. 2011 5:17PM

No. 9249 P. 3



PEZZILLO ROBINSON

September 19, 2011

Page 2

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer R. Lloyd-Robinson'.

Jennifer R. Lloyd-Robinson, Esq.
PEZZILLO ROBINSON

EXHIBIT 2

DISTRICT COURT
CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a Nevada
corporation,

Plaintiff,

vs.

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

Defendants.

) Case No.

) A642583

DEPOSITION OF PERSON MOST KNOWLEDGEABLE OF
CASHMAN EQUIPMENT COMPANY
KEITH LOZEAU

Las Vegas, Nevada
Tuesday, September 4, 2012

REPORTED BY: Tammy M. Breed, CCR NO. 305
JOB NO.: 164929

Page 2	Page 4
<p>1 DEPOSITION OF PERSON MOST KNOWLEDGEABLE OF CASHMAN 2 EQUIPMENT COMPANY, KEITH LOZEAU, taken at 400 South Fourth 3 Street, Las Vegas, Nevada, on Tuesday, September 4, 2012, at 4 9:30 a.m., before Tammy M. Breed, Certified Court Reporter, in 5 and for the State of Nevada. 6 7 APPEARANCES: 8 For the Plaintiff: 9 JENNIFER R. ROBINSON, ESQ. 10 Pezallo Robinson 11 6750 Via Austi Parkway 12 Suite 170 13 Las Vegas, Nevada 89119 14 (702) 233-4225 15 jrobinson@pezzallobrobinson.com 16 17 For the Defendants: 18 BRIAN W. BOSCHKE, ESQ. 19 SHERMILLY A. BRISCOE, ESQ. 20 Cotton, Driggs, Walch, Holley 21 Woloson & Thompson 22 400 South Fourth Street 23 Third Floor 24 Las Vegas, Nevada 89101 25 (702) 791-0308 bbschke@nevadafirm.com SBriscoe@nevadafirm.com</p>	<p>1 Las Vegas, Nevada; Tuesday, September 4, 2012 2 9:30 a.m. 3 -oOo- 4 Whereupon -- 5 KEITH LOZEAU 6 having been first duly sworn to testify to the truth, was 7 examined and testified as follows: 8 9 EXAMINATION 10 BY MR. BOSCHKE: 11 Q. Can you please state your full name for the record? 12 A. Keith Daniel Lozeau. 13 Q. You'd better spell the last name for the court 14 reporter. 15 A. Yes, L-O-Z-E-A-U. 16 Q. You ever been deposed before, Keith? 17 A. No. 18 Q. This is the first time? 19 A. Yes, sir. 20 Q. Great. I'll run through a couple of ground rules 21 with you. I'm sure you talked about this with your counsel 22 but -- and you are represented by counsel, is that correct, 23 Jennifer -- 24 A. Uh-huh. 25 Q. -- Robinson's here?</p>
Page 3	Page 5
<p>1 INDEX 2 WITNESS: KEITH LOZEAU 3 EXAMINATION 4 BY: Mr. Boschke 5 6 7 8 EXHIBITS 9 EXHIBIT PAGE 10 Exhibit 1 Notice of 30(B)(6) Deposition of 9 11 Person Most Knowledgeable of 12 Cashman Equipment Company 13 Exhibit 2 Letter from Jennifer R. Robinson, 10 14 Esq., Dated 8/31/12 15 16 Exhibit 3 Stop Payment on a check to Cashman 35 17 Equipment in the amount of 18 \$755,893.89, Dated 4/29/11, Bates 19 CASH014 20 Exhibit 4 Application For Credit, Bates 51 21 CASH001 to 002 22 23 Exhibit 5 Invoices and Bill of Lading, Bates 54 24 CASH003 to 008 25 Exhibit 6 Subcontractor's Daily Log, The 60 Whiting-Turner Contracting Company, Bates WTC00070 to 71</p>	<p>1 A. Yes. 2 Q. First, the oath you just took from the court 3 reporter is the same oath you take in a court of law. It 4 carries with it the same obligations and penalties that the 5 oath would take in court. So I just want to make sure you 6 understand that before we get started. Okay? 7 A. Yes, sir. Yep. 8 Q. Okay. You're not going to be able to remember 9 everything that I ask you about today, I'm sure, and I don't 10 want you to guess at anything. I don't want you speculating 11 or guessing at the questions I'm asking. But I am entitled to 12 your best recollection. So to the extent that you remember 13 anything related to the questions I've asked, I'm entitled to 14 know that, but don't guess at something. If you don't know, 15 you don't know, just let me know that. Okay? 16 A. Okay. 17 Q. The court reporter is going to make a transcript 18 about what we're talking about today, my questions and your 19 answers. Couple things related to that. I will do my best 20 not to ask a follow-up question while you're still answering, 21 if you would do me the same courtesy of not answering when I'm 22 asking a question. She can't transcribe us both talking at 23 the same time. Okay? 24 A. Understood. 25 Q. Along the same lines, your lawyer may object, may</p>

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1 tell you not to respond to one of my questions. I don't think
2 I've got anything like that in here, but she may make an
3 objection for the record. Let her finish before you say
4 anything or -- and I'll try to do the same, give her the same
5 courtesy as well. Okay?

6 A. Fair enough.

7 Q. The court reporter can't transcribe head nods, head
8 shakes.

9 A. (Witness nodding.)

10 Q. Just like that.

11 A. Right. Understood. Understood.

12 Q. Audible responses are going to be great for her. If
13 you need me to clarify any of my questions, if there's
14 something I asked that you don't understand, which is very
15 likely at some point in the morning, just ask me to clarify
16 something because it's very likely that -- I know exactly what
17 I'm talk -- what I'm asking about and you're going to hear a
18 question that I think is really artfully asked of you, and
19 you're going to be like, I don't have any idea what you're
20 talking about, Brian. Please clarify that. And I'd be happy
21 to do that. Okay?

22 A. Okay. Thank you.

23 Q. This is not -- I know that we're under a little bit
24 of a time crunch today, you need to be somewhere this
25 afternoon. That said, I don't want this to be an endurance

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1 have you done anything to prepare for this deposition this
2 morning?

3 A. I went through back -- excuse me. I went back
4 through some of my e-mails from the time period, but there was
5 a lot of things that were frankly verbal, um, leading up to a
6 lot of this very early on. So I -- there's not -- there
7 wasn't a lot of preparation I was able to do, so I had to do
8 some review of some e-mails but that's about it.

9 Q. Sure. And that's part of the reason that we're
10 taking a deposition today, because a lot of this was verbal
11 and there were meetings and whatnot and I just need to know
12 kind of what happened.

13 Other than your counsel have you spoke -- did you
14 speak to anybody about your deposition today?

15 A. No.

16 Q. Nobody at the company?

17 A. At Cashman?

18 Q. Yeah.

19 A. There's a couple people at Cashman that know I'm
20 here. My supervisor, Joel Larson, and Shane Norman, who
21 you've already depose I think, so -- but other than that, no.

22 Q. Shane was the one I was kind of -- did you talk to
23 Shane at all about the substance of what you were coming here
24 to do today, or does he just know that you're here?

25 A. He just knows I'm here.

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1 contest. If you need to run down the hallway to the restroom,
2 get something to drink, anything like that, we can take a
3 five-minute break. It's not a big deal. Just let me know and
4 say, hey, can we take a quick break, and we'll go off the
5 record and take a quick break. All right?

6 A. Cool.

7 Q. Kind of related to what I said earlier, your counsel
8 may make objections for the record at some point during this
9 proceeding. Unless she -- however, unless she instructs you
10 not to answer my question, let her make the objection. I may
11 or may not respond. And then go ahead and answer the question
12 at that point. Okay?

13 A. Okay.

14 Q. Cool.

15 Are you on any medication today that would prevent
16 you from giving your best testimony?

17 A. No.

18 Q. Is there any other reason why you can't give your
19 best testimony today?

20 A. No.

21 Q. Don't have a cold or a flu or anything?

22 A. Other than a three-day weekend, everything's fine.

23 Q. I've got that same problem working for me this
24 morning.

25 Let me ask you, other than speaking to your attorney

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1 Q. Anything substantive you talked about with anybody
2 at Cashman other than, hey, I've got to go take this
3 deposition? I'm going to this deposition, I'm going to be out
4 of the office for a few hours?

5 A. Yeah -- no.

6 Q. Okay. Did you look at -- other than the e-mails we
7 just talked about, did you look at any documents to prepare
8 for this deposition?

9 A. No.

10 MR. BOSCHEE: I'm going to mark as the first
11 exhibit, it's the amended, submitted depo notice.
12 (Exhibit No. 1 marked.)

13 Q. (BY MR. BOSCHEE) Take a look at this exhibit. This
14 is an amended deposition notice that we sent out, which is why
15 you're here today.

16 A. Uh-huh.

17 Q. Do you recall receiving a copy of this?

18 A. Yes, sir.

19 Q. Go to page 3.

20 A. (Witness complying.)

21 Q. Excluding items three and four, which we'll talk
22 about in just a second, are you -- to the best of your
23 understanding are you the person most knowledgeable from
24 Cashman with respect to items one, two, five, six, seven, and
25 eight? And take a second.

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1 A. Likely so.
 2 Q. Okay. I'm going to mark the next -- keep that in
 3 front of you.
 4 A. Okay.
 5 Q. I have another exhibit that I just received this
 6 morning. I'm literally going to ask you one question.
 7 (Exhibit No. 2 marked.)
 8 Q. (BY MR. BOSCHEE) Okay. I don't know that you've
 9 actually seen this letter before. You may have.
 10 A. Nope.
 11 Q. Okay. My question to you is, without going back to
 12 items three and four in your -- in the deposition notice,
 13 relates to insurance policies and insurance claims basically.
 14 My understanding from this letter is that you are not the
 15 person most knowledgeable from Cashman as to insurance-related
 16 issues; is that correct?
 17 A. That is correct.
 18 Q. Just to save us some time because I've now depose
 19 two folks over at Cashman and I don't want to have to keep
 20 doing this, do you happen to know off the top of your head who
 21 I would need to talk about insurance-related issues, who that
 22 person might be?
 23 If you don't know, you don't know. That's fine.
 24 I'm just trying to save everybody a little bit of time going
 25 forward.

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1 A. There's one of two people.
 2 Q. Okay.
 3 A. And the only reason I say it's one of two people is
 4 we had some turnover. Our previous CFO would have been the
 5 person.
 6 Q. Uh-huh.
 7 A. Our new CFO was not present when all this happened.
 8 Q. Okay.
 9 A. So his name is Lee Vanderpool. The president of the
 10 company is Mike Pack, and Mike at the end of the day might be
 11 the best person to discuss insurance and that kind of --
 12 Q. Mike Pack was the CFO at the time?
 13 A. No, he is president.
 14 Q. Okay.
 15 A. And he has been president throughout.
 16 Q. Who was the CFO at the time?
 17 A. Jim Moore.
 18 Q. Jim Moore.
 19 A. And quite frankly, I'm not sure Jim Moore would be
 20 available to be deposed or not because he has terminal cancer.
 21 Q. That would probably be no.
 22 A. Yes.
 23 Q. Okay. I assume -- is that why he left the company?
 24 A. That is.
 25 Q. Okay.

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1 A. So I'm sorry to just give kind of an obtuse answer,
 2 but that's -- that's the situation.
 3 Q. No, that -- that stinks. Okay.
 4 Well, it could be -- it could be something where
 5 counsel may pick up the phone and ask a question or two and
 6 get to the bottom of this, but I don't want -- I'm certainly
 7 not going to drag him in for that.
 8 Okay. But other -- other than the insurance, who we
 9 may need to talk to Mike or Lee about, you're good to go on
 10 everything else in the depo -- in Exhibit 1 there?
 11 A. Yes, sir.
 12 Q. What is your position with Cashman?
 13 A. I am the sales and rental manager of the power
 14 division.
 15 Q. Okay. And how long have you had that position?
 16 A. Six years.
 17 Q. Okay. Did you have a different position with the
 18 company prior to that?
 19 A. I was just a sales rep.
 20 Q. Okay. What are your -- as -- as manager of the
 21 power division, what are your job responsibilities with that
 22 position for the last six years or so?
 23 A. All of our account managers statewide report to me,
 24 and basically I'm responsible for growing our sales and rental
 25 business.

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1 Q. Okay. How long have you been employed with Cashman
 2 overall?
 3 A. Sorry, I have to think because I left for two years.
 4 Overall about 19 years.
 5 Q. Well, walk me through that. You started with
 6 Cashman when?
 7 A. '91. Left in '97.
 8 Q. Okay.
 9 A. Came back in '99. Been with them ever since.
 10 Q. What did you do with them from '91 to '97?
 11 A. I was a technician for a good part of the time, and
 12 when I left I was a salesperson.
 13 Q. What were your job responsibilities as technician?
 14 Walk me through a typical day in the life of a Cashman
 15 technician.
 16 A. Okay. We repair anything that we sell, and that's
 17 primary Caterpillar products but there -- there's some other
 18 products associated with that too. I worked on generators,
 19 electrical equipment, engines, some machinery. You know, the
 20 idea was to get things running before warranty repairs,
 21 startups, those kind of things.
 22 Q. Okay. And that was what you did before you become a
 23 sales rep?
 24 A. Yes, sir.
 25 Q. Okay. And when did you kind of transition from tech

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1 into sales?
 2 A. I believe it was 1995.
 3 Q. Okay. And then when you came back in '99, were you
 4 again a sales rep or --
 5 A. I was --
 6 Q. Okay.
 7 A. -- yes.
 8 Q. Okay. And you've had that until about six years
 9 ago?
 10 A. Correct.
 11 Q. Which would be 2006, 2007, sometime in there?
 12 A. Yes.
 13 Q. With respect to your current job, does your current
 14 job require any of your, I guess, technical background or your
 15 background as a technician? Does that come into play with
 16 what you do now?
 17 A. Yes.
 18 Q. Okay. How so?
 19 A. What we do is -- the products and services that we
 20 sell -- everything is a very technical sale, so it is
 21 tremendously helpful to be able to fall back on that
 22 background and have an understanding when I have somebody
 23 telling me something in the field that they have going on that
 24 I -- I have a reasonable knowledge of the challenges that they
 25 have and what they need to do to fix them.

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1 Not to mention, prior to the sale I can have a
 2 discussion with architects and engineers and contractors and
 3 those kinds of things and talk them through what they're
 4 buying, why they're buying it, and what we're going to have
 5 to -- what challenges and opportunities we'll face during
 6 installation and start-up.
 7 Q. Okay. With respect to specifically the City Hall
 8 project -- and that's pretty much what we're going to be
 9 talking about today.
 10 A. Uh-huh.
 11 Q. -- do you have a general familiarity with the
 12 start-up -- well, your word -- start-up, installation, ah,
 13 requirements for -- for what's going on over there right now?
 14 A. Yes.
 15 Q. Okay. And what I'm thinking of specifically are --
 16 there's some codes that counsel and I are still -- still
 17 arguing about a little bit with the judge. But there's some
 18 codes that are -- as I understand, are required to get things
 19 up and running over there. Do you have a familiarity with
 20 that?
 21 A. Generally speaking, yes. And the reason I say
 22 generally speaking is --
 23 Q. That's fine.
 24 A. -- each municipality has their own rules and
 25 regulations. And then sometimes the design engineer has input

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1 into that. And so they're not unfortunately universal to
 2 every project.
 3 Q. Okay. Well, I guess what I'm -- what I'm wondering,
 4 specifically with respect to this project, my understanding is
 5 that -- that there is some concerns or some issues with --
 6 with getting this -- at this stage, like tomorrow, getting
 7 this stuff started up and installed and running with these
 8 codes today. Could you -- could you explain to me what -- if
 9 you know, what your concerns are with respect to that?
 10 A. Only to the extent that we (indicating) discussed it
 11 on the phone, and there's -- there's two --
 12 MS. ROBINSON: I'm going to object --
 13 Q. (BY MR. BOSCHÉE) I don't want to know anything -- I
 14 don't want to know anything you discussed with Jennifer. I
 15 don't want to know anything that -- any attorney/client
 16 communication.
 17 MS. ROBINSON: And I'm going to object to the form
 18 of your question. Maybe it's a little vague. If you can
 19 rephrase. "Issues," I don't know.
 20 MR. BOSCHÉE: I'm sure -- okay. Concern was the
 21 real -- was the word I was looking at.
 22 Q. (BY MR. BOSCHÉE) You guys have some -- you guys
 23 have some codes that are required to, as I understand it, get
 24 the stuff over at City Hall up and running, correct?
 25 A. Typically, yes.

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1 Q. Okay.
 2 A. And I say typically because I have no direct
 3 knowledge of the status of the equipment, what's been done,
 4 what's not been done --
 5 Q. Right.
 6 A. -- and what they're requiring.
 7 Q. Well, going back in time, assuming -- I don't want
 8 to say assuming but -- you guys at some point stopped working
 9 on this project for -- because of nonpayment, correct?
 10 A. Correct.
 11 Q. At that point before anything else had happened, you
 12 guys had some codes that would have been used to get the stuff
 13 started, installed, and running, correct?
 14 A. Codes can have two different definitions.
 15 Q. Tell me what they are. You're the technical guy and
 16 I'm not.
 17 A. So there's -- there's -- there's National Electrical
 18 Code and fire protection codes.
 19 Q. Sure.
 20 A. And those are -- those are code requirements that
 21 are regulations, laws. And then there's codes that are
 22 associated with communication protocols that we use for the
 23 equipment to be able to talk to each other. So there's -- I'm
 24 not sure which codes it is that they're asking about. That's
 25 where I'm at. I'm not sure -- I'm not sure what's holding

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1 this them up at this point. I don't know.

2 Q. Okay. Well, I'm just thinking out loud here. Both
3 sets of those codes would probably be -- probably pretty handy
4 in terms of getting everything up and running, I would think,
5 wouldn't they?

6 A. The codes -- the protocols -- the communication
7 protocols for the equipment would be absolutely required. The
8 codes for the fire protection -- it's NFPA, National Fire
9 Protection Association, and the National Electrical Code and
10 Clark County fire code or City of Las Vegas fire code,
11 depending upon which it is, they often vary from job to job.

12 Q. Okay.

13 A. So it's hard for me to say if that's what their hold
14 up is, specifically what the hold up is. And what we do --
15 what would typically happen in a project like this is, once we
16 get to the latter stages of the job, there's meetings between
17 us and the contractor and the inspectors, and the inspectors
18 sort of lay out what specifically they're looking for to meet
19 the codes.

20 And then a lot of times we have to make adjustments
21 to our bills of materials or specifically how -- we may have
22 an image at the beginning of the job of how we're going to
23 address the codes. What that looks like at the end of the
24 project could be something very different.

25 Q. Okay.

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1 protocol and communications that make the system work.

2 If the load does exceed the rating of one generator
3 set and you need both generator sets, then you're -- then
4 those codes become absolutely necessary.

5 Q. Okay. I'm not -- I'm not an engineer or a
6 contractor, per se, but I've been over to City Hall. It's a
7 pretty big project. I mean, fair to say that it's going to --
8 it at least contemplates both generators being needed over
9 there, doesn't it? I mean it's...

10 A. It was certainly designed that way.

11 Q. Right.

12 A. It's -- that would be something the design engineer
13 could tell you better than I could.

14 Q. Sure.

15 But when -- when you guys were supplying the
16 equipment, it was certainly contemplated it was going to be --
17 that both generators were going to be used over there, wasn't
18 it?

19 A. Yes, but that could be for a different reason. In a
20 lot of cases they'll have two generator sets for redundancy.

21 Q. Sure.

22 A. So they won't -- the load doesn't exceed the
23 capacity of both generators -- or excuse me, of one generator.
24 You have the second generator in case the first generator
25 fails.

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1 A. Does that help?

2 Q. It does a little bit. I want to talk about the
3 protocol calls specifically, because I think I know what
4 you're talking about with fire codes. And that's kind of a
5 moving target a little bit.

6 A. Uh-huh.

7 Q. But the protocol codes, if those aren't -- if those
8 aren't in, the equipment can't kind of communicate with each
9 other. What is the net effect of that? I mean what -- what
10 happens if those codes aren't used at installation?

11 A. A qualified person might be able to make the
12 equipment work to a certain extent, but they probably wouldn't
13 be able to make it work to its full capability.

14 Q. Okay. Would there be -- I mean when you say it
15 wouldn't be able to work to its full capability, what are some
16 things that might not -- might not work? Would there be
17 safety concerns?

18 A. It depends.

19 Q. Okay.

20 A. And if the -- one of the things that we talked
21 about -- one of the -- one of the more important functions of
22 this system is to be able to parallel the two generator sets
23 together. If the building load doesn't exceed the capacity of
24 one generator, you could theoretically lock one generator out,
25 use just one generator, and you could bypass a lot of that

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1 Q. Kind of a backup?

2 A. And -- and -- and -- right. And one generator can
3 still carry the entire building. So -- and that's why I said
4 the design engineer would probably have to have a discussion
5 with you about that because I don't know if they had a -- if
6 they had two generators for capacity or two generators for
7 redundancy.

8 Q. Okay.

9 A. Two kind of different things.

10 Q. That makes sense. And it's a government job so
11 redundancy wouldn't be completely out of the question.

12 But assuming that -- if it wasn't -- if it wasn't a
13 redundancy situation, if it was actually two generators were
14 required, then those codes are absolutely going to be
15 necessary for them to communicate with each other?

16 A. That is correct.

17 Q. We may get back to some of that. I have completely
18 gone afield of my outline of questions, so I'm going to try to
19 get back on track here.

20 Before the City Hall project, how many times have
21 you worked with Mojave Electric?

22 A. Oh, boy.

23 Q. Estimate? I don't want you to have to count them on
24 your fingers.

25 A. Yeah. Probably a few dozen.

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1 Q. Okay. How about Whiting-Turner?
 2 A. Indirectly, probably a dozen times. I say indirect
 3 because we don't usually deal directly with the general
 4 contractor.
 5 Q. Right. Usually deal with --
 6 A. Mojave Electrical.
 7 Q. -- with like --
 8 A. Yes.
 9 Q. Do you have any idea how many accounts you've opened
 10 for -- for Mojave off the top of your head?
 11 A. How many --
 12 Q. Shane had -- Shane had an estimate, and I was
 13 wondering if you maybe had a little more -- yeah, I mean how
 14 many different -- different specific accounts you've opened
 15 with -- with Mojave?
 16 A. Oh, you know what. I don't know.
 17 Q. Dozens?
 18 A. Well, I guess depends on how you look at it. Are
 19 you talking about physical accounts, or you talking about
 20 projects?
 21 Q. Projects?
 22 A. Oh, projects. Yeah, probably -- I'm going to say
 23 three dozen.
 24 Q. Okay. You personally worked on a lot of those
 25 projects?

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1 A. Yes.
 2 Q. Prior to this -- and obviously this is a bit of a --
 3 have you ever had any problems with Mojave prior to this
 4 incident?
 5 A. The only problem we ever had with Mojave -- and this
 6 has been more of a recent thing in the last couple of years --
 7 they've had somewhat of a different definition associated with
 8 lien releases. And at times they've asked us to sign lien
 9 releases when we still haven't received full payment. And
 10 that's -- it seems to be related to one specific person that
 11 they hired a couple years ago. And prior to that we never had
 12 a problem with Mojave ever.
 13 Q. Okay.
 14 A. Paid like clockwork.
 15 Q. Do you know that person's name off the top of your
 16 head?
 17 A. Her first name is Francis.
 18 Q. Okay.
 19 A. I do not know her last name.
 20 Q. You don't even need to tell me anymore.
 21 A. Okay.
 22 Q. I do know her last name.
 23 You guys use conditional lien releases though, don't
 24 you?
 25 A. Typically.

Page 24

1 Q. Okay.
 2 A. I mean there's -- there's conditional and there's
 3 unconditional.
 4 Q. Sure.
 5 A. So -- but we have -- again, more recently we've had
 6 situations where she would hold a check until we signed
 7 conditional and/or unconditional releases for unrelated
 8 projects, which is very -- well, let's just say it's not
 9 consistent --
 10 Q. Okay.
 11 A. -- with industry practice. And -- but to collect
 12 money we did what we had to do paperwork wise to satisfy what
 13 she was asking for. And this -- quite frankly, this is more
 14 of a Shane question than mine. He has more direct knowledge
 15 of a lot of that that was going on. But -- but I do know
 16 there was some irregularities, and we were really struggling
 17 with how to -- how to work through that process.
 18 Q. When you're describing -- and I talked to Shane
 19 about something related to this. And I don't -- if this is
 20 getting afield of your knowledge, please tell me. But when
 21 you're talking about, okay, there's payment due on this
 22 project and you've got a lien release for this. And basically
 23 you -- what you typically do in the industry is you swap check
 24 for a lien release, as I understand; is that right?
 25 A. For the same project?

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1 Q. For the same project, correct.
 2 A. Yes.
 3 Q. And what I under -- as I understand what you're
 4 saying is, okay, that's fine for this project. But then you
 5 got a project over here, and they're holding your money on
 6 this one as well looking for -- looking for a lien release
 7 when you haven't been paid yet. Is that what you're telling
 8 me?
 9 A. It appeared from conversations that I had with Shane
 10 that that was what they were doing.
 11 Q. Okay. And how often did that happen?
 12 A. It seemed to happen on every job after she got
 13 hired.
 14 Q. Okay. I guess the obvious question to me is -- I
 15 mean why -- if -- if the payment wasn't made yet, if you guys
 16 weren't paid in full, why were you giving unconditional lien
 17 releases?
 18 MS. ROBINSON: I'm just going to object. It's going
 19 outside his notice for his person most knowledgeable. So are
 20 you asking him as the person most knowledgeable of Cashman, or
 21 did you already depay -- depose Shane as the person most
 22 knowledgeable on this issue, are you asking him for his own
 23 personal knowledge?
 24 MR. BOSCHEE: I'm asking for his own personal
 25 knowledge because he brought it up.

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1 MS. ROBINSON: Right. That --

2 MR. BOSCHEE: I mean that's -- I mean I understand.

3 But Shane -- Shane painted a very different -- I mean not a

4 very different, but Shane said something a little different.

5 I just want to make sure that I understand exactly what --

6 what this witness is talking about because I just want -- more

7 of a clarification than anything.

8 Q. (BY MR. BOSCHEE) To the best of your understanding

9 why -- you know why -- why were doing -- why were you guys

10 doing that?

11 A. To the best of my understanding we had had a

12 long-term relationship with Mojave Electric. We had no

13 history of never not being paid. And so we felt like if

14 that's what we needed to do to accommodate a valuable

15 customer, then -- then we were willing to do that.

16 Q. Okay. Again, to the best of your understanding,

17 prior to this situation, we'll call it, did you guys ever have

18 a payment problem with Mojave? Have you ever been not paid by

19 Mojave?

20 A. Never not paid, no.

21 Q. Okay.

22 A. Slow sometimes, but never not paid.

23 Q. Right. Sometimes -- the situation we're talking

24 about, you know, a little bit of slow pay, little bits, but

25 never a non-payment issue, correct?

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1 A. Correct.

2 Q. Okay. And again, you're usually one or two steps

3 removed Whiting, but had you ever had this situation with

4 Whiting before, just not getting paid?

5 A. Not to my knowledge.

6 Q. Okay. With respect to -- and again the -- the lien

7 releases and the -- and the payment kind of Francis holding

8 the checks, as I understand it, that resulted in a little bit

9 of a slow -- a slowdown effect, but you guys always did get

10 paid for the work that you performed prior to this project,

11 right, as far as you know?

12 A. As far as I know.

13 Q. Okay. Now, on this project you guys, as I

14 understand it, contracted directly with a company called CAM

15 Consulting, right?

16 A. Correct.

17 Q. And they were -- I mean I always look for the

18 politically correct way to say this, but I mean it's the term

19 used in the industry I think, minority contractor, are you

20 familiar with that?

21 A. Yes.

22 Q. That was their role here, correct --

23 A. Yes.

24 Q. -- CAM Consulting?

25 A. Yes.

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1 Q. Are you familiar generally with the requirements for
2 minority contracts? I mean why did they end up being used in
3 this pro -- in projects like this?

4 A. That's a broad question, but to --

5 Q. In your experience?

6 A. To make it sort of simple, a lot of government

7 projects require a certain amount of equipment and services to

8 be purchased by -- from, excuse me, minority entities. And --

9 and I don't recall what the percentage was, but I can remember

10 being told early on by -- by -- Peter Fergen is the vice

11 president of Mojave that does a lot of their purchasing and

12 those kinds of things. He told me very early on that we were

13 -- that there was a percentage of the project that had to be

14 purchased by -- from minority entities and their intention was

15 to purchase this equipment through a minority entity.

16 Q. Okay.

17 A. So I -- so we -- does that answer your question?

18 Q. I think so.

19 You've dealt with minority contractors on other

20 projects, correct?

21 A. Yes. Not a lot, but yes.

22 Q. Was this -- was this scenario or was this experience

23 considerably different than your experiences on other projects

24 with minority contractors, obviously other than not getting

25 paid?

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1 A. The obvious exception?

2 Q. Other than that how did you like the play,

3 Mrs. Lincoln, but -- yeah, up to that point?

4 A. You got me with the Mrs. Lincoln.

5 Q. Sorry.

6 A. It's okay.

7 Um, no, I -- I would say in the few instances that

8 we had to do -- I think the only thing that was different is

9 in most cases we dealt with a larger company, as opposed to a

10 very small entity such that CAM was.

11 Q. Okay. Now, I talked to Shane a lot about the -- the

12 -- kind of credit process and things like that. We'll talk

13 about that very briefly in a few minutes. But as I

14 understand, you worked with -- you were kind of on the ground

15 and worked with CAM kind of directly in terms of the equipment

16 transfer, is that fair, or not really?

17 A. No, not really. I -- no.

18 Q. Tell me what was your experience. What did you do

19 with CAM?

20 A. The only time I actually met Angelo was when we met

21 over at Mojave's office to discuss transacting this deal

22 through them.

23 Q. Okay.

24 A. And -- and actually I'm not even sure -- I don't

25 even recall talking to him on the phone after that. It was a

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<p>1 pretty straightforward discussion. We discussed the finances, 2 the percentage, and came to an agreement, shook hands, and 3 that was pretty much it.</p> <p>4 Q. That was that?</p> <p>5 A. Yeah.</p> <p>6 Q. Okay.</p> <p>7 A. In terms of equipment getting to the site, what I 8 would call logistics of the project, everything was transacted 9 directly with the Mojave folks.</p> <p>10 Q. Okay. That makes sense.</p> <p>11 Did you participate -- when I say "you" I mean you 12 or anybody else at Cashman -- participate in the selection of 13 CAM as the minority contractor here?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. What -- how so? Walk me through the kind of 16 picking them process, if you will. That was a terrible 17 question but...</p> <p>18 A. No, that's okay. I'll do the best I can here.</p> <p>19 We had -- originally all of our equipment was going 20 to be purchased through a company called NEDCO, which we had 21 done this with before. And NEDCO's a large company and 22 there's -- you know, there's generally no problems there. But 23 they wanted -- this was a very tight competitive bid job. 24 There was not a lot of money in there to be spiffing (sic) 25 companies for pushing paper through their books. And what</p>	<p>1 to support people who have come back from wars and those kinds 2 of things. So it seemed like somebody that we want to try and 3 do business with. If we have to put money in somebody's 4 pocket, I would rather put money in somebody like that's 5 pocket, rather than you know somebody that maybe doesn't need 6 it quite so much.</p> <p>7 Q. Sure.</p> <p>8 A. Does that make sense?</p> <p>9 Q. Yeah. I think I understand what you're saying.</p> <p>10 A. Okay.</p> <p>11 Q. And I don't disagree with your rationale on that.</p> <p>12 Let me -- you had the meeting, and it's Mojave and 13 you and Angelo. Did you have any conversations -- I know you 14 didn't with Angelo, but did you have any conversations with 15 anybody at Mojave -- okay, Angelo leaves -- kind of, okay, you 16 left the room now I can talk about you behind your back 17 conversation. Did you have any conversations like that with 18 anybody at Mojave about Angelo and CAM and any concerns you 19 might have using them, you personally?</p> <p>20 A. No, not really.</p> <p>21 Q. Okay.</p> <p>22 A. Not -- not -- not relative to concerns. It was 23 basically, okay, he's willing to do it for what we're looking 24 to spend. And so let's go forward, let's get paperwork 25 written up. At that point the job was getting very</p>
Page 31	Page 33
<p>1 NEDCO wanted for a percentage was not going to be acceptable.</p> <p>2 So we were talking to another group that was just in 3 the process of getting their disadvantaged business license, 4 and they were -- they were experiencing delays getting that 5 done. And Pete contacted me a couple of times and said, you 6 know, what are we doing? Are -- is that group going to work? 7 And you know it didn't seem like it was going to.</p> <p>8 And then he called me and said, listen, we had this 9 guy come in. We're using him on a couple other things. Would 10 you like to meet him? Maybe you could work something out with 11 him. So -- and I'm not sure how the meeting was actually 12 arranged. I don't know if he was already there. And -- but I 13 went over there very shortly after the phone call and met 14 Angelo at their office. And Pete introduced us in their 15 conference room, and we sat down and had a discussion.</p> <p>16 Q. Okay. And after that discussion you were 17 comfortable using, I guess CAM, but I mean Angelo? After you 18 met him you were comfortable using them going forward?</p> <p>19 A. I'm not sure if comfortable is the right word. His 20 documentation was in order. His story seemed legitimate. And 21 by story he talked about being in the Army Rangers, which I 22 guess maybe wasn't even the case. But he'd been wounded and 23 different things, and so he had gotten licensed by this 24 federal office to be a disadvantaged business. And you know 25 seemed like -- certainly I think all of us as Americans want</p>	<p>1 compressed. We needed to get some paperwork going and do some 2 different things or we were going to start missing some 3 milestones.</p> <p>4 Q. Okay.</p> <p>5 A. So it was -- it was -- we jumped right into, let's 6 get things going.</p> <p>7 Q. Time was getting tight at that point?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. Now, when I talked to Shane he -- he -- he 10 discussed having some concerns about the credit or in his case 11 lack of credit that CAM had. Did you ever have a conversation 12 with Mr. Norman about that?</p> <p>13 A. Not specifically, no. I mean understanding was that 14 there was going to be -- and this was something that Pete and 15 I had talked about it -- that there was going to be an 16 exchange of checks pretty -- I mean we understood the fact 17 that -- that Angelo didn't have three quarters of a million 18 dollars to lay out and then wait for payment. We understood 19 that he was going to take payment from Mojave and then turn 20 right around and cut Cashman a check for our portion. So 21 there was -- I don't think there was ever any confusion in -- 22 in that regard. And that was our understanding of what was 23 going to happen.</p> <p>24 You know, Shane in his typical process had -- had 25 Angelo fill out a credit app. He also -- I'm pretty sure --</p>

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1 understood the same, and we moved forward.
 2 Q. I think you answered -- you indirectly answered
 3 this, but I just want to clarify. You had never worked with
 4 CAM or Angelo Carvalho before? Cashman hadn't before this
 5 project, had --
 6 A. We had not, that's correct.
 7 Q. Okay. And again, if you could quantify it, um,
 8 disadvantaged businesses, minority contractors, how often do
 9 you think you'd worked with them on other projects? I think
 10 the word you used was handful but -- less than ten?
 11 A. Definitely less than ten, probably less than five.
 12 Q. Just a couple of times?
 13 A. Yes.
 14 Q. Have you ever encountered anything like this? And I
 15 say the "anything like this," a failure to pay by a minority
 16 contractor?
 17 A. No.
 18 Q. Okay. Did you -- aside from what you knew or didn't
 19 know about CAM, you talked a little bit about Angelo
 20 personally. And he told you he was an Army Ranger and things
 21 like that. Did you know any -- did you ever know anything
 22 else about Angelo Carvalho personally, aside from he's working
 23 with this company, he's doing this? Did you do any other
 24 background check on him or anything like that?
 25 A. With the exception of verifying his status with

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1 the -- and I'm sorry, I'm forgetting the name of the
 2 government entity that he was -- he was sponsored by.
 3 Q. Sure.
 4 A. I -- with the exception of verifying that that
 5 letter was legit, had no other knowledge of him.
 6 Q. So basically just to summarize, just so I've got the
 7 lay of the land: Time's getting tight. NEDCO wasn't going to
 8 work out. You had someone else that was having a hard time
 9 getting a disadvantaged status; is that right?
 10 A. That's correct.
 11 Q. Okay. And get a call from Mojave. Say, hey, we
 12 worked with this guy on this other project. Why don't you
 13 come in and meet him, see if you have a comfort level. You go
 14 in, have the one meeting at Mojave's office. Everybody shakes
 15 hands. Submit the paperwork. And then you just kind of go
 16 forward from there --
 17 A. Yes, sir.
 18 Q. -- correct?
 19 Let's take a look at -- now things start getting --
 20 going south.
 21 (Exhibit No. 3 marked.)
 22 Q. (BY MR. BOSCHEE) I suspect you'll recognize this
 23 check. Take a second to look at it.
 24 A. I might be familiar with it.
 25 Q. I assume you've seen this check before?

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1 A. Yes, sir.
 2 Q. Okay. This is -- you recognize this as the check
 3 from CAM for the full 755,893.89, correct?
 4 A. Correct.
 5 Q. And that was, as I understand from documents that
 6 have been filed and other things, that was the amount that --
 7 that you guys were owed on this project for the equipment
 8 provided, correct?
 9 A. I don't have our invoice in front of me, but I --
 10 it's -- I believe it's correct.
 11 Q. We'll look at those later, but it's close. Okay.
 12 As I understand it, Shane Norman received this
 13 check; is that right?
 14 A. Yes.
 15 Q. Okay. Do you have any understanding -- I talked to
 16 Shane about his, and you may not know. Do you have any
 17 understanding as to why you guys accepted a postdated check
 18 from Mr. Carvalho?
 19 A. I -- honestly, no.
 20 Q. Okay. Did he ever communicate anything directly to
 21 anybody at Cashman, you or otherwise, other than Shane, any
 22 reason why he would need to give you guys a postdated check?
 23 A. No.
 24 Q. Okay. Did you ever have any conversations with
 25 Shane Norman about the fact that you guys had accepted a

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1 postdated check from -- from CAM?
 2 A. No.
 3 Q. Okay. I'm guessing it's not something you typically
 4 do, Cashman typically does, accepting postdated checks in
 5 situations like this?
 6 A. Not to my knowledge.
 7 Q. Okay. You testified earlier that it was your --
 8 that everybody's understanding kind of was: Mojave's paying
 9 CAM, CAM's paying you guys, and that's going to be a fairly,
 10 you know, simultaneous process, correct?
 11 A. Correct.
 12 Q. Okay. Did it concern you that this check was dated
 13 a handful of days after -- well, let me ask you this: Do you
 14 have an understanding as to whether Mojave paid CAM the
 15 755,893? Do you have an understanding as to whether that
 16 actually happened?
 17 A. I believe that happened, yes.
 18 Q. Okay. And then --
 19 A. I haven't seen that check, so I -- but I believe
 20 it's happened.
 21 Q. Okay. I can get it for you as an exhibit, but I
 22 don't think it necessarily matters.
 23 And then CAM gives you guys a check, but it's dated
 24 a few days later. Did that give -- would that be something
 25 that would cause you -- typically in a situation like this

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<p>1 cause you concern?</p> <p>2 MS. ROBINSON: I'm going to object to incomplete</p> <p>3 hypothetical, and he already stated he had no knowledge.</p> <p>4 MR. BOSCHEE: Well -- okay. I'm saying --</p> <p>5 THE WITNESS: I --</p> <p>6 MR. BOSCHEE: -- as to this personally but --</p> <p>7 THE WITNESS: I was on vacation when this</p> <p>8 happened --</p> <p>9 Q. (BY MR. BOSCHEE) Oh, okay.</p> <p>10 A. -- so I didn't know -- I didn't know any of this was</p> <p>11 even going on until I got back --</p> <p>12 Q. Okay.</p> <p>13 A. -- a week later.</p> <p>14 Q. You get back and there's a stop payment on this</p> <p>15 check, correct?</p> <p>16 A. Welcome back. Yes.</p> <p>17 Q. Exactly. Again, thank you for that vacation.</p> <p>18 Do you guys have -- I mean -- I say you guys, I keep</p> <p>19 saying that, I mean Cashman. Do you have a procedure,</p> <p>20 standard procedure, when a creditor fails to fund like -- as</p> <p>21 in a situation like this?</p> <p>22 A. You know, that's probably a question best asked of</p> <p>23 Shane.</p> <p>24 Q. Okay.</p> <p>25 A. I'm not really in the -- I'm not typically involved</p>	<p>1 A. That was my impression of what he answered.</p> <p>2 Q. Sure.</p> <p>3 These other jobs that you had worked on with</p> <p>4 disadvantaged owners, with minority contractors, on those jobs</p> <p>5 did you receive joint checks, or did it go the process like</p> <p>6 this where the minority contractor got paid and then paid you?</p> <p>7 A. Minority contractor got paid and paid us. We were</p> <p>8 usually dealing with people of -- of greater financial</p> <p>9 strength.</p> <p>10 Q. But the process --</p> <p>11 A. And quite frankly, this was easily the biggest job</p> <p>12 we had ever done in this process as well.</p> <p>13 Q. Right.</p> <p>14 A. We were usually working in the 30- to \$50,000 range.</p> <p>15 It was a completely different scale.</p> <p>16 Q. Three quarters of a million dollars was a little</p> <p>17 bit --</p> <p>18 A. Correct.</p> <p>19 Q. Was the outlier in that?</p> <p>20 A. Right.</p> <p>21 Q. But the process, the actual process, was the same in</p> <p>22 the other jobs as it was here where the minority contractor</p> <p>23 gets paid, then you get paid? Kind of, you know, one check,</p> <p>24 then another check?</p> <p>25 A. Correct.</p>
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<p>1 directly in the collections business.</p> <p>2 Q. Okay. Well, let me ask you a different way, because</p> <p>3 I did ask Shane this. Are you aware of any protections that</p> <p>4 the company has to try to protect itself from something like</p> <p>5 this happening?</p> <p>6 A. Certainly the lien process.</p> <p>7 Q. Right.</p> <p>8 A. You know, in a lot of cases, situation like this, we</p> <p>9 would ask for a joint check. And I believe we did. And</p> <p>10 again, this was Shane's, so I'm -- this is a discussion with</p> <p>11 Shane, so it's secondhand.</p> <p>12 Q. Sure.</p> <p>13 A. But my understanding is that he did ask to do a</p> <p>14 joint check and was told that that was a problem. And I'm not</p> <p>15 sure he was ever told why it was problem, but they didn't want</p> <p>16 to do it.</p> <p>17 Q. Okay. Were you ever told by anybody why a joint</p> <p>18 check was a problem?</p> <p>19 A. The one time I had a discussion with Pete Fergen</p> <p>20 about it early on he -- I think he had a concern that a joint</p> <p>21 check would create a -- what am I looking for -- a potential</p> <p>22 inconsistency in the process of using a disadvantaged</p> <p>23 business. He was afraid the paperwork wouldn't look</p> <p>24 appropriate.</p> <p>25 Q. Okay. These --</p>	<p>1 Q. Okay. As I understand it, no one else from Cashman</p> <p>2 ever accompanied Mr. Carvalho to a financial institution or</p> <p>3 anything like that, it was just Shane that was dealing with</p> <p>4 him directly, correct? As far as you know?</p> <p>5 A. As far as I know.</p> <p>6 Q. Now, going back to the joint check question, if you</p> <p>7 will, you worked on a few dozen projects with Mojave, have you</p> <p>8 ever gotten a joint check from Mojave on any of those</p> <p>9 projects? That you can recall?</p> <p>10 A. No, not that I can recall.</p> <p>11 Q. Okay. And they -- and I understand they wouldn't --</p> <p>12 again, Pete Fergen may have said -- but for whatever reason</p> <p>13 they didn't want to do a joint check on this project, and you</p> <p>14 guys proceeded anyway, right? I mean it wasn't -- that didn't</p> <p>15 cause you guys pause in not -- in not finishing -- you know,</p> <p>16 going forward and giving the lien release, did it?</p> <p>17 A. Did it not give us pause? It was certainly not what</p> <p>18 we would have preferred.</p> <p>19 Q. Okay.</p> <p>20 A. So to say that it -- it probably did give us a</p> <p>21 little bit of pause. But you know in -- in my discussions</p> <p>22 with Shane after the fact, as he said, you know, we don't</p> <p>23 usually have a problem with \$750,000 checks bouncing, it's</p> <p>24 usually the \$3,000 checks that bounce. So it just -- it just</p> <p>25 really at that point hadn't entered our mind that somebody</p>

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1 would do something like this.

2 Q. Okay. We'll get to this in a minute as well but --
3 you did supply an unconditional lien release in exchange for
4 -- not a joint check, but the check from CAM, correct?

5 A. I don't know. I wasn't there.

6 Q. That wasn't you?

7 A. That wasn't me.

8 Q. Do you have an understanding as to whether that
9 happened? I mean I don't -- we talked to Shane about this at
10 length but...

11 A. I don't know.

12 Q. Okay. In the absence of a joint check, are you
13 aware of any other precautions that you guys undertook at that
14 point?

15 A. Again, as far as I know the project was liened or
16 preliened.

17 Q. Okay.

18 A. Which, you know, usually is security enough on a
19 government project that you're going to get paid.

20 Q. Sure.

21 And a lot of these are -- these are probably going
22 to be pretty quick questions because I talked to Shane about
23 them a little bit, but you may have -- there were a couple
24 things that he wasn't able to identify. He said you might
25 know.

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1 A. Okay.

2 Q. Are you familiar with the steps that Cashman has
3 taken subsequent to the two bounced checks to obtain funds
4 from Mr. Carvalho?

5 A. You know, from a very high level. I know that I
6 personally went and knocked on his door one day. Shane and I
7 both knocked on his door one day. We tried some very direct
8 things to try and physically collect money. Not to threaten
9 the guy, but to you know compel him to pay. And those were
10 obviously unsuccessful.

11 But other than that when it reached the point of
12 where it was beginning to become apparent that there was
13 something not right, the first thing I did when I got back
14 from vacation is I heard about this, and I sent an e-mail to
15 Pete and I said should we be considering you guys stop payment
16 on his check, because we're -- and -- and he had changed his
17 e-mail address, he changed his phone number. All the
18 information that I had on him from his business card that he
19 gave me in our initial meeting was all invalid.

20 Q. Just so we're clear, when you say Pete, you mean
21 Pete Fergen?

22 A. Pete Fergen. Yep.

23 And so I e-mailed Pete and said, you know, we're
24 trying to reach him. We're not able to reach him. He's not
25 answering his phone. He's not answering his e-mails. Now it

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1 turned out that he had changed his phone numbers and e-mails
2 and I didn't know that. That's why he wasn't responding. Um,
3 well, I think.

4 But I did at that point ask Pete, do you guys want
5 to consider stopping payment on your check? And that was --
6 that was the first thing that came to my mind is if this guy
7 is going to scamper, you know, maybe we can do something real
8 quick to protect Mojave.

9 Q. Okay.

10 A. And so -- and I don't know -- we never verbally had
11 a conversation about it, and so I don't know what they talked
12 about internally --

13 Q. Okay.

14 A. -- with that. But that was -- I mean it was -- at
15 that point I was still in the mode of it's not too late, let's
16 see if we can do something to protect us both. Mojave had
17 been a tremendous partner to us for years. I didn't want to
18 see them get hurt either.

19 So -- and at that point that's what it -- it was
20 starting to look like because of this -- you know, this guy
21 was going to skip away with our money and go lay on a beach in
22 Tahiti. So that was -- that was step one.

23 And then we had some follow-up discussions. Pete
24 got us some updated contact information. And that was when
25 Shane and I started to get sort of aggressive with -- with

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1 trying to chase him down and collect the money. And it really
2 did -- you know, he told us some stories about being deployed
3 in Afghanistan and coming back in the middle of the night and
4 all kinds of other craziness. And we didn't -- his stories
5 were just plausible enough to be believable that the reason
6 why he was having these delays -- the reason he stopped
7 payment on the check was because we were sending him e-mails
8 concerned about the funding of the check and all kinds of
9 other things.

10 It was really -- at that point it seemed very
11 plausible that everything was just sort of a honest mistake
12 and as soon as we got him face to face and at a financial
13 institution he would be able to get us a check legitimately,
14 get us paid, and all those other things. And that's what
15 Shane attempted to do by going down to his bank with him with
16 the second check.

17 Q. Right.

18 A. And then -- and then he bailed at the last minute,
19 is my understanding. And that was when -- that was when the
20 game was really afoot.

21 Q. Okay. Other than the e-mail with Pete Fergen, did
22 you have any follow-up conversations with folks at Mojave
23 about, okay, this guy doesn't have any money in his bank
24 account. He's skipped off with the funds. What can we do?

25 A. I don't recall.

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1 Q. Okay.

2 A. I should, but I don't.

3 Q. Did you have any meetings with anybody at Mojave
4 about this issue?

5 A. I did not.

6 Q. Okay. Do you have any understanding -- other than
7 Shane, do you have any understanding as to whether anybody
8 else at Cashman did, had meetings with Mojave?

9 A. The only meeting we had with Mojave that I recall
10 specifically was -- now Shane was having discussions and those
11 kinds of things, and I'm sure you've got a record of those.

12 The only other meeting that we had was when we were
13 a good bit of the way down the road and we had told them that
14 we weren't going to perform startup on the equipment and those
15 kinds of things and things were starting to get sort of messy,
16 I sent an e-mail to Brian and to Troy. And I said, you know,
17 we've done a lot of projects together over the years -- and I
18 can't remember the exact words in my e-mail. I'm sure we
19 could find it.

20 But the gist of it was, we've done a lot of projects
21 over the years, we've had a lot of challenges, and we've
22 always been able to overcome them, can we get a few minutes of
23 your time to sit down and discuss this and see if there's some
24 place we can find some common ground and get this thing moving
25 forward.

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1 And I mean Troy called me within ten minutes of me
2 hitting the send button on the e-mail. He said, "Absolutely.
3 Come on down. Let's talk about it."

4 And I went down there with my boss, Joel Larson, and
5 Mike Pack, our president. And we met with Brian Bugney
6 (phonetic) and with Troy Nelson, and we discussed the
7 situation where it was and what we could do to get things
8 moving forward again somehow. And there really wasn't a whole
9 lot of resolution in that meeting. I mean certainly Mojave
10 had their stance and we had ours, and I don't think we really
11 made a lot of progress there.

12 Q. Well, let's walk through that a little bit. Let's
13 -- I want to follow up on that meeting because -- I may have
14 heard something different about that meeting.

15 But when you say Mojave had their stance and we had
16 our stance, specifically what do you mean by that?

17 A. You know, they wanted us to perform startup, and
18 Mike basically told them that we would be glad to perform
19 startup if they would cut us a check for \$755,000 we were owed
20 and we would perform startup.

21 Q. Okay. So at that point Cashman had not performed
22 the startup?

23 A. That is correct.

24 Q. Okay. Maybe getting back into the technician days,
25 what was required at that point in time to perform startup, if

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1 you recall?

2 A. You know, at that stage of the game it was still
3 pretty early on. Mojave would -- to kind of step through at a
4 real high level, Mojave would perform installation, which
5 involves putting the equipment in place, hooking it up,
6 verifying wiring, doing some different things against the
7 schematics that we provided them. It's a pretty
8 straightforward deal from their standpoint.

9 And then we have -- we have two stages to startup,
10 basically. We have a technician that goes out and verifies
11 that the installation is correct and everything was done
12 correctly. He verifies wiring and -- basically verifies
13 Mojave's work and makes sure that it's done to the factory
14 standard.

15 And the second part of startup is actually
16 physically starting to energize equipment, make equipment
17 work, activate the electronics, physically start running
18 equipment, setting up controls, adjusting controls, doing
19 different things. And it all -- there's a checklist that we
20 have to do on all the pieces of equipment. And that would be
21 the generators, the switchgear, the transfer switches and the
22 Mitsubishi UPS that are -- that we have checklists from the
23 factories that tell us the things that have to be done.

24 And we go through those checklists. And it's
25 basically just verifying that everything is operating

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1 correctly and there's no -- there's no defects in materials of
2 workmanship at that point. And then when we're done
3 performing those checklists, the customer signs a document
4 that they've received the equipment, it's in good running
5 order, and it now has a viable factory warranty.

6 Q. And those protocol codes that we talked about
7 earlier, about a half hour ago, that's part of that startup
8 process as well, isn't it?

9 A. That would have been part of that process, yes.

10 Q. Energizing and all that --

11 A. Uh-huh.

12 Q. -- okay.

13 And that's -- and none of that, the inspection of --
14 of the installation or the energizing startup, any of that,
15 that hadn't been done when you had the meeting with Mojave,
16 correct?

17 A. No.

18 Q. As to the equipment?

19 A. No.

20 Q. As I understand it, and correct me if I'm wrong
21 about this, but the equipment was delivered, but before you
22 guys could go back and inspect anything or do any of the
23 startup, you know, the energizing or anything, this -- this
24 check issue happened, and that was pretty much where you guys
25 stopped doing anything, correct?

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1 A. That is correct.
 2 Q. Okay. Are you familiar -- Shane talked about this a
 3 little bit, and I don't know if you're familiar with it or
 4 not. But there was -- you guys submitted this to the -- to
 5 the bad check department, I understand?
 6 A. Of the District Attorney's office?
 7 Q. Yes.
 8 A. Yes. Correct.
 9 Q. Okay.
 10 A. I'm not sure of the timing of that, but I know Shane
 11 was -- that was one of his first things that he, Shane did.
 12 Q. Are you familiar with what's happening in that case?
 13 I understand a Grand Jury was apparently called?
 14 A. I testified in front of a Grand Jury. That's the
 15 extent of what I know.
 16 Q. Do you know what the proceeding was that you
 17 testified at, what stage of the -- of the process that was in?
 18 A. I --
 19 Q. If you don't know, you don't know.
 20 A. I don't know.
 21 Q. Okay. That's fine.
 22 Do you have a general understanding of what's going
 23 -- what's happening with that case? Obviously, you testified
 24 so...
 25 A. With the exception of my testimony, I have none.

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1 Q. Okay. Has Mojave participated in that -- in that
 2 case at all, to the best of your knowledge?
 3 A. I don't know.
 4 Q. Okay, that's fine.
 5 I want to just get into the project briefly. I'm
 6 going to show you -- you're probably not going to know a lot
 7 about this document, but I'm going to show it to you anyway.
 8 A. Sure.
 9 (Exhibit No. 4 marked.)
 10 MS. ROBINSON: Can we take a break?
 11 MR. BOSCHEE: Sure. When we come back, we'll talk
 12 about Exhibit 4.
 13 (A brief recess was taken.)
 14 MR. BOSCHEE: Back on the record.
 15 Q. (BY MR. BOSCHEE) You understand you're still under
 16 oath?
 17 A. Yes, sir.
 18 Q. Okay. Off the record we had a ten-second
 19 conversation about Pete Fergen's position with Mojave. Could
 20 you tell me what that is?
 21 A. His -- he's a vice president. He manages a lot of
 22 their -- he manages most of their larger projects. He does
 23 their major product purchasing, handles a lot of logistics,
 24 and has several folks work for him that handle the -- that
 25 handle the direct logistics for him

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1 Q. Okay. And he was someone that you dealt with? He's
 2 someone at Mojave you personally dealt with a fair amount?
 3 A. For a lot of years, yes.
 4 Q. Right. Okay.
 5 Before we broke I marked CAT application for credit
 6 for CAM Consulting as Exhibit 4. You recognize this document?
 7 A. I do.
 8 Q. Did you see this document prior to using CAM on this
 9 job? Did you review this document --
 10 A. No.
 11 Q. -- I know Shane did?
 12 A. No.
 13 Q. Okay. But you had an understanding that an
 14 Application For Credit was filled out by CAM, correct?
 15 A. I had an understanding, yes.
 16 Q. Because otherwise if they didn't you wouldn't have
 17 been able to use them on -- use them going forward, could you?
 18 A. Right. Even the fact that it wasn't necessarily the
 19 understanding that it was going to be a credit transaction, so
 20 to speak, we weren't extending them 30-day terms -- even when
 21 we deal with somebody on a cash basis, we have them fill out
 22 these applications so we have their pertinent information and
 23 they sign, you know, that they're going to comply with our
 24 terms and conditions and those kinds of things.
 25 Q. Yeah, you anticipated my next question, which is,

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1 even though this was a cash transaction, you're still going to
 2 have a minority contractor in a situation like this fill out
 3 the credit application so that you've got the information --
 4 A. Yes --
 5 Q. -- correct?
 6 A. -- sir.
 7 Q. Okay. And in this case, they filled out -- as I
 8 understand the process, they fill out the Application For
 9 Credit and then there's the -- the invoicing starts taking
 10 place from you to them, correct? I mean, there's nothing --
 11 there's nothing in between that is there?
 12 A. I --
 13 Q. As far as --
 14 A. You know, honestly I'm not sure. Ordinarily there
 15 is a process of, you know, checking trade references and those
 16 kinds of things. And I'm honestly not sure if Shane did that
 17 in this case or not, understanding that it was going to be
 18 sort of a check exchange. So I don't know the answer to that.
 19 Q. Okay. And we did talk to Shane about that. I don't
 20 think it necessarily matters for what we're talking about.
 21 But I guess what I'm asking is: There wasn't -- there isn't
 22 some other document that transpires between the credit
 23 application and the beginning of invoicing that I just haven't
 24 seen, is there, between you and CAM?
 25 A. That -- a purchase order.

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1 Q. Right.
 2 A. Right. That's it.
 3 Q. Let's go to the first invoice or an invoice.
 4 (Exhibit No. 5 marked.)
 5 Q. (BY MR. BOSCHEE) These are -- Exhibit 5, take a
 6 look at them -- are some invoices that I'm guessing are going
 7 to look familiar to you I hope.
 8 A. Yes.
 9 Q. Okay. Followed up with -- we've got the Bill of
 10 Lading in the back?
 11 A. Bill of Lading.
 12 Q. I assume you are familiar with these documents?
 13 A. Yes.
 14 Q. Now, just to be clear about something, did -- to the
 15 best of your understanding, Cashman ever enter any contract
 16 directly with Mojave on this project?
 17 A. I don't know how to answer that question. And the
 18 reason I say that is because the purchase order was a Mojave
 19 Electric purchase order. It was on their letterhead. And I
 20 believe the line said, Care of CAM Consulting or something --
 21 Q. Okay.
 22 A. -- along those lines. So I guess I'm not sure how
 23 to answer that.
 24 Q. Well, let me ask you -- let me ask you a better
 25 question: There's no -- there's no signed written contract

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1 ahead -- the release basically signals us, go ahead and order
 2 the equipment. So we went ahead and ordered equipment. The
 3 equipment gets built, produced, modified in some cases, and
 4 then delivered to the site. And that's the Bills of
 5 Lading --
 6 Q. Sure.
 7 A. -- that are on here. And we delivered the
 8 generators and the transfer switches, the paralleling gear and
 9 the UPS to the site, coordinating with -- I believe Chris
 10 Meyers is the project manager on this job for Mojave. And
 11 we -- our project manager handled all the logistics with
 12 Chris, getting everything to the site when they needed it,
 13 where they needed it.
 14 Mojave unloads the equipment, installs the
 15 equipment, as we discussed earlier.
 16 Q. Right.
 17 A. When the equipment's all installed, they call us out
 18 to perform startup. And I kind of outlined that process as
 19 well. And at the end of all of that when the successful
 20 startup is completed, we complete the paperwork that we submit
 21 to Caterpillar and Mitsubishi that states that the startup was
 22 completed by a factory-certified technician, everything
 23 conforms to their requirements as far as the installation
 24 goes, and we're good to start the warranty at that time on all
 25 both those pieces of -- or three of those pieces of equipment.

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1 between Cashman and Mojave that I just haven't seen for this
 2 project, is there?
 3 A. With the exception of that purchase order that --
 4 Q. The purchase order, right.
 5 A. No.
 6 Q. As a part of -- of the overall -- of the overall
 7 agreement between CAM, Cashman, and Mojave, could you just
 8 tell me generally what was the scope of work that Cashman was
 9 going to perform on this project, kind of start to finish?
 10 A. Okay. We would take the purchase order and provide
 11 what we call submittals, which is basically a technical
 12 description of the equipment we proposed to provide. And we
 13 provide those submittals to Mojave Electric, and they provide
 14 those to Whiting-Turner, who in turn provides them to the
 15 architects and engineers that design the building.
 16 And basically everybody just reviews everybody's
 17 scope of work and what they're proposing to use to make sure
 18 it meets with their specifications and requirements. And I
 19 don't know the specific details relative to this because I'm
 20 not the person that directly reviews those anymore. But I
 21 believe there was a few questions relative to some of our
 22 equipment that the engineers came back with, but there was
 23 nothing -- they were all of a very minor nature. And -- and I
 24 believe we addressed those questions.
 25 And we received a release from Mojave Electric to go

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1 Q. Okay.
 2 A. That's pretty much it. I -- as I said earlier, some
 3 of the, I guess what I would call fine-tuning of the project,
 4 how they're going to comply with the fire department as far as
 5 alarms and their fire command room and some different things,
 6 a lot of that stuff is somewhat of a fluid situation. And
 7 when we get to the end -- we have an idea at the beginning how
 8 we're going to address that, but sometimes what we plan on
 9 doing at the beginning is not exactly what happens at the end.
 10 And so we -- we, you know, typically participate in
 11 some meetings. We discuss how we intend to address whatever
 12 it is they're asking for. And then we go through the process
 13 of doing that. It's usually not a tremendously big deal.
 14 Q. That was very thorough. It was a good answer to my
 15 very vague question.
 16 We discussed earlier the scope and you just
 17 discussed the scope involved the installation of the st -- the
 18 startup primarily of a lot of this equipment down the line a
 19 little bit. And that never happened, correct, because of the
 20 check?
 21 A. Right.
 22 Q. Right.
 23 A. We put an all stop to everything.
 24 Q. Sure.
 25 Now, looking at this exhibit -- looking at the Bill

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1 of Lading first -- Bills of Lading, you see at the top there
2 it says -- the date on there is 1/17/11. Does that comport
3 generally with your recollection of when most of this
4 equipment was delivered? January, early February of 2011?

5 A. Without having my calendar in front of me it seems
6 right.

7 Q. Okay. The reason I ask -- and then we'll move on to
8 the next -- because the first two invoices which constitute,
9 you know, the majority -- it's actually the first three pages
10 of this exhibit, you've got the first invoice there for
11 598,936.26?

12 A. Uh-huh.

13 Q. And then the 156,627.92. And they're both dated
14 February of 2011, February 1st of 2011. Again, does that
15 comport generally with your understanding of when this
16 equipment was delivered to the site?

17 A. The February 1st date or the January 17th?

18 Q. Well, either one. I mean I guess -- let me ask you
19 a better question.

20 A. Because we have two different things here.

21 Q. Sure.

22 A. The January 17th I'm going to say is probably the
23 date that the equipment left the factory, and then the
24 February 1st date is probably pretty close to when the stuff
25 actually arrived on the site.

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1 Q. Okay.

2 A. Does that make sense?

3 Q. Yeah, and that's what I was going to ask you?

4 A. Okay.

5 Q. The Bill of Lading is probably when the stuff
6 leaves. And then sometime before February 1st is when the
7 equipment arrives on the site, because then you send the
8 invoice out because the equipment's been delivered --

9 A. That is correct.

10 Q. -- correct?

11 Okay. So that's most of it, it looks like. And
12 then I've got another one that's the fourth page in. It looks
13 like some miscellaneous lugs essentially were -- were
14 delivered for \$329.71, it looks like March 25, 2011. Do you
15 have a specific recollection of that?

16 A. I have no idea.

17 Q. Okay. But per your understanding, almost all of the
18 equipment, other than maybe these lugs, all of that stuff was
19 delivered to the site a little bit before February 1st, 2011;
20 is that right?

21 A. Yes.

22 Q. Okay. Sitting here -- and if you add -- I'll
23 represent to you if you add the three invoices up -- we talked
24 about this earlier. I did the math, and I'm not very good at
25 this, but I'm guess -- it comes out to 755,893.89. Do you

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1 have an understanding of whether Cashman delivered any
2 materials or did any additional work on -- on the City Hall
3 project after the -- you know, after March of 2011?

4 A. The only thing that I know of is we have a -- we
5 have a factory project manager for paralleling gear
6 specifically who visited the site sometime after this, just to
7 review the installation and those kinds of things. And I
8 don't remember the specific date.

9 Q. When you say after this?

10 A. Right.

11 Q. Is that after the installation or after delivery?

12 A. After delivery.

13 Q. Okay. Would it have been shortly after the
14 delivery?

15 A. Pretty shortly.

16 Q. I'll introduce another exhibit. This might help.
17 (Exhibit No. 6 marked.)

18 Q. (BY MR. BOSCHEE) Exhibit 6, I will represent is --
19 is what appear would be my client's daily log.

20 A. Okay.

21 Q. Okay. This is the last -- if you take a look -- and
22 we've got some -- we've got some dates on here. And it's got,
23 (as read): Description of work performed. It's kind of hard
24 to read. And this goes into -- this is that right -- this is
25 between, if you look at the dates, January 20th, January 21st,

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1 after the Bill of Lading, but before the invoice.

2 January 21st, this is the last record that my client
3 has of Cashman actually being onsite. Do you have any
4 understanding or documentation that Cashman was onsite after
5 this, after January 21st?

6 A. I don't because that gentleman doesn't work for
7 Cashman, he works for the factory.

8 Q. Okay.

9 A. So I -- and I couldn't tell you what the date was.
10 I couldn't tell you what the date was.

11 Q. Okay.

12 MS. ROBINSON: Can you clarify who you mean by "my
13 client"?

14 MR. BOSCHEE: Oh, I'm sorry.

15 MS. ROBINSON: Who you're identifying, because you
16 have so many.

17 MR. BOSCHEE: I understand.

18 You've got -- what you've got here is a -- is a
19 Whiting-Turner document. I believe this was actually filled
20 out by Mojave.

21 MS. ROBINSON: Oh.

22 MR. BOSCHEE: By the subcontractor. And the reason
23 I say that is because it's a Subcontractor's Daily Log, and it
24 says, (as read): Trade, Mojave.

25 Q. (BY MR. BOSCHEE) So someone from the factory came

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1 out in the -- you know, shortly after delivery of the stuff to
2 inspect it, but you don't have any knowledge or documentation
3 that anybody from Cashman was actually onsite or delivered any
4 materials after January 21st of 2011, do you?

5 A. Not to my knowledge.

6 Q. Okay. Do you have any -- again, there's the factory
7 person that came out -- I understand the factory person is not
8 a Cashman employee, correct?

9 A. That is correct.

10 Q. Okay. Do you have any -- any record or knowledge of
11 any work that Cashman performed after January 21st of 2011?
12 A. I don't.

13 Q. Kind of what I'm getting at is, we talked about the
14 fact that there was a bunch of stuff that was going to happen,
15 but then the check incident happened so you guys never got to
16 the inspection and then the -- the startup. So after delivery
17 of this stuff, January 20th and 21st, you guys were done, you
18 guys didn't do any other work on this project, correct?

19 A. Right. At that point we're in a wait mode for
20 Mojave to contact us and let us know they want us out to the
21 site.

22 Q. Sure.

23 And then the -- the check unfortunateness happens
24 and then that was that?

25 A. Right.

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1 Q. So the scope of work that we talked about earlier
2 that include the startup and everything, there's no -- we're
3 not -- we don't have any dispute between us, you guys didn't
4 complete the scope of work that you had originally agreed to
5 do, correct?

6 A. Correct.

7 Q. Because you didn't get paid?

8 A. Right.

9 Q. Right. Okay.

10 And the work that was left to be completed, just so
11 I've got this clear in my mind, was you guys were going to go
12 out inspect the installation that Mojave and/or whoever had
13 done with the equipment and then perform the startup, correct?

14 A. Correct.

15 Q. And that was going to involve those protocol codes
16 that we talked about earlier, correct?

17 A. That would involve -- that would be part of it, yes.

18 Q. Okay. Did you guys receive -- do you recall
19 receiving a demand from Mojave to complete the work -- to
20 complete your scope of work? Does that ring a bell?

21 A. I'm not sure about a demand. I got an e-mail
22 asking.

23 Q. Let's start there.

24 A. Yeah. I got an e-mail asking and -- and I, you
25 know -- from Pete Fergen.

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1 Q. Okay.

2 A. And I said, you know, we're not in a position to be
3 able to do that. We got to work this money thing out first
4 and then we'll be out.

5 Q. Sure.

6 Was that e-mail before or after you had the meeting
7 with Brian and Troy?

8 A. Before.

9 Q. Okay. So Pete sends you an e-mail saying, hey, you
10 know got this problem, but we really need you to come out and
11 get the inspection and startup done. You say, no, you know
12 this money issue is a big deal. And then sometime after that
13 you send an e-mail to Troy. Troy calls you up. You guys go
14 and have a meeting, but that doesn't resolve it either,
15 correct?

16 A. Correct.

17 Q. Okay. And just so I understand, the reason you guys
18 -- when I say "you guys," you being part of the
19 decision-making process, I'm assuming, did not do the
20 inspection and startup is because you didn't get paid,
21 correct?

22 A. Correct.

23 Q. Were there any other issues that you -- I mean --
24 and again, you know, other issues besides the \$755,000 you --
25 but were there any other issues or reasons that you wouldn't

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1 have gone out and done the inspection or the startup?

2 A. No.

3 Q. Did you receive any complaints from Mojave about the
4 quality or functioning of the materials that were provided?

5 A. No.

6 Q. Okay. Do you recall anybody at Mojave ever
7 requesting repair of any of the equipment that was provided?
8 Does that ring a bell?

9 A. No.

10 Q. You personally didn't -- don't have knowledge of
11 that?

12 A. Don't recall that.

13 Q. Then obviously the follow-up of that would be: You
14 don't recall ever actually going out and repairing any of the
15 equipment out at the job site, do you?

16 A. No.

17 Q. Okay. Because again, January 21st that's -- you
18 guys haven't gone back out there to do any inspection,
19 installation, or repair any other work out there, have you?

20 A. Not to my knowledge.

21 Q. Okay. Do you have an understanding -- did anybody
22 at Mojave communicate to you they were going to try to hire
23 some folks, other contractors, to complete your work?

24 A. Yes.

25 Q. Who communicated that to you?

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1 A. Pete Fergen.

2 Q. What did Pete tell you?

3 A. He said first he was going to contact some
4 neighboring CAT dealers to see if they could get one of them
5 to do it. And then -- and that was sort of the end of our
6 conversation in that regard because it -- because the
7 understanding is that only an authorized Caterpillar dealer
8 can start this equipment up.

9 Q. Okay.

10 A. So I -- when -- when we started hearing rumors that
11 maybe there was an independent company out there starting it
12 up, I was not aware that they were looking at hiring an
13 independent.

14 Q. Okay. When you are talking to Pete and had the
15 meeting with Brian and Troy -- I want to be -- I want to be
16 clear about this so I -- so I know. There was no dispute that
17 you guys weren't -- that you weren't paid, that CAM's check
18 bounced. Why were they asking you -- or what were they
19 communicating to you that they want -- as a reason to go out
20 there and finish the job?

21 A. You know, our discussions at that point were
22 basically it needs to be done.

23 Q. Okay.

24 A. They have obligations to Whiting-Turner. Whiting-
25 Turner has obligations to the owner. And they -- you know, it

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1 Q. Understand. And I'm not going to have you look at a
2 document that you haven't seen.

3 Were you -- did you play any part in -- in the lien
4 process in terms of getting the process started or anything
5 else, or was that all Shane?

6 A. Pretty much all Shane. The only thing -- the only
7 part of that process that our department has is we provide the
8 customer with a form to fill out with the prelien information
9 so we have all the interested parties' information and those
10 kinds of thing. Other than that, I -- after that, it's pretty
11 much Shane's department's --

12 Q. Okay.

13 A. -- rodeo.

14 Q. Okay. The lien's dated April 26th, 2011 and signed
15 under a notary. Do you have any reason to dispute that date
16 as the lien date? I mean does that comport with your
17 understanding of when you guys liened the project -- or I
18 mean --

19 MS. ROBINSON: I'm going to --

20 Q. (BY MR. BOSCHEE) -- gave the lease -- gave the
21 release? Because we're going to look at the Right to Lien in
22 a second.

23 A. I guess I have no comment.

24 Q. Okay.

25 A. I don't know.

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1 needed to be done.

2 Q. Okay. During those meetings, those communications,
3 did they articulate to you that, well, we did pay. We paid
4 CAM, so the work needs to get done and you guys need to figure
5 out what to do with CAM? Was part of the rationale, if you
6 will?

7 A. I'm not sure if that was specifically spoken --

8 Q. Okay.

9 A. -- but I -- that was certainly the implication.

10 Q. Okay. And sitting here right now -- again we talked
11 about this earlier -- but you don't -- you don't have any --
12 you don't dispute that Mojave paid CAM, do you?

13 A. I -- without having direct knowledge of it, I don't
14 necessarily dispute it.

15 Q. Okay. And we talked earlier, you didn't actually do
16 the exchange, but there was an unconditional lien release
17 provided for this work, correct?

18 A. I -- it looks like you have it there so I'm --

19 Q. I do. I'm going to show it to you.

20 A. I've never -- I've not seen it.

21 Q. You've never seen it?

22 A. I have not.

23 Q. Okay.

24 A. I don't -- that's a Shane Norman -- that's his
25 department and their function that takes care of that.

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1 Q. You just don't know?

2 A. Right.

3 Q. Okay. Well, let's take a look. Maybe you don't --
4 maybe you don't know this, I've got a Notice of Right to Lien.
5 Have you ever seen that document before?

6 A. I have not.

7 Q. Did you provide any equipment -- any equipment? You
8 did provide equipment.

9 Did you provide the information with respect to
10 getting that process started, the Right to Lien?

11 A. Again --

12 MS. ROBINSON: I object, he -- asked and answered.

13 MR. BOSCHEE: Well, he said he --

14 Q. (BY MR. BOSCHEE) He (sic) said that your company
15 provided some information with respect to the release and --
16 and the lien itself. The prelien information --

17 A. Right.

18 Q. -- like what did you -- what did you provide in
19 terms of the prelien?

20 A. The prelien is essentially -- I haven't seen the
21 form in a while, to tell you the truth. But the last time I
22 saw it, it's basically a list of the interested contractors on
23 the job, the owner, names, addresses, contacts. There's
24 really not much else to it.

25 Q. And you didn't -- you've never actually seen the --

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1 the Notice of Right to Lien for -- with respect to this
2 project, have you?

3 A. I have not.

4 Q. Well, then I'm not going to ask you about it.

5 Have you ever seen the lien, the actual Notice of
6 Lien for this project?

7 A. I have not.

8 Q. Did you participate in any way, shape, or form with
9 putting that document together?

10 A. Again, with the exception of the prelien process,
11 no.

12 Q. Okay. This document -- this Notice of Lien is dated
13 June 21st, 2011, signed by Shane Norman. Do you have any
14 reason to -- and it looks like it was recorded on -- the next
15 day, June 22nd, 2011 by Ms. Robinson. Do you have any reason
16 to doubt that that's the date the lien was recorded? Any
17 reason to dispute that?

18 A. No.

19 Q. Okay. Follow-up question, I'm going back again off
20 my own line: Do you have an understanding as to why you guys
21 didn't give a conditional lien release with respect to the
22 755,000, as opposed to an unconditional lien release?

23 A. I don't.

24 MS. ROBINSON: Objection, asked and answered.

25 Q. (BY MR. BOSCHÉE) Or was that a -- was that a -- was

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1 that a decision you were part of?

2 A. Again, I was on vacation.

3 Q. Okay.

4 A. So that was a Shane decision.

5 Q. Okay. You were completely out of the loop on that?

6 A. That is correct.

7 Q. On the other projects you had worked on or that you
8 were a part of with the disadvantaged business owners or
9 minority contractors where the check was cut and then the next
10 check was cut to you guys, did you provide unconditional lien
11 releases on those projects, if you know?

12 A. If we liened the project, at some point we would
13 have had to provide an unconditional release to close out the
14 job.

15 Q. Okay.

16 A. So logic says yes, we have. I'm not -- I don't see
17 them very often.

18 Q. Right.

19 Let me -- let me ask you another way. On those
20 other projects -- we talked about the process, right. There's
21 -- the minority contractor gets a check and then they cut a
22 check to you guys, correct?

23 A. (Witness nodding.)

24 Q. Do you have an understanding as to whether a
25 conditional release was given upon the first check being cut

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1 and then an unconditional release being given once the
2 minority contractor's check cleared your financial
3 institution, or was it just, it got paid, here's the
4 unconditional release, if you know?

5 A. I don't know. That's a Shane question. Sorry.

6 Q. Okay, yeah. And I think we did ask Shane that
7 question, but anyway.

8 MS. BRISCOE: He said you would know.

9 MR. BOSCHÉE: He did say you would know.

10 MS. ROBINSON: I don't recall that actually.

11 MR. BOSCHÉE: He did. Well, I've got his transcript
12 here.

13 Q. (BY MR. BOSCHÉE) But he said you might know that.

14 A. That's -- that's typically his.

15 I -- I can tell you, if you take the minority
16 contractor out of it --

17 Q. Yeah.

18 A. -- if we're dealing directly with a contractor,
19 ordinarily the conditional release is provided upon -- we
20 usually get paid in stages on a job like this, and they'll
21 hold what's called a retention. And we'll get -- we'll sign a
22 conditional release on the payment -- the majority payment,
23 and we won't provide the unconditional until the retention is
24 paid.

25 Q. Until the thing's paid in full?

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1 A. Right.

2 Q. But in this case, the 755 was -- was the entirety of
3 -- was essentially the entirety of the payment --

4 A. It's -- yeah --

5 Q. -- per the invoice?

6 A. I'm trusting your math.

7 Q. Right. Don't make that mistake the second time
8 but -- but it is, that's the correct number.

9 Is that -- and that would -- given that there's no
10 necessary retention at that point going forward, would that
11 be -- that would be a typical reason -- you don't know
12 specifically as to this project, but that would typically be a
13 reason to give the unconditional instead of the conditional,
14 because there's no retention to hold back?

15 A. Correct.

16 Q. Okay.

17 A. That would make sense.

18 Q. Do you have any knowledge of a claim made to
19 Whiting-Turner with respect to this amount owed?

20 A. I don't.

21 Q. You don't. That was again -- that was a Shane issue
22 completely?

23 A. Yeah. Yep.

24 Q. So sitting here right now you're not -- you're not
25 familiar with the 90-day -- what's typically termed the 90-day

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1 notice to the general contractor, with respect to this?
 2 A. That was something that Shane was working with Mike
 3 on, and I -- frankly I'm not -- I wasn't involved.
 4 Q. Okay. That would be something -- if -- if there was
 5 something that Shane didn't know in his deposition about that
 6 that would be something I would need to talk to Mike about?
 7 A. Mike Pack.
 8 Q. The president?
 9 A. The president of our company.
 10 Q. Okay.
 11 A. I guess so, yes.
 12 Q. Okay. Sitting here right now are -- and this is the
 13 only -- I'll represent this is -- this is a document disclosed
 14 because I -- I don't have any other ones.
 15 Are you aware of any -- of any other notices that
 16 were sent to Whiting-Turner, other than perhaps this 90-day
 17 notice? I mean did you personally communicate anything to
 18 Whiting-Turner, i.e., we didn't get paid. You know, we're
 19 going to make a claim on your bond. Anything like that?
 20 A. I did not.
 21 Q. Okay. That again would have been Shane and Mike,
 22 theoretically, or Mike?
 23 A. Yes, I -- for want of a -- I'm not sure.
 24 Q. Okay. The 90-day notice that was provided to
 25 Whiting-Turner is again -- it's at that same -- this one is

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1 June 24th, 2011. Do you have -- sitting here right now, do
 2 you have any knowledge or information as to -- as to any
 3 notices that were provided to Whiting-Turner prior to that?
 4 A. No, I don't.
 5 Q. Okay. Do you sitting here right now have any
 6 knowledge of any notices that were provided to any surety
 7 companies, Whiting or Mojave's, at any point during this
 8 process?
 9 A. No direct knowledge.
 10 Q. Okay. And who -- if anybody had that direct
 11 knowledge would it be Shane or Mike?
 12 A. Yes.
 13 Q. I want to go back to the initial meeting and -- the
 14 meeting with Angelo and you and Mojave. Specifically to the
 15 best you can recall, what did -- and was that -- was that with
 16 Pete or was it with Troy or Brian?
 17 A. It was with Peter.
 18 Q. Okay. Specifically, what did Pete tell you about
 19 their relationship or their working relationship on the other
 20 projects with CAM Consulting?
 21 A. Almost nothing.
 22 Q. Okay.
 23 A. He basically just introduced us and said that we've
 24 been -- we've had -- he -- I think he said something to the
 25 effect of, we're working with him on some other things. Seems

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1 like a really straight up guy. Can probably get us where we
 2 need to go on this project.
 3 Q. Okay.
 4 A. I'm paraphrasing, but I -- pretty close.
 5 Q. I understand. And it's been awhile, so remember
 6 specific words in a conversation is difficult. I get that.
 7 But during that conversation that kind of led you to
 8 the meeting with them, did he articulate that they had any
 9 kind of a special working relationship or that they had a
 10 personal relationship with Angelo Carvalho, other than just
 11 working on some projects with him?
 12 A. No.
 13 Q. Now, Cashman -- you guys -- Cashman has also brought
 14 a claim in this case for fraudulent transfer against Mojave.
 15 Are you familiar with that?
 16 A. I'm not.
 17 Q. You're not?
 18 A. No.
 19 Q. Okay. So asking you about the factual basis for
 20 that is probably -- probably something you're not going to
 21 know about.
 22 Let me ask you this: To the extent that any
 23 investigation was performed after the fact, after the check
 24 didn't clear, as to other business dealings between Mojave and
 25 CAM Consulting, would you have been involved in that?

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1 A. The only knowledge I had of any sort of prior
 2 relationship between Mojave and CAM was when we got -- when we
 3 subpoenaed CAM's financial records and bank statements and
 4 there were payments made to Mojave that appeared to be for
 5 transactions prior to this one. But that's the extent of what
 6 I know.
 7 Q. Okay. Did you -- after you got those bank
 8 statements, did you perform any follow-up investigation beyond
 9 that as to the other jobs or what the source of those payments
 10 would be?
 11 A. No. And when we sat in that meeting with Brian and
 12 Troy, you know Mike mentioned those transactions specifically.
 13 I think sort of -- he didn't want to -- I'm not sure why he
 14 didn't want to ask directly. But he didn't want to ask
 15 directly about them. But he did mention those transactions.
 16 And Brian and Troy pretty much just didn't acknowledge one way
 17 or the other their knowledge of those transactions.
 18 Q. I got to follow up on that because I don't -- when
 19 you say they didn't acknowledge one way or another, I mean --
 20 let me -- let me see if I understand this. What
 21 specifically did Mike ask them about those other payments?
 22 A. I believe Mike said something to the effect of that
 23 -- you know, the transactions we see on here, we see a couple
 24 of payments to Mojave for -- and they were large dollar
 25 amounts.

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1 Q. Uh-huh.
 2 A. And Brian and Troy basically just didn't say
 3 anything.
 4 Q. They didn't deny them? They didn't tell -- say they
 5 were for another job? They didn't say anything?
 6 A. They didn't acknowledge.
 7 Q. Did they just sit there silently and not say
 8 anything about that question? It's a pretty loaded question.
 9 I mean I -- they didn't say a word?
 10 A. They did not say a word.
 11 Q. Did either of them say, well, we're just not going
 12 to talk about that or we're just not going to address that,
 13 that's apples and oranges, or I mean they literally didn't say
 14 anything?
 15 A. They did not acknowledge it.
 16 Q. I'm just imagining Troy Nelson sitting in a room not
 17 saying anything upon a question like that. I'm having a hard
 18 time reconciling that but...
 19 A. He's not the kind of guy to hold back on something.
 20 And that was why it was sort of noteworthy. That's why I
 21 remember it specifically is -- you know, Troy's not -- well,
 22 you know him. He's -- he's not a -- he's not somebody who's
 23 not a forthcoming person. And that was -- that's why it
 24 sticks in my mind, because it was so out of character.
 25 Q. Well, did you or Mike follow up with any questions

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1 about those checks after the non-response?
 2 A. No. We moved on to talking about other things
 3 relative specifically to this project.
 4 Q. Like what?
 5 A. How do we go forward?
 6 Q. And at that point you reached an impasse because
 7 there was no way to go forward?
 8 A. That is correct.
 9 Q. You guys, as I understand it -- as I understand the
 10 topic, Mojave wants you to go forward because it needs to get
 11 done. You guys aren't going to go forward do the ins -- or do
 12 the checklist and then do the startup, provide the codes,
 13 because you weren't paid, correct?
 14 A. Correct.
 15 Q. Okay. You're a tech guy, so I'm going to ask you a
 16 little bit of a technical question. And we're still arguing
 17 about this with the judge a little bit but...
 18 If Cashman has to go in and provide those protocol
 19 codes at this stage in the game, does that -- what concerns
 20 would you have about doing that today?
 21 A. Concerns? None from a technical standpoint.
 22 Q. Okay.
 23 A. I mean there's no physical reason why we wouldn't be
 24 able to do that. It's just -- it's proprietary information.
 25 It's privileged and --

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1 Q. You haven't been paid?
 2 A. Correct.
 3 Q. Okay. But from an actual just going in there and
 4 putting the codes in and getting the stuff communicating, like
 5 physically there's no real issue there, you just don't want to
 6 do it because you haven't gotten paid, right?
 7 A. That is correct.
 8 MR. BRISCOE: Let me take two minutes, review my
 9 notes, and we might be able to get you out of here pretty
 10 quick.
 11 THE WITNESS: Okay.
 12 (A brief recess was taken.)
 13 MR. BOSCHEE: Back on the record. We'll be quick.
 14 THE WITNESS: No problem, I appreciate it.
 15 Q. (BY MR. BOSCHEE) You understand you're still under
 16 oath?
 17 A. Yes, sir.
 18 Q. Factory guy came out and inspected the site at some
 19 point. You don't know -- we don't have dates, that's fine.
 20 Did he ever provide you a report that you recall?
 21 A. Not us.
 22 Q. Okay. Who did he provide it to?
 23 A. Back to the factory.
 24 Q. Okay. Did you ever have a conversation with the
 25 factory guy about what he saw out there or anything like that?

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1 A. Had a conversation with him, it was -- you know, it
 2 was basically, the equipment is installed. It looks like it's
 3 being installed correctly. But that was -- it was still very
 4 early --
 5 Q. Right.
 6 A. -- stages, so there wasn't anything really done yet.
 7 It was more -- honestly, I think he wanted a weekend in Vegas.
 8 So -- I hate to say it but...
 9 Q. I can't hate him for that.
 10 But it was early on in the process. He just went
 11 out, looked at it, said things are going smoothly, eh?
 12 A. Right.
 13 Q. When you talked to Pete initially about CAM and he
 14 said they were working on other jobs with CAM, did he tell you
 15 what other jobs they were working on with him?
 16 A. He did not.
 17 Q. Okay. But you knew that they were working -- you
 18 knew that Pete was working on at least a couple other jobs
 19 with CAM before that meeting, right?
 20 A. Yes.
 21 Q. The meeting -- the one meeting with all three of
 22 them?
 23 A. Right. Yes.
 24 Q. Okay. And did he articulate any problems that they
 25 had had with CAM on any other projects?

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1 A. No, he did not.
 2 Q. Did he talk about any -- any money that was due and
 3 owing on those other jobs during that meeting?
 4 A. We did not even -- didn't have that in depth of a
 5 discussion.
 6 Q. Didn't get to that. Okay.
 7 We talked about the fact that you haven't seen the
 8 prelien notice and you haven't even seen the lien, per se, but
 9 one thing that Shane did identify you as knowing is, who's
 10 going to figure out the amount of the mechanic's lien. Would
 11 that be you or would that be someone else at Cashman that
 12 would determine the amount that Cashman's going to lien for?
 13 A. It would be probably somewhat of a joint discussion.
 14 Q. Okay.
 15 A. Certainly myself and the account manager on the job
 16 have the most direct knowledge of what work -- what costs go
 17 into the total makeup of the job, if that's -- I think that's
 18 what you're asking.
 19 Q. Well, I am, and that's why -- I guess what I'm
 20 getting at it is, okay, we've got a \$755,893.89 lien on this
 21 project. Did you participate in coming to that number?
 22 A. Yes.
 23 Q. Who else participated in coming to that number?
 24 A. My account manager.
 25 Q. And so who did you provide that number to? I mean

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1 obviously you didn't see the lien, you didn't see the prelien,
 2 but the information was provided to somebody. Who did you
 3 provide that to?
 4 A. Within Cashman?
 5 Q. Yeah. Right.
 6 A. In other words, for them to be able to generate that
 7 paper?
 8 Q. Right.
 9 A. Shane.
 10 Q. Oh.
 11 A. And I'm going to guess that he just did it off the
 12 invoice --
 13 Q. Okay.
 14 A. -- or invoices.
 15 Q. Sure.
 16 But you were involved in coming up with the number?
 17 A. Yes, sir.
 18 Q. Okay. Let's say a 755,893.89 bowl of gold coins
 19 fell in your lap today and you were able to go out and
 20 complete the project, get the inspection and the startup done.
 21 How much time would that take?
 22 A. Difficult to say without having a knowledge of the
 23 condition of the site. Now, I'm assuming that it's pretty
 24 late in the construction stages. So assuming that everything
 25 is -- the table is set, so to speak --

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1 Q. Uh-huh.
 2 A. -- and everything is ready and everything that
 3 Mojave did was done correctly and all those other things, you
 4 know, a typical time frame for a project like this would be
 5 two weeks.
 6 Q. Okay.
 7 A. Maybe three.
 8 Q. Two to three weeks.
 9 Would that be the same as had -- I mean, let's say
 10 CAM's doesn't -- let's say he's got sufficient funds back in
 11 the day and you guys had gone out and done the inspection when
 12 -- when Mojave called, and the startup. Would that time frame
 13 be the same at that point as it is now, or would it take a
 14 little longer or shorter?
 15 A. Hard to say. Likely longer, only because -- if
 16 you've ever been on a construction site, it's kind of a mad
 17 house. And there's people running all over the place and
 18 doing different things and everything gets sort of fragmented.
 19 And there's probably -- there probably would have been days in
 20 there where we would not be able to get our work done.
 21 So we would say, you know something, where you are
 22 with your situation, we can't get any work done today so we're
 23 not going to have a technician out there. So if the -- the
 24 time -- the total time frame should be the same. Well, I
 25 shouldn't say that. The net time frame would be the same.

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1 The total would probably be something longer, maybe four
 2 weeks.
 3 Q. Sure.
 4 We're kind of talking about the same thing. If it
 5 would take you 14 days, and right now you could do it 14
 6 consecutive days, back a -- you know, a year ago it would have
 7 maybe taken you 14 days with breaks?
 8 A. Correct.
 9 Q. Okay. How much expense would -- would -- ballpark
 10 would Cashman incur on that process?
 11 A. You know, it depends a lot on how much is done
 12 correctly at the site.
 13 Q. Right.
 14 A. It can vary pretty widely. I -- man, I don't recall
 15 how much we had in there for startup.
 16 Q. Okay.
 17 A. I mean we can take a literal sense of it and -- two
 18 guys for 14 days and do the math at \$110 an hour --
 19 Q. Sure.
 20 A. -- and come up with a number. But that's just the
 21 -- that's just the man hours. It doesn't count if we had to
 22 purchase any materials or anything. So I don't -- I don't
 23 think I can answer that accurately.
 24 Q. So you don't know what the hard cost would be
 25 because it would depend on whether everything was installed

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1 correctly?

2 A. And -- right.

3 Q. And then rest of it would be man hours. And then
4 it's just a question of two people, 14 days, X amount per
5 hour, figuring that math out?

6 A. Right. And then -- and then as we discussed
7 earlier, the last part of that is working out the final
8 details. How are -- how is the communication with the
9 building going to work, how is the communication with fire
10 command going to work, those kinds of things that get hammered
11 out in the latter stages of the process. So there could be a
12 variance there in cost as well.

13 Q. Okay. Well, how -- when you say a variance in cost,
14 I mean how much variance are we talking about there? I mean
15 ballpark? It doesn't seem like a lot, but I -- you know.

16 A. Well, you know, it depends --

17 Q. Yeah.

18 A. -- if -- if they want some high-level communications
19 at a digital level, I mean that's a \$-, \$6,000 process.

20 Q. Okay. Not a high cost relative to what we're
21 talking about in this case?

22 A. Relative to three quarters of a million dollars not
23 high.

24 Q. Well, \$-, \$6,000, not insignificant either?

25 A. Right.

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1 Q. So I mean you would have to come out-of-pocket
2 for -- okay.

3 Just specifically talking about the installation of
4 the protocol codes, how much time is that going to take? If
5 it has to happen? If it --

6 A. You know I really can't answer. And the reason I
7 can't answer is when I was a technician, we didn't have all
8 these digital communications. So I can tell you that we have
9 to go all the way back to the beginning. It's not something
10 you can pick up in the middle and do just that. We have to go
11 back to the very beginning and start from ground zero and work
12 through the checklist process that Caterpillar gives us to get
13 to that point where we start getting things communicating with
14 each other.

15 Q. Okay. And to go back from the beginning and go
16 through the checklist, how -- I mean, approximately how long
17 is that going to take?

18 A. That's 14 days.

19 Q. That's 14 days?

20 A. Yep.

21 Q. Well, so what you're saying is you can't -- as I
22 understand this, you can't install the protocol codes without
23 doing the whole startup?

24 A. Correct.

25 Q. Okay.

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1 A. Whatever has been done out there, and I don't know
2 what has or has not been done, is -- is -- how do I say
3 this -- is inconsequential. It doesn't make any difference
4 what they did or didn't do. From Caterpillar and Mitsubishi's
5 on the UPS side's standpoint, none of that work was done by a
6 factory-authorized rep. So all of that has to be done by a
7 factory-authorized rep. So -- and because our folks don't
8 know what was done or what was not done you can't -- you can't
9 try and pick up somebody else's work in the middle. They're
10 going to have to start from the beginning and go all the way
11 through the process.

12 Q. Okay.

13 A. And if that doesn't happen -- well, two things could
14 happen. Number one, it could be done incorrectly. A step
15 could be missed, and that could be expensive. The second part
16 is there won't be a viable warranty on any of the products
17 until that is done.

18 Q. Okay. Sitting here right now though, you don't know
19 whether a factory-authorized representative has been out there
20 and done any of that work, do you?

21 A. I'm relatively sure that that has not happened.

22 Q. Based on?

23 A. Based on discussions we had with Mitsubishi as far
24 as them dispatching somebody. They were not going to dispatch
25 anybody without our knowledge. And they say that they

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1 haven't.

2 Q. Okay.

3 A. And as far as Caterpillar goes our -- we've had --
4 we have very specific what we call sales and service
5 agreements with Caterpillar. And if another dealer is going
6 to come in and work in our territory, perform any sort of work
7 whatsoever, they need to notify us that they're going to be in
8 our territory working. And we've had no CAT dealer notify us
9 that they were going to be working on the job.

10 So could somebody have snuck in and done it?

11 Q. Sure.

12 A. Yes. It's not very likely.

13 Q. Okay. Have you had communications with anybody at
14 Caterpillar about not wanting anyone else to come in and do
15 that, primary because you guys haven't -- or are owed a lot of
16 money on this project?

17 A. I don't recall.

18 Q. How about Mitsubishi, communications with them along
19 those same lines?

20 A. I --

21 Q. I.E., don't let -- don't let someone else come in
22 and do this because we're owed a lot of money and -- and we
23 want to get paid?

24 A. Yeah, I don't recall -- yeah, no, I don't recall
25 having that conversation.

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1	Q. But nobody from Caterpillar or Mitsubishi could do	1	CERTIFICATE OF DEPONENT
2	anything with the protocol codes? That's something that you	2	PAGE LINE CHANGE REASON
3	guys would have to do, because like you said earlier, I think	3	
4	it's proprietary?	4	
5	A. Correct.	5	
6	Q. All right. And the other kind of question I had --	6	
7	it's kind of random -- when you say the factory guy, which	7	
8	factory?	8	
9	A. We have several involved. What -- carry a couple of	9	
10	different terms. Their official name at this point is	10	
11	Caterpillar Switchgear. It use to be known as Intelligent	11	
12	Switchgear Organization. And then it was known as CAT ISO	12	
13	(phonetic) for awhile during a transition period. But their	13	
14	official title now is Caterpillar Switchgear.	14	
15	Q. Okay.	15	
16	A. And it's a division of Caterpillar. And they	16	
17	have -- they have their own people that go out and do site	17	
18	inspections and project management and those kinds of things	18	
19	It's a very -- very technical business that most dealers don't	19	I, KEITH LOZEAU, deponent herein, do hereby certify
20	have the real ability to support, so they have factory folks	20	and declare the within and foregoing transcription to be my
21	that help out.	21	deposition in said action; under penalty of perjury; that I
22	Q. Okay. That was -- that was where I was going. I	22	have read, corrected and do hereby affix my signature to said
23	wasn't sure where -- which of the factories he came from.	23	deposition.
24	We talked about a lot of subjects today and a lot of	24	
25	specific things. Is there anything else about your	25	KEITH LOZEAU, Deponent
Page 91		Page 93	
1	involvement with the City Hall project and specifically	1	REPORTER'S CERTIFICATE
2	relating to your dealings with Mojave Electric that I did not	2	
3	ask you about today, but that you feel are important to my	3	I, Tammy M. Breed, CSR No. 305, Certified
4	understanding of what -- what the dynamic here is, issues	4	Reporter, certify:
5	going forward?	5	That the foregoing proceedings were taken before me
6	A. No.	6	at the time and place therein set forth, at which time the
7	MS. ROBINSON: Object, form of the question.	7	witness was put under oath by me;
8	THE WITNESS: No.	8	That the testimony of the witness, the
9	MR. BOSCHEE: Okay, I don't have any further	9	questions propounded, and all objections and statements made
10	questions.	10	at the time of the examination were recorded stenographically
11	I'm assuming Jennifer doesn't have any questions?	11	by me and were thereafter transcribed;
12	MS. ROBINSON: No.	12	That the foregoing is a true and correct transcript
13	(Signature requested.)	13	of my shorthand notes so taken.
14	(The proceedings concluded at 11:36 a.m.)	14	I further certify that I am not a relative or
15		15	employee of any attorney of the parties, nor financially
16		16	interested in the action.
17		17	I declare under penalty of perjury under the laws of
18		18	Nevada that the foregoing is true and correct.
19		19	Dated this 5th day of September, 2012.
20		20	
21		21	
22		22	
23		23	TAMMY M. BREED, C.C.R. No. 305
24		24	
25		25	

EXHIBIT 3

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Case No: 65819 Clerk of Supreme Court

District Court Case Nos.: **A642583 &
A653029**

23
24

26

PEZZILLO LLOYD

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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
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26	81	QH Las Vegas, PQ Las Vegas, LWITC Successor and FC/LW Vegas'	06/11/2013	10	JA0002441-61
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	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