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1 projects in the west.
2 Q. The whole western region?
3 A. West of the Mississippi.
4 Q. Are you based here in Las Vegas?
5 A. Yes, I am.
6 Q. And how long have you been in that position
7 with ForestCity?
8 A. Fifteen years.
9 Q. And prior to that, where were you employed?
10 A. I was employed with Domingo Camaro
11 Architects.
12 Q. What was your position with --
13 A. I was the director of construction services.
14 Q. And have you been based here in Las Vegas for
15 15 years with ForestCity?
16 A. Yes.
17 Q. Okay. So this litigation concerns the
18 new Las Vegas City Hall, as I am sure you are aware. I
19 am going to use the word "project." If I use the word
20 "project," I am going to be referring to that
21 particular project. So can you describe to me
22 ForestCity Construction Services' role on that project.
23 A. We were employed by -- we were employed as
24 the owner's representative on-site by QH Las Vegas,
25 LLC, which was the entity that owned the property and

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1 developed the property.
2 Q. Okay. And then is there also a PQ Las Vegas?
3 A. There is a PQ Las Vegas, LLC.
4 Q. What is that?
5 A. That was the entity established for -- there
6 is a land swap within the development agreement.
7 QH Las Vegas is the property in Symphony Park. And
8 it's the two parcels, Q and H. And so, you know, QH is
9 Queen of Hearts, because that is the property. The
10 Queen of Hearts sat on that property. So that is how
11 they determined the two LLCs.
12 Q. Just coming up with a name?
13 A. Coming up with a name. So PQ was tied to the
14 development agreement with the City. And when we
15 closed we swapped land.
16 Q. Okay. So then what is ForestCity
17 Enterprises' role? Are they like the parent
18 corporation?
19 A. That is the parent corporation.
20 Q. For all the different individual --
21 A. Entities.
22 Q. And is there a ForestCity Commercial
23 Construction Entity?
24 A. In the first quarter of 2012 we merged our
25 two construction divisions together. We had a

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1 commercial construction division as well as a
2 residential construction. And in the reorganization of
3 the company, as everybody is doing, we merged. And now
4 we are just Construction Services to deal with
5 everything.
6 Q. So at the time was it ForestCity Commercial
7 Construction that was the owner's rep on this project?
8 A. It was ForestCity Commercial Construction CO,
9 Inc.
10 Q. Were there any other owner affiliated
11 companies that were involved in the projects, or did we
12 cover them?
13 A. The project was developed under ForestCity
14 Commercial Development California.
15 Q. Can you think of any others?
16 A. That is all the entities I believe that was
17 involved.
18 Q. So what was your role on the project?
19 A. I was designated by the City as well as our
20 company as the owner's rep. I assisted in the
21 development of the construction documents with the
22 architects. I was involved in the RP for the
23 construction manager at risk. I was involved in the
24 final selections of contractors, subcontractors, with
25 Whiting Turner. And then I was on site to make sure

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1 that the construction was pursuant to construction
2 documents.
3 Q. Did you have an office on site?
4 A. I had a trailer.
5 Q. And were you there on a daily basis or a
6 weekly basis?
7 A. Every day.
8 Q. So when you are there at the project, are you
9 just observing the construction activities, or did you
10 have a particular role you took on at different times?
11 A. No. I was there to just observe and make
12 sure that the project was moving smoothly; it was
13 within schedule, within budget; if there was any
14 questions that occurred that I could answer, or I would
15 take to the engineers to get answered. So I was more
16 of an assistant to make sure that the project ran
17 smoothly.
18 Q. And then did you hold meetings at the project
19 with the general contractor?
20 A. We had one once a month, OAC meetings, what
21 we called OAC, which is the owner, architect,
22 contractor meetings. At that time that would include
23 City staff representatives. A lot of my corporate from
24 Cleveland would come down; the developer from LA would
25 come over. And we would just do an overview of the

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1 project, how the schedule was going, how the costs were
2 going. They would walk the project just to see how
3 everything was going.
4 Q. Okay. Then did you participate in any
5 meetings with the subcontractors?
6 A. No.
7 Q. Did you keep any records on site, concerning
8 preliminary notices or other things that the owner
9 might receive as part of construction?
10 A. I only received things that corporate would
11 somehow send to me. They all went to our corporate
12 office, which they kept, you know, lien notices and
13 things. But they weren't mailed directly to the
14 trailer.
15 Q. Because the record address was the address --
16 A. Public Square and Queen.
17 Q. So who in Cleveland would be responsible for
18 tracking that information?
19 A. I am not quite sure who in our corporate
20 office did that. It went to legal, I believe.
21 Q. How big is ForestCity Enterprises?
22 A. We are a multi-billion-dollar corporation
23 with about 2800 employees across the country.
24 Q. That is pretty big.
25 A. It used to be a lot larger.

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1 Q. Oh, yeah?
2 (Exhibit 1 marked.)
3 BY MS. LLOYD:
4 Q. So have you seen this document?
5 A. I don't recall seeing this one.
6 Q. So it would have been served obviously on the
7 Cleveland address for QH Las Vegas, and then you didn't
8 necessarily get copies of everything.
9 A. No, I didn't.
10 Q. Okay. But do you think that there are
11 records in Cleveland concerning the preliminary notices
12 that were received?
13 A. Well, if it went to Suite 1005, that is
14 ForestCity Construction Services or ForestCity
15 Commercial Construction suite numbers.
16 Q. So they would likely kept records there
17 somewhere concerning all of these preliminary notices
18 or other notices that they might have received?
19 A. Yes.
20 Q. Let's talk a little bit about JMA's role on
21 the project. Can you tell me what JMA was hired to do.
22 A. ForestCity Commercial Development hired JMA
23 as the executive architect, which under the executive
24 architect they were to do all the construction
25 documents. The design architect, which is Helkis

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1 Manfredi out of Boston, worked under JMA. And his
2 contract, JMA's contract, included all subtiers of
3 structural engineers, mechanical, electrical engineers.
4 It was all under their control.
5 Q. So did they act as part of their role to be
6 the owner's rep concerning certain items on the
7 project?
8 A. No.
9 Q. What was their role, then, in, I guess,
10 dealing with those subtiers? Like JBA was one of their
11 subtiers?
12 A. Right.
13 Q. So what was their role if they weren't acting
14 as owner's rep for certain approvals, or how did that
15 work?
16 A. I am not sure what you are asking.
17 Q. Like, for instance, if they asked for
18 submittals on certain items to make sure that what was
19 going to be provided by a contractor or subcontractor
20 was to contract, were they the one that would have the
21 ultimate approval or would it go all the way up to,
22 say, you as the owner's rep for approval?
23 A. How did that process work?
24 Q. Yeah, how did that process work?
25 A. Well, the process is that in the construction

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1 documents there is specifications that clearly indicate
2 what submittals are required in the project. The
3 subcontractor would prepare those specifications; you
4 know, product data, drawings, whatever was required
5 within the spec. It would first go to Whiting Turner.
6 They are required by our contract to review those
7 documents to make sure that they meet and fall within
8 the range of the contract documents. If they did, they
9 transmitted directly to JMA.
10 JMA would then distribute to whatever party
11 was required, either JBA or the structural engineer.
12 They would review them for the specification, to meet
13 all the specifications. If they did, they would stamp
14 them reviewed. Sometimes they stamped them reviewed as
15 noted, just because there might be some minor errors.
16 It would go back to JMA; JMA would review them. Then
17 if they were approved and stamped by them, then it
18 would go back to Whiting Turner. Then Whiting Turner
19 would in turn give copies back to the subcontractor.
20 Q. And down the line?
21 A. Down the line. The only time I ever got
22 involved on anything would be if the submittal was
23 totally out of range of the specifications.
24 Q. And do you recall any instances like that on
25 this project?

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A. No.
Q. So in the submittal process, then, JMA had the final approval of the submittals that were for the contract work?
A. Well, it's a combination. I require that the contractor approve them because he bid the job, and I am holding him responsible for, you know -- I am holding Whiting Turner responsible to build it within the specifications. So from my point of view, Whiting Turner's approval is just as important as the engineer's approval. They are all equal in the realm of responsibility.
Q. JMA, Whiting Turner?
A. JBA. Everyone is -- from the owner's point of view, they are all held --
Q. Equally responsible?
A. -- equally responsible.
Q. What was your involvement with the selection of subcontractors on the project?
A. What the process is that we go through is that we do an RFP. Whiting Turner did an RFP to at least three and mostly five subcontractors for each trade. We would review who they were bidding to in case we had people that we wanted to add; or if we had experiences with contractors we don't want to deal with

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anymore, then they would bid the project. We would as a team -- and that would include myself and our corporate -- we have an estimating group and we have other people in Cleveland that would review the scope of work, make sure that the scope was complete. We would evaluate the cost.
As a public company we do not have to select the lowest bidder, but we do select the lowest qualified bidder on the project. We would normally narrow that down to three. We had -- I mean, we had five to six on each trade because of the timing, and everybody wanted to work on the City Hall project. So we narrow it down to three.
We would bring them in and have an interview. We require -- ForestCity requires interviews, which means you bring your project managers, you bring your foremen. You bring anyone in upper level that would be on that site in. And we would have resumes. And we truly -- you know, it's a team effort. So we do a complete review.
At that time, we would go back and reconvene. We would say, okay, we like, you know, this person or that person. There was always qualifications of the initial bid, because someone would miss this or we would have questions. Then we would bring them back in

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for their final cost proposal.
At that point Whiting Turner would also have a major input and provide their selection to ForestCity for approval. And at that time we would review the final packages and make, you know, and say that is the contractor.
Q. That is a very owner-involved process.
A. ForestCity is a general contractor. We got away from it years ago because development goes up and down. But we are a very hands-on group and we do understand construction. And we have done it ourselves. So, you know, we pride ourselves on, you know, producing quality projects on time and on budget, or that are under budget, which this project was under budget.
Q. Oh, really? I wasn't aware of that.
So you were involved in obviously with the selection of Mojave --
A. Yes.
Q. -- as a subcontractor?
A. Along with other ForestCity entities -- or personnel.
Q. Okay. And do you go any further down the --
A. No.
Q. -- subtier?

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And when it comes to, I guess, management of payments, are you -- is the owner involved in managing payments to subcontractors?
A. No.
Q. So would you only then be approving payments to Whiting Turner, or how did the whole payment process work?
A. The payment process was also pretty detailed. It was detailed in development agreement of how it would be done. Once a month all the subcontractors would provide Whiting Turner with their billing information. I would review all the detail of Mojave's billing per se. Because it's billed on a percentage of completion, I would say yes or no, or this area is not what he is billing for or whatever; we would make corrections.
At that point, when that was corrected, we would sit down with the City staff and walk the project. They would also review the completion percentages, as well as the architect at the same time. When that was -- when everybody agreed to that package, then we would -- it would be signed by the architect. I would send that package to Cleveland, where the executive vice president was required to initial off to make sure, which he understood that I went through it

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1 pretty thoroughly.
2 And then the invoice would at that point be
3 put together -- that billing would be put together with
4 our invoice, for our fees and architectural fees or any
5 other fees we would have a combined invoice of
6 everyone's. That would be submitted to the City. The
7 City had a five-person signoff of that invoice.
8 At that time it would be sent to the trustee
9 for the project, which is I believe Bank of America.
10 They would at that time wire transfer funds to Whiting
11 Turner for their billing. They would wire transfer
12 ForestCity, which in turn we would wire transfer to our
13 third-party consultants.
14 Q. And that happened every month?
15 A. Every month.
16 Q. Wow. So how long would that process take for
17 the approval of a billing?
18 A. We were required to do that within ten days
19 in the development agreement. The City had -- as soon
20 as we completed our process, the City had ten days to
21 do it. We were following under the State statute of I
22 believe 45 days, which we always met.
23 Q. Wow. So I guess just to backtrack a tiny
24 bit, how exactly did the whole development -- because
25 it was privately owned property, but there was

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1 obviously a public component, I guess, in some way.
2 Can you describe to me how that sort of worked?
3 A. It was a private public partnership. The
4 funding came from Build American Bonds, and we were
5 able to construct and develop it for the City. And we
6 negotiated for land costs to do the trade of the two
7 parcels for the rest of it.
8 Q. Okay. So did you have a requirement for
9 Whiting Turner concerning the Disadvantaged Business
10 Entities percentage that was to be met or to try to be
11 met on the project?
12 A. That was -- during our negotiations with the
13 City, it was at a time when they were laying off
14 people. It was a tough time to sell a new City Hall.
15 The City had a lot of pressure on them from the
16 minority groups to say, If you are going to do this,
17 please get participation. The City does not have a
18 diversity program that they can enforce in the city.
19 So they came to us and said, We would like
20 you to try and get the participation. And we agreed as
21 a goal to try to get 15 percent. We included that goal
22 to Whiting Turner's contracts. And from there they
23 managed how that was obtained.
24 Q. So it was a city requirement essentially?
25 A. Well, it was a request, a strong request.

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1 Which we ended up getting over 20 percent at the end of
2 the day.
3 Q. So did you leave it to Whiting Turner, then,
4 to enforce it or encourage subcontractors to meet
5 certain goals?
6 A. During that first interview process before,
7 you know, we awarded contractors, we told them that it
8 was an important factor in selection, as well as for
9 selection purposes. They needed to come to the table
10 with some diversity.
11 Q. So were they required to identify like which
12 areas they would be, you know, meeting diversity with?
13 A. Early on, no. They basically came back and
14 said, We feel for this contract we can get 8 percent or
15 we can get 10 percent, you know. And we monitored
16 them. And most of the contractors met their goals.
17 And the ones that didn't actually we had them
18 contribute.
19 Q. How do you mean?
20 A. There was one contractor that poorly missed
21 his goal. And we had him -- well, he volunteered to --
22 in the minority publications take out ads for his
23 company, which was a benefit to the minority magazines
24 and to the minority groups. So we convinced them to do
25 things of that nature.

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1 Q. Okay. Was there -- I guess speaking of if
2 they didn't meet their goal, was there any consequence?
3 A. No. We would only ask that they do
4 something.
5 Q. Okay.
6 A. It was monitored on a monthly basis during
7 the pay application process.
8 Q. Because they were required to submit like the
9 certificates of DBE with their pay aps?
10 A. Yeah.
11 Q. So did you check that with Whiting Turner on
12 a monthly basis?
13 A. No. They provided ForestCity with a report.
14 It was based off costs of the project, costs of each
15 subcontractor. They provided us a breakdown and we
16 never audited.
17 Q. Then I guess in conjunction with payments,
18 did you require a certain waiver or releases from subs
19 and suppliers for Whiting Turner to get those, or did
20 you rely on Whiting Turner to make sure that they were
21 obtaining the proper releases?
22 A. We did get all releases.
23 Q. How did you monitor, I guess, what releases
24 you would need?
25 A. They had a -- Whiting Turner had a breakdown

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1 within the pay application for the previous month's
2 payments. We would get unconditionals, you know, for
3 that breakdown after the payment and they would provide
4 us conditional waivers with the initial payment. And
5 Whiting Turner had to do unconditionals and
6 conditionals to us for the project too.
7 Q. So did you have anyone in your offices
8 tracking, say, preliminary notices with releases, or
9 how did you --
10 A. Yes, that went to our corporate.
11 Q. So someone in Cleveland was handling that?
12 A. Yes. Michelle did -- Michelle Lagina did
13 that. She bugged me all the time. When am I getting
14 my releases?
15 Q. So did you rely on a combination of Whiting
16 Turner keeping track of which suppliers were supplying
17 to the projects under subcontractors, or did you have
18 your own tracking system?
19 A. We did not get conditionals or unconditionals
20 from suppliers. It was from the first tier. So we
21 would get -- like, Mojave would provide us conditionals
22 and unconditionals for --
23 Q. Its payments?
24 A. Yeah.
25 Q. Then you weren't tracking downstream subs and

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1 suppliers to Mojave?
2 A. No.
3 Q. Is there a reason why you weren't tracking
4 downstream?
5 A. Because that is not part of our standard
6 process.
7 Q. Did you rely on Whiting Turner to be tracking
8 downstream?
9 A. No, not in our contract it's not required.
10 Q. Were you concerned about lien claims from
11 people who might be unpaid under the subcontractor's
12 second, third tier suppliers or subs?
13 A. Concerned about it? It happens all the time.
14 Q. But, I mean, not concerned enough to require
15 that, I guess, releases be provided?
16 A. It hasn't been in our past history a major
17 concern for us on subtiers and suppliers.
18 Q. Okay. Can you tell me what the status of the
19 project is now?
20 A. Well, on February 14th of this year it's
21 going to be one year opened. We had substantial
22 completion on February 14th of 2012.
23 Q. Is the project totally closed out at this
24 point?
25 A. No.

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1 Q. And what is, I guess, left open?
2 A. The contract with Whiting Turner is still
3 open.
4 Q. Why is it open?
5 A. We were still negotiating some requests from
6 them specifically. We still have the Mojave contract
7 open because there is payments still within that --
8 their line items or schedule of values for the
9 generator, which I held after -- it was pretty much
10 paid out, but it was the completion portion that's
11 there.
12 Q. So you are holding money for the generator
13 from Whiting Turner?
14 A. From Mojave.
15 Q. From Mojave. Do you recall offhand how much
16 you are holding? Is it the full cost of the generator
17 line item?
18 A. No. I would be surprised if it's $30,000.
19 It's somewhere in there, I think.
20 Q. So the project has a permanent C of O?
21 A. Correct.
22 Q. Do you recall when you got that?
23 A. On February 14th.
24 Q. And then -- I mean, I am sure you generally
25 know that we are here because Cashman didn't get paid

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1 for the generator and the UPS equipment that it
2 supplied to the project.
3 A. I have been told that.
4 Q. So when we talk about the generator and UPS
5 equipment, it's kind of a package deal. You know what
6 I am referring to?
7 A. Yes.
8 Q. So what is the status of the generator, UPS
9 equipment on the project now?
10 A. Well, it's installed. I am being told that
11 it would operate in case of an emergency. I have not
12 witnessed that. Due to a lack of some programming on
13 the system itself, it does not give my client, the
14 City, the opportunity to go into a laptop on site or
15 off site and monitor the status of the generator
16 systems, which is critical. Most buildings are fully
17 automated and have a building management system. And
18 they sit up in an office when they need to check to
19 verify that the fuel is correct, the batteries are
20 operating, how that system is operating after it starts
21 up for RPMs and the technical things that need to be
22 monitored on these systems in case of an emergency, and
23 that is not available.
24 Q. And so as a result of that, were you taking
25 any action against Whiting Turner or Mojave or --

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A. We have been, you know, pushing to get resolution of that.
Q. Of that issue?
A. Of that issue.
Q. So does that leave any pending issues between you, your company, or ForestCity and the City of Las Vegas?
A. The City is aware of the situation. Being aware of it, they can manually go check things, which they are doing, but they are not very pleased about it. Because there is a fault on the generator panel.
Q. What do you mean? What does that mean?
A. It's a big red light that flashes.
Q. Like something is wrong?
A. Yeah.
(Exhibit 2 marked.)
BY MS. LLOYD:
Q. Can you take a look at this document? This was produced in conjunction with a subpoena that I issued to ForestCity. Do you recognize this document?
A. Yes. It's the one I provided. It's the last executed pay application to Whiting Turner.
Q. Okay. And then if you go to page Bates stamp 5, can you tell me what -- under the electrical, that first line item, it looks like there is a withholding.

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Am I reading that correctly?
A. Yeah, there was a retainage still held.
Q. It looks like -- is that 792 or --
A. Yeah, it's --
Q. In that range?
A. Yeah, I believe.
Q. Is that still being withheld?
A. Yes.
Q. From Whiting Turner?
A. From Mojave.
Q. Through Whiting Turner, I guess. So why is that being withheld?
A. We were closing out with Mojave. There were several change orders that they had asked for that did not get approved before this was done.
Q. So that line item is not related to the generator equipment?
A. No.
Q. Do you have a breakdown of what it is related to somewhere else?
A. Whiting Turner would. Whiting Turner held all the files for this project. I did not keep -- they are to provide me on disk the entire file system, which I have not received because we haven't closed out yet. So this is all I had available.

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Q. What type of file, like, recordkeeping software do they use?
A. I don't know.
Q. There wasn't a requirement for a specific program?
A. (Shakes head.)
Q. So that withholding on there is not related to the generator?
A. No.
Q. In speaking with Nancy from Whiting Turner, she seemed to indicate that it was related to the generator. Unless I misunderstood -- I guess I am trying to understand. Do you recall -- you are still holding it, or have you paid it out?
A. No.
Q. You are still holding it?
A. Until a project is completely closed out with a contractor, I do not release. I release 5 percent. That is 5 percent, I believe. And then column, I think it says 5 percent. I released under percentage retainage; it's 5 percent. Until a project is closed out, ForestCity's policy is we do not release all the retainage. And it's not specifically to any certain item.
Q. Well, that particular item shows both a

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balance to finish and a retainage amount. Those are two separate -- are those two separate -- because most of the items show basically no balance to finish, because they are all looking like they are complete and have been paid out, except for some show retention. So that's why I was trying to understand exactly what the status of the payment to Whiting Turner was on that particular item, because it looks like there is a balance to finish and then a retainage amount.
A. The balance to finish was listed of the contract change orders that we were still negotiating.
Q. Do you recall what those were about?
A. No.
Q. So did the owner withhold any funds from Whiting Turner and Mojave related to the generator beyond -- I think you identified 30,000?
A. That's all we did because it was a specific line item. Mojave's contract would have -- or pay application would have this cover sheet. And then they were required to give us schedule of values for every item of their scope of work, which entailed the electrical, audio, visual, I mean, the whole breakdown. It was a specific line item for the generator.
Q. So the generator line item was somewhere in the range of 800,000. But if it was, would you have

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1 withheld 800,000 or would you withhold an amount you
2 determined separately, or did you have a way of coming
3 up with what you were going to withhold?
4 A. The generator was already paid out before
5 this was brought to our attention. So I just refused
6 to pay any more on that line item.
7 Q. Okay. I guess what's the status of the
8 negotiations with Whiting Turner to close everything
9 out?
10 A. We are hoping to have it all closed out
11 within the next two weeks.
12 Q. Then what is your plan, I guess, in reference
13 to the operation of the generator equipment as far as,
14 you know, I guess sort of how that is going to work
15 with the City?
16 A. We have asked Whiting Turner to give us a
17 proposal on how they want to handle it. They have to
18 deal with their contractor.
19 Q. Have they come to you with any proposal yet?
20 A. No. They are in the -- they are just
21 following this process. That is all they can give us
22 the information.
23 Q. So is that item just going to remain open
24 until the litigation is complete?
25 A. Well, the lien has been bonded around. As

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1 far as the City, the lien has been bonded. But
2 operationalwise I am not sure. We have been trying to
3 get resolution of this, so that I can go down and talk
4 to the City to determine exactly what their position is
5 on this.
6 Q. Okay. Did you have any involvement in
7 choosing the generator system requirements?
8 A. No, I am not an electrical engineer.
9 Q. So was that a JMA role as part of their
10 design services?
11 A. Yes. JMA, JBA.
12 Q. Did you have any involvement in approving the
13 system that was proposed by Mojave to be used?
14 A. No.
15 Q. Would that just have been JMA and Whiting
16 Turner?
17 A. It's a combination of JMA, Whiting Turner and
18 JBA.
19 Q. So would you have seen any of the submittals
20 concerning any type of the equipment that was being
21 supplied to the project?
22 A. No, not on that specific item, no. The
23 specifications are performance specifications. It
24 requires -- it will provide at least three different
25 manufacturers of equipment, three to five, which is our

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1 requirement. We cannot single-source a product for
2 ForestCity. We are a public company. Any of those
3 manufacturers would have to meet the performance
4 specifications that the engineers design to. If
5 those -- that selection process, they are all equal in
6 the engineer's eyes as well as the owner's eyes, then
7 they can -- they are responsible for making sure that
8 system is complete.
9 (Exhibit 3 marked.)
10 BY MS. LLOYD:
11 Q. Take a look at this document. Have you seen
12 it before?
13 A. Yes.
14 Q. And when did you first see the lien?
15 A. I don't recall exactly when I saw the lien.
16 Q. Was it shortly after it was recorded?
17 A. At some point. Like I said, I can't give an
18 exact time.
19 Q. Did you -- it was forwarded to you from
20 Cleveland, your Cleveland offices?
21 A. Yes.
22 Q. And then what action did you take once you
23 were aware of the lien?
24 A. I took a copy over to Whiting Turner and
25 said, Address this issue.

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1 Q. And what did they say?
2 A. That is when it was bonded around.
3 Q. And so did you take any other action in
4 relation to the lien or the lien claim?
5 A. No.
6 Q. Did you have any discussions with Whiting
7 Turner about what happened or why there was a lien?
8 A. I asked what was going on and they said they
9 were trying to contact Mojave to find out.
10 Q. Did you do any inquiry beyond that
11 afterwards?
12 A. No.
13 MS. LLOYD: I don't think I have any other
14 questions.
15 MR. BOSCHEE: I think I have a couple.
16 EXAMINATION
17 BY MR. BOSCHEE:
18 Q. Looking at Exhibit 3, I understand that you
19 don't recall exactly what date that you saw that. Was
20 that the first time that you learned or ascertained of
21 the issue that has caused us to sit here today?
22 A. Well, this was not specific to the issues we
23 are sitting here today. It was a lien from Cashman for
24 equipment. That didn't explain why we are sitting here
25 today.

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1 Q. Well, what is your understanding of why we
2 are here today?
3 A. It's all hearsay.
4 Q. Okay.
5 MS. LLOYD: Depos are okay for hearsay.
6 THE WITNESS: When we started to commission
7 this building, we have a third-party commissioner on
8 the project. When they started to come out and test
9 equipment and do things, there was this flag that was
10 put on the generator system by our third-party
11 consultant concerning, you know, PCL or whatever. And
12 at that point it sat there and I kept asking, Is this
13 resolved? Is this resolved? And they said, No, not
14 yet, not yet. And finally it came out that -- how it
15 was told that there was an issue with Cashman and CAM.
16 BY MR. BOSCHEE:
17 Q. Yeah.
18 A. And they explained to me the situation. At
19 that point they didn't have all the detailed facts.
20 They just -- you know, they reassured ForestCity. It
21 was at an owner's meeting. We would have a meeting
22 prior to -- before the City came in. So in our meeting
23 they explained of the situation. And that they assured
24 us that we had final releases and things of that
25 nature. That put people somewhat to comfort and it was

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1 bonded around. And we didn't know how -- we knew we
2 needed to get the program so that we could complete our
3 commissioning and move forward with the City.
4 Q. Prior to seeing this lien and getting this
5 from your corporate office, did you have any actual
6 knowledge that Cashman Equipment Company was involved
7 in what we will call the project? Have you ever heard
8 of them before?
9 A. I have been here for 24 years. I have heard
10 of Cashman. But no, generators show up, equipment
11 shows up. Who supplies it, who is installing it, I am
12 just relying on Whiting Turner to make sure it's done.
13 Q. Okay. And I mean, sitting here right now, do
14 you have any actual knowledge of when or whether
15 Cashman Equipment Company actually supplied the
16 generators to the project?
17 A. No, I don't.
18 Q. And following up on that, do you have any
19 specific recollection of when the generators were
20 delivered to the project?
21 A. Not specifically, no.
22 Q. Is it fair to say you just know that they got
23 there and it got put in and the construction kept
24 flowing?
25 A. Correct.

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1 Q. Now, I had another question from my notes in
2 talking to you. Do you recall -- I believe there was a
3 pending log that you reviewed from time to time; is
4 that correct?
5 A. Every day.
6 Q. I didn't want to hold your feet to the fire
7 on the everyday thing, but I knew it was pretty much
8 every day. Do you recall seeing anything in the
9 pending log about change orders with respect to the
10 generators?
11 A. There was none.
12 Q. Okay. And again, just to clarify, your
13 company and you personally had played no part in the --
14 I guess we will call it the screening process for the
15 disadvantaged business entities that were used on this
16 project, did you?
17 A. No.
18 Q. And with respect to -- with respect to JMA's
19 involvement, you talked to Ms. Lloyd about this a
20 little bit earlier. Is it fair to say that their
21 primary job was to deal with the design and the design
22 changes once the project got going; is that fair?
23 A. Yes.
24 MR. BOSCHEE: I don't think I have anything
25 further.

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1 MS. LLOYD: I have a follow-up.
2 FURTHER EXAMINATION
3 BY MS. LLOYD:
4 Q. What is a pending log?
5 A. ForestCity requires all of our contractors to
6 keep track of any possible change or foreseeable change
7 and project a cost that could impact the project. We
8 don't like surprises. If you know you have a
9 problem -- If we know we have a problem out there with
10 some steel, we would indicate that on this pending log
11 and we would project a cost. So every month we knew
12 what our exposure was to the project in any changes.
13 It might end up being zero.
14 The City might come and say, Dave, I want you
15 to redo these floor plans, which they did. We would
16 put that on there and we would project a cost involved
17 in that. So that at the end of the day, every month we
18 knew what our true cost exposure was on a monthly basis
19 for finance purposes.
20 Q. Would you see, like, a pending cost if
21 Whiting Turner determined that, say, a sub missed
22 something and didn't bid it properly so they were going
23 to essentially put the cost back onto the sub? Would
24 they have notified you of something like that?
25 A. No.

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1 Q. Or only if it was going to be an
2 owner-impacted change or potential cost?
3 A. It tracked -- if Whiting Turner missed
4 something in the contract itself, that item would be
5 put -- it would be tracked to Whiting Turner. If
6 ForestCity asked for a change, it would be listed as
7 ForestCity. And if the City made a change, it would be
8 City. Beyond that, nothing else went on that log.
9 Q. So it was only if, say, Whiting Turner was
10 going to ask for more money --
11 A. Right.
12 Q. -- related to a certain item.
13 So if they made a determination that, say,
14 Mojave missed something and it was in the drawings and
15 they should have included it and it wasn't going to be
16 a change to the owner, you wouldn't be notified --
17 A. No, I wasn't.
18 Q. -- an issue like that.
19 Talking about the generator, I guess,
20 delivery. Do you recall seeing the generators be
21 delivered?
22 A. I just saw them sitting there one day.
23 Q. Before they were in the box or however they
24 are housed in the equipment room, or after they were
25 already in the equipment room?

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1 A. After they were already in the -- it's a wall
2 enclosure.
3 Q. Okay. Do you recall meeting Shane Norman of
4 Cashman Equipment Company?
5 A. His name doesn't sound familiar.
6 Q. It would have been around the time of the
7 lien, sort of the dispute concerning the payment
8 issues. He recalled, I guess visiting the site and
9 meeting you, but I don't know if you had recalled.
10 A. I met so many people.
11 Q. No, I am sure. Especially every day.
12 A. The name doesn't sound familiar, but I am not
13 saying I didn't meet him. I am just saying I don't
14 recall meeting him.
15 Q. But you don't recall having a conversation
16 concerning this bounced check and the issue with the
17 nonpayment of the generator?
18 A. I don't recall that.
19 MS. LLOYD: Okay. That is all I have.
20 (Thereupon, the deposition
21 concluded at 4:00 p.m.)
22
23
24
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, David Phillips, deponent herein, do hereby
certify and declare the within and foregoing
16 transcription to be my deposition in said action; that
I have read, corrected and do hereby affix my signature
17 to said deposition under penalty of perjury.
18
DAVID PHILLIPS, Deponent
19
20
21
22
23
24
25

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1 CERTIFICATE OF REPORTER
2 STATE OF NEVADA)
) ss:
3 COUNTY OF CLARK)
4 I, Christy L. DeJonker, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
5 certify: That I reported the deposition of David
Phillips, commencing on Thursday, January 10, 2012, at
6 3:00 p.m.
7 That prior to being deposed, the witness was
duly sworn by me to testify to the truth. That I
8 thereafter transcribed my said shorthand notes into
typewriting and that the typewritten transcript is a
9 complete, true and accurate transcription of my said
shorthand notes. That review of the transcript was
10 requested.
11 I further certify that I am not a relative,
employee or independent contractor of counsel of any of
12 the parties; nor a relative, employee or independent
contractor of the parties involved in said action; nor
13 a person financially interested in the action; nor do I
have any other relationship with any of the parties or
14 with counsel of any of the parties involved in the
action that may reasonably cause my impartiality to be
15 questioned.
16 IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
17 14th day of January, 2013.
18
19
20
CHRISTY LYN DeJONKER, CCR NO. 691
21
22
23
24
25

EXHIBIT 18

Mojave Electric
3755 W. Hacienda Avenue
Las Vegas, Nevada 89118-1755
(702) 798-2970 - FAX (702) 798-3740

MATERIAL RELEASE ORDER

DATE: August 11, 2010

TO: CAM CONSULTING C/O CASHMAN
ATTN: ANGELO CARVALHO / KEITH LOZE
FAX #:

RE: NEW CITY HALL
PO #: 767810-GEN-10010
From: Julie Vavrek

PER APPROVED SUBMITTALS FOR THE ABOVE PROJECT, PLEASE MAKE ANY CORRECTIONS NOTED AND RELEASE THE ITEMS AS LISTED BELOW.

PLEASE RELEASE THE FOLLOWING:

LINE ITEM	QTY	TYPE	DESCRIPTION
1	1	GEN#1	900KW, 480/277V, 4P, 4W, N3R Enclosed Generator
2	1	GEN# 1&2	Shunt Trip Station
3	1	GEN#2	900KW, 480/277V, 4P, 4W, N3R Enclosed Generator
4	1	PSG	3000A, 480/277V, 3P, 4W, N3R Paralleling Switchgear
5	1	ATS-X2	800A, 480/277V, 4P, 4W, N3R Automatic Transfer Switch
6	1	ATS-E1	1200A, 480/277V, 4P, 4W, N3R Automatic Transfer Switch
7	1	ATS-X1	1000A, 480/277V, 4P, 4W, N3R Automatic Transfer Switch
8	1	ATS#1	Remote Annunicator

Please contact us ahead of time to make sure the site is prepped. Thank you!

FOR IMMEDIATE RELEASE TO MOJAVE JOBSITE
518 South First Street Las Vegas, NV 89101

1) CALL MOJAVE ELECTRIC 24 HRS PRIOR TO DELIVERIES (WHEN APPLIES) NOTIFY Chris (702) 798-2970
2) MARK ALL CARTONS, ETC. WITH JOB NAME, PO #, ITEM # AND TYPE !!
3) MAKE SURE ALL ITEMS COMPLY WITH PLANS, SPECS AND ADDENDA !!
4) DOUBLE CHECK ALL VOLTAGES WITH THIS OFFICE !!

THANK YOU

BY: Julie Vavrek
JULIE VAVREK PM ASSISTANT

ORIGINAL: SUPPLIER *COPY: D.N., L.P.O. FILE (RED FOLDER, PM ASSISTANTS*

Mojave Electric
3756 W. Hacienda Avenue
Las Vegas, Nevada 89118-1755
(702) 798-2970 - FAX (702) 798-3740

MATERIAL RELEASE ORDER

DATE: August 11, 2010

TO: CAM CONSULTING C/O CASHMAN J
ATTN: ANGELO CARVALHO / KEITH LOZE
FAX #:

RE: NEW CITY HALL
PO #: 767810-UPS-10011
From: Julie Vavrek

PER APPROVED SUBMITTALS FOR THE ABOVE PROJECT, PLEASE MAKE ANY CORRECTIONS NOTED AND RELEASE THE ITEMS AS LISTED BELOW.

PLEASE RELEASE THE FOLLOWING:

LINE ITEM	QTY	TYPE	DESCRIPTION
1	1		400 KW, 277/480V 3 PHASE WITH BATTERIES AS SHOWN
			ON CONTRACT DRAWINGS DATED 11/05/09
			MGE Model # EPS6000
2	1		Shunt Trip Station

Please contact us ahead of time to make sure the site is prepped. Thank you!

FOR IMMEDIATE RELEASE TO MOJAVE JOBSITE
518 South First Street Las Vegas, NV 89101

1) CALL MOJAVE ELECTRIC 24 HRS PRIOR TO DELIVERIES (WHEN APPLIES) NOTIFY Chris (702) 798-2970
2) MARK ALL CARTONS, ETC. WITH JOB NAME, PO #, ITEM # AND TYPE !!
3) MAKE SURE ALL ITEMS COMPLY WITH PLANS, SPECS AND ADDENDA !!
4) DOUBLE CHECK ALL VOLTAGES WITH THIS OFFICE !!

THANK YOU

BY: Julie Vavrek
JULIE VAVREK PM ASSISTANT

ORIGINAL: SUPPLIER *COPY: D.N., L.P.O. FILE (RED FOLDER, PM ASSISTANTS*

EXHIBIT 19

STRAIGHT BILL OF LADING—SHORT FORM ORIGINAL—NOT NEGOTIABLE

Shipper's No.

Carrier's Name RST

Carrier's No.

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading,

at 3394 Hulda (Date) 1-17-11 FROM JBI Inc

Consigned To Cashman Equip / LV City Hall

Destination 818 South Street 1st St City

County State Zip

Route Nev Oregon NV Delivery Address Equip

Delivering Carrier Car or Vehicle Initials and No.

Collect on Delivery $ Kime Cashman And Remit to

702-326-6596 Street City State

No. Packages	HM	Kind of Packaging, Description of Articles, Special Marks, and Exceptions	*Weight (Subject to Correction)	Class or Rate	Check Column
1		Eng / Hand Truck			
		#-42226-2			
		Puget Sound Equip			
1		wheel			
2		pallets parts			
		Chris Myers			
		Cell 702-205-2311			

C.O.D. Charge to Collect by ☐ Shipper ☐ Consignee

Shipper, Per Agent

Per

1

CASH007

JA 00001889

THIS SHIPPING ORDER

Shipper's No.

Carrier's Name: RST

Carrier's No.

20394 Rotas (Date) 1-7-11 FROM IBLLC

Consigned TO Eisenman Equip / LV City Hall

Destination 51 S. South Street SE City

County State Zip

Point Las Vegas NV 89101 Delivery Address

Delivering Carrier Car or Vehicle Initials and No.

Collect on Delivery $ Ken O Carpenter And Remit to

702-32[illegible]6996

No. Packages	HM	Description of Articles, Special Marks, and Exceptions	Weight (Subject to Correction)	Rate	Check Column
1		Eisenman Equipment Tank			
		# 42706-1			
		Dest - Las Vegas City Hall			
		Driver			
1		Spare parts			
		Chris Mauer - 702-205-3311			

C. O. D. Charges to Pay Shipper Consignee

Agent must detach and retain this Shipping Order and attach it to all copies of bill of lading.

CASH008

JA 0000189D

CASHMAN POWER SOLUTIONS

CASHMAN POWER SOLUTIONS
3800 SAINT ROSE PARKWAY
HENDERSON, NV 89052
PHONE: (702) 649-0777
FAX: (702) 639-6090

To	Mojave Electric	Date	November 16, 2011
		PO No.	
		Material	
Att		Project	Las Vegas City Hall

IF ENCLOSURES ARE NOT AS NOTED, PLEASE ADVISE IMMEDIATELY.

- [ ] Submittal / Resubmittal
- [ ] Product Specification Sheets / Brochures
- [ ] Specifications / Plans
- [ ] Operation & Maintenance Manuals
- [ ] Shop Drawings-Wiring Diagrams
- [ ] Other

No of Copies	Manufacturer	Description
2	CAT	C32 Generators S/N JSJ01016, JSJ01013

- [ ] As Requested
- [ ] Review / Comment / Clarification
- [ ] Information / Other

Additional Notes and Comments

Received By: [signature] Title: Project Manager

Date Received: 1-20-11

Submitted By: _____ Date: _____

CASH000

EXHIBIT 20

Submittal Transmittal

Project Name : Las Vegas New City Hall
Project Number : 12600
Package Name: Engine Generator Systems Parts List & Installation Manual

WHITING-TURNER

Mojave Electric, Inc.
3755 W. Hacienda Ave.
Las Vegas, NV 89118
Tel: 702-798-2970
Fax: 702-798-0547

The Whiting-Turner Contracting Company
6720 Via Austi Parkway
Suite 300
Las Vegas, NV 89119
Tel: 702-650-0700
Fax: 702-650-2650

Attn: Chris Meiers
Delivered Via:

From: Elliott Lloyd
Tracking Number:

Spec Section	Submittal Number	Title	Type	Copies	Sent Date	Due Date	Action
263213	0766	[illegible]	Product Data	2	09/21/2010	09/21/2010	Approved

Subcontractor : Mojave Electric, Inc.

Contractor Comments:

Transmittal Remarks:

Package Reviewers

To Company	To:	From	Date Rcv'd	Date Sent	Action Taken
JMA Architects	Robert Messiana	Elliott Lloyd	09/16/2010	09/07/2010	Approved
Mojave Electric, Inc.	Chris Meiers	Elliott Lloyd	09/16/2010	09/21/2010	Approved

A/E Remarks
:

Copies To:

Electronically Filed
04/02/2013 04:00:41 PM

CLERK OF THE COURT

SUPP
BRIAN W. BOSCHEE, ESQ.
Nevada Bar No. 7612
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Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

DEFENDANTS' SUPPLEMENT TO MOTION TO EXPUNGE LIEN AND OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AS TO LIEN AND BOND CLAIMS

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

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, a surety ("Travelers"), and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ("Fidelity") (collectively "Counterclaimants" or "Defendants"), by and through their attorneys of record, Brian W. Boschee, Esq. of the law firm of COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON, and hereby submit the following Supplement to their Motion to Expunge Mechanic's Lien and Opposition to Motion for Summary Judgment as to Lien and Bond Claims (the Supplement").

This Supplement is supported by the following Memorandum of Points and Authorities below, the pleadings and papers on file and such oral argument as may be adduced at a hearing on this matter.

POINTS AND AUTHORITIES

I. INTRODUCTION

In November of 2012, the Court permitted Plaintiff Cashman Equipment Company ("Cashman" or "Plaintiff")) additional time to conduct limited discovery with respect to whether or not the owners of the Project (defined below) received proper notice of Cashman's right to lien pursuant to NRS §108.245. After conducting discovery for several months, this is what Cashman has "supplemented" its prior briefing with:

- The owner's representative, David Phillips, testified under oath that he never had any idea Cashman was working on the Project and never received any pre-lien notice from Cashman.
- Cashman has produced some type of mailing slip purported showing that the pre-lien notice was mailed to the owners in Cleveland, OH, but strangely, this "certified mailing" does not show a receipt signed by any owners' representative in Cleveland. Obtaining a return receipt is the entire point of sending something via certified mail, and Cashman has no such receipt showing that the owners ever actually received the pre-lien notice.
- Cashman has nothing to refute the sworn statements from Forest City that they provided all of the documents that they had in response to Cashman's subpoena in

November of 2012. Notably, the pre-lien notice was not included with those documents.

- Cashman has provided an unsupported statement that it still had personnel on the Project as of May 23, 2011. Cashman represents that this statement is supported by Exhibit "1" of their Supplement, but Exhibit "1" has nothing attached other than a note saying "To Be Supplemented." The last invoice Cashman sent with respect to a minor amount of work and materials provided as dated March 23, 2011. There is absolutely no evidence in this case that Cashman did **any** work or provided **any** materials after the date of the last invoice.
- Cashman has provided another "certified" mailing slip dated April 19, 2010, but there is nothing attached to that mailing slip to show what was purportedly sent to the owners in Ohio **eight months** prior to Cashman actually delivering any equipment to the site. Further, if the document attached to the Plaintiff's Supplement as Exhibit "9" is the only pre-lien that was sent in 2010, it is woefully deficient in that it does not describe in any detail what work Cashman is allegedly going to perform, nor does it provide the value of the alleged work. Also, like the other "certified" mailing evidence Cashman has presented, Cashman also strangely has no receipt from the owners for this purported mailing.

So, after five months of taking additional depositions and trying to obtain additional discovery, the Plaintiff **still** has no actual evidence that notice of its work was ever received by the Owner or the Owner's representative on the Project. Instead, having been told by the Owner's representative that he had no idea that Cashman was on this Project, and also having been provided with sworn statements from the Owners articulating that they had provided what they had in response to Cashman's subpoena (said document notably **not** including any pre-lien notices), Cashman has attempted to circumvent the Court's requirement that Cashman provide evidence of actual Owner's notice that Cashman was working on the Project. Instead of providing actual evidence, Cashman is relying on a third-party mailing slip, purportedly claiming to have sent the pre-lien notice via "certified mail," that contains no proof of receipt, no proof of

service, and that contradicts sworn statements and sworn testimony of the Owner's representative.

Cashman then attempts to defeat its deficiency with respect to both the lien and the payment bond by making an unsupported, unsubstantiated claim that Cashman representatives were on the Project as late as May 23, 2011. Cashman has no logs of employees on site that late into 2011; May 23 is almost a month ***after*** CAM Consulting, Inc. ("CAM") tendered the check containing insufficient funds to Cashman, and it directly refutes testimony obtained from both of Cashman's persons most knowledgeable that Cashman's employees were likely off the Project by the time of the last invoice.

Cashman has provided this Court with no new evidence demonstrating that it complied with both its statutory obligations and this Court's requirement that Cashman demonstrate actual notice of its work to the Owner of the Project. Further, Cashman has provided no new evidence that it provided notice to Whiting within 90 days of completion of its work on the Project. While Cashman now claims to have been working on the Project as of May 23, 2011, it provided this Court with no evidence to support that claim. Thus, given that the Plaintiff has provided no new evidence to defeat the Defendants' Motion to Expunge the Lien or to support their Motion for Summary Judgment on both the lien and the payment bond, the Court should, at this stage, expunge the lien and hold that Plaintiff is not entitled to recovery under the payment bond.

II. STATEMENT OF FACTS

Most of the facts of the case are not in dispute. Mojave entered into a purchase order ("Purchase Order") dated April 23, 2010 with CAM c/o Cashman Equipment to purchase the necessary generator equipment for the City Hall Project in Las Vegas (the "Project"). To that end, there were two agreements, one between Mojave and CAM, and the other between CAM and Cashman. Cashman now claims that it sent a pre-lien notice to the owners on April 29, 2010 and another on December 7, 2010. See Exhibit "9" and Exhibit "11" to the Motion.

However, as of April 29, 2010, Cashman had not supplied any materials or labor to the City and would not supply anything to the Project for another eight months. By Plaintiff's own admission, Cashman began delivery of materials in "late December of 2010," which also would

have been after the service of the purported second pre-lien notice dated December 7, 2010. Plaintiff now claims that it "started to perform work" in April of 2010, but Cashman has provided no evidence that it did anything prior to December of 2010. Additionally, the pre-lien notices attached to Plaintiff's Motion as Exhibit "9" and Exhibit "11" contain no receipts of acceptance by any of the parties it was purportedly sent to, nor do they contain any specifics as to what Cashman was going to provide or the amount of the work Cashman was going to perform. Thus, given that these alleged notices were sent well before any work was performed and have no proof of service or description of the work performed, they are simply not valid pre-lien notices as required by NRS §108.245.

However, the parties also do not dispute that Cashman provided ***most*** of the materials and labor required for the generators per its agreement with CAM. Per the testimony of Cashman's key witness in this case, Keith Lozeau, which the Plaintiff now apparently disputes without any evidence to the contrary, Cashman began delivery and installation in late December of 2010 and concluded sometime in February of 2011. See Deposition of Keith Lozeau, P. 59, ll. 5-15, P.60, ll. 1-15, attached hereto as **Exhibit "A"** and incorporated by reference. Cashman did **not** complete the delivery and installation, as the Court is now well-aware based upon the extensive briefing with respect to the PLC Codes.

After Cashman provided ***most*** of the equipment and work that was invoiced by CAM, it is also undisputed that Mojave tendered full payment to CAM, as required by its contract with CAM, and that CAM then provided Cashman with a post-dated check, which Cashman accepted. Cashman then provided an unconditional, final lien release with respect to the materials and labor it had provided to the Project. CAM's check was returned for insufficient funds, and that essentially started this entire process. Cashman liened the Property, despite already providing an unconditional lien release, Cashman initiated this action, has now brought three sureties, the general contractor, every owner of the Property since the Project started, and Mojave into a dispute that should really be between Cashman and CAM.

Cashman also made a claim on Whiting's payment bond on June 24, 2011, which was more than 90 days after the date of the last invoice Cashman sent with respect to the work

performed (and thus, clearly more than 90 days after said work was completed). Much like the notice to the Owner, the Court has expressed concern about whether this notice to Whiting was timely. So, after taking several months to conduct discovery, Cashman's response to this concern is to state, without any supporting evidence and in contradiction to its own documents and witnesses, that there were still Cashman personnel at the Project until May 23, 2011. What were these employees doing? Why was this work not invoiced? More importantly, why was Cashman still working on the Project after CAM's check was returned?! Cashman has been very clear in this dispute that it would not complete the work on the Project, namely supply and installation of the PLC Codes, until it was paid, yet now it comes to this Court with an unsupported allegation that it had personnel still on the Project **after** it realized that CAM was not able to pay for the materials and labor. In the absence of actual evidence supporting this new assertion, the Court should give it no merit.

So, Cashman has come back to this Court seeking summary judgment despite the fact that: (a) it has no evidence that it complied with the notice requirements contained in NRS §108.245 with respect to the Owner, which is precisely what this Court wanted to see when it allowed more time for discovery in November of 2012; (b) it has no evidence supporting the new claim that it "started to perform work" in April of 2010, particularly when all of the evidence in the case shows that Cashman's "work" was performed beginning in December of 2010; and (c) it has no evidence that its employees were still on the Project as of May 23, 2011, and thus no evidence that it complied with the 90-day requirement articulated directly in the bond (which is thoroughly discussed in the underlying Motion and Opposition). Thus, absent that evidence, the lien recorded against the Property must be expunged pursuant to NRS §108.245, and Cashman should not be granted summary judgment as to either the lien or the payment bond.

III. LEGAL ARGUMENT

A. CASHMAN'S LIEN MUST BE EXPUNGED FOR MULTIPLE DEFICIENCIES UNDER NRS §108.245

Cashman now claims to have served the Owners of the Project, not just once but three separate times, with pre-lien notices with respect to the work performed. However, the pre-lien

notices attached to Cashman's supplement contain several problems, all of them fatal to the notice requirements of NRS §108.245. First, a quick review of the plain language and requirements of NRS §108.245 is insightful with respect to the deficiencies in the notices purportedly sent by Cashman and attached to the Supplement. The statute provides:

> **NRS 108.245 Notice of right to lien: Form; service; effect.**
>
> 1. Except as otherwise provided in subsection 5, every lien claimant, other than one who performs only labor, who claims the benefit of NRS 108.221 to 108.246, inclusive, shall, ***at any time after the first delivery of material or performance of work*** or services under a contract, ***deliver in person or by certified mail to the owner of the property*** a notice of right to lien in substantially the following form:
>
> NOTICE OF RIGHT TO LIEN
>
> To:.....
>
> (Owner's name and address)
>
> The undersigned notifies you that he or she has supplied materials or equipment or performed work or services as follows:
>
> (***General description of materials, equipment, work or services***)
>
> for improvement of property identified as (property description or street address) under contract with (general contractor or subcontractor). This is not a notice that the undersigned has not been or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, record a notice of lien as provided by law against the property if the undersigned is not paid.
>
> (Claimant)
>
> A subcontractor or equipment or material supplier who gives such a notice must also deliver in person or send by certified mail a copy of the notice to the prime contractor for information only. The failure by a subcontractor to deliver the notice to the prime contractor is a ground for disciplinary proceedings against the subcontractor under chapter 624 of NRS but does not invalidate the notice to the owner.
>
> 2. Such a notice does not constitute a lien or give actual or constructive notice of a lien for any purpose.
>
> 3. No lien for materials or equipment furnished or for work or services performed, except labor, may be perfected or enforced pursuant to NRS 108.221 to 108.246, inclusive, unless the notice has been given.
>
> 4. The notice need not be verified, sworn to or acknowledged.

> 5. A prime contractor or other person who contracts directly with an owner or sells materials directly to an owner is not required to give notice pursuant to this section.
>
> 6. A lien claimant who is required by this section to give a notice of right to lien to an owner and 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.

NRS §108.245(emphasis added).

The first requirement is that the pre-lien notice must be sent within 31 days ***after the first delivery of material or performance of work.*** We know, from Cashman's documents and testimony, that the first delivery of material did not occur until late December of 2010. So, the pre-lien notices that were allegedly sent in April and early December of 2010 clearly do not comply with the "delivery of material" portion of the statutory requirement. Further, the last pre-lien notice was purportedly sent on April 29, 2011, which is more than 31 days after Cashman acknowledges it delivered material to the Project (January 19, 2011, according to the Supplement on Page 11), and more than 31 days after the last invoice, March 25, 2011. So, from a pure timing standpoint, the purported pre-lien notices that Cashman now claims were sent, with no proof of receipt despite allegedly being certified mail, were either sent too soon or too late with respect to delivery of the material.

Cashman attempts to avoid this issue by claiming that it "started work" in April of 2010, despite not delivering materials to the Project until late December (again, per Cashman's Supplement on Page 11). In this instance, the definition of "work" from NRS Chapter 108 is helpful. First, "work" is defined as:

> **NRS 108.22184 "Work" defined.** "Work" means the planning, design, geotechnical and environmental investigations, surveying, labor and services provided by a lien claimant for the construction, alteration or repair of any improvement, property or work of improvement whether the work is completed or partially completed.

NRS §108.22184.

///

In this case, Cashman has provided absolutely no evidence that it provided any "work" prior to late December of 2010. On April 23, 2010, Mojave issued the purchase orders for purchase of the materials to be eventually supplied by Cashman. There was no "planning" required by Cashman, nor was there any "labor" or "services" required of Cashman at that point. Literally, Mojave had put Cashman on notice that it would be purchasing equipment to be ultimately supplied by Cashman, equipment that, by Cashman's own admission, was not supplied or installed until "late December" of 2010. See Supplement, P.11. So, even giving Cashman the benefit of the doubt that these pre-lien notices were properly served, which they clearly were not, the notices would be defective because they were not timely.

Another material defect in the purported pre-lien notices that Cashman allegedly sent out is that it provides no proof of service showing that the mailings were ever actually received. The entire point of providing Cashman with additional time for discovery was to allow Cashman to conduct discovery as to whether the Owners ever got notice that Cashman was providing work to the Project. NRS §108.245 is clear as to how that notice must be accomplished. The pre-lien notice must be "***deliver in person or by certified mail to the owner of the property.***" See NRS §108.245.

There is no dispute that the pre-lien notices were not delivered in person to the owner of the Property, even though the owner's representative, David Phillips, was at the Project almost every day, per his testimony. See Deposition of David Phillips, attached hereto as **Exhibit "B"** and incorporated by reference, P. 9, ll. 5-7; P.35, 13-17. Instead, Cashman purported sent the pre-lien notices first to Forest City Enterprises, Inc. in April of 2010, then to GH Las Vegas, LLC in December of 2010, and finally to PQ Las Vegas, LLC in April of 2011. Cashman claims that these notices were sent by "certified mail" in the Supplement, but Cashman has not provided this Court with the very thing that distinguishes certified mail from regular U.S. Mail, a receipt of acceptance by any of the Owners. The reason that the statute specifically calls for these types of notices to be sent via certified mail is for a situation like this. If something is actually sent via certified mail, then there is a receipt of acceptance and a trier of fact does not need to guess as to whether such a vital, statutorily-required notice, was actually received by the owner of a

property. Instead, there ***should be*** a receipt showing that it was accepted.

Cashman has no such receipt for any of the pre-lien notices that were purportedly sent to the Owners. Further, when Cashman subpoenaed the Owners, the Owners provided the documents that they had and provided sworn statements that those were the **only** documents that they had. True and correct copies of the Verifications of PQ Las Vegas, LLC and FC/LW Las Vegas, LLC are attached hereto as **Exhibit "C" and Exhibit "D"**. So, while Cashman contends that the defective pre-lien notices were sent to the Owners three separate times, Cashman can provide no evidence that these notices were ever received (primarily in the form of a certified mail receipt), nor can Cashman demonstrate that the Owner's representative was personally served with any pre-lien notice.[1] So, despite being given several months by this Court to establish actual notice to the Owners of Cashman's work on the Project, Cashman has come back to this Court with no more evidence than it had before. Thus, the notice requirement of NRS §108.245 has clearly not been met and the lien must be expunged.

While the two deficiencies noted above should be fatal to Cashman's lien claim, it should also be noted that the language of the pre-lien notices themselves do not comply with the requirements articulated in NRS §108.245. The form memorialized in the statute clearly requires that the potential lien claimant provide at least a general description of the work or materials it is providing for a given project that are subject to the pre-lien notice. The reason for this requirement is pretty straight-forward – to make sure that all of the parties have some idea what the lien claimant is going to provide and, more importantly, the amount of work or materials the lien claimant is going to provide.

As the Court can plainly see from the three pre-liens that were allegedly sent, Cashman provides absolutely no description of what it is actually providing for the Project, other than the standard "equipment for the improvement of the property" that is also cited in the statute **before** the portion where the subcontractor is supposed to provide a general description of the work or materials it is providing. There is no mention of the monetary amount of the work and materials

[1] In his deposition, David Phillips testified that he did not even know that Cashman supplied material for the Project until he found out about the lien.

Cashman was to provide (even though that number was set by the purchase orders), or what portion of the Project these pre-lien notices applied to. Cashman supplied equipment for other subcontractors on other portions of the Project, notably Stetson Electric for the underground work, and these pre-liens could have applied to that work. Absent **some** explanation as to what work or what monetary amount the pre-lien notices related to on the Project, even if the Court were to give Cashman the benefit of the doubt as to every other deficiency identified with respect to the pre-lien notices and the service, the Owners would **still** not have actual notice of what Cashman was supplying to the Project from the notices attached to the Supplement.

Further, the April and December notices identify Mojave as the "Customer contracting for said Equipment and Labor." See Exhibit "9" and Exhibit "11" to Plaintiff's Supplement. There is no dispute between the parties at this point that Cashman did **not** have a contract with Mojave with respect to the equipment provided to the Project. Mojave was not the "customer" or the "contracting" party with Cashman, yet this was the information purportedly sent with the first two pre-lien notices. Again, had the Owners actually received these pre-lien notices, they would have had no idea what work Cashman was giving them notice of, and they would have had the impression that Cashman had contracted with Mojave, which it did not.

So, the pre-lien notices provided by Cashman are defective on their face, were never properly served on the Owners as required by NRS §108.245, and even had they been properly sent via certified mail, the notices would have been untimely because two were sent before Cashman began its "work" and the last was sent more than 31 days after the last invoice date. Thus, having failed to comply with NRS §108.245, the Defendants' Motion to Expunge Cashman's mechanic's lien must be granted and Cashman's clearly invalid lien must be expunged as well.

B. CASHMAN'S CLAIM ON WHITING'S PAYMENT BOND SHOULD BE DENIED AS CASHMAN STILL HAS NO EVIDENCE THAT IT COMPLIED WITH THE 90-DAY SERVICE REQUIREMENT

Faced with a similar notice issue as it has with its mechanic's lien, Cashman has attempted to "cure" its failure to provide notice to Whiting within 90 day, as required by Section 4.2 of the payment bond and briefed extensively in the prior pleadings, by now making the

unsupported, unsubstantiated claim that Cashman personnel were on the Project as late as May 23, 2011. Cashman does not have a single piece of evidence supporting this new theory that it was still working on the Project on May 23, 2011. In fact, the evidence and testimony in this case indicates otherwise.

The last invoice for this Project from Cashman is dated March 25, 2011, and that invoice is for $329.71 or warranty materials provided prior to the invoice date. Further, Keith Lozeau, designated by Cashman as their person most knowledgeable as to this particular issue, testified that all of the equipment had been delivered by the date of the first 2 invoices (February 1), and that other than someone coming to check the installation (which he testified happened "shortly after" delivery), other than the delivery of some lug bolts shortly prior to March 25, 2011 (the $329.71 charge), everything was done. See **Exhibit "A"**, P. 59, ll. 5-15, P.60, ll. 1-15.

Additionally, a cursory review of the invoices from February 1 along with the nominal invoice from March 25, clearly shows that these invoices add up to the exact amount of the lien and payment Cashman is seeking in this case, $755,893.89. Cashman has taken the position consistently throughout this litigation that $755,893.89 is the amount owed to it for the work it performed, and that amount was completely invoiced as of March 25, 2011 (and 99% of it was invoiced as of February 1, 2011).

Based upon the evidence and testimony, Cashman is clearly trying to have its cake and eat it too. Cashman had delivered, and apparently installed, all of the equipment that is subject to its lien and its bond claims well prior to March 25, 2011. Putting aside the fact that Cashman clearly had not finished the work, because the PLC Codes are still not installed, everything that Cashman did supply for the Project was over as of March 25, 2011. Further, in reality, all of the work, but for delivery of some minor lug bolts, was done by February 1, 2011. Cashman all but acknowledged this fact in its final pre-lien notice when it represented that the work performed occurred on "February 1, 2011." See Exhbiit "13" to Plaintiff's Supplement.

That is what the evidence and the testimony of Cashman's person most knowledgeable demonstrates. In support of the new claim that Cashman was still performing work, and again, "work" as defined above by NRS §108.22184 as opposed to some warranty work Cashman may

have had to perform, Cashman literally points to no evidence. No employee log. No job site log. No sworn statements from the personnel who were allegedly on the Project up until May 23, 2011 detailing why they were still on the Project that long after delivery and installation. Nothing. Just a blanket statement in the Supplement articulating that personnel were there until May 23. Absent evidence to support his new assertion, and in light of the overwhelming evidence contradicting the May 23, 2011 assertion, Plaintiff still has nothing to show that it complied with the 90-day requirement set forth in Whiting's payment bond. Thus, Plaintiff' claim with respect to this bond must be denied as well.

IV. CONCLUSION

This Court provided Cashman several months to conduct discovery to obtain evidence showing that the Owners of the Property received actual notice of Cashman's work with respect to what Cashman has liened the Project for. Instead, Cashman has provided this Court with pre-lien notices that are defective on their face, that Cashman cannot prove the pre-lien notices were ever received by the Owners (in fact, there is substantial evidence that they were **not** received by the Owners), and that the pre-lien notices would have been untimely even if they had been properly served when Cashman claims to have served them.

Additionally, Cashman has come to this Court with no new evidence showing that it complied with the 90-day requirement in Whiting's payment bond. As with the lien, the exact opposite is true; the evidence is overwhelming that Cashman was finished with its work prior to March 25, 2011.

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Based upon the foregoing, the Defendants' Motion to Expunge the Mechanic's Lien should be granted, and Plaintiff's Motions for Summary Judgment as to the lien and the bond must be denied.

Dated this 2nd day of April, 2013.

COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

(NBN 11658)

BRIAN W. BOSCHEE, ESQ.
Nevada Bar No. 7612
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 2nd day of April, 2013 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **DEFENDANTS' SUPPLEMENT TO MOTION TO EXPUNGE LIEN AND OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AS TO LIEN AND BOND CLAIMS**, postage prepaid and addressed to:

Jennifer R. Lloyd, Esq.
Marisa L. Maskas, Esq.
PEZZILLO LLOYD
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Attorneys for Plaintiff

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Attorneys for Element Iron and Design

C Mulitello

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

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EXHIBIT A

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

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.
Pezzillo Robinson
10 6750 Via Austi Parkway
Suite 170
11 Las Vegas, Nevada 89119
(702) 233-4225
12 jrobinson@pezzillorobinson.com
13
14 For the Defendants:
15 BRIAN W. BOSCHEE, ESQ.
SHEMILLY A. BRISCOE, ESQ.
16 Cotton, Driggs, Walch, Holley
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17 400 South Fourth Street
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20
21
22
23
24
25

1 I N D E X

2 WITNESS: KEITH LOZEAU

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6

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8 E X H I B I T S

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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. BOSCHEE:
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?**

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

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

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

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.

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.

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 deposed
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.

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.**

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.

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**

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.

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

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. BOSCHEE) 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. BOSCHEE: I'm sure -- okay. Concern was the
21 real -- was the word I was looking at.
22 **Q. (BY MR. BOSCHEE) 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.

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

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.**

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

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.

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.

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?**

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.

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?

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 knowledge 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.

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?**

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.

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?**

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

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

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

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

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 --

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

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?

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

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

1 **cause you concern?**
2 MS. ROBINSON: I'm going to object to incomplete
3 hypothetical, and he already stated he had no knowledge.
4 MR. BOSCHEE: Well -- okay. I'm saying --
5 THE WITNESS: I --
6 MR. BOSCHEE: -- as to this personally but --
7 THE WITNESS: I was on vacation when this
8 happened --
9 **Q. (BY MR. BOSCHEE) Oh, okay.**
10 A. -- so I didn't know -- I didn't know any of this was
11 even going on until I got back --
12 **Q. Okay.**
13 A. -- a week later.
14 **Q. You get back and there's a stop payment on this**
15 **check, correct?**
16 A. Welcome back. Yes.
17 **Q. Exactly. Again, thank you for that vacation.**
18 **Do you guys have -- I mean -- I say you guys, I keep**
19 **saying that, I mean Cashman. Do you have a procedure,**
20 **standard procedure, when a creditor fails to fund like -- as**
21 **in a situation like this?**
22 A. You know, that's probably a question best asked of
23 Shane.
24 **Q. Okay.**
25 A. I'm not really in the -- I'm not typically involved

1 directly in the collections business.
2 **Q. Okay. Well, let me ask you a different way, because**
3 **I did ask Shane this. Are you aware of any protections that**
4 **the company has to try to protect itself from something like**
5 **this happening?**
6 A. Certainly the lien process.
7 **Q. Right.**
8 A. You know, in a lot of cases, situation like this, we
9 would ask for a joint check. And I believe we did. And
10 again, this was Shane's, so I'm -- this is a discussion with
11 Shane, so it's secondhand.
12 **Q. Sure.**
13 A. But my understanding is that he did ask to do a
14 joint check and was told that that was a problem. And I'm not
15 sure he was ever told why it was problem, but they didn't want
16 to do it.
17 **Q. Okay. Were you ever told by anybody why a joint**
18 **check was a problem?**
19 A. The one time I had a discussion with Pete Fergen
20 about it early on he -- I think he had a concern that a joint
21 check would create a -- what am I looking for -- a potential
22 inconsistency in the process of using a disadvantaged
23 business. He was afraid the paperwork wouldn't look
24 appropriate.
25 **Q. Okay. These --**

1 A. That was my impression of what he answered.
2 **Q. Sure.**
3 **These other jobs that you had worked on with**
4 **disadvantaged owners, with minority contractors, on those jobs**
5 **did you receive joint checks, or did it go the process like**
6 **this where the minority contractor got paid and then paid you?**
7 A. Minority contractor got paid and paid us. We were
8 usually dealing with people of -- of greater financial
9 strength.
10 **Q. But the process --**
11 A. And quite frankly, this was easily the biggest job
12 we had ever done in this process as well.
13 **Q. Right.**
14 A. We were usually working in the 30- to $50,000 range.
15 It was a completely different scale.
16 **Q. Three quarters of a million dollars was a little**
17 **bit --**
18 A. Correct.
19 **Q. Was the outlier in that?**
20 A. Right.
21 **Q. But the process, the actual process, was the same in**
22 **the other jobs as it was here where the minority contractor**
23 **gets paid, then you get paid? Kind of, you know, one check,**
24 **then another check?**
25 A. Correct.

1 **Q. Okay. As I understand it, no one else from Cashman**
2 **ever accompanied Mr. Carvalho to a financial institution or**
3 **anything like that, it was just Shane that was dealing with**
4 **him directly, correct? As far as you know?**
5 A. As far as I know.
6 **Q. Now, going back to the joint check question, if you**
7 **will, you worked on a few dozen projects with Mojave, have you**
8 **ever gotten a joint check from Mojave on any of those**
9 **projects? That you can recall?**
10 A. No, not that I can recall.
11 **Q. Okay. And they -- and I understand they wouldn't --**
12 **again, Pete Fergen may have said -- but for whatever reason**
13 **they didn't want to do a joint check on this project, and you**
14 **guys proceeded anyway, right? I mean it wasn't -- that didn't**
15 **cause you guys pause in not -- in not finishing -- you know,**
16 **going forward and giving the lien release, did it?**
17 A. Did it not give us pause? It was certainly not what
18 we would have preferred.
19 **Q. Okay.**
20 A. So to say that it -- it probably did give us a
21 little bit of pause. But you know in -- in my discussions
22 with Shane after the fact, as he said, you know, we don't
23 usually have a problem with $750,000 checks bouncing, it's
24 usually the $3,000 checks that bounce. So it just -- it just
25 really at that point hadn't entered our mind that somebody

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.**

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

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

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.

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.

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**

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

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?**

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.

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.

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,**

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.

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**

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

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.

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**

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.

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

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,**

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**

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.

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.

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

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?

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 we're 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

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.

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.

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 --

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. BOSCHEE) Or was that a -- was that a -- was

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**

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. BOSCHEE: He did say you would know.
10 MS. ROBINSON: I don't recall that actually.
11 MR. BOSCHEE: He did. Well, I've got his transcript
12 here.
13 **Q. (BY MR. BOSCHEE) 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?**

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**

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**

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

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?

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.

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**

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 --

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?**

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?**

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**

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 --

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.

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**

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 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.

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.**

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

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.

1 **Q. But nobody from Caterpillar or Mitsubishi could do**
2 **anything with the protocol codes? That's something that you**
3 **guys would have to do, because like you said earlier, I think**
4 **it's proprietary?**
5 A. Correct.
6 **Q. All right. And the other kind of question I had --**
7 **it's kind of random -- when you say the factory guy, which**
8 **factory?**
9 A. We have several involved. What -- carry a couple of
10 different terms. Their official name at this point is
11 Caterpillar Switchgear. It use to be known as Intelligent
12 Switchgear Organization. And then it was known as CAT ISO
13 (phonetic) for awhile during a transition period. But their
14 official title now is Caterpillar Switchgear.
15 **Q. Okay.**
16 A. And it's a division of Caterpillar. And they
17 have -- they have their own people that go out and do site
18 inspections and project management and those kinds of things.
19 It's a very -- very technical business that most dealers don't
20 have the real ability to support, so they have factory folks
21 that help out.
22 **Q. Okay. That was -- that was where I was going. I**
23 **wasn't sure where -- which of the factories he came from.**
24 **We talked about a lot of subjects today and a lot of**
25 **specific things. Is there anything else about your**

1 **involvement with the City Hall project and specifically**
2 **relating to your dealings with Mojave Electric that I did not**
3 **ask you about today, but that you feel are important to my**
4 **understanding of what -- what the dynamic here is, issues**
5 **going forward?**
6 A. No.
7 MS. ROBINSON: Object, form of the question.
8 THE WITNESS: No.
9 MR. BOSCHEE: Okay, I don't have any further
10 questions.
11 I'm assuming Jennifer doesn't have any questions?
12 MS. ROBINSON: No.
13 (Signature requested.)
14 (The proceedings concluded at 11:36 a.m.)
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25

Q. Oh, yeah?

(Exhibit 1 marked.)

BY MS. LLOYD:

Q. So have you seen this document?

A. I don't recall seeing this one.

Q. So it would have been served obviously on the Cleveland address for QH Las Vegas, and then you didn't necessarily get copies of everything.

A. No, I didn't.

Q. Okay. But do you think that there are records in Cleveland concerning the preliminary notices that were received?

A. Well, if it went to Suite 1005, that is ForestCity Construction Services or ForestCity Commercial Construction suite numbers.

Q. So they would likely kept records there somewhere concerning all of these preliminary notices or other notices that they might have received?

A. Yes.

Q. Let's talk a little bit about JMA's role on the project. Can you tell me what JMA was hired to do.

A. ForestCity Commercial Development hired JMA as the executive architect, which under the executive architect they were to do all the construction documents. The design architect, which is Helkis

1 Manfredi out of Boston, worked under JMA. And his
2 contract, JMA's contract, included all subtiers of
3 structural engineers, mechanical, electrical engineers.
4 It was all under their control.
5 Q. So did they act as part of their role to be
6 the owner's rep concerning certain items on the
7 project?
8 A. No.
9 Q. What was their role, then, in, I guess,
10 dealing with those subtiers? Like JBA was one of their
11 subtiers?
12 A. Right.
13 Q. So what was their role if they weren't acting
14 as owner's rep for certain approvals, or how did that
15 work?
16 A. I am not sure what you are asking.
17 Q. Like, for instance, if they asked for
18 submittals on certain items to make sure that what was
19 going to be provided by a contractor or subcontractor
20 was to contract, were they the one that would have the
21 ultimate approval or would it go all the way up to,
22 say, you as the owner's rep for approval?
23 A. How did that process work?
24 Q. Yeah, how did that process work?
25 A. Well, the process is that in the construction

1 documents there is specifications that clearly indicate
2 what submittals are required in the project. The
3 subcontractor would prepare those specifications; you
4 know, product data, drawings, whatever was required
5 within the spec. It would first go to Whiting Turner.
6 They are required by our contract to review those
7 documents to make sure that they meet and fall within
8 the range of the contract documents. If they did, they
9 transmitted directly to JMA.
10 JMA would then distribute to whatever party
11 was required, either JBA or the structural engineer.
12 They would review them for the specification, to meet
13 all the specifications. If they did, they would stamp
14 them reviewed. Sometimes they stamped them reviewed as
15 noted, just because there might be some minor errors.
16 It would go back to JMA; JMA would review them. Then
17 if they were approved and stamped by them, then it
18 would go back to Whiting Turner. Then Whiting Turner
19 would in turn give copies back to the subcontractor.
20 Q. And down the line?
21 A. Down the line. The only time I ever got
22 involved on anything would be if the submittal was
23 totally out of range of the specifications.
24 Q. And do you recall any instances like that on
25 this project?

1 A. No.
2 Q. So in the submittal process, then, JMA had
3 the final approval of the submittals that were for the
4 contract work?
5 A. Well, it's a combination. I require that the
6 contractor approve them because he bid the job, and I
7 am holding him responsible for, you know -- I am
8 holding Whiting Turner responsible to build it within
9 the specifications. So from my point of view, Whiting
10 Turner's approval is just as important as the
11 engineer's approval. They are all equal in the realm
12 of responsibility.
13 Q. JMA, Whiting Turner?
14 A. JBA. Everyone is -- from the owner's point
15 of view, they are all held --
16 Q. Equally responsible?
17 A. -- equally responsible.
18 Q. What was your involvement with the selection
19 of subcontractors on the project?
20 A. What the process is that we go through is
21 that we do an RFP. Whiting Turner did an RFP to at
22 least three and mostly five subcontractors for each
23 trade. We would review who they were bidding to in
24 case we had people that we wanted to add; or if we had
25 experiences with contractors we don't want to deal with

1 anymore, then they would bid the project. We would as
2 a team -- and that would include myself and our
3 corporate -- we have an estimating group and we have
4 other people in Cleveland that would review the scope
5 of work, make sure that the scope was complete. We
6 would evaluate the cost.
7 As a public company we do not have to select
8 the lowest bidder, but we do select the lowest
9 qualified bidder on the project. We would normally
10 narrow that down to three. We had -- I mean, we had
11 five to six on each trade because of the timing, and
12 everybody wanted to work on the City Hall project. So
13 we narrow it down to three.
14 We would bring them in and have an interview.
15 We require -- ForestCity requires interviews, which
16 means you bring your project managers, you bring your
17 foremen. You bring anyone in upper level that would be
18 on that site in. And we would have resumes. And we
19 truly -- you know, it's a team effort. So we do a
20 complete review.
21 At that time, we would go back and reconvene.
22 We would say, okay, we like, you know, this person or
23 that person. There was always qualifications of the
24 initial bid, because someone would miss this or we
25 would have questions. Then we would bring them back in

1 for their final cost proposal.
2 At that point Whiting Turner would also have
3 a major input and provide their selection to ForestCity
4 for approval. And at that time we would review the
5 final packages and make, you know, and say that is the
6 contractor.
7 Q. That is a very owner-involved process.
8 A. ForestCity is a general contractor. We got
9 away from it years ago because development goes up and
10 down. But we are a very hands-on group and we do
11 understand construction. And we have done it
12 ourselves. So, you know, we pride ourselves on, you
13 know, producing quality projects on time and on budget,
14 or that are under budget, which this project was under
15 budget.
16 Q. Oh, really? I wasn't aware of that.
17 So you were involved in obviously with the
18 selection of Mojave --
19 A. Yes.
20 Q. -- as a subcontractor?
21 A. Along with other ForestCity entities -- or
22 personnel.
23 Q. Okay. And do you go any further down the --
24 A. No.
25 Q. -- subtier?

1 And when it comes to, I guess, management of
2 payments, are you -- is the owner involved in managing
3 payments to subcontractors?
4 A. No.
5 Q. So would you only then be approving payments
6 to Whiting Turner, or how did the whole payment process
7 work?
8 A. The payment process was also pretty detailed.
9 It was detailed in development agreement of how it
10 would be done. Once a month all the subcontractors
11 would provide Whiting Turner with their billing
12 information. I would review all the detail of Mojave's
13 billing per se. Because it's billed on a percentage of
14 completion, I would say yes or no, or this area is not
15 what he is billing for or whatever; we would make
16 corrections.
17 At that point, when that was corrected, we
18 would sit down with the City staff and walk the
19 project. They would also review the completion
20 percentages, as well as the architect at the same time.
21 When that was -- when everybody agreed to that package,
22 then we would -- it would be signed by the architect.
23 I would send that package to Cleveland, where the
24 executive vice president was required to initial off to
25 make sure, which he understood that I went through it

1 pretty thoroughly.
2 And then the invoice would at that point be
3 put together -- that billing would be put together with
4 our invoice, for our fees and architectural fees or any
5 other fees we would have a combined invoice of
6 everyone's. That would be submitted to the City. The
7 City had a five-person signoff of that invoice.
8 At that time it would be sent to the trustee
9 for the project, which is I believe Bank of America.
10 They would at that time wire transfer funds to Whiting
11 Turner for their billing. They would wire transfer
12 ForestCity, which in turn we would wire transfer to our
13 third-party consultants.
14 Q. And that happened every month?
15 A. Every month.
16 Q. Wow. So how long would that process take for
17 the approval of a billing?
18 A. We were required to do that within ten days
19 in the development agreement. The City had -- as soon
20 as we completed our process, the City had ten days to
21 do it. We were following under the State statute of I
22 believe 45 days, which we always met.
23 Q. Wow. So I guess just to backtrack a tiny
24 bit, how exactly did the whole development -- because
25 it was privately owned property, but there was

1 obviously a public component, I guess, in some way.
2 Can you describe to me how that sort of worked?
3 A. It was a private public partnership. The
4 funding came from Build American Bonds, and we were
5 able to construct and develop it for the City. And we
6 negotiated for land costs to do the trade of the two
7 parcels for the rest of it.
8 Q. Okay. So did you have a requirement for
9 Whiting Turner concerning the Disadvantaged Business
10 Entities percentage that was to be met or to try to be
11 met on the project?
12 A. That was -- during our negotiations with the
13 City, it was at a time when they were laying off
14 people. It was a tough time to sell a new City Hall.
15 The City had a lot of pressure on them from the
16 minority groups to say, If you are going to do this,
17 please get participation. The City does not have a
18 diversity program that they can enforce in the city.
19 So they came to us and said, We would like
20 you to try and get the participation. And we agreed as
21 a goal to try to get 15 percent. We included that goal
22 to Whiting Turner's contracts. And from there they
23 managed how that was obtained.
24 Q. So it was a city requirement essentially?
25 A. Well, it was a request, a strong request.

1 Which we ended up getting over 20 percent at the end of
2 the day.
3 Q. So did you leave it to Whiting Turner, then,
4 to enforce it or encourage subcontractors to meet
5 certain goals?
6 A. During that first interview process before,
7 you know, we awarded contractors, we told them that it
8 was an important factor in selection, as well as for
9 selection purposes. They needed to come to the table
10 with some diversity.
11 Q. So were they required to identify like which
12 areas they would be, you know, meeting diversity with?
13 A. Early on, no. They basically came back and
14 said, We feel for this contract we can get 8 percent or
15 we can get 10 percent, you know. And we monitored
16 them. And most of the contractors met their goals.
17 And the ones that didn't actually we had them
18 contribute.
19 Q. How do you mean?
20 A. There was one contractor that poorly missed
21 his goal. And we had him -- well, he volunteered to --
22 in the minority publications take out ads for his
23 company, which was a benefit to the minority magazines
24 and to the minority groups. So we convinced them to do
25 things of that nature.

1 Q. Okay. Was there -- I guess speaking of if
2 they didn't meet their goal, was there any consequence?
3 **A. No. We would only ask that they do**
4 **something.**
5 Q. Okay.
6 **A. It was monitored on a monthly basis during**
7 **the pay application process.**
8 Q. Because they were required to submit like the
9 certificates of DBE with their pay aps?
10 **A. Yeah.**
11 Q. So did you check that with Whiting Turner on
12 a monthly basis?
13 **A. No. They provided ForestCity with a report.**
14 **It was based off costs of the project, costs of each**
15 **subcontractor. They provided us a breakdown and we**
16 **never audited.**
17 Q. Then I guess in conjunction with payments,
18 did you require a certain waiver or releases from subs
19 and suppliers for Whiting Turner to get those, or did
20 you rely on Whiting Turner to make sure that they were
21 obtaining the proper releases?
22 **A. We did get all releases.**
23 Q. How did you monitor, I guess, what releases
24 you would need?
25 **A. They had a -- Whiting Turner had a breakdown**

1 within the pay application for the previous month's
2 payments. We would get unconditionals, you know, for
3 that breakdown after the payment and they would provide
4 us conditional waivers with the initial payment. And
5 Whiting Turner had to do unconditionals and
6 conditionals to us for the project too.
7 Q. So did you have anyone in your offices
8 tracking, say, preliminary notices with releases, or
9 how did you --
10 A. Yes, that went to our corporate.
11 Q. So someone in Cleveland was handling that?
12 A. Yes. Michelle did -- Michelle Lagina did
13 that. She bugged me all the time. When am I getting
14 my releases?
15 Q. So did you rely on a combination of Whiting
16 Turner keeping track of which suppliers were supplying
17 to the projects under subcontractors, or did you have
18 your own tracking system?
19 A. We did not get conditionals or unconditionals
20 from suppliers. It was from the first tier. So we
21 would get -- like, Mojave would provide us conditionals
22 and unconditionals for --
23 Q. Its payments?
24 A. Yeah.
25 Q. Then you weren't tracking downstream subs and

1 suppliers to Mojave?
2 A. No.
3 Q. Is there a reason why you weren't tracking
4 downstream?
5 A. Because that is not part of our standard
6 process.
7 Q. Did you rely on Whiting Turner to be tracking
8 downstream?
9 A. No, not in our contract it's not required.
10 Q. Were you concerned about lien claims from
11 people who might be unpaid under the subcontractor's
12 second, third tier suppliers or subs?
13 A. Concerned about it? It happens all the time.
14 Q. But, I mean, not concerned enough to require
15 that, I guess, releases be provided?
16 A. It hasn't been in our past history a major
17 concern for us on subtiers and suppliers.
18 Q. Okay. Can you tell me what the status of the
19 project is now?
20 A. Well, on February 14th of this year it's
21 going to be one year opened. We had substantial
22 completion on February 14th of 2012.
23 Q. Is the project totally closed out at this
24 point?
25 A. No.

1 Q. And what is, I guess, left open?
2 A. The contract with Whiting Turner is still
3 open.
4 Q. Why is it open?
5 A. We were still negotiating some requests from
6 them specifically. We still have the Mojave contract
7 open because there is payments still within that --
8 their line items or schedule of values for the
9 generator, which I held after -- it was pretty much
10 paid out, but it was the completion portion that's
11 there.
12 Q. So you are holding money for the generator
13 from Whiting Turner?
14 A. From Mojave.
15 Q. From Mojave. Do you recall offhand how much
16 you are holding? Is it the full cost of the generator
17 line item?
18 A. No. I would be surprised if it's $30,000.
19 It's somewhere in there, I think.
20 Q. So the project has a permanent C of O?
21 A. Correct.
22 Q. Do you recall when you got that?
23 A. On February 14th.
24 Q. And then -- I mean, I am sure you generally
25 know that we are here because Cashman didn't get paid

1 for the generator and the UPS equipment that it
2 supplied to the project.
3 A. I have been told that.
4 Q. So when we talk about the generator and UPS
5 equipment, it's kind of a package deal. You know what
6 I am referring to?
7 A. Yes.
8 Q. So what is the status of the generator, UPS
9 equipment on the project now?
10 A. Well, it's installed. I am being told that
11 it would operate in case of an emergency. I have not
12 witnessed that. Due to a lack of some programming on
13 the system itself, it does not give my client, the
14 City, the opportunity to go into a laptop on site or
15 off site and monitor the status of the generator
16 systems, which is critical. Most buildings are fully
17 automated and have a building management system. And
18 they sit up in an office when they need to check to
19 verify that the fuel is correct, the batteries are
20 operating, how that system is operating after it starts
21 up for RPMs and the technical things that need to be
22 monitored on these systems in case of an emergency, and
23 that is not available.
24 Q. And so as a result of that, were you taking
25 any action against Whiting Turner or Mojave or --

1 A. We have been, you know, pushing to get
2 resolution of that.
3 Q. Of that issue?
4 A. Of that issue.
5 Q. So does that leave any pending issues between
6 you, your company, or ForestCity and the City of Las
7 Vegas?
8 A. The City is aware of the situation. Being
9 aware of it, they can manually go check things, which
10 they are doing, but they are not very pleased about it.
11 Because there is a fault on the generator panel.
12 Q. What do you mean? What does that mean?
13 A. It's a big red light that flashes.
14 Q. Like something is wrong?
15 A. Yeah.
16 (Exhibit 2 marked.)
17 BY MS. LLOYD:
18 Q. Can you take a look at this document? This
19 was produced in conjunction with a subpoena that I
20 issued to ForestCity. Do you recognize this document?
21 A. Yes. It's the one I provided. It's the last
22 executed pay application to Whiting Turner.
23 Q. Okay. And then if you go to page Bates stamp
24 5, can you tell me what -- under the electrical, that
25 first line item, it looks like there is a withholding.

1 Am I reading that correctly?
2 A. Yeah, there was a retainage still held.
3 Q. It looks like -- is that 792 or --
4 A. Yeah, it's --
5 Q. In that range?
6 A. Yeah, I believe.
7 Q. Is that still being withheld?
8 A. Yes.
9 Q. From Whiting Turner?
10 A. From Mojave.
11 Q. Through Whiting Turner, I guess. So why is
12 that being withheld?
13 A. We were closing out with Mojave. There were
14 several change orders that they had asked for that did
15 not get approved before this was done.
16 Q. So that line item is not related to the
17 generator equipment?
18 A. No.
19 Q. Do you have a breakdown of what it is related
20 to somewhere else?
21 A. Whiting Turner would. Whiting Turner held
22 all the files for this project. I did not keep -- they
23 are to provide me on disk the entire file system, which
24 I have not received because we haven't closed out yet.
25 So this is all I had available.

1 Q. What type of file, like, recordkeeping
2 software do they use?
3 A. I don't know.
4 Q. There wasn't a requirement for a specific
5 program?
6 A. (Shakes head.)
7 Q. So that withholding on there is not related
8 to the generator?
9 A. No.
10 Q. In speaking with Nancy from Whiting Turner,
11 she seemed to indicate that it was related to the
12 generator. Unless I misunderstood -- I guess I am
13 trying to understand. Do you recall -- you are still
14 holding it, or have you paid it out?
15 A. No.
16 Q. You are still holding it?
17 A. Until a project is completely closed out with
18 a contractor, I do not release. I release 5 percent.
19 That is 5 percent, I believe. And then column, I think
20 it says 5 percent. I released under percentage
21 retainage; it's 5 percent. Until a project is closed
22 out, ForestCity's policy is we do not release all the
23 retainage. And it's not specifically to any certain
24 item.
25 Q. Well, that particular item shows both a

1 balance to finish and a retainage amount. Those are
2 two separate -- are those two separate -- because most
3 of the items show basically no balance to finish,
4 because they are all looking like they are complete and
5 have been paid out, except for some show retention. So
6 that's why I was trying to understand exactly what the
7 status of the payment to Whiting Turner was on that
8 particular item, because it looks like there is a
9 balance to finish and then a retainage amount.
10 **A. The balance to finish was listed of the**
11 **contract change orders that we were still negotiating.**
12 Q. Do you recall what those were about?
13 **A. No.**
14 Q. So did the owner withhold any funds from
15 Whiting Turner and Mojave related to the generator
16 beyond -- I think you identified 30,000?
17 **A. That's all we did because it was a specific**
18 **line item. Mojave's contract would have -- or pay**
19 **application would have this cover sheet. And then they**
20 **were required to give us schedule of values for every**
21 **item of their scope of work, which entailed the**
22 **electrical, audio, visual, I mean, the whole breakdown.**
23 **It was a specific line item for the generator.**
24 Q. So the generator line item was somewhere in
25 the range of 800,000. But if it was, would you have

1 withheld 800,000 or would you withhold an amount you
2 determined separately, or did you have a way of coming
3 up with what you were going to withhold?
4 **A. The generator was already paid out before**
5 **this was brought to our attention. So I just refused**
6 **to pay any more on that line item.**
7 Q. Okay. I guess what's the status of the
8 negotiations with Whiting Turner to close everything
9 out?
10 **A. We are hoping to have it all closed out**
11 **within the next two weeks.**
12 Q. Then what is your plan, I guess, in reference
13 to the operation of the generator equipment as far as,
14 you know, I guess sort of how that is going to work
15 with the City?
16 **A. We have asked Whiting Turner to give us a**
17 **proposal on how they want to handle it. They have to**
18 **deal with their contractor.**
19 Q. Have they come to you with any proposal yet?
20 **A. No. They are in the -- they are just**
21 **following this process. That is all they can give us**
22 **the information.**
23 Q. So is that item just going to remain open
24 until the litigation is complete?
25 **A. Well, the lien has been bonded around. As**

1 far as the City, the lien has been bonded. But
2 operationalwise I am not sure. We have been trying to
3 get resolution of this, so that I can go down and talk
4 to the City to determine exactly what their position is
5 on this.
6 Q. Okay. Did you have any involvement in
7 choosing the generator system requirements?
8 A. No, I am not an electrical engineer.
9 Q. So was that a JMA role as part of their
10 design services?
11 A. Yes. JMA, JBA.
12 Q. Did you have any involvement in approving the
13 system that was proposed by Mojave to be used?
14 A. No.
15 Q. Would that just have been JMA and Whiting
16 Turner?
17 A. It's a combination of JMA, Whiting Turner and
18 JBA.
19 Q. So would you have seen any of the submittals
20 concerning any type of the equipment that was being
21 supplied to the project?
22 A. No, not on that specific item, no. The
23 specifications are performance specifications. It
24 requires -- it will provide at least three different
25 manufacturers of equipment, three to five, which is our

1 requirement. We cannot single-source a product for
2 ForestCity. We are a public company. Any of those
3 manufacturers would have to meet the performance
4 specifications that the engineers design to. If
5 those -- that selection process, they are all equal in
6 the engineer's eyes as well as the owner's eyes, then
7 they can -- they are responsible for making sure that
8 system is complete.
9 (Exhibit 3 marked.)
10 BY MS. LLOYD:
11 Q. Take a look at this document. Have you seen
12 it before?
13 A. Yes.
14 Q. And when did you first see the lien?
15 A. I don't recall exactly when I saw the lien.
16 Q. Was it shortly after it was recorded?
17 A. At some point. Like I said, I can't give an
18 exact time.
19 Q. Did you -- it was forwarded to you from
20 Cleveland, your Cleveland offices?
21 A. Yes.
22 Q. And then what action did you take once you
23 were aware of the lien?
24 A. I took a copy over to Whiting Turner and
25 said, Address this issue.

1 Q. And what did they say?
2 **A. That is when it was bonded around.**
3 Q. And so did you take any other action in
4 relation to the lien or the lien claim?
5 **A. No.**
6 Q. Did you have any discussions with Whiting
7 Turner about what happened or why there was a lien?
8 **A. I asked what was going on and they said they**
9 **were trying to contact Mojave to find out.**
10 Q. Did you do any inquiry beyond that
11 afterwards?
12 **A. No.**
13 MS. LLOYD: I don't think I have any other
14 questions.
15 MR. BOSCHEE: I think I have a couple.
16 EXAMINATION
17 BY MR. BOSCHEE:
18 Q. Looking at Exhibit 3, I understand that you
19 don't recall exactly what date that you saw that. Was
20 that the first time that you learned or ascertained of
21 the issue that has caused us to sit here today?
22 **A. Well, this was not specific to the issues we**
23 **are sitting here today. It was a lien from Cashman for**
24 **equipment. That didn't explain why we are sitting here**
25 **today.**

1 Q. Well, what is your understanding of why we
2 are here today?
3 **A. It's all hearsay.**
4 Q. Okay.
5 MS. LLOYD: Depos are okay for hearsay.
6 THE WITNESS: When we started to commission
7 this building, we have a third-party commissioner on
8 the project. When they started to come out and test
9 equipment and do things, there was this flag that was
10 put on the generator system by our third-party
11 consultant concerning, you know, PCL or whatever. And
12 at that point it sat there and I kept asking, Is this
13 resolved? Is this resolved? And they said, No, not
14 yet, not yet. And finally it came out that -- how it
15 was told that there was an issue with Cashman and CAM.
16 BY MR. BOSCHEE:
17 Q. Yeah.
18 **A. And they explained to me the situation. At**
19 **that point they didn't have all the detailed facts.**
20 **They just -- you know, they reassured ForestCity. It**
21 **was at an owner's meeting. We would have a meeting**
22 **prior to -- before the City came in. So in our meeting**
23 **they explained of the situation. And that they assured**
24 **us that we had final releases and things of that**
25 **nature. That put people somewhat to comfort and it was**

1 bonded around. And we didn't know how -- we knew we
2 needed to get the program so that we could complete our
3 commissioning and move forward with the City.
4 Q. Prior to seeing this lien and getting this
5 from your corporate office, did you have any actual
6 knowledge that Cashman Equipment Company was involved
7 in what we will call the project? Have you ever heard
8 of them before?
9 A. I have been here for 24 years. I have heard
10 of Cashman. But no, generators show up, equipment
11 shows up. Who supplies it, who is installing it, I am
12 just relying on Whiting Turner to make sure it's done.
13 Q. Okay. And I mean, sitting here right now, do
14 you have any actual knowledge of when or whether
15 Cashman Equipment Company actually supplied the
16 generators to the project?
17 A. No, I don't.
18 Q. And following up on that, do you have any
19 specific recollection of when the generators were
20 delivered to the project?
21 A. Not specifically, no.
22 Q. Is it fair to say you just know that they got
23 there and it got put in and the construction kept
24 flowing?
25 A. Correct.

1 Q. Now, I had another question from my notes in
2 talking to you. Do you recall -- I believe there was a
3 pending log that you reviewed from time to time; is
4 that correct?
5 **A. Every day.**
6 Q. I didn't want to hold your feet to the fire
7 on the everyday thing, but I knew it was pretty much
8 every day. Do you recall seeing anything in the
9 pending log about change orders with respect to the
10 generators?
11 **A. There was none.**
12 Q. Okay. And again, just to clarify, your
13 company and you personally had played no part in the --
14 I guess we will call it the screening process for the
15 disadvantaged business entities that were used on this
16 project, did you?
17 **A. No.**
18 Q. And with respect to -- with respect to JMA's
19 involvement, you talked to Ms. Lloyd about this a
20 little bit earlier. Is it fair to say that their
21 primary job was to deal with the design and the design
22 changes once the project got going; is that fair?
23 **A. Yes.**
24 MR. BOSCHEE: I don't think I have anything
25 further.

1 MS. LLOYD: I have a follow-up.
2 FURTHER EXAMINATION
3 BY MS. LLOYD:
4 Q. What is a pending log?
5 A. ForestCity requires all of our contractors to
6 keep track of any possible change or foreseeable change
7 and project a cost that could impact the project. We
8 don't like surprises. If you know you have a
9 problem -- if we know we have a problem out there with
10 some steel, we would indicate that on this pending log
11 and we would project a cost. So every month we knew
12 what our exposure was to the project in any changes.
13 It might end up being zero.
14 The City might come and say, Dave, I want you
15 to redo these floor plans, which they did. We would
16 put that on there and we would project a cost involved
17 in that. So that at the end of the day, every month we
18 knew what our true cost exposure was on a monthly basis
19 for finance purposes.
20 Q. Would you see, like, a pending cost if
21 Whiting Turner determined that, say, a sub missed
22 something and didn't bid it properly so they were going
23 to essentially put the cost back onto the sub? Would
24 they have notified you of something like that?
25 A. No.

1 Q. Or only if it was going to be an
2 owner-impacted change or potential cost?
3 **A. It tracked -- if Whiting Turner missed**
4 **something in the contract itself, that item would be**
5 **put -- it would be tracked to Whiting Turner. If**
6 **ForestCity asked for a change, it would be listed as**
7 **ForestCity. And if the City made a change, it would be**
8 **City. Beyond that, nothing else went on that log.**
9 Q. So it was only if, say, Whiting Turner was
10 going to ask for more money --
11 **A. Right.**
12 Q. -- related to a certain item.
13 So if they made a determination that, say,
14 Mojave missed something and it was in the drawings and
15 they should have included it and it wasn't going to be
16 a change to the owner, you wouldn't be notified --
17 **A. No, I wasn't.**
18 Q. -- an issue like that.
19 Talking about the generator, I guess,
20 delivery. Do you recall seeing the generators be
21 delivered?
22 **A. I just saw them sitting there one day.**
23 Q. Before they were in the box or however they
24 are housed in the equipment room, or after they were
25 already in the equipment room?

1 A. After they were already in the -- it's a wall
2 enclosure.
3 Q. Okay. Do you recall meeting Shane Norman of
4 Cashman Equipment Company?
5 A. His name doesn't sound familiar.
6 Q. It would have been around the time of the
7 lien, sort of the dispute concerning the payment
8 issues. He recalled, I guess visiting the site and
9 meeting you, but I don't know if you had recalled.
10 A. I met so many people.
11 Q. No, I am sure. Especially every day.
12 A. The name doesn't sound familiar, but I am not
13 saying I didn't meet him. I am just saying I don't
14 recall meeting him.
15 Q. But you don't recall having a conversation
16 concerning this bounced check and the issue with the
17 nonpayment of the generator?
18 A. I don't recall that.
19 MS. LLOYD: Okay. That is all I have.
20 (Thereupon, the deposition
21 concluded at 4:00 p.m.)
22
23
24
25

1 CERTIFICATE OF DEPONENT

2 PAGE LINE CHANGE REASON

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14 * * * * *

15 I, David Phillips, deponent herein, do hereby certify and declare the within and foregoing

16 transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature

17 to said deposition under penalty of perjury.

18 _____

DAVID PHILLIPS, Deponent

19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
2 STATE OF NEVADA)
) ss:
3 COUNTY OF CLARK)
4 I, Christy L. DeJonker, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby
5 certify: That I reported the deposition of David Phillips, commencing on Thursday, January 10, 2012, at
6 3:00 p.m.
7 That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I
8 thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a
9 complete, true and accurate transcription of my said shorthand notes. That review of the transcript was
10 requested.
11 I further certify that I am not a relative, employee or independent contractor of counsel of any of
12 the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor
13 a person financially interested in the action; nor do I have any other relationship with any of the parties or
14 with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be
15 questioned.
16 IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this
17 14th day of January, 2013.
18
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_____
CHRISTY LYN DeJONKER, CCR NO. 691
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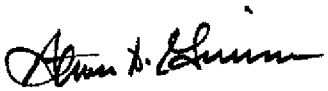

CLERK OF THE COURT

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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; QH LAS VEGAS LLC, a foreign limited liability company; PQ LAS VEGAS, LLC, a foreign limited liability company; L W T I C SUCCESSOR LLC, an unknown limited liability company; FC/LW VEGAS, a	Case No.: A642583 Dept. No.: 32 Consolidated with Case No.: A653029 **CASHMAN EQUIPMENT COMPANY'S SUPPLEMENT TO ITS COUNTERMOTION FOR SUMMARY JUDGMENT ON ITS PAYMENT BOND AND MECHANIC'S LIEN CLAIMS** Date: April 16, 2013 Time: 9:00 a.m.

foreign limited liability company; DOES 1 - 10, inclusive; and ROE CORPORATIONS 1 - 10, inclusive;

Defendants.

AND ALL RELATED MATTERS.

CASHMAN EQUIPMENT COMPANY'S SUPPLEMENT TO ITS COUNTERMOTION FOR SUMMARY JUDGMENT ON ITS PAYMENT BOND AND MECHANIC'S LIEN CLAIMS

Plaintiff, CASHMAN EQUIPMENT COMPANY ("Cashman"), by and through its undersigned counsel of record, respectfully submits the following Supplement to Its Countermotion for Summary Judgment on its Payment Bond and Mechanic's Lien Claims. This Supplement incorporates the Countermotion and all associated filings, is supported by the following Memorandum of Points and Authorities, the exhibits attached hereto, the Court's file, and any evidence adduced at the continued hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Summary Judgment should be granted in favor of Cashman and against Defendants, West Edna Associates, Ltd. dba Mojave Electric ("Mojave") and Western Surety Company ("Western") on Cashman's claim to enforce its mechanic's lien against the lien release bond obtained by those Defendants as the evidence submitted with this Supplement when considered in conjunction with that submitted in support of Cashman's Countermotion, filed on or about September 19, 2012, establish that Cashman properly perfected its lien claim as a matter of law and no genuine issues of material fact exist.

After the hearing held on November 9, 2012, the Court ordered that supplemental pleadings be filed on the pending motions to include what materials were delivered, when supplies were delivered, and time certain notice information, allowing additional discovery to be conducted concerning the notice issue. During this time, it was discovered that Cashman

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timely served two Notice of Right to Liens as required by NRS 108.245 in addition to the Notice submitted with its Countermotion that Mojave argued was untimely. As Cashman complied with NRS 108.245, and as Cashman has established that it fulfilled the remaining requirements of NRS Chapter 108 to maintain and enforce its lien claim as set forth in its Countermotion for Summary Judgment, summary judgment should be entered in favor of Cashman on its mechanic's lien claim.

The hearing on Cashman's Countermotion for Summary Judgment as to its Payment Bond Claim against The Whiting Turner Contracting Company ("Whiting Turner") and Fidelity and Deposit Company of Maryland ("Fidelity") was also continued. In that Countermotion, Cashman established that judgment should be granted in its favor on its claim against the payment bond obtained by Whiting Turner and its surety Fidelity, as Cashman is a claimant on the bond, fulfilled the requirements of the bond and remains unpaid for the work performed. The Whiting Turner payment bond does not contain a notice requirement similar to that of NRS 108.245, the issue for which the Court ordered supplemental briefing. However, Defendants did argue as to the timeliness of the notice sent by Cashman informing Whiting Turner that it had not been paid, as that notice was required to be sent within 90 days of the date work was last performed. Cashman is submitting evidence of its satisfaction of this requirement with this Supplement. Cashman served its notice of claim on Whiting Turner on June 24, 2011. Cashman personnel were last on the Project on May 23, 2011. As such, Cashman's notice of claim was sent within 90 days of its last date of work on the Project.

II.

STATEMENT OF UNDISPUTED FACTS

1. The Project was owned by FC/LW Las Vegas LLC and LWTIC Successor LLC c/o Forest City Enterprises (with a conglomerate of private entities which include PQ Las Vegas and QH Las Vegas) from December 2009 until February 17, 2012, when the

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building was transferred to the City of Las Vegas, Nevada. See Exhibit "14." All of these entities will collectively be referred to herein as "Owner."

2. Cashman contracted with Cam Consulting, Inc. ("Cam") to supply materials to the New Las Vegas City Hall Project (the "Project") comprised of generators and switchgear equipment and associated items. See Exhibit "1" and "13" to Countermotion for Summary Judgment.

3. Cashman initially submitted a revised Quote to Mojave on or about January 11, 2010 for the materials at issue and according to owner requirements with a total price of $855,467.00. See Exhibit "1" and "2," attached hereto.

4. The Quote from Cashman to Mojave details the materials to be supplied as two Caterpillar diesel generators, Caterpillar switchgear and Mitsubishi battery backup. As part of supplying the materials for this price, Cashman also agreed to ship the materials to the Project, perform start up functions, commission the equipment, perform load bank testing and provide training to users. Cashman was also to provide a parts and labor warranty from startup and two years of service and maintenance. See Exhibit "2."

5. Mojave issued two purchase orders on April 23, 2010 to purchase these materials for a total price of $757,611.00. The purchase orders were issued to "CAM Consulting c/o Cashman Equipment." See Exhibit "3," attached hereto.

6. Cashman's scope of work on the Project included preparing submittals for approval of the materials, as required by the Mojave purchase orders. Id. See also Exhibit "15," Deposition of Brian Bugni at p. 57, lns. 14 – 25; and Exhibit "16," Deposition of Christopher Meiers at p. 16, lns. 1 – 8.

7. The submittals were given by Mojave to Whiting Turner, the general contractor for the Project, who in turn provided them to the JMA, the executive architect hired

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by the Owner, as testified to by David Phillips[1], the owner representative. See Exhibit "17," Deposition of David Phillips at pgs. 11 – 13.

8. JMA and Whiting Turner were responsible for approving the submittals for the materials to be supplied by Cashman to the Project. Id. at p. 13.

9. Cashman provided submittals for the materials it was to supply to Mojave for the Project on January 25, 2010, March 9, 2010 and April 12, 2010. See Exhibit "1."

10. Cashman received correspondence forwarded by Mojave requesting revisions to certain items included in the submittals and provided its response on May 24, 2010. See Exhibit "4," attached hereto (CASH 1762).

11. Cashman received notice of approval for certain materials from Mojave directly on June 16, 2010. See Exhibit "5," attached hereto (CASH 1763).

12. Cashman received the Materials Release Order from Mojave directing it to begin procuring the materials for delivery to the Project on August 11, 2010. See Exhibit "18", attached hereto (CASH 1766-67).

13. Cashman began procuring the materials shortly thereafter. See Exhibit "1."

14. Cashman received notice of approval for certain materials from Mojave directly on September 21, 2010. See Exhibit "20," attached hereto (CASH1168).

15. The Mitsubishi uninterrupted power supply was delivered to Mojave on November 18, 2010. See Exhibit "6", attached hereto (CASH 1769).

16. The Caterpillar switchgear was delivered to Mojave on December 27, 2010. See Exhibit "7", attached hereto (CASH 1770).

17. The three automatic transfer switches and the two batteries for the switchgear were provided to Mojave on January 5, 2011. See Exhibit "8", attached hereto (CASH 1771).

---

[1] David Phillips is employed "with Forest City Construction Services, LLC, which is a business unit of Forest City Enterprises, Inc. based in Cleveland, Ohio." See Exhibit "17," p. 5, lns. 15-18. Forest City Construction Services was employed as the owner's representative by QH Las Vegas, LLC, the entity that owned and developed the Property. Id. at p. 6, lns. 23-25. PQ Las Vegas, LLC is another related entity formed for the land swap. Id. at p. 7, lns. 13-15. Forest City Enterprises, Inc. is the parent corporation for all of the related entities.

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18. Cashman coordinated delivery of the two Caterpillar diesel generators with Mojave directly to the Project. See Exhibit "1."

19. The two Caterpillar diesel generators were delivered to the Project on January 19, 2011. See Exhibit "19," Delivery Receipts.

20. Delivery of the generators required the use of a crane. See Exhibit "16," p. 22, lns. 1-2.

21. The generators were installed into the Project by Mojave upon delivery. Id. at p. 21, lns. 21-24.

22. Chris Meiers, Mojave's project manager, testified that Cashman's scope of work included putting the exhaust system together after delivery and performing start-up functions. Id. at p. 25, lns. 17-19.

23. The installation of the materials supplied by Cashman would be completed over "a couple months." Id. at p. 26, lns. 5.-19.

24. Cashman personnel were last at the Project performing work required for the materials on May 23, 2011. See Exhibit "1."

25. Cashman issued two invoices for the materials supplied totaling $755,893.89. See Exhibit "13," to Countermotion for Summary Judgment.

26. Cashman served a Notice of Right to Lien on April 29, 2010 addressed to Mojave and Forest City Enterprises at Terminal Tower #1410, 50 Public S., Cleveland, OH 44113-2202. This Notice was served by certified mail and the record kept in the ordinary course of business. See Exhibit "9," attached hereto (CASH1734).

27. The assessor's page record ownership information at the time the first Notice of Right to Lien was served listed the owner of the Project as PQ Las Vegas, LLC, % Forest City Entrprs, Inc., Terminal Tower #1410, 50 Public Square, Cleveland, OH, 44113-2202. See Exhibit "10," attached hereto (CASH1735).

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28. Cashman served a Notice of Right to Lien on December 7, 2010 addressed to Mojave, Whiting Turner, and OH Las Vegas, LLC at 50 Public Square, Ste 1005, Cleveland, OH, 44113. This Notice was served by certified mail and the record kept in the ordinary course of business. See Exhibit "11," attached hereto (CASH1736).

29. Cashman received a job information sheet from Mojave for this Project, which listed the owner of the Project as OH Las Vegas, LLC, 50 Public Square, Suite 1005, Cleveland, OH, 44113. See Exhibit "12," attached hereto (CASH1737).

30. David Philips testified at his deposition as to the Notice of Right to Lien served on December 7, 2010 that if served on the address listed that is the Forest City Construction Services or Forest City Commercial Construction suite numbers and that records of preliminary notices would have been kept there. See Exhibit "17," at p. 11, lns. 13 – 15.

31. Cashman served subpoenas on QH Las Vegas, LLC, PQ Las Vegas, LLC and FC/LW Vegas, LLC in November, 2012. In response, no documents were produced and Cashman was informed that it should subpoena and depose David Phillips for Owner documents.

32. Cashman served a Notice of Right to Lien on April 20, 2011 addressed to Mojave and PQ Las Vegas, LLC at 50 Public Sq-TT #1410, Cleveland, OH, 44113-2202. See Exhibit "13," attached hereto (CASH013).

33. Cashman is currently owed $755,893.89 for materials supplied to Mojave through Cam. See Exhibit "1" to Countermotion for Summary Judgment.

34. Cashman has not received any payment toward the materials it supplied to this Project. Id.

35. Cashman caused a mechanic's lien to be recorded on the Project on June 22, 2011 in the amount of $755,893.89 and Cashman caused its mechanic's lien to be served on the Owner on June 29, 2011. See Exhibit "4" to Countermotion for Summary Judgment.

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36. Cashman filed its complaint to foreclose on its mechanic's lien on June 3, 2011.

37. Mojave obtained a bond to release Cashman's mechanic's lien from Western and provided a copy of the bond to Cashman. See Exhibit "5" to Countermotion for Summary Judgment.

38. Cashman then amended its complaint to seek recovery on its mechanic's lien claim against the lien release bond.

III.

ARGUMENTS AND AUTHORITIES

A. Standard for Summary Judgment

In the case of Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005), the Nevada Supreme Court adopted the same standard employed by the U.S. Supreme Court. The Court stated that:

> Summary Judgment is appropriate under NRCP 56 when the pleadings, deposition, 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. The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party.

Id. at 1029. In so holding, the Court expressly rejected the "slightest doubt" standard and reiterated that the nonmoving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." Id. at 1030 (citations omitted).

Summary judgment is appropriate when, as a matter of law, there is no genuine issue as to any material fact. NRCP 56(c); Prostack v. Songailo, 97 Nev. 38, 40, 623 P.2d 978 (1981); see also Barr v. Gaines, 103 Nev. 548, 549, 746 P.2d 634, 635-36 (1987) (summary judgment is appropriate where only question is one of law).

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Tel. 702 233-4225

B. Cashman is Entitled to Summary Judgment Against Mojave and Western on its Mechanic's Lien Claim against the Lien Release Bond.

Cashman has complied with the requirements to hold and enforce its mechanic's lien and is entitled to judgment in its favor and against the lien release bond in the principal amount of $755,893.89, plus attorney's fees, costs and interest. At the hearing on November 9, 2012, the Court requested that supplemental briefing be provided to address the timing of the Notice of Right to Lien provided by Cashman, and to include more detailed information as to the materials supplied by Cashman and the timing of Cashman's work.

1. Cashman timely served its Notice of Right to Lien on the Owner in compliance with NRS 108.245.

Cashman served two Notice of Right to Liens, in addition to the Notice submitted with its Countermotion, in conjunction with its work on this Project, and in compliance with NRS 108.245. NRS 108.245 requires that a claimant who did not contract with the owner of the Property where the work is to be performed, serve a notice of right to lien at any time after the first delivery of material or performance of work occurs in person or by certified mail. Upon the giving of this notice, the lien claimant has a "right to lien for materials or equipment furnished or for work or services performed in the 31 days before the notice of right to lien is given" and for work performed or materials supplied thereafter until the project is complete. Id.

For ease of reference, Cashman has incorporated the undisputed facts surrounding its work on this Project and its compliance with the notice requirements of NRS Chapter 108 in the table included below:

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PEZZILLO LLOYD
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Tel. 702 233-4225

Date	Action relevant to Cashman's work on Project
January 11, 2010	Cashman submitted revised quote to Mojave for materials supplied to Project. See Exhibit "2."
January 25, 2010	Submittal provided to Mojave. See Exhibit "1."
March 9, 2010	Submittal provided to Mojave. Id.
April 12, 2010	Submittal provided to Mojave. Id.
April 23, 2010	Mojave issues two purchase orders to purchase materials to be supplied by Cashman. See Exhibit "3."
April 29, 2010	Cashman serves first Notice of Right to Lien. See Exhibit "9."
May 24, 2010	Cashman responds to Mojave concerning issues with submittals. See Exhibit "4."
June 16, 2010	Cashman receives notice from Mojave that materials are approved. See Exhibit "5."
August 11, 2010	Cashman receives Material Release Order from Mojave and shortly thereafter begins procuring the materials. See Exhibit "18."
November 18, 2010	Mitsubishi uninterrupted power supply delivered to Mojave. See Exhibit "6."
December 7, 2010	Cashman serves second Notice of Right to Lien. See Exhibit "11."
December 27, 2010	Caterpillar switchgear delivered to Mojave. See Exhibit "7."
January 5, 2011	Three automatic transfer switches and the two batteries for the switchgear were provided to Mojave. See Exhibit "8."
January 19, 2011	Two Caterpillar diesel generators delivered to Project. See Exhibit "19."
Beginning January 20, 2011	Cashman personnel at Project as needed to perform functions included in scope of work related to startup and installation. See Exhibit "1."
April 29, 2011	Cashman serves third Notice of Right to Lien. See Exhibit "13."
May 23, 2011	Cashman personnel last on Project. See Exhibit "1."
June 22, 2011	Lien recorded on Project. See Exhibit "4" to Countermotion for Summary Judgment.

Cashman began work on this Project in April 2010, as it started to perform work required to complete its scope on the Project simultaneously with the issuance of the purchase orders to procure the materials by Mojave, if not slightly earlier with the preparation of the submittals related to the materials it was to supply. In conjunction with starting work, Cashman served its first Notice of Right to Lien on April 29, 2010. This Notice of Right to Lien was served on the owner of record via certified mail at the address on file with the Clark County Assessor. See Exhibit "10." Cashman then continued to perform work related to the materials supplied to the Project to include responding to issues with submittals, receiving the Material Release Order from Mojave and procuring the materials required.

After receiving a job information sheet from Mojave that provided different owner information, Cashman then served another Notice of Right to Lien on December 7, 2010 via certified mail. See Exhibit "12." While the owner information appears to be different, the

PEZZILLO LLOYD
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Tel. 702 233-4225

service address is almost identical and both are entities whose parent corporation is Forest City Enterprises, Inc. See Exhibit "17,"at p. 7. Cashman caused materials to be delivered to fulfill the purchase orders beginning in late December and continuing until January 19, 2011 when the two generators are delivered to the Project. Shortly after delivery the materials provided by Cashman were incorporated into the Project by Mojave.

The Notice of Right to Lien served by Cashman on the Owner on April 29, 2010 fulfills the requirements of NRS 108.245. The Mojave purchase orders were issued on April 23, 2010 and require the preparation of submittals as part of the scope of work. As set forth herein, Cashman began its work shortly before April 23, 2010, as it began preparing and providing to Mojave the submittals for the materials it was to supply to the Project. This Notice of Right to Lien was served after Cashman first began work under its Contract with Cam and pursuant to the purchase orders issued by Mojave making it within the time required by the statute. This Notice of Right to Lien was served on the owner of record with the Clark County Assessor. NRS 108.22148 includes in its definition of Owner, "the owner or owners of the property…as shown on the records of the county assessor." Cashman performed a search and then served the owner as shown on the records of the county assessor. As this Notice of Right to Lien was served on the Owner of record after Cashman began work it fulfills the requirements of NRS 108.245, and as it was served within days of the purchase orders procuring the materials, Cashman has the right to lien for all of the materials provided and work performed to the Project. See NRS 108.245(6).

Cashman served a second Notice of Right to Lien on December 7, 2010 after having been provided with job information from Mojave. This Notice of Right to Lien was also served after Cashman began work, as set forth above, and the delivery of the materials occurred within the 31 days prior to this Notice or after the service of this Notice as delivery began on November 18, 2010 and ended on January 19, 2011. NRS 108.245 allows Cashman to lien for materials provided or work performed within the 31 days prior to service of this

PEZZILLO LLOYD
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Notice and for all materials provided or work performed after service of this Notice. As the delivery of the materials falls within the time allowed by statute, Cashman would have the right to lien for the full value of the materials supplied and work performed under its Contract. The second Notice of Right to Lien was served on the reputed owner of the Project, as provided by Mojave. NRS 108.22148 includes in its definition of Owner, "the reputed owner or owners of the property." The address on the second notice is virtually identical to that of the first, was acknowledged as a Forest City address by David Phillips in his deposition and is to a related entity that was represented to be the owner of the Project to Cashman by Mojave. Therefore, even if the first Notice of Right to Lien were disregarded, the second Notice of Right to Lien fulfills the requirements of NRS 108.245, and Cashman has the right to lien for all materials supplied and work performed on this Project.

2. Cashman is a Lien Claimant and Properly Perfected its Mechanic's Lien Against the Project as set forth in its Countermotion.

The **purpose** of the mechanic's lien statutes "is to secure payment to those who perform labor or furnish material to improve the property of the owner." Crestline Investment Group, Inc. v. Lewis, 119 Nev. 365, 368, 75 P.3d 363, 366 (2003). NRS Chapter 108 sets forth the requirements to hold and enforce a mechanic's lien in Nevada. The undisputed facts establish that Cashman properly perfected and is entitled to enforce its mechanic's lien claim against the lien release bond obtained by Mojave and Western, as Cashman (1) is a lien claimant pursuant to NRS 108.2214; (2) timely served the notice of right to lien required by NRS 108.245; (3) contracted to supply materials and supplied materials to the Project; (4) failed to received payment for the materials supplied and incorporated into the Project; (5) timely recorded and served its notice of lien pursuant to NRS 108.226 and NRS 108.227 in the amount for which it is entitled to lien under NRS 108.222; and (6) filed this matter to enforce its lien. In its Countermotion for Summary Judgment, Cashman establishes that it has complied with the requirements to hold and enforce its mechanic's lien against this Project

PEZZILLO LLOYD
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Las Vegas, Nevada 89119
Tel. 702 233-4225

and for the convenience of the Court, Cashman will limit this supplement to the additional information requested by the Court.

Defendants' main argument as to the enforceability of Cashman's lien concerned whether Cashman had timely served the Notice of Right to Lien on the owner as required by NRS 108.245. As set forth above, Cashman timely served two Notices of Right to Lien that fulfill the requirements of NRS 108.245 and allow Cashman to lien for the materials supplied and work performed within the 31 days prior to service of the notice and for all materials supplied and work performed thereafter until the Project is complete. Based upon the dates of service of the two Notices of Right to Lien, Cashman is entitled to lien for the full value of the materials supplied and work performed, which is the entire amount owed $755,893.89.

The amount of Cashman's lien is proper under NRS 108.222. Pursuant to NRS 108.222, a lien claimant has a lien upon the property and any improvements for which the work, materials and equipment were furnished or to be furnished, where there is an agreed upon price, for "the unpaid balance of the price agreed upon for such work, material or equipment…whether performed, furnished or to be performed or furnished at the instance of the owner or his agent." Cashman provided a quote that included a lump sum bid amount for the materials to be supplied and the work to be performed to fulfill the Owner's requirements for the generator, switchgear and uninterrupted power supply equipment. See Exhibit "2." Mojave then issued two purchase orders that included the materials to be supplied and the work to be performed on these items for the total price of $757,611.00. This amount is the agreed upon price for the work and materials. Cashman recorded its lien for the amount it is owed out of the agreed upon price, which is $755,893.89. This is the amount for which Cashman is entitled to lien pursuant to NRS 108.222.

Mojave agreed that the amount claimed by Cashman was the amount to be paid for the work to be performed. As has been briefed, Cashman completed its work until its performance was excused after it failed to receive payment from Cam. Cashman has

PEZZILLO LLOYD
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Las Vegas, Nevada 89119
Tel. 702.233-4225

submitted evidence of the materials it delivered, which represent substantially all of the materials it was to provide and is entitled to lien for the entire unpaid amount as allowed by NRS 108.222. However, should the Court determine that a dispute exists as to the amount of the lien Cashman is entitled to enforce, summary judgment should be granted as to liability on the perfection of Cashman's lien and an evidentiary hearing set to determine the amount of the judgment to be entered.

C. Cashman is Entitled to Summary Judgment Against Whiting Turner and Fidelity on its Payment Bond Claim.

As set forth in Cashman's Countermotion for Summary Judgment on its Payment Bond Claim, filed on or about September 19, 2012, Cashman is a claimant on this payment bond by its terms, fulfilled the requirements of the bond to enforce a claim and remains unpaid for the work performed, entitling Cashman to judgment. This payment bond does not contain a notice requirement similar to that of NRS 108.245, therefore Cashman was not required to provide notice to Whiting Turner that it was performing work on the Project. However, Defendants did argue as to the timeliness of the notice sent by Cashman informing Whiting Turner that it had not been paid, as that notice of claim was required to be sent within 90 days of the date Cashman last performed work on the Project, as set forth in Section 4.2.1. Cashman served its notice of claim on Whiting Turner on June 24, 2011. See Countermotion for Summary Judgment, Exhibit "7." Contrary to previous statements by Defendants, Cashman's work on the Project did not end with delivery of the materials. Instead, Cashman was required to perform functions related to installation and startup, as detailed in Cashman's quote, required by Mojave's purchase orders, and testified to by Mojave personnel. Cashman personnel were at the Project to perform this work as required until May 23, 2011. As such, Cashman's notice of claim sent on June 24, 2011 was sent within 90 days of its last date of work on the Project and is timely under Section 4.2.1.

PEZZILLO LLOYD
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Tel. 702 233-4225

IV.

CONCLUSION

In this Supplement, Cashman has provided evidence concerning the materials it delivered to the Project and has established that it complied with NRS 108.245, providing the Owner with a Notice of Right to Lien. When this evidence is considered in conjunction with Cashman's Motion for Summary Judgment, the undisputed facts of this matter establish that Cashman is entitled to judgment on its mechanic's lien claim as a matter of law in the principal amount of $755,893.89, plus attorneys' fees, costs and interest. Cashman has also established its right to payment on its payment bond claim.

DATED: March 18, 2013

PEZZILLO LLOYD

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

PEZZILLO LLOYD
6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada 89119
Tel. 702 233-4225

EXHIBIT 1
(To be supplemented)

EXHIBIT 2

CASHMAN CAT

POWER SOLUTIONS

3300 St. Rose Parkway
Henderson, NV 89052

Main (702) 649-0777
Fax (702) 639-5080

August 31, 2009
QUOTE EXPIRES AFTER THIRTY (30) DAYS.

(Revised)

Attention: Estimating

Project Name: Las Vegas City Hall
QUOTE K908310901

We are pleased to provide pricing per the following quote and bill of materials. Specification 260540, 263213, 263353, 263500, 263600 & drawings E5.00, E5.01, E5.02 & E5.03 were reviewed to complete this quote.

Current lead time on new order for gen set 20-22 weeks after release. Current lead time on CAT switchgear is 20-22 weeks after release. Current lead time on Mitsubishi UPS is 8-10 weeks after release. Current lead time on ATS is 4-6 weeks after release.

2-Caterpillar C32 900kW diesel generator set & 3 ATS	$ 418,844+tax
Cat Switchgear	$ 279,208+tax
Mitsubishi 500Kva UPS w/ 17 minutes of battery backup	$ 157,415+tax

$ 698,05

Clarification: On the ATS feeding the fire pump, the ATS is integral with pump controls and needs to be provided by pump supplier.

Third Party LEED inspection/certification by others.

Price includes freight to site, start up, commissioning, load bank testing at site, and owner training on equipment provided by Cashman Equipment. Also includes CAT parts and labor warranty from date of startup and 2 year service and maintenance agreement.

Please add applicable tax.

NOT INCLUDED: CRANE TO OFFLOAD, INSTALLATION, FUEL, TAXES.

Fuel is estimated at $4.50 per gallon. Price is subject to change at time of delivery.

Thank you for the opportunity to quote this equipment.

Sincerely yours,

CASHMAN POWER

Kim Symons

Kim Symons

Power Systems Sales Representative

Tel 702-639-5012
Cel 702-326-6696

BILL OF MATERIALS
Caterpillar C32 Diesel Engine
900kW 60Hz 480V
Stationary Application
Standby Application
Non UL2200
Weather proof Enclosure
750 Gallon UL2085 fuel tank
Vibration Isolators
EMCP 3.3 Control Panel
Control Panel Mount Rear
Custom Local Annunciator
Custom Remote Annunciator
Local PC Monitoring
HD Electric Starting Motor
10A Battery Charger
Over sized Battery set 24V
Jacket Water Heater
1600A 3P 100% LSI-P UL Rated Circuit Breaker
Bottom Cable Entry w/ shroud
CSA Test and Certification
Generator Test Report
Test Report @ .8 PF

Start up, commissioning, and training at site per specs on all equipment furnished by Cashman Equipment
Load test at site
Warranty entire Caterpillar system TWO (2) years
Service and Maintenance Contract (2) years
Operation and Maintenance Manuals

AUTOMATIC TRANSFER SWITCH/ES:

Caterpillar CTS 800A 4 pole 480V N1
Caterpillar CTS 1000A 4 pole 480V N1
Caterpillar CTS 1200A 4 pole 480V N1

SWITCHGEAR:

Please see attached quote

UNINTERRUPTIBLE POWER SUPPLY:

Please see attached quote

SEE GENERAL TERMS AND CLARIFICATIONS ON ATTACHED SEPARATE PAGE.

EXHIBIT 3

10-504

PURCHASE ORDER

Mojave Electric, Inc.

Please Send Invoices and Statements To:
3755 W. Hacienda Ave.
Las Vegas, NV 89118
(702) 798-2970
Fax (702) 739-1419

UPS

767810 UPS 10011
P.O. NO. & JOB NO. MUST APPEAR ON ALL INVOICES, DEL. TICKETS AND BILLS OF LADINGS.

Date 4/23/2010

Page 1 of 4

Ship Via DELIVER

TO CAM Consulting c/o Cashman Equipment
ATTN.: Angelo Carvalho / Keith Lozeau
PHONE # 702-325-0032 / 702-630-5018
MUST NOTIFY 24 HOURS BEFORE DELIVERY.
FOR EXACT MATERIAL DELIVERY LOCATION

Job No. City of Las Vegas New City 767810
Ship To SHOP ATTN# 767810
City LAS VEGAS State/ 89118
F.O.B. Job Site ☐ Full Freight Allowed ☐ Freight Excluded ☐

#	QUANTITY	TYPE	DESCRIPTION	PRICE	PER	TRADE DISC	EXTENSION NET
1	1		400 KW, 277/480V 3 PHASE WITH BATTERIES AS SHOWN ON CONTRACT DRAWINGS DATED 11/05/09 MGE Model # EPS6000	157,415.00	E		157,415.00
2	1		Shunt Trip Station		E		$ -
3	1		Extra Materials are required per 269353-1.8		LT		$ -
*			FROM THE DATE OF THIS PURCHASE ORDER ALL CORRESPONDENCE IS TO BE SENT TO THE ATTENTION: Chris Meiers				
*			ALL FREIGHT IN INCLUDED IN THE PURCHASE ORDER				
*			IT IS THE SELLERS RESPONSIBILITY TO INSURE MOJAVE'S PROJECT MANAGER IS NOTIFIED OF ALL BACK ORDERS AND SHIPPING SCHEDULES OF ALL EQUIPMENT IN WRITING IN A TIMELY FASHION				
*			VENDOR HAS 30 DAYS FROM THE DATE OF COMPLETION OF THEIR WORK AND/OR DELIVERY OF MATERIALS TO SUBMIT ALL COSTS RELATED TO THIS PURCHASE ORDER AND SUBSEQUENT CHANGE ORDERS. ANY INVOICES SUBMITTED AFTER THE 30 DAYS WILL BE CONSIDERED WAIVED AND NOT BILLABLE BY MOJAVE ELECTRIC				
*			DELIVER MATERIALS TO: MOJAVE ELECTRIC, INC. ATTENTION: 767810-UPS-10011 3755 W HACIENDA AVE LAS VEGAS NEVADA 89118				
*			DELIVERY LOCATION MAY BE CHANGED TO JOBSITE AT THE TIME OF RELEASE				
*			TERMS: THIS IS A PAID WHEN PAID PO. INVOICES ARE TO BE INTO MOJAVE NOT LATER THAN THE 15TH OF THE MONTH AND PROJECTED THRU THE END OF THE MONTH.				

VENDOR PLEASE NOTE

After release, starting within ten (10) days a written expediting report will be given to this office on the first and fifteenth of each month. This report is to include the delivery date for each item and any changes from the previous report. A detailed packing list is to be included with each shipment and a copy attached to each invoice.

Send all invoices to the attention of Accounts Payable. Send all expediting reports to the attention of Nancy Goodson.

*SHIP ALL MATERIAL GROUND OR AIR FREIGHT IF POSSIBLE.
*ALL MATERIAL TO INCLUDE ALL SALES TAXES IN THE LUMP SUM PRICE.
*MARK ALL BOXES, ETC. WITH THE JOB NUMBER.

TERMS: 2% 25th PROX. INVOICES RECEIVED AFTER 25th CONSIDERED NEXT MONTH'S BUSINESS.

SUB TOTAL	157,415.00
TAX	
CASH DISC	

TOTAL PRICES FIRM

ACCEPTED FOR VENDOR

BY _____

Angelo Carvalho / Keith L CAM Consulting c/o Cashman Equipment

MOJAVE ELECTRIC, INC.

BY _____

Philip Ferren, VP Project Development

PURCHASE ORDER

Mojave Electric, Inc.

Please Send Invoices and Statements To:
3755 W. Hacienda Ave.
Las Vegas, NV 89118
(702) 798-2970
Fax (702) 739-1419

Gensets

767810 GEN- 10010
P.O. NO. & JOB NO. MUST APPEAR ON ALL INVOICES, DEL. TICKETS AND BILLS OF LADINGS.

Date 4/23/2010
Page 1 of 4
Ship Via DELIVER

TO CAM Consulting c/o Cashman Equipment
ATTN.: Angelo Carvalho / Keith Lozeau
PHONE # 702-325-9032 / 702-630-5018
MUST NOTIFY 24 HOURS BEFORE DELIVERY
FOR EXACT MATERIAL DELIVERY LOCATION

Job No. City of Las Vegas New City I 767810
Ship To SHOP ATTN# 767810
City LAS VEGAS St. NV 89118
F.O.B. Job Site ☐ Full Freight Allowed ☐ Freight Excluded ☐

#	QUANTITY	TYPE	DESCRIPTION	PRICE	PER	TRADE DISC	EXTENSION NET
			Supply Generator System as required by the Contract				
			Specifications and Drawings dated November 24, 2000				
			including addendas 1 thru 4 and as directed by Project				
			Manager to include but not be limited to the below				
			listed material				
1	1	GEN#	900KW, 480/277V, 4P, 4W, N3R Enclosed Generator	163,618.00	E		$ 163,618.00
2	1	GEN#1&2	Shunt Trip Station	600.00	E		$ 600.00
3	1	GEN#2	900KW, 480/277V, 4P, 4W, N3R Enclosed Generator	163,618.00	E		$ 163,618.00
4	1	PSG	3000A, 480/277V, 3P, 4W, N3R Paralleling Switchgear	248,100.00	E		$ 248,100.00
5	1	ATS-X2	800A, 480/277V, 4P, 4W, N3R Automatic Transfer Switch	7,711.00	E		$ 7,711.00
6	1	ATS-E	1200A, 480/277V, 4P, 4W, N3R Automatic Transfer Switch	10,867.00	E		$ 10,867.00
7	1	ATS-X1	1000A, 480/277V, 4P, 4W, N3R Automatic Transfer Switch	10,267.00	E		$ 10,267.00
8	1	ATS/R	Remote Annunciator		E		$
9	1	Spares	Extra Materials as called for in 263213-1.12	2,366.00	E		$ 2,366.00
10	1	CSA	2 year maintenance agreement	7,500.00	E		$ 7,500.00
11	1	Fuel	Diesel Fuel for each tank - Billed at cost budget 4.50 per gal	7,660.00	E		$ 7,660.00

* FROM THE DATE OF THIS PURCHASE ORDER ALL CORRESPONDENCE IS TO BE SENT TO THE ATTENTION: Chris Meiers
* THE ELECTRICAL STUB UP AREA IS TO HAVE A FACTORY INSTALLED ELECTRICAL WIREWAY FROM THE TERMINALS TO THE FINISHED FLOOR - AT ALL LOCATIONS
* ANY INVOICE THAT IS BILLED DUE TO A CHANGE ORDER TO THIS PO SHALL BE DESIGNATED AS PART OF SAID CHANGE ORDER NUMBER - THIS NUMBER CAN BE FOUND IN THE UPPER RIGHT HAND CORNER OF MOJAVE'S CHANGE ORDER. IF NO NUMBER IS PRESENT THEN THE DATE OF THE CHANGE ORDER SHALL BE LISTED
* NO VEREAL DIRECTION OR INFORMATION IS TO BE ACCEPTED FROM BUYER OR SELLER

*SHIP ALL MATERIAL ON THIS P.O. AFB FREIGHT IF POSSIBLE.
*ALL MATERIAL TO INCLUDE ALL SALES TAXES IN THE LUMP SUM PRICE.
*MARK ALL BOXES, ETC. WITH THE JOB NUMBER.

7' 9: 2% 25th PROX. INVOICES RECEIVED AFTER 25th CONSIDERED MONTH'S BUSINESS.

SUB TOTAL	$ 660,166.00
TAX	
CASH DISC	

TOTAL PRICES FIRM

MOJAVE ELECTRIC, INC.

ACCEPTED FOR VENDOR

BY _____

Angelo Carvalho / Keith L CAM Consulting c/o Cashman Equipment

BY _____

Robert Farmer, VP Project Development

PURCHASE ORDER

Mojave Electric, Inc.

Please Send Invoices and Statements To:
3755 W. Hacienda Ave.
Las Vegas, NV 89118
(702) 798-2970
Fax (702) 739-1419

767810 GEN- 10010
P.O. NO. & JOB NO. MUST APPEAR ON ALL INVOICES, DEL. TICKETS AND BILLS OF LADINGS.

Date 4/23/2010
Page 2 of 4
Ship Via DELIVER

TO CAM Consulting c/o Cashman Equipment
ATTN: Angelo Carvalho / Keith Lozeau
PHONE #: 702-326-8032 / 702-839-6018
MUST NOTIFY 24 HOURS BEFORE DELIVERY FOR EXACT MATERIAL DELIVERY LOCATION

Job City of Las Vegas New City No. 767810
Ship To SHOP ATTN# 767810
City LAS VEGAS State NV 89118
F.O.B. Job Site☐ Full Freight Allowed☐ Freight Excluded☐

#	QUANTITY	TYPE	DESCRIPTION	PRICE	PER	TRADE DISC	EXTENSION NET
*			ALL FREIGHT IN INCLUDED IN THE PURCHASE ORDER				
*			IT IS THE SELLERS RESPONSIBILITY TO INSURE MOJAVE'S PROJECT MANAGER IS NOTIFIED OF ALL BACK ORDERS AND SHIPPING SCHEDULES OF ALL EQUIPMENT IN WRITING IN A TIMELY FASHION				
*			SELLER'S INVOICES MUST COINCIDE WITH MOJAVE PURCHASE ORDER - ITEM #, DESCRIPTION, AND UNIT PRICE BREAKDOWN				
*			EQUIPMENT TO BE ON SITE 20 WEEKS AFTER TRANSMITTAL OF APPROVED SUBMITTALS AND PROPER WRITTEN RELEASE BY MOJAVE ELECTRIC PROJECT MANAGER				
*			VENDOR HAS 30 DAYS FROM THE DATE OF COMPLETION OF THEIR WORK AND/OR DELIVERY OF MATERIALS TO SUBMIT ALL COSTS RELATED TO THIS PURCHASE ORDER AND SUBSEQUENT CHANGE ORDERS. ANY INVOICES SUBMITTED AFTER THE 30 DAYS WILL BE CONSIDERED WAIVED AND NOT BILLABLE BY MOJAVE ELECTRIC				
*			TERMS: THIS IS A PAID WHEN PAID PO - INVOICES ARE TO BE INTO MOJAVE NOT LATER THAN THE 15TH OF THE MONTH AND PROJECTED THRU THE END OF THE MONTH.				
*			SUBMITTALS - WHEN DELIVERED TO MOJAVE WILL BE SEPERATED BY SECTION, SUBSECTION AND 3 HOLE PUNCHED AND DELIVERED TO OUR OFFICE WITHIN 15 WD OF RELEASE. ALL SUBMITTAL INFORMATION IS TO BE SENT TO PETER PERGEN.				
			14 paper copies + 2 Electronic copies of submittals to be supplied as required by Specifications				
			7 paper copies + 2 Electronic copies of O&M Manuals to be supplied as required by Specifications				
			ALL required Assistance from supplier and Manufacturer as needed for BIM Process				

VENDOR PLEASE NOTE:

After release, starting within ten (10) days a written expediting report will be given to this office on the first and fifteenth of each month. This report is to include the delivery date for each item and any changes from the previous report. A detailed packing list is to be included with each shipment and a copy attached to each invoice.

Send all invoices to the attention of: Accounts Payable. Send all expediting reports to the attention of: Nancy Goodson.

•SHIP ALL MATERIAL ON THIS P.O. AFB FREIGHT IF POSSIBLE.
•ALL MATERIAL TO INCLUDE ALL SALES TAXES IN THE LUMP SUM PRICE.
•MARK ALL BOXES, ETC. WITH THE JOB NUMBER.

* 1% 2% 25th PROX. INVOICES RECEIVED AFTER 25th CONSIDERED MONTH'S BUSINESS.

SUB TOTAL	$ 600,196.00
TAX	
CASH DISC	
TOTAL PRICES FIRM	

MOJAVE ELECTRIC, INC.

ACCEPTED FOR VENDOR

BY

Angelo Carvalho / Keith L CAM Consulting c/o Cashman Equipment

BY

Rolex Fergen, VP Project Dev

EXHIBIT 4

CASHMAN CAT

POWER SOLUTIONS

CAT Rental Power

May 24, 2010

Cashman Power Solutions
3300 St. Rose Pkwy.
Henderson, NV 89052

Mojave Electric
3755 W. Hacienda
Las Vegas, NV 89118

Subject: Las Vegas City Hall Submittal review

Pete,
We have completed our review of the Las Vegas City Hall submittal with the following responses for re-submittal:

Div 263213- Packaged Generator Systems

1. 9kw jacket heaters require circuit revisions to the drawings.
   a. Jacket heaters are designed to work on either 240V or 208V.
2. Generators shall be furnished with upturn radiator exhaust scoops.
   a. Upturn scoops will be provided. Revised drawings are being produced.
3. *Shop drawings of the generator yard not in the Cashman scope.*

Div 263353- Static uninterruptible power supply

1. Furnish with network monitoring via Ethernet cable connection
   a. Item D in the UPS BOM and Section 5 in the UPS submittal references the NETCOM UPS monitoring equipment.

Div 263600- Transfer switches

1. Provide information for remote status panel.
   a. Cashman will provide a remote status panel for the Fire Command indicating ATS switch position.
2. *Equipment room layouts not in the Cashman scope.*
3. Indicate automatic transfer switch features as indicated in specifications.
   a. Transfer switches meet the scope of the specification.

Thank you,

Kim Symons
Account Manager
Cashman Power Solutions

Las Vegas
3300 St. Rose Pkwy
Henderson, NV 89052
PH: 702-649-8777
FAX: 702-639-5090

Reno
600 Glendale Ave.
Sparks, NV. 89431
PH: 775-358-5111
FAX: 775-358-0433

Elko
5010 Idaho Street
Elko, NV. 89801
PH: 775-738-9871
FAX: 775-738-7865

EXHIBIT 5

Mojave Electric

TRANSMITTAL

MOJAVE JOB # 767810

DATE: 06/16/10

JOB NAME: City of Las Vegas New City Hall
ADDRESS: 495 Main Street
Las Vegas Nevada 89101

TO: CAM Consulting c/o Cashman Equipment

ATTN: Angelo Carvalho / Keith Lozeau

WE ARE SENDING

- [ ] SHOP DRAWINGS
- [ ] LETTER
- [ ] DRAWINGS
- [X] SUBMITTALS
- [ ] SAMPLES
- [ ] SUB CONTRACT

SUBMITTED FOR

- [ ] APPROVAL
- [X] YOUR RECORDS
- [ ] CORRECTION AND RESUBMITTAL
- [ ] IMMEDIATE RELEASE TO JOBSITE
- [ ] IMMEDIATE RELEASE TO SHOP
- [ ] _____

ACTION TAKEN

- [X] APPROVED
- [ ] APPROVED AS NOTED
- [ ] REVISE AND RESUBMIT
- [ ] REJECTED
- [ ] _____
- [ ] _____

SPEC. SECT.	ITEMS SUBMITTED	MANUFACTURER	COPIES SENT	COPIES TO BE RETURNED
263600	ATS Product Data	Catapillar	1	0
263213	Generator Installation	Catapillar	1	0
263600	Generator Drawing	Catapillar	1	0

RESUBMITTAL DUE BY: _____

REMARKS: Documents given directly to Cashman Power Systems

RECEIVED BY: _____

DATE: _____

3755 W. Hacienda Avenue Las Vegas, Nevada 89118-1755 FAX 702-798-3740

EXHIBIT 6

MITSUBISHI ELECTRIC POWER PRODUCTS, INC.

Packing Slip

Packing Slip No: 6812
Ship Date: 11/11/10

ATTN: Tom
From Brandon Rat
218-2185

520 Keystone Drive
Dock A
Warrendale, PA 15086

Sold To:
C085393
CASHMAN EQUIPMENT CO.
P.O. BOX 271630
LAS VEGAS, NV 89127-1630
UNITED STATES

Ship To:
7
CHRIS MEIERS
MOJAVE ELECTRIC
3480 W. HACIENDA
LAS VEGAS, NV 89118
USA

Order #	PO Number	Total Boxes	Ship Via	Weight
SU06197	7402	5	R&L CARRIER	8,134.00

Item	Description	UM	Qty Ordered	Qty Packed	Qty BO
M98AE-60024-44B00	98AE 600KVA 480V IN/OUT UPS	EA	1	1	0
S/N: 10-7M73354-01					
WB973-CDP-800-480E	MBP; WALL MNT (3)800A SKRU 2)KK PB CPT	EA	1	1	0
S/N: PU5654-1					
NETCOM2 SEC	NETCOM2 SEC FOR 2033C,G,D 9800 AND 9900	EA	1	1	0
	Consists of the following items				
NETCOM-PH	SNMP IP ETHERNET INTERFACE CARD	EA	1	1	0
HDW90001	CABLE; 6 FOOT DB9 TO RJ45 GRAY CABLE	EA	1	1	0
DL-CABLE-6	COMMUNICATION CABLE	EA	1	1	0
HDW90003	CD; FOR NETCOM2 KITS	EA	1	1	0
MCP-104-10006-S	MUCM; MODBUS FOR 9800AE	EA	1	1	0
	Consists of the following items				
MCP-104	MUCM-102/MUCM-002, METH-001, MU1, TR1218	EA	1	1	0
COMITSU KIT SEC	DB9-RJ45 ADAPTERS FOR NETCOM-S	EA	1	1	0
KIT10005	PSAU60-KIT 12V 1.3A POWER KIT FOR 9800AE	EA	1	1	0
KIT10010	KIT; MISC HARDWARE FOR MUCM	EA	2	2	0
CAP00250	LNX2W842MSMCMK 450V 8400uF	EA	2	2	0
FAN20012	UPS FAN	EA	1	1	0
AE-ENP00014	MBS; PROCEDURE REV * AE-ENP00014	EA	1	1	0

BEST WAY
MUST NOTIFY 24HRS BEFORE DELIVERY
CHRIS 702-798-2970

Thank you for your order.

Tom Cashman 3:00 11/18/10

CASH1769

EXHIBIT 7

TRANSPORTATION CO.

BILL OF LADING – SHORT FORM – NOT NEGOTIABLE

SHIP FROM	SHIPPED
	BILL OF LADING
CONSIGNEE'S DESCRIPTION	

24 hour notification required – Please call Chris Hodge 24 hours prior arrival at equipment at job site.

EXHIBIT 8

CASHMAN CAT
POWER SOLUTIONS

CASHMAN POWER SOLUTIONS
3300 SAINT ROSE PARKWAY
HENDERSON, NV 89052
PHONE: (702) 649-8777
FAX: (702) 639-5090

To	Mohave Electric 3480 W. Hacienda Las Vegas, NV	Date	January 5, 2011
		PO No.	767810-GEN-10010
		Material	ATS's and batteries
Att	Tom Ceravolo	Project	LV City Hall

IF ENCLOSURES ARE NOT AS NOTED, PLEASE ADVISE IMMEDIATELY.

☐ Submittal / Resubmittal ☐ Product Specification Sheets / Brochures ☐ Specifications / Plans
☐ Operation & Maintenance Manuals ☐ Shop Drawings-Wiring Diagrams ☐ Other

No of Copies	Manufacturer	Description
2	CAT	batteries for switchgear
1	CAT	800A tansfer switch #ZEN1598823
1	CAT	1000A tansfer switch #ZEN1598824
1	CAT	1200A tansfer switch #ZEN1598825

☐ As Requested ☐ Review / Comment / Clarification ☐ Information / Other

Additional Notes and Comments

Received By: Tom Ceravolo Title: Purchasing Agent

Date Received:

Submitted By: Date: 01-5-11

EXHIBIT 9

Recording Requested by and Return to:
CASHMAN EQUIPMENT
3300 ST ROSE PKWY Credit Dept
HENDERSON, NV 89052
Phone 800 937-2326 Fax 702 633-4695

Customer Name MOJAVE ELECTRIC
Project / Job J1771 LAS VEGAS CITY HALL
PO # 603410-017
Agreement # R16743
Agreement Date 3/9/2010
Cert No 7009 1410 0001 4014 5685

101381 015
4/29/2010
CLARK County

PRELIMINARY NOTICE OF RIGHT TO LIEN AND REQUEST FOR RECEIPT OF NOTICE OF COMPLETION

Customer contracting for said Equipment or Labor: R16743 General

MOJAVE ELECTRIC
3766 W HACIENDA AVE
LAS VEGAS NV 89118
Phone: (702) 798-2070

Owner: 7009 1410 0001 4014 5678 ader, Surety or Bonding Co:
FOREST CITY ENTERPRISES INC
TERMINAL TOWER #1410, 50 PUBLIC S
CLEVELAND OH 44113-2202
Phone:

The undersigned notifies you that they have supplied equipment for the improvements of the property identified as:

R16743

JobNum:	J1771	Agreement #:	R16743
Address:	495 MAIN ST		/E CLARK
City / State:	LAS VEGAS NV	county:	CLARK
Job Infor:	LAS VEGAS CITY HALL		

This is not a notice that the undersigned has not or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, claim a lien as provided by law against the property if the undersigned is not paid.

REQUEST IS HEREBY MADE: The Owner is hereby requested, pursuant to NRS 108.228(4), to provide this claimant with a copy of any Notice of Completion recorded on this construction project.

Customer is required to immediately advise Cashman Equipment should this piece of equipment or any other piece of equipment designated for use on this project be moved to another project.

Prepared by: Karen Lee McClain 4/29/2010
KAREN LEE McCLAIN, CREDIT ASSISTANT Phone: (800) 937-2326 ext 4603 Fax: (702) 633-4695

For more information regarding this notice or to obtain a release, please contact your account representative:

DIANN BOWIE
Phone: (800) 937-2326
Fax: (702) 633-4695

EXHIBIT 10

PRELIM
R16743
view prelim

M.W. Schofield, Assessor

REAL PROPERTY PARCEL RECORD

Click Here for a Print Friendly Version

GENERAL INFORMATION	
PARCEL NO.	139-34-201-022
OWNER AND MAILING ADDRESS	P Q LAS VEGAS L L C %FOREST CITY ENTPRS INC TERMINAL TOWER #1410 50 PUBLIC SQUARE CLEVELAND OH 44113-2202
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.	* 20091210:03372
RECORDED DATE	12/10/2009
VESTING	NO STATUS

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

ASSESSMENT INFORMATION AND SUPPLEMENTAL VALUE	
TAX DISTRICT	203
APPRAISAL YEAR	2009
FISCAL YEAR	09-10
SUPPLEMENTAL IMPROVEMENT VALUE	0
SUPPLEMENTAL IMPROVEMENT ACCOUNT NUMBER	N/A

REAL PROPERTY ASSESSED VALUE		
FISCAL YEAR	2009-10	2010-11
LAND	0	0
IMPROVEMENTS	0	0

EXHIBIT 11

Recording Requested by and Return to:
CASHMAN EQUIPMENT
3300 ST ROSE PKWY Credit Dept
HENDERSON, NV 89052
Phone 800 937-2326 Fax 702 633-4695

Customer # 101381 MOJAVE ELECTRIC
Project / Job LAS VEGAS CITY HALL
PO # 603410-017
Agreement # R16743
Agreement Date 3/8/2010
Cert No 7009 1410 0001 4015 0290

015
12/7/2010
CLARK County

PRELIMINARY NOTICE OF RIGHT TO LIEN AND REQUEST FOR RECEIPT OF NOTICE OF COMPLETION

Customer contracting for said Equipment or Labor: R16743
MOJAVE ELECTRIC
3755.W HACIENDA AVE
LAS VEGAS NV 89118
Phone: (702) 798-2970

General: 7009 1410 0001 4015 0276
WHITING TURNER CONTR CO - 6720
6720 VIA AUSTI PKWY STE 300
LAS VEGAS NV 89119
Phone: (702) 650-0700

Owner: 7009 1410 0001 4015 0283
OH LAS VEGAS LLC
50 PUBLIC SQUARE STE 1005
CLEVELAND OH 44113
Phone:

ler, Surety or Bonding Co:

The undersigned notifies you that they have supplied equipment for the improvements of the property identified as:

R16743

Agreement #:	R16743			
Address:	495 MAIN ST		/E CLARK	
City / State:	LAS VEGAS	NV	**county:**	CLARK
Job Info:	LAS VEGAS CITY HALL			

This is not a notice that the undersigned has not or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, claim a lien as provided by law against the property if the undersigned is not paid.

REQUEST IS HEREBY MADE: The Owner is hereby requested, pursuant to NRS 108.228(4), to provide this claimant with a copy of any Notice of Completion recorded on this construction project.

Customer is required to immediately advise Cashman Equipment should this piece of equipment or any other piece of equipment designated for use on this project be moved to another project.

Prepared by: Karen Lee McClain 12/7/2010
KAREN LEE McCLAIN, CREDIT ASSISTANT Phone: (800) 937-2326 ext 4603 Fax: (702) 633-4695

For more information regarding this notice or to obtain a release, please contact your account representative:

KAREN LEE McCLAIN
Phone: (800) 937-2326
Fax: (702) 633-4695

EXHIBIT 12

JOB INFORMATION SHEET

PROJECT INFORMATION

City of Las Vegas New City Hall
495 Main Street
Las Vegas Nevada 89101

ELECTRICAL CONTRACTOR:

MOJAVE ELECTRIC
8755 W. Hacienda Avenue
Las Vegas, Nevada 89113
PHONE: (702) 798-2970
FAX: (702) 798-3740

PRIME CONTRACTOR

Whiting - Turner
6720 Via Austi Parkway, Suite 300
Las Vegas Nevada 89119
PHONE: 660-0700
FAX: 660-2650

OWNER

OH Las Vegas LLC
50 Public Square, Suite 1005
Cleveland Ohio 44113
PHONE:
FAX:

FROM:

Mojave Electric

EXHIBIT 13

File(0 [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: AB206643-B5B2-42EE-A008-186898642070
Job #: S1236701
Cert No.:

NOTICE OF RIGHT TO LIEN (PRIVATE WORK)

(Nevada Revised Statues)

TO: GENERAL CONTRACTOR
MOJAVE ELECTRIC INC

3788 W HACIENDA AVE
LAS VEGAS, NV 89118-2905

TO: OWNER OR REPUTED OWNER
EQ LAS VEGAS LLC

50 PUBLIC SQ-TE 31410
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, 3074 CIVIC CENTER DR, N LAS VEGAS, NV 89030-7624.

Said labor, materials or services were first furnished or worked performed on 02/01/2011.

This is not a notice that the undersigned has not or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, claim a lien as provided by law against the property if the undersigned is not paid.

REQUEST IS HEREBY MADE that the Owner or Public Entity, pursuant to Nevada's Mechanic's Lien Statutes serve on the Undersigned, by certified mail, a copy or copies of any and all Notices of Completion the Owner or Public Entity, its agents or its assigns, causes to be recorded with the County Recorder's Office where the property is located with respect to the improvements to be made.

I declare that I am authorized to file this claim on behalf of the claimant. I have read the foregoing document and know the contents thereof; the same is true of my own knowledge. I declare under penalty of perjury that the foregoing is true and correct. Executed at HENDERSON, Nevada on 04/20/2011 for CASHMAN EQUIPMENT COMPANY.

Prepared by: CMA FORMS FILING SERVICE
LUPE GALLEGOS, REPRESENTATIVE FOR, CREDIT MANAGEMENT ASSOCIATION Phone: (702) 259-2622 Fax: (702) 269-9908

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.

EXHIBIT 14

Assessor

Michele W. Shafe, Assessor

PARCEL OWNERSHIP HISTORY

Assessor Map | Aerial View | Document Codes | Current Ownership | New Search

ASSESSOR DESCRIPTION
PARCEL MAP FILE 117 PAGE 14 LOT 1
SEC 34 TWP 20 RNG 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 SP 180-10	20120917:01875	07/17/2012	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 G 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, 1989 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.

  500 S. Grand Central Pkwy., Las Vegas, NV 89155 (702) 455-0900

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	495 S MAIN ST
CITY/UNINCORPORATED TOWN	LAS VEGAS
ASSESSOR DESCRIPTION	PARCEL MAP FILE 117 PAGE 14 LOT 1 SEC 34 TWP 20 RNG 61
RECORDED DOCUMENT NO.	* 20120217:01878
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

Inst #: 20120217-0001075
Fees: $0.00 N/C Fee: $0.00
RPTT: $0.00 Ex: #002
02/17/2012 11:10:14 AM
Receipt #: 1070223
Requestor:
FIRST AMERICAN TITLE HOWARD
Recorded By: KGP Pgs: 5
DEBBIE CONWAY
CLARK COUNTY RECORDER

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
386052-585
(Space above line for Recorder's use only)

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)

LV 410,970,226v1 12-9-09

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 }
COUNTY OF Clark } ss.

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

S. Renee Hoban
NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
S. RENEE HOBAN
No. 94-2420-1
My Appointment Expires Oct. 26, 2010

S. Renee Hoban
#94-2420-1
EXP. 10-26-10

LV 410,270,27v1 12-9-09

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 61 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 87 OF PLATS OF CLARK COUNTY, NEVADA RECORDS AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE ROUND ALUMINUM CAP MARKING THE INTERSECTION OF MAIN STREET AND CLARK AVENUE ON THE NEVADA DEPARTMENT OF TRANSPORTATION "O" CENTERLINE; THENCE NORTH 27°53'11" EAST, ALONG SAID CENTERLINE, A DISTANCE OF 80.03 FEET; THENCE SOUTH 62°06'49" EAST, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF MAIN STREET;

THENCE NORTH 27°53'11" 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 16.71 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF LEWIS AVENUE; THENCE SOUTH 62°04'49" EAST, ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 276.19 FEET (276.00' 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 16.71 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF FIRST STREET; THENCE SOUTH 27°14'16" WEST, ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 380.62 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 90°00'27", A CURVE LENGTH OF 16.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF CLARK AVENUE; THENCE NORTH 62°07'16" WEST, ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 276.19 FEET (276.00' RECORD) TO THE BEGINNING OF A 10.00 FOOT RADIUS TANGENT CURVE, CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE, HAVING A CENTRAL ANGLE

90°01'28", 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°57'30" WEST, BEING THE CENTERLINE OF CASINO CENTER BOULEVARD BETWEEN STEWART AVENUE AND COOLIDGE AVENUE AS SHOWN BY THAT CERTAIN MAP IN FILE 67, PAGE 79 OF SURVEYS IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

MARK D. HERZIG
PROFESSIONAL LAND SURVEYOR
NEVADA LICENSE NO. 16082
POGGEMEYER DESIGN GROUP, INC.
8880 SMOKE RANCH ROAD, SUITE 110
LAS VEGAS, NEVADA 89148

MARK D. HERZIG
Exp. 6-30-11
No. 16082

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) 138-34-201-022
   b)
   c)
   d)

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

FOR RECORDER'S 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 Fretwell Capacity: Grantee

SELLER (GRANTOR) INFORMATION (REQUIRED)
Print Name: PQ LAS VEGAS, LLC
Address: Terminal Tower, Ste. 1410, 50 Public Sq.
City: Cleveland
State: Ohio 44113

BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: CITY OF LAS VEGAS, NEVADA
Address: 400 Stewart Avenue, 2nd Floor
City: Las Vegas
State: Nevada Zip: 89101

APPROVED AS TO FORM
3-25-11

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
Print Name: First American Title File Number: 386052
Address: 2400 Paseo Verde Pkwy State: NV Zip: 89074
City: Henderson

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

LV410.070.2001v1

EXHIBIT 15

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CASHMAN EQUIPMENT COMPANY, a Nevada corporation,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED MATTERS.

CASE NO. A642583

DEPOSITION OF BRIAN BUGNI
Taken on Thursday, January 10, 2013
At 11:00 a.m.
At 6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada

REPORTED BY: CHRISTY LYN DeJONKER, CCR NO. 691

APPEARANCES:
For the Plaintiff:
JENNIFER R. LLOYD, ESQ.
Pezzillo Lloyd
6725 Via Austi Parkway
Suite 290
Las Vegas, Nevada 89119

For the Defendants:

BRIAN W. BOSCHEE, ESQ.
Cotton, Driggs, Walch,
Holley, Woloson & Thompson
400 South Fourth Street
Third Floor
Las Vegas, Nevada 89101

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EXHIBITS

(Prior to the commencement of the deposition, all of the parties present agreed to waive statements by the court reporter, pursuant to Rule 30(b)(4) of NRCP.)
Thereupon --
BRIAN BUGNI,
was called as a witness, and having been first duly sworn, was examined and testified as follows:
EXAMINATION
BY MS. LLOYD:
Q. We are here today, Cashman Equipment versus CAM Consulting, Case No. A642583. I am Jennifer Lloyd, plaintiff's attorney. And we are here for the deposition of the person most knowledgeable of West Edna Associates, Ltd. So we will start with can you state your name for the record.
A. Brian Bugni.
Q. Can you spell your last name.
A. B-U-G-N-I.
Q. Okay. And you are here as the person most knowledgeable for West Edna Associates?
A. Yes.
Q. We will go over that in just a second.
Have you ever had your deposition taken before?
A. Yes.

Q. How many times?
A. I think once probably 14 years ago.
Q. Okay. Then we will go over the rules really quick as a refresher. It's questions and answers. I need verbal responses to all of the questions that I ask, not just a nod of the head. The court reporter is going to be taking down everything we say. So it's important that we don't talk at the same time, so if you let me finish and I'll let you finish so she can make an accurate record.
You can take a break at any time except for when a question is pending. I would ask that you answer the question prior to taking a break. If you don't understand a question or it's not clear what I am asking, just tell me and I'll try to rephrase it so it's understandable so we can get your best testimony here today. Your testimony is under oath just like it would be in a court of law.
Is there any reason why you cannot give your full and complete, truthful testimony here today?
A. No.
Q. What did you do to prepare for your deposition today?
A. I mean, not that much.
Q. Do you want to -- I don't want to get into

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1 privileged communications with your attorney, but just
2 generally what you did to prepare.
3 A. Just reviewed some of the information that
4 you had requested on the notice for the person most
5 knowledgeable.
6 Q. So documents that have already been produced
7 by your counsel in this case?
8 A. Well, I just looked in our accounting system.
9 I didn't review any court documents.
10 Q. Okay. Did you speak with anyone besides your
11 attorney concerning your deposition today?
12 A. No.
13 Q. What is the highest level of education you
14 have obtained?
15 A. Master's degree.
16 Q. In what subject?
17 A. Accounting.
18 Q. And where did you graduate from?
19 A. For that, Western New England College.
20 Q. When was that?
21 A. 1987, I think.
22 Q. Prior to that, did you get your undergraduate
23 degree?
24 A. Yes.
25 Q. Where did you obtain that?

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1 A. The University of North Carolina.
2 Q. When did you graduate from there?
3 A. That was '85.
4 Q. And do you hold any professional licenses?
5 A. No.
6 Q. Then I have to ask this. It doesn't mean
7 anything. Have you been convicted of any crime within
8 the last ten years?
9 A. No.
10 Q. Can you tell me about your current
11 employment?
12 A. I have been with Mojave Electric for -- going
13 on 16 years in June.
14 Q. Oh, wow. What is your position there?
15 A. Vice president of finance.
16 Q. And how long have you held that position?
17 A. I think since about 2002.
18 Q. And prior to that, what was your position at
19 Mojave?
20 A. The title was controller.
21 Q. Can you describe what your job duties are as
22 a vice president of finance.
23 A. Maintaining all the financial information,
24 accounts receivable, accounts payable, maintaining the
25 office staff.

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1 Q. All of the office staff?
2 A. Yes.
3 Q. Let's go over the PMK notice really briefly.
4 You want to take a look at this. I am assuming that is
5 what you were referring to earlier.
6 A. Yes.
7 Q. So if you just want to confirm that you are
8 the PMK for West Edna Associates on all of the items
9 that are listed on this notice?
10 A. Yes, I am.
11 Q. That is the amended notice of deposition
12 dated November 8th, 2012. The project we are here
13 today on is the new Las Vegas City Hall. So I'm
14 probably just going to say project. And when I say
15 "project," that is what I am referring to, just so we
16 are on the same page.
17 Can you describe to me Mojave's scope of work
18 on the project.
19 A. It was the electrical installation on this
20 project.
21 Q. All of it?
22 A. Yes.
23 Q. And was it done in phases?
24 A. Could you clarify --
25 Q. Was your contract from Whiting Turner one

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1 large, lump-sum contract, or was it done in different
2 like, you know, I don't know, rough end -- or I don't
3 know how they broke it up, but was it broken up in
4 separate contracts?
5 A. No. We actually had two contracts from
6 Whiting Turner on that project.
7 Q. What were those two separate contracts?
8 A. One was the main building and then the second
9 was for the underground work.
10 Q. So the underground would have been completed
11 first, or no?
12 A. The contract is still open at this time.
13 Q. Were they issued at the same time?
14 A. Approximately the same time.
15 Q. Then what was your role in reference to this
16 project?
17 A. Just all financial matters on the contract.
18 Q. So do you deal with all payments, receipt of
19 payments, issuing payments?
20 A. Yes.
21 Q. Do you have day-to-day involvement in the
22 project?
23 A. No.
24 Q. Are you responsible for preparing the payment
25 applications?

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A. In our accounting system, yes.
Q. So do you determine percentage completion, or do you fill in the schedule of values, or how is that completed?
A. That is completed with the project manager on the job.
Q. Do you know offhand what your total contract value was with the two contracts?
A. No, I don't.
Q. And then do you know what the value was related to the equipment supplied by Cashman?
A. Through CAM?
Q. Uh-huh.
A. That was a ballpark of a little over 750,000.
(Exhibit 1 marked.)
BY MS. LLOYD:
Q. We will mark Exhibit 1. You want to take a look at these. They were disclosed in this order. Are you familiar with these documents?
A. Yes.
Q. And can you describe to me what they are?
A. They are the AIA billing formats for the multi billings to Whiting Turner.
Q. This appears to contain three subsequent months. Is that how it looks to you?

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A. Yes.
Q. So it's a period ending January 2011, February 2011 and March 2011. Are these complete payment applications?
A. Typically we provide a conditional release and a copy of our union letter.
Q. Would this be the full schedule of values for the project?
A. No. There is more line items on it because it should be a total at the bottom.
Q. Okay. So can you take a look at the schedule of values included with each of these and tell me where the equipment that was supplied by Cashman is, if you see it?
A. I am not sure exactly where it's broken out on here.
Q. Is it line 4, line 5, emergency generator and UPS system?
A. I would assume it is, but I can't verify that.
Q. How would you be able to verify what those items refer to?
A. I would have to talk to our project manager just to see how they derive the schedule of values.
Q. Okay. Do you know when Mojave received

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payment for the equipment that was supplied by Cashman to the project, the generator equipment?
A. If I remember correctly, it was in the April time period.
Q. So on here, say, for January, on the emergency generator line item, when it says this period, 200,000, does that mean you are billing 200,000 for the emergency generator in January?
A. Yes.
Q. When would you receive payment for your January payout?
A. Typically we should have received that probably the first part of March.
Q. Okay. Then if you go to February, it looks like it was billed out, is that another 520,000 --
A. Yes.
Q. -- on the generator? And then 50,000 more on the UPS?
A. Correct.
Q. So when would you have received payment for the February payment application?
A. Typically that should be the first part of April also.
Q. Okay. And then on the March lines 4 and 5, you billed out another 89,700 it looks like?

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A. Yes.
Q. So when would you receive payment for the March payment application?
A. That should be probably the first part of May.
Q. Okay. And I could not locate copies of those payments. Do you know if you have disclosed copies of those payments to your counsel?
A. I am assuming we have.
MR. BOSCHEE: Just so I am clear on this, the payments from Whiting to you guys for this?
MS. LLOYD: For the equipment.
MR. BOSCHEE: Okay. I'll say that I haven't seen them, but we will go back and look. And if we haven't disclosed them, we will get them to you. But I don't believe I have seen them.
BY MS. LLOYD:
Q. So on a job like this when you have the equipment, assuming that the generator and the UPS line items are referring to the equipment supplied by Cashman, how do you coordinate payment of your vendors?
A. Typically we will get a notice from Whiting Turner that they have a check ready. Then they will give a checklist of items that they need to release that payment to Mojave.

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1 Q. And then how does that work with -- when do
2 you pay your vendors for the equipment?
3 A. Typically we have to pay vendors first. You
4 get the appropriate releases from each supplier and
5 their subtiered suppliers. And then I take all the
6 releases over to Whiting Turner and pick up payment.
7 Q. So were you required to provide conditionals
8 prior to getting these payments? Conditional releases.
9 A. Mojave provided a conditional release to
10 Whiting Turner with the billing.
11 Q. Did Whiting Turner require you to provide a
12 conditional release from, say, CAM or even downstream
13 or Cashman --
14 A. No.
15 Q. -- prior to issuing the payment for the
16 equipment?
17 A. No. They would have the check ready, and I
18 would have to go get unconditional releases.
19 Q. Upon payment of the vendors? Maybe you can
20 describe the whole process to me. So you billed for
21 the generator equipment here, and say you have received
22 most of the payment for it. So you are determining you
23 are going to pay your vendors. So what happens once
24 you -- or how do you get the check from Whiting Turner?
25 A. Okay. Typically we would get an e-mail from

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1 their accounting person that would say, We have a check
2 for X dollars ready for this time frame. We need
3 current a union letter; we need unconditional releases
4 from the following suppliers. So we would then collect
5 all that paperwork, unconditional releases from all
6 suppliers or subcontractors, get union letters, you
7 know. At different times they may, just depending on
8 insurance, renewals will last for new insurance
9 certificates. But typically it's usually just union
10 letters and supplier releases.
11 Q. So are you getting unconditionals through the
12 pay ap period that you are being paid for?
13 A. Yes.
14 Q. So would you pay your vendors prior to
15 receiving the payment from Whiting Turner?
16 A. Yes.
17 Q. And is that what happened with CAM?
18 A. What do you mean?
19 Q. With the payments to CAM for this equipment,
20 did you pay them prior to your getting paid for the
21 equipment?
22 A. Right. We paid CAM to get the releases from
23 MC Fan, all of his suppliers.
24 Q. So did you pay him prior to getting payment
25 from Whiting Turner for that equipment?

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1 A. I believe we did, to get the releases, yes.
2 Q. And as far as you know, has Mojave been paid
3 in full for the equipment that was supplied?
4 A. Yes.
5 Q. And so you billed out the equipment at
6 100 percent?
7 A. Yes.
8 Q. Is that because it's 100 percent complete?
9 A. Yes. This project is 100 percent complete.
10 Q. And the equipment is at 100 percent, meaning
11 you have supplied 100 percent of what you were
12 contracted to supply?
13 A. Could you clarify?
14 Q. So you supplied the generator and the UPS
15 system. Those had certain requirements, I am guessing,
16 that come along with the whole package. It's like a
17 package of equipment.
18 A. Well, we didn't supply the generator and UPS.
19 Q. Well, it was part of your contract with
20 Whiting Turner to supply those items?
21 A. Yes.
22 Q. And you procured them from the vendor?
23 A. Correct.
24 Q. So you were ultimately responsible for
25 installing them and supplying them and getting them

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1 working?
2 A. No, that was through CAM. CAM directed their
3 suppliers to do this.
4 Q. But it was part of your contract. CAM didn't
5 contract with Whiting Turner to supply that equipment?
6 A. Correct.
7 Q. You contracted with Whiting Turner to supply
8 that equipment?
9 A. Yes.
10 Q. So if your contract is 100 percent, that
11 means your work supplying that equipment is complete,
12 right?
13 MR. BOSCHEE: Objection. That may call for a
14 legal conclusion, but go ahead.
15 THE WITNESS: I would say no.
16 BY MS. LLOYD:
17 Q. What is not complete?
18 A. Cashman didn't complete all their contracted
19 work.
20 Q. Cashman or CAM didn't complete?
21 A. Cashman.
22 Q. Well, who did you contract with?
23 A. CAM.
24 Q. So then who was responsible to do that work
25 for you?

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A. CAM.
Q. Did CAM complete the work?
A. It wasn't CAM's work. I mean, it was items provided by Cashman.
Q. Well, who was your contract with?
A. Ours is with CAM.
Q. And what was that contract for?
A. Managing the installation of the generator and UPS.
Q. So you paid them not 800,000-some dollars to manage the installation of the UPS?
A. I am not sure of the question you are asking.
Q. You paid him 900,000 just to manage the installation, or was that to manage the installation and supply the equipment?
A. To manage and supply the equipment.
Q. So then as to you CAM was responsible to supply the equipment to the project and get it in working order, right?
A. Simplistically, yes.
Q. What do you mean "simplistically"?
A. Well, we had CAM as a minority contractor directing and coordinating all this work. I mean, I can't sit here and say that CAM was providing the generator themselves.

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Q. But that is what he agreed to provide with Mojave, wasn't it?
A. Yes.
Q. So then he was contractually responsible for doing that, right?
A. Yes.
Q. So has Mojave -- just to clarify, Mojave has been paid in full on this project?
A. Yes.
Q. And the generator equipment, that is all closed out?
A. No.
Q. How is it not closed out?
A. There is items that were not provided under the contract.
Q. So how did Mojave bill 100 percent and get paid in full if there are items that aren't complete?
A. Because it was billed by Cashman through CAM for 100 percent of the work that they had on their contract.
Q. Right. What I am saying is if you are saying the work isn't complete, why did Whiting Turner pay you for the work if it's not complete? Pay Mojave.
A. Because right now for the work that is complete Mojave has gone out and provided bonds for the

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mechanic's lien and the PLC codes --
Q. So even --
A. -- that have been provided at this time, along with other items that weren't provided.
Q. So are there still items that Mojave is responsible to complete related to the generator equipment?
A. I don't understand the question.
Q. Is Mojave still responsible to Whiting Turner to complete certain items related to the generator equipment on the project?
A. By bond obligation, yes.
Q. Well, is Whiting Turner looking to you to get the codes or expecting you are going to get the codes? I don't know what is left to do.
A. I don't know what Whiting Turner is thinking, but that is why we had to place a bond for the PLC codes.
Q. Did Mojave obtain a payment bond for this project?
A. Yes, we did.
Q. Was that required by Whiting Turner?
A. Yes.
Q. Okay.
(Exhibit 2 marked.)

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BY MS. LLOYD:
Q. Can you take a look at this document and see if you recognize it.
A. It appears to be the payment bond that was required by Whiting Turner for this project.
Q. Did Whiting Turner make a claim on this bond?
A. Not to my knowledge.
Q. Were there any claims on this bond?
A. Not to my knowledge.
Q. Who would know if there were?
A. Probably our bonding company.
Q. So no one at Mojave would know if there were claims made on your payment bond posted for this project?
A. Not at this time.
Q. Do you know what the purpose of the payment bond is?
A. Simplistically for an owner or general contractor to be protected from a subcontractor or, you know, a subtiered supplier that if something happens to that company during the course of construction that there is an avenue that the owner has protection against, you know, other individuals not being paid on the project.
Q. Do you know if Cashman has made a claim on

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1 this bond?
2 A. I don't know.
3 Q. Can you tell me who Chris Myers is?
4 A. He was our project manager on this project.
5 Q. So was he in charge of Mojave's work on the
6 entire project?
7 A. Yes.
8 Q. Both contracts?
9 A. Yes.
10 Q. And did he have daily involvement, then?
11 A. Yes.
12 Q. Can you generally just describe what his
13 responsibilities would be with your subcontractors or
14 vendors on the project?
15 A. Just coordination of delivering of materials,
16 making sure that deadlines are met. Just making sure
17 that the correct products have been delivered to the
18 job site.
19 Q. And who does he report to?
20 A. Our vice president of construction.
21 Q. And who is that?
22 A. Gary Rich.
23 Q. When we talk about generator systems and UPS,
24 do you know what I am referring to in reference to this
25 project?

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1 A. Just generically. I mean, not an in-depth
2 knowledge of -- I mean, I wouldn't be able to take a
3 schematic and talk about the generator or UPS system.
4 Q. But generally this is what was supplied by
5 CAM and supplied by Cashman, or do you need me to
6 identify the equipment?
7 A. No. I mean, if we are talking in general
8 terms.
9 Q. Okay. Do you know how Mojave solicited bids
10 for the equipment?
11 A. Our typical stance is we'll just contact
12 different suppliers and just get bids from each one
13 on -- for that line item or, you know, a different
14 group of items.
15 Q. Do you do that prior to getting awarded the
16 contract, or do you do that after being awarded the
17 contract?
18 A. Typically it's done prior to awarding the
19 contract. It's usually done prior to bid time.
20 Q. And then that is how you comprise your bid to
21 give to the general contractor?
22 A. Yes.
23 Q. Okay. Do you know the other suppliers or
24 subcontractors that may have provided bids for this
25 generator or equipment on this project?

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1 A. I am not sure of all of them.
2 Q. Do you know any of them?
3 A. One guess would be -- a common name is Rocky
4 Mountain.
5 Q. And then did CAM provide a bid to supply the
6 generator or equipment?
7 A. I am not sure of that.
8 Q. Do you know how Mojave determined who it was
9 going to purchase the equipment from?
10 A. How do you mean?
11 Q. Well, assuming you got a bid from Cashman and
12 other vendors, then how did you determine -- how did
13 Mojave determine who they were going to purchase the
14 equipment from?
15 A. Typically it's who has the lowest price and
16 most complete package.
17 Q. And when you obtain those bids, do you
18 provide them to the general contractor or the owner at
19 any time?
20 A. I am not sure if we do.
21 Q. Who at Mojave would know that?
22 A. Our vice president of buyout.
23 Q. Who is that?
24 A. Pete Fergen.
25 Q. And so do you know in this specific instance

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1 how Cashman was chosen to supply the equipment?
2 A. I mean, I would assume that they were the
3 lowest bidder on the project.
4 Q. But you don't have direct knowledge?
5 A. No.
6 Q. Do you know why Mojave didn't just buy
7 directly from Cashman?
8 A. The owner had a requirement for minority
9 participation.
10 Q. So when did Mojave determine that this
11 equipment should be supplied through a minority or
12 disadvantaged business --
13 A. I am not sure of that date.
14 Q. Do you know if it was before or after you had
15 solicited the bids for the equipment?
16 A. I am not sure.
17 Q. Who would know that?
18 A. Pete Fergen.
19 Q. Is that typically determined prior to getting
20 bids for equipment, or is it different for each
21 project?
22 A. For what item are we talking about?
23 Q. Having to supply a certain amount of -- or
24 utilize a certain amount of disadvantaged business
25 entities. How does Mojave typically determine, you

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1 know, I guess who or what or how that requirement is
2 going to be met?
3 A. I am assuming it's typically in the bid
4 package that comes out from the general contractor.
5 Q. When does Mojave determine which line items,
6 I guess, are going to be supplied through a
7 disadvantaged business entity?
8 A. Again, it's based off the bid. I mean, there
9 are some businesses that are minority or disadvantaged
10 businesses that are direct with Mojave.
11 Q. Like Nedco?
12 A. Yes.
13 Q. So I guess I am trying to get an idea.
14 Cashman bid to Mojave directly. At what point did
15 Mojave determine they didn't want to purchase from
16 Cashman; they wanted to purchase that through the DBE,
17 disadvantaged business entity?
18 A. I am not sure of that exact date.
19 Q. And do you know what your percentage was with
20 Whiting Turner, what utilization you had to do for a
21 DBE on this project?
22 A. I am not sure of that number.
23 (Exhibit 3 marked.)
24 BY MS. LLOYD:
25 Q. Can you take a look at this and tell me if

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1 you recognize this document?
2 A. Yes, I do.
3 Q. Can you tell me what it is?
4 A. This is our large purchase order to CAM
5 Consulting.
6 Q. What do you mean "large purchase order"?
7 A. That is just our terminology for -- I mean,
8 how we track more of the larger expenditures on a
9 project.
10 Q. So because it's over a certain amount?
11 A. Yes. It's tracked in our management report
12 for the job just to have a rough idea of contract
13 amount with the supplier, dollars spent today, what is
14 remaining on the contract.
15 Q. So this was issued -- can you tell me who it
16 was issued to?
17 A. It looks like CAM Consulting. And there's --
18 I guess CEO of Cashman Equipment.
19 Q. Do you know why it was issued that way?
20 A. For minority participation.
21 Q. What does that mean, CAM Consulting, in care
22 of Cashman Equipment?
23 A. I am not sure.
24 Q. Who decided how it would be issued?
25 A. This was issued by Pete Fergen.

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1 Q. Do you know how CAM came to be the DBE that
2 you bought this equipment from?
3 A. I believe he contacted Mojave and had done
4 work with other general contractors.
5 Q. Do you know who else he had worked for?
6 A. I believe he has worked for Martin Harris and
7 Premier Mechanical.
8 Q. Do you know if he spoke with Troy Nelson?
9 A. Yes.
10 Q. And who is Troy Nelson?
11 A. The president and one of the owners of Mojave
12 Electric or West End Associates, Ltd.
13 Q. How did Angelo get a meeting with Troy
14 Nelson?
15 A. I'm not sure.
16 Q. Like, did he just walk in off the street?
17 A. He may have made a phone call to Troy and
18 just introduced himself as a minority contractor.
19 Q. And are you usually, like, looking for
20 minority contractors often, or how does that whole
21 process work?
22 A. Typically I would assume that with this bid
23 certain -- I mean, individuals know the bid is out
24 there, and they will monitor who gets a project and
25 then contact the awarded subcontractor or supplier and

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1 try and get a contract that way, I am assuming.
2 Q. So in one of the responses to the
3 interrogatories, Mojave stated that they checked with
4 other contractors about CAM. Do you know who it was
5 checked with, I guess?
6 A. Is that -- I mean, are you asking the
7 companies that --
8 Q. It just stated that he had met with Troy
9 Nelson and that he checked with other contractors about
10 him.
11 A. That is the Martin Harris and the Premier
12 Mechanical, that I know of.
13 Q. So did Troy actually speak with Martin Harris
14 and Premier Mechanical about Angelo and CAM?
15 A. Yes.
16 Q. What was CAM's first project with Mojave?
17 A. I am not sure of the sequence order. We had
18 two other projects with CAM.
19 Q. In addition to this project?
20 A. Yes.
21 Q. So three projects total. So when you
22 determined that you were going to work with him, is
23 there a process you go through to check him out prior
24 to contracting with him?
25 A. Could you clarify what --

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1 Q. Well, you are paying him large amounts of
2 money. Do you check his credit? Do you check his
3 business status, you know? Is there any, I guess,
4 checking done before you decide that you are going to
5 contract with him?
6 A. There isn't any credit checks done. There
7 was a check done on his DBE status.
8 Q. So you verified his DBE?
9 A. Yes.
10 Q. But you didn't check his credit?
11 A. No.
12 Q. And did he have a contractor's license?
13 A. I am not sure.
14 Q. Mojave didn't check to see if he had a
15 contractor's license?
16 A. I am not sure if somebody else did or didn't.
17 Q. Did you verify how long he had been in
18 business?
19 A. I did not.
20 Q. Do you think anyone else at Mojave did?
21 A. I am not sure.
22 Q. Who would be responsible for something like
23 that?
24 A. Probably Pete Fergen would have been the one.
25 Q. Does CAM actually perform any work?

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1 A. Could you clarify that?
2 Q. What did you hire him to do? What did you
3 hire CAM Consulting to do?
4 A. Just the managing and coordination for
5 whatever task he is hired for.
6 Q. Does he actually do that? Does he do
7 anything?
8 A. He does the managing and coordination.
9 Q. So if I look through your job file, would I
10 find documents from CAM on this project related to the
11 work he performed?
12 A. I am not sure.
13 Q. I mean, what does that mean, "management and
14 coordination"?
15 A. It's more or less if -- let's just say we had
16 a light fixture order with him. He would be given,
17 Here's the fixtures we need, here's the deadline they
18 have to be there, and he coordinates all those items.
19 Q. But in this instance wasn't Mojave dealing
20 with Cashman directly on this generator equipment?
21 A. Not to my knowledge. The only dealing I had
22 was through CAM.
23 Q. What dealings did you have through CAM?
24 A. Just on payments. That is all I really had
25 with CAM.

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1 Q. So for actual work that was performed, you
2 know, the actual supplying of the equipment, the
3 ordering of the equipment, those items, do you know if
4 CAM or Angelo had a role in that?
5 A. Just the coordination of getting the
6 materials, getting whatever subcontractors or suppliers
7 we had to get the items to the job site.
8 Q. Hadn't Mojave already determined to buy the
9 equipment from Cashman?
10 A. I'm not sure.
11 Q. So it was up to CAM to choose who was going
12 to supply the equipment, the generator equipment?
13 A. I'm not sure.
14 Q. Who would know about that?
15 A. Pete Fergen.
16 (Exhibit 4 marked.)
17 BY MS. LLOYD:
18 Q. Can you take a look at this document for me.
19 A. Okay.
20 Q. Are you familiar with this document?
21 A. Yes.
22 Q. Mojave's interrogatory response No. 5 and 7
23 state that this document is -- it memorializes the
24 scope of work that CAM had on this project; is that
25 correct? And the response actually cites this and the

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1 subsequent exhibit as --
2 A. Yes, it does.
3 MR. BOSCHEE: Since you cited it and then we
4 reference it in the interrogatory response, do we just
5 want to put the next one --
6 MS. LLOYD: Together? We can. I don't know
7 that they really actually go together.
8 MR. BOSCHEE: I don't know either, but when
9 you ask about the total scope of work --
10 MS. LLOYD: So the interrogatory response
11 cites Mojave 185 to 208, which you can see at the
12 bottom. The document starts with Mojave 185 and then
13 continues. And the document I just provided goes to
14 208.
15 (Exhibit 5 marked.)
16 BY MS. LLOYD:
17 Q. So are these for the work CAM performed on
18 the new City Hall project?
19 A. No.
20 Q. Okay. So what are these for?
21 A. These refer to separate projects.
22 Q. Okay. Let's start with No. 4. Can you tell
23 me what this is?
24 A. This is a contract for the NV Energy project.
25 Q. And this is issued by Mojave to CAM as your

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1 subcontractor?
2 A. Yes.
3 Q. So can you tell me what CAM's scope of work
4 was for Mojave on this project?
5 A. Reading off of page 2 it includes supply and
6 install a turnkey telecommunication system that's
7 called for in the contract documents dated July 16,
8 2010.
9 Q. So do you need a license, a contractor's
10 license, to install a telecommunication system like
11 that?
12 MR. BOSCHEE: Object to form. May call for a
13 legal conclusion, but if you know, you can answer.
14 THE WITNESS: I don't know.
15 BY MS. LLOYD:
16 Q. Did CAM perform that work?
17 A. Can you clarify it? I'm sorry.
18 Q. So CAM was contracted to supply and install a
19 turnkey telecommunication system. Did CAM do that?
20 A. Can you clarify that again, because I am not
21 sure what you are asking.
22 Q. Well, Mojave hired CAM -- if I am
23 understanding the document right. Mojave hired CAM as
24 a subcontractor to install a turnkey telecommunication
25 system as described in paragraph 1.1. Did CAM perform

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1 that work?
2 A. Are you asking self-performed?
3 Q. Did they perform that work? It's not a trick
4 question, I promise.
5 A. I'm not sure what work. Are you talking
6 about the work there? They were hired to do it and
7 then they hired someone to perform that work.
8 Q. Who did they hire to perform that work?
9 A. Our low-voltage systems division.
10 Q. Does that have a separate corporation?
11 A. No. It's just more or less a division under
12 the West End Associates, Ltd, d/b/a Mojave Electric.
13 Q. So Mojave hired CAM to hire Mojave to perform
14 the work?
15 A. Mojave Systems.
16 Q. But it's the same corporation, so essentially
17 you hired CAM to hire Mojave?
18 A. Yes.
19 Q. And is there a separate contract between CAM
20 and Mojave for the work Mojave --
21 A. I would assume there is.
22 Q. Have you seen it?
23 A. I mean, I haven't looked for it. We got so
24 many projects. I couldn't tell you the exact contracts
25 that are there or not there.

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1 Q. Do you want to look through all these pages?
2 Because I don't know if they are all contract pages or
3 something else. If you want to tell me at the end if
4 any of the documents that are in here in this exhibit
5 clarify that relationship?
6 A. I mean, this is just the agreement between
7 Mojave and CAM.
8 Q. So Bates 199, the last page of it, what is
9 that?
10 A. That is an invoice from CAM to Mojave
11 Electric.
12 Q. Under this agreement?
13 A. Yes.
14 Q. And then what is the previous page?
15 A. More or less the same thing, just for the
16 January time period.
17 Q. Okay. So there is no document in here that
18 shows Mojave billing CAM?
19 A. No.
20 Q. Did Mojave bill CAM?
21 A. Yes.
22 Q. Okay. And do you know what Mojave agreed to
23 pay CAM and then what CAM agreed to pay Mojave for this
24 work?
25 A. Well, for this contract, it was for $350,470.

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1 Q. And then do you know what CAM subcontracted
2 with Mojave to do the work?
3 A. I believe it was probably that dollar amount
4 less -- I think it was a 3 percent fee for CAM.
5 Q. So why did you use CAM on this project?
6 A. Again, it was a minority participation.
7 Q. Required by Clark County?
8 A. I am not sure whether it was NV Energy or
9 Clark County, but there was minority participation
10 desired on this project.
11 Q. So did the prime contractor know that you
12 inserted him in the middle of yourself?
13 A. I am not sure.
14 Q. Okay. So did he complete his work on this
15 project?
16 A. The work was completed by Mojave Systems.
17 Q. Was he around until the end of the project?
18 A. I think the final bid of the project was
19 when -- I mean, it was after the April 2011 time period
20 when --
21 Q. He still owed the money and skipped town?
22 A. Yes.
23 Q. So page 198, it states that -- it says
24 82 percent. Does that refer to percentage complete?
25 A. Yes.

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Q. So there would have been a subsequent payment for 18 percent?
A. Normally there would have been.
Q. So what happened to that payment, I guess?
A. Well, that is when CAM more or less disappeared, so we had Mojave Systems finish it.
Q. And then kept the money?
A. Well, not really kept the money. We had to do his management for him.
Q. Well, did he really do any management on the project?
A. Yes.
Q. Describe to me what he would do on a daily basis on this job.
A. I couldn't tell you. You'd have to get our project manager. But this project manager is no longer with the company.
Q. Who was the project manager on this job?
A. Mark Foster.
Q. So he wasn't just inserted in to meet the DBE requirement. He actually had a role on the project?
A. Yes. The managing/coordination for the low-voltage installation.
Q. Okay. Let's look at No. 5. Can you describe to me what that is?

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A. This is an agreement between Mojave Electric and CAM Consulting for the Las Vegas Metro Police headquarters tenant improvement.
Q. So this is a -- Mojave hired CAM, correct?
A. Yes.
Q. And what did Mojave hire CAM to do on this project?
A. As referenced in paragraph 1-12, supply the consulting services and contract the following systems for access control, paging, multimedia and security systems.
Q. Okay. And then the price for that work, is that contained in Article 5?
A. Yes, it is.
Q. Okay. And did CAM complete its work on this project?
A. No, this was during the same time frame when CAM disappeared. So he had completed a portion of it and Mojave had to step in and coordinate for the rest.
Q. Okay. And on this project CAM hired -- CAM hired the entities specified?
A. Yes.
Q. In 1.1, Stanley Well & Sting?
A. Correct.
Q. And did you tell CAM who to hire to complete

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this work? Is that why it's specified in the agreement?
A. That is what I would assume.
Q. Okay. Who was the project manager on this job?
A. Debbie Corwin.
Q. Is she still with the company?
A. Yes.
Q. And so do you know if Angelo had a role on this project?
A. Probably the same as the other ones.
Q. And do you know if there was a DBE requirement on this project?
A. Yes, there was.
Q. And is that why he was used?
A. Yes.
Q. So he was used for a total of three projects?
A. Yes.
Q. Just to make sure, the City Hall, the Metro, and the NV energy?
A. Yes.
Q. So was CAM paid any payments on the Metro contract?
A. I am not sure. I would have to double-check on that.

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Q. Okay. And then do you know if he was paid any payments on the NV Energy?
A. Yes.
(Exhibit 6 marked.)
BY MS. LLOYD:
Q. Take a look at this document. Do you recognize it?
A. Yes.
Q. Can you tell me what it is?
A. It's a contract between Mojave Electric and CAM Consulting on the Las Vegas Metropolitan Police headquarters, DI.
Q. So did you issue two separate contracts to CAM?
A. Yes.
Q. So this one paperwork is for the 1.1, but it's a different scope of work from the other that we just looked at?
A. Yes.
Q. And what was -- I don't really understand the scope of work. Can you tell me what he was to do or CAM was to do on this project? On this contract.
A. Just reading the paragraphs, the subcontractor is required to supply a job site or job site specific safety program within 30 days of the

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1 contract, two days prior to having a person on the job
2 site. This is an M3 dimensional coordinated project,
3 and it appears for a Q-Matic quote. And electrical
4 contractor is to install conduit and wire in standard
5 boxes for subcontractor.
6 Q. So did he subcontract to someone else to do
7 anything on this contract, or were these actually his
8 duties?
9 A. I am not sure on this one.
10 Q. Did he perform this work?
11 A. Just by looking at the subcontract number, it
12 would -- it appears that it is for a low-voltage work,
13 which might have been my systems department again, but
14 I am not 100 percent sure on that.
15 Q. The date of this agreement is July 20, 2011,
16 which is after the April date you referenced earlier
17 where he skipped town. So do you know if this was ever
18 actually signed, or if he ever did any of this work?
19 A. I am not sure on this one.
20 Q. Can you look to the back and tell me what
21 those invoices are for starting --
22 A. It looks like an invoice from --
23 Q. -- around 280.
24 A. 289 maybe.
25 Q. 282, 281.

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1 A. 281 is a change order.
2 Q. So you issued a change order under the
3 contract. So I am assuming that means it was --
4 A. And the same thing for 282.
5 Q. So what does that mean if you issue a change
6 order on a contract? That there is a contract?
7 MR. BOSCHEE: Can we go off the record for a
8 second?
9 (Off-record discussion held.)
10 BY MS. LLOYD:
11 Q. We started off at Mojave 271. Can you see
12 the numbers at the bottom?
13 A. Yes.
14 Q. So this document appears to be a CAM
15 agreement, correct?
16 A. Yes.
17 Q. Not a Mojave agreement. Have you seen this
18 document before?
19 A. No, I haven't.
20 Q. Because you produced it. I mean, it was in
21 your possession. I don't know if that --
22 A. Okay.
23 Q. So I am not sure why, but -- so can you talk
24 to what this agreement is, or do you not have any
25 knowledge of it?

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1 A. I don't. I mean, this is an agreement from
2 CAM to Q-Matic.
3 Q. If you look at Article 1.1, it looks like it
4 contains the same scope of work as the Mojave to CAM
5 contract we were just looking at, the earlier part of
6 this exhibit. Yes?
7 A. Yes.
8 Q. Okay. But you don't have any knowledge about
9 what this agreement was for?
10 A. I mean, just reading it, I mean, it's to
11 Q-Matic.
12 Q. Do you know why Mojave would have a copy of
13 this agreement if it was between CAM and Q-Matic?
14 A. An assumption would be that CAM needed help
15 with the contract and they basically took a copy of our
16 contract.
17 Q. With their logo on the front. It looks very
18 similar as your contract.
19 A. Well, ours is just an Excel format, so I am
20 assuming they just gave it to Angelo and just had him
21 change --
22 Q. Okay. So neither one of these documents are
23 executed. Do you know if you have executed copies?
24 A. I don't know.
25 Q. Do you know if this work was performed?

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1 A. I would have to assume that it was.
2 Q. Okay. So then if we look again starting at
3 281 with the purchase order changes that were issued by
4 Mojave to CAM, would those have been in reference to
5 Mojave 262, the contract beginning at the beginning of
6 this exhibit?
7 A. Yes. I am assuming it was additional work
8 that was required.
9 Q. At the bottom of that page where it says,
10 Please acknowledge, who's supposed to sign that?
11 A. The subcontractor.
12 Q. Is that Angelo's signature?
13 A. I am not sure. I don't know what Angelo's
14 signature looks like.
15 Q. Because I am going to represent to you that
16 in July I am pretty sure he was gone, July of 2011. So
17 who would have signed this document for CAM?
18 A. I would assume that if this was additional
19 work for Q-Matic, that they had someone from Q-Matic
20 come in and sign that, because at the top it says to
21 CAM.
22 Q. In care of Q-Matic?
23 A. Yes. Because they weren't able to find
24 Angelo to sign it, they just had somebody come in and
25 sign.

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1 Q. And then the documents following that, can
2 you tell me what those --
3 A. Starting with 283?
4 Q. Uh-huh.
5 A. Looks like invoices from Q-Matic.
6 Q. Related to the work they did?
7 A. Yes.
8 Q. Or related to those change orders maybe?
9 A. They would have to be a combination of both
10 because the two change orders total a little over 9,300
11 and the subtotal is almost at 41,000.
12 Q. So Q-Matic was able to complete the work
13 without CAM?
14 A. Yes.
15 Q. And does that still account for your DBE
16 requirement on that project?
17 A. I would assume that portion would be no with
18 CAM being gone.
19 (Exhibit 7 marked.)
20 BY MS. LLOYD:
21 Q. Can you take a look at this and tell me what
22 this is.
23 A. An agreement between CAM and Stanley
24 Convergent Security Tools on the Las Vegas Metropolitan
25 Police Headquarters tenant improvement.

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1 Q. Was this to complete the work from the
2 contract we looked at earlier? I think it was
3 Exhibit 5 between Mojave and CAM.
4 A. Yes.
5 Q. Do you know why Mojave would have a copy of
6 this agreement?
7 A. I am not sure.
8 Q. Then if you can take a look starting at
9 Mojave 218 and describe to me what all the supporting
10 documents are.
11 A. Okay. 218 is a listing for our LPO or large
12 purchase order just tracking of invoices charged
13 against the LPO.
14 Q. So is this a Mojave -- you produced this
15 document. You write in it or someone from Mojave
16 writes in it?
17 A. Yes. 219 is a change order; 220 is also a
18 change order; 221 is also a change order; 222 is also a
19 change order; 223 is also a change order; 224 is also a
20 change order; 225 is also a change order; 226 is also a
21 change order; 227 is also a change order.
22 Q. Let me stop you there. Most of these change
23 orders appear to be unsigned. Is that normal?
24 A. Typically we will get a signature on them.
25 Q. Okay.

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1 A. Then 228 is an invoice from Stanley.
2 Q. And is that -- it looks like it's an invoice
3 to Mojave directly.
4 A. I don't know if they just billed us because
5 this was the time that CAM had disappeared and we had
6 to start paying for CAM.
7 Q. So did you just take over the scope that he
8 was supposed to be performing?
9 A. Basically.
10 Q. Okay. Then if you can, tell me the rest of
11 the documents essentially represent that.
12 A. They are just invoices from Stanley Sting and
13 Well Equipment Company. And the last invoice is just a
14 billing from CAM, which appears to be for well
15 equipment.
16 Q. Do you know if that was paid to CAM?
17 A. I am not sure.
18 Q. So when it's stamped "processed," does that
19 mean it was paid?
20 A. It was entered into our system, in our
21 accounting system.
22 Q. So is there -- do you ever put a date on an
23 invoice that shows when it was paid?
24 A. No.
25 (Exhibit 8 marked.)

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1 BY MS. LLOYD:
2 Q. Can you take a look at these?
3 A. They are checks from Mojave to CAM.
4 Q. Is there any marking on the check itself that
5 shows what it's a payment for? So if we start with the
6 first page, Cashman 438, the check is for 19,989.84.
7 Is there a reference on here of what that is for?
8 A. It would be on the check stub, but not on
9 this portion of the check itself.
10 Q. Okay. Do you have records in your system of
11 what these payments would be for?
12 A. Yes.
13 Q. Have those been produced to date to know what
14 these different payments were in reference to? So if
15 you want to look through, do you know offhand what
16 these payments are in reference to if we go check by
17 check?
18 A. I mean, I couldn't tell you what each check
19 was for.
20 Q. But you have records to know what each check
21 was paying?
22 A. Yes.
23 Q. Can you provide those records?
24 A. Yes.
25 Q. Okay. Then if you want to keep that exhibit

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1 handy.
2 (Exhibit 9 marked.)
3 BY MS. LLOYD:
4 Q. And do you recognize this document?
5 A. It's an unconditional progress release from
6 CAM to Mojave on the City Hall project.
7 Q. And CAM received payment $901,388.93?
8 A. Yes.
9 Q. Do you know what that was payment for?
10 A. I would have to pull the -- I think three
11 invoices are referenced on the release to know exactly
12 what it's paying.
13 Q. Okay. Because I don't believe I have records
14 of that, so could you provide it?
15 A. Sure.
16 Q. Okay. Did CAM have a role on the City Hall
17 project besides the generator and UPS equipment?
18 A. I am not sure.
19 Q. You don't know if they were supplying other
20 equipment?
21 A. I am not sure, because I mean, a lot of the
22 projects mixed together were -- like on the Las Vegas
23 Metropolitan Police Headquarters TI, I mean, they had
24 different facets on that one.
25 Q. So it's possible that CAM was supplying other

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1 equipment to the City Hall?
2 A. I'm not sure.
3 Q. Okay. But those invoice numbers would tell
4 you what this payment was for?
5 A. Yes.
6 Q. Okay. And is this notary -- does this notary
7 work for Mojave?
8 A. Not anymore, but yes, at the time.
9 Q. She did?
10 A. Yes.
11 Q. Did you prepare this release for CAM
12 Consulting?
13 A. Not to my knowledge.
14 Q. So did anyone at Mojave prepare it?
15 A. I don't know. I mean, I know I didn't.
16 Q. Okay. And then if you want to take a look at
17 the previous exhibit. Do you know what checks this
18 release was exchanged for?
19 A. Without having a detail in front of me, I
20 would assume it was the last two checks, possibly.
21 Because it looks like those two checks totaled the
22 901,000.
23 Q. So at the time that Mojave issued these
24 checks, had Mojave been paid for the equipment from
25 Whiting Turner?

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1 A. I don't think we had.
2 Q. Okay. But you have records of when you
3 received payment and you are going to provide that?
4 A. Yes.
5 Q. Okay.
6 (Exhibit 10 marked.)
7 BY MS. LLOYD:
8 Q. Can you take a look at these documents?
9 A. Okay.
10 Q. Do you recognize these?
11 A. Yes.
12 Q. Can you tell me what they are?
13 A. They are checks from CAM to Mojave.
14 Q. And do you know what they are paying?
15 A. They are paying Mojave for the work on the NV
16 Energy project.
17 Q. That was the first contract we discussed
18 where Mojave hired CAM, then CAM hired Mojave?
19 A. Correct.
20 Q. Did Mojave submit invoices to CAM?
21 A. Yes.
22 Q. And do you have copies of those invoices?
23 A. I am assuming we do.
24 Q. Can you provide those?
25 A. Yes.

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1 Q. Okay. And were these given to CAM at the
2 same time he received the other checks?
3 A. I remember we paid them -- the first check on
4 NV Energy was given to CAM the month prior. And it was
5 our -- I think the first payment on that project and he
6 didn't bring a check to us. So when he came to pick up
7 the second check, he paid us for the first check, and
8 then the second check on NV Energy.
9 Q. Okay. So did you require him to do that in
10 order to issue subsequent payments to him?
11 A. Could you clarify?
12 Q. So you paid him the month before and then he
13 didn't pay Mojave. So were you concerned because he
14 didn't pay Mojave the month before?
15 A. Well, I contacted him, and that's when I left
16 him voicemails. And I got an e-mail from him saying
17 that he was out of the country and he would be back on
18 this date to square everything up.
19 Q. Okay. At that point were you concerned that
20 there might be issues with him issuing payment?
21 A. Not really.
22 Q. Okay. So when he came to pick up the other
23 checks you required that he pay for the previous month
24 and that month?
25 A. Correct.

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1 Q. On the NV Energy?
2 A. Correct.
3 Q. And did you require that before you paid him
4 on the City Hall project? Like, did you require him to
5 square up everything with Mojave before you were going
6 to give him any more money?
7 A. No, just on the NV Energy project.
8 Q. So was the NV Energy handled at a different
9 time as the City Hall payment, or were those handled at
10 the same time?
11 A. Just timing hit that they were both paid at
12 the same time, so they were handled at the same time.
13 Q. So he came to Mojave's offices?
14 A. Yes.
15 Q. Is that normal course of dealing for your
16 suppliers? They come to your offices to exchange
17 releases for payments?
18 A. Yes.
19 Q. And so you didn't have any concerns paying
20 him and then waiting for him to pay Mojave for the work
21 that Mojave was doing on the NV Energy project?
22 A. Not on the first time.
23 Q. Why didn't you have any concerns, I guess, if
24 he was out of the country and didn't issue payment like
25 you thought he was going to issue payment?

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1 A. Just because we had more work with him on NV
2 Energy, so I knew he would have to get it straightened
3 out.
4 Q. How do you mean -- because if he was out of
5 the country, he wasn't really doing anything on the
6 project.
7 A. Well, I don't know if he was or not. I am
8 just saying, that is what the response I received was.
9 Q. So what was your agreement with him on the NV
10 Energy project about the payments? Did you have an
11 agreement?
12 A. It was basically to bring in a check and it
13 would be exchanged check for check and release. And we
14 made an error on the first payment. That wasn't done
15 by my accounting staff. So then when the second check
16 was ready, that is why I told him he was coming in with
17 two checks to get NV Energy current on all payments.
18 Q. So did you believe he had the funds to cover
19 these checks in his account before depositing your
20 funds?
21 A. Yes.
22 Q. So you believed he had the funds to cover
23 your check before he put your check in the bank, if
24 that makes sense? So he didn't need to get paid from
25 Mojave to pay Mojave? You thought he had the money to

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1 pay Mojave?
2 A. No. My assumption was he got our check and
3 we got his, and he needed ours --
4 Q. To pay yours?
5 A. Yes.
6 Q. So did you deposit his checks right away, or
7 did you wait for your check to clear, your check to him
8 to clear?
9 A. No. Typically it was the -- I think this one
10 was late in the day that he came in and it was done the
11 next day. But he knew I wasn't waiting on him; that
12 these checks were going in.
13 Q. How did he know?
14 A. Because I told him, We are depositing the
15 checks.
16 Q. What was his response?
17 A. He was fine with it. Because he had our
18 payment.
19 Q. And he had the City Hall payment --
20 A. Yes.
21 Q. -- at the same time?
22 So to go back a little bit to the generator
23 equipment, we had talked earlier about who was to do
24 certain things on the project. So can you describe to
25 me what your understanding of Cashman's scope of work

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1 is on behalf of Mojave? I guess, what Mojave's
2 understanding of what Cashman's scope of work was on
3 the City Hall project?
4 A. Just my understanding was that they were to
5 provide the complete generator and complete UPS on the
6 project.
7 Q. Do you know what that entails?
8 A. Not every detail. When I say "generator," I
9 am not sure of every component that makes it a
10 generator.
11 Q. Do you know when that scope of work would
12 start? Like, when the first work would be done?
13 A. I wouldn't.
14 Q. Do you -- does it include the preparation of
15 submittal from Mojave?
16 A. Yes, it would.
17 Q. So that would be Cashman's responsibility, or
18 would that be CAM's responsibility?
19 A. Well, for us it would be CAM's responsibility
20 to tell them that we need submittals, and then they
21 would -- it would go to Cashman to get the submittal.
22 Q. But essentially providing this generator and
23 UPS system includes preparing submittals when they are
24 needed to give to the general contractor for approval?
25 A. Yes.

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Q. And do you know if Cashman provided those submittals?
A. I am not sure.
Q. Do you know what the purpose of the submittals are?
A. I mean, simplistically so the owner and general contractor know that what was on the contract is being installed. So if there is a substitution being made, if you spec'd out a Type A fixture made by a specific requirement, we say we can get this one less expensive, can we substitute it. It's just so that what is on the contract documents are installed.
Q. So you wait for the owner approval before you actually issue the go-ahead and order the equipment?
A. I think more the general contractor.
Q. And then does Mojave issue a release once they have the approvals to the supplier to go ahead and order the equipment, that everything looks good, or how does that process work?
A. It would be dictated by the schedule of the project. The project manager would release it. I am just saying, if day one we got the project and there is a 90-day late time on a generator and it's a 91-day project, I can't wait until day 90 to say, okay, we'll order a generator. It would have been released on day

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one with a scheduled delivery date.
Q. Okay. So obviously all of that is included in Cashman's scope of work, the ordering of the equipment and all of that coordination?
A. Through CAM, yes.
Q. And then did Cashman complete all of the work required of it prior to Angelo's bad check?
A. No.
Q. What did Cashman not do prior to Angelo's bad check?
A. The items that I am aware of that Cashman hadn't provided was batteries for the UPS.
Q. Was that requested prior to Angelo's bad check?
A. I am not sure. I think it was -- I think it was --
Q. Because I am kind of wanting to start with, you know, before the bad check and then after the bad check. So if we deal with before the bad check, was Cashman doing everything it was required to do before the bad check?
A. No.
Q. So what items didn't it do before the bad check?
A. The batteries for the UPS, the startup of the

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generator, providing the PLC codes. And then this would come after, but just warranty work on the generator or the UPS.
Q. So Mojave asked for the PLC codes to be installed prior to Angelo's bad check?
A. I am not sure. That would be the project manager.
Q. Okay. So you are not sure if these items were not completed by Cashman before or after the bad check?
A. I would have to say before because Cashman billed 100 percent of the contract.
Q. Well, Cashman didn't bill it; CAM billed it?
A. Right. Cashman billed to CAM, and CAM billed to Mojave for this work.
Q. Do you know how the installation of the generator is scheduled?
A. No.
Q. So you don't know at what point the batteries would be required as opposed to deliver the generator as opposed to the PLC codes?
A. No.
Q. So you don't know if the PLC codes would be installed immediately upon delivery or if that is something that happens later?

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A. I wouldn't know.
Q. So you don't really know whether they were on schedule completing the work prior to Angelo's bad check?
A. I wouldn't know. But that wasn't the question that you asked.
Q. Well, I did. I asked were they completing their work as required prior to CAM or Angelo issuing that check that ended up being bad?
A. But I am saying from my perspective, on an accounting perspective when you bill 100 percent of the contract you are saying all of the work is done. And I understand warranty work, you know, wouldn't be done until after the project is complete.
Q. Well, who decides when your supplier can bill 100 percent? Does your supplier decide when they can bill 100 percent, or does Mojave decide when they can bill 100 percent?
A. The project manager approves the percentage.
Q. So Mojave's project manager approved a billing of 100 percent?
A. Yes.
Q. And then it was up to him to coordinate when those items were completed?
A. I am not sure what he was thinking on that.

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1 Q. So if he allowed 100 percent billing, but say
2 part of the work couldn't be done for, I don't know,
3 six months because it requires a certain sequencing,
4 Mojave made that decision to allow that to happen?
5 A. Yes.
6 Q. Okay. Do you know about the delivery of the
7 equipment to the site?
8 A. No.
9 Q. Who would be the best person at Mojave to
10 know about the delivery and the installation of the
11 equipment?
12 A. Chris Myers, the project manager.
13 Q. And then do you know anything about the
14 problems with the installation or if there were
15 problems with the installation?
16 A. No.
17 Q. That would be Chris?
18 A. Chris also.
19 Q. Do you know when Cashman was last on the
20 project or performing work for the project?
21 A. I don't know that. Chris would know that.
22 Q. Do you know what work was completed by other
23 contractors on the generator equipment?
24 A. Roughly the startup work was done by other
25 subcontractors, and then Mojave had to go out and

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1 purchase the batteries for the UPS.
2 Q. Do you know what the startup work entails on
3 the generators?
4 A. No.
5 Q. Would Chris --
6 A. Yes.
7 Q. -- know more fully what was done by those
8 other subcontractors?
9 A. Yes.
10 Q. And then I recall seeing something in an
11 e-mail from you about self-insurance, Cashman having
12 self-insurance. Do you know what that was referring
13 to?
14 A. Yes, because I talked to Keith and Shane
15 asking them if they had insurance for covering this
16 type of transaction.
17 Q. What type of transaction?
18 A. Well, where they are paid. They take a
19 postdated check and then CAM doesn't come through and
20 pay basically on a promissory note.
21 Q. Do you have insurance? Does Mojave have
22 insurance for that?
23 A. Well, we have directors, you know, and
24 owner's insurance, employee insurance in case there is
25 a theft of some type.

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1 Q. But is there an insurance that would insure
2 you against a bad check from -- say, if Whiting Turner
3 gave you a bad check, do you have insurance to cover
4 that?
5 A. I don't think -- I am not sure. I would have
6 to get our insurance agent and ask him specifically,
7 again the specifics of it.
8 Q. So why did you think that Cashman would have
9 insurance?
10 A. Just against the theft or fraud.
11 Q. So were you just kind of assuming they should
12 have a policy like that, or did you have direct
13 knowledge? Did you see a policy?
14 A. No. I asked Keith and he said they had one,
15 but they were self-insured and they didn't want to go
16 against themselves for the payment.
17 Q. As part of this litigation, does Mojave have
18 an agreement with Whiting Turner concerning Cashman's
19 claims?
20 A. I am not sure what you mean by an
21 "agreement."
22 Q. Mojave had a requirement to keep their
23 project free of liens and resolve claims by its
24 lower-tiered suppliers; is that right?
25 A. Yes.

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1 Q. So when Cashman's claim came up, did Whiting
2 Turner come to Mojave and say anything?
3 A. No. Actually, Mojave reacted first.
4 Q. And did what?
5 A. Went out and posted a mechanic's lien bond.
6 Q. And then what was done subsequent? Was there
7 an agreement reached with Whiting Turner about the
8 defense of Cashman's claim?
9 A. I am not sure of all the legal aspects of it.
10 Q. Who would know about that?
11 A. Probably our law firm.
12 Q. I mean, who at Mojave would know about it?
13 Someone had to authorize it and understand what was
14 going on, on Mojave's behalf.
15 A. I would assume that would be Troy.
16 Q. Were you in the room when the checks were all
17 exchanged concerning this equipment?
18 A. Between CAM and Mojave, yes.
19 Q. And then was Cashman also on site?
20 A. Cashman was on site also. And that is when
21 checks were exchanged in our sales conference room.
22 Q. So you were all in the room together?
23 A. I don't remember me sitting in that exchange
24 with CAM. I mean, that is almost two years ago.
25 Q. So did you recall -- I mean, did you recall

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1 seeing CAM give Cashman the check?
2 A. I don't remember.
3 Q. Okay. And did you see if the check was given
4 in exchange for the release?
5 A. I did see that, but I mean, I saw the release
6 after they left.
7 Q. Okay. And do you know why you required an
8 unconditional release?
9 A. Because Cashman was being paid 100 percent on
10 the project.
11 Q. But wouldn't a conditional release serve the
12 same purpose if payment is issued?
13 MR. BOSCHEE: Object to form. That may call
14 for a legal conclusion, but you can answer if you can.
15 THE WITNESS: To me it's just industry
16 standard. For me to go pick up a check at a general
17 contractors, I have to come in with an unconditional
18 progress or final, depending on what the check is for.
19 BY MS. LLOYD:
20 Q. So if the check to you from your general
21 contractor bounces, is that unconditional release -- do
22 you consider it still to be a valid release?
23 A. Well, I have a bad check I could take to the
24 DA's office to collect on.
25 Q. Right, but say they disappear; do you

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1 consider that to still be a valid release if the check
2 doesn't clear?
3 A. I haven't thought about that.
4 Q. Do you know why Mojave didn't issue a joint
5 check to CAM and Cashman for this equipment?
6 A. Just for the minority participation. Just
7 because I couldn't issue a joint check to CAM and
8 Cashman.
9 Q. Why?
10 A. My understanding is that with the DB program,
11 payments have to go to the DB, and then the DB
12 disburses them.
13 Q. Where did you -- have you seen that
14 requirement in writing anywhere?
15 A. Just talking with different contractors
16 across the country, electrical contractors.
17 Q. So did Whiting Turner say you can't issue a
18 joint check?
19 A. No.
20 Q. Wouldn't it have been safer to issue a joint
21 check?
22 A. Well, first of all, I didn't have a
23 joint-check agreement with CAM and Cashman.
24 Q. But Cashman requested a joint check, didn't
25 they?

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1 A. They called into the office asking for a
2 joint check and my response to my accounts payable is
3 we can't do it because of the minority participation.
4 I have to have a check going to CAM.
5 Q. But you don't really have that requirement
6 anywhere in writing from Whiting Turner that you
7 couldn't issue a joint check; you just chose not to
8 issue a joint check?
9 A. Yes, but that was also the agreement with
10 CAM.
11 Q. What was the agreement with CAM?
12 A. How they were handling payment.
13 Q. What do you mean?
14 A. That this was set up before when CAM and
15 Cashman met to decide how payments were going to go.
16 Q. Who decided it?
17 A. Keith and Angelo met. And actually Cashman
18 reduced the percentage from -- I think on this one it
19 was from 1 percent down to a half a percent.
20 Q. But I still don't understand if Cashman
21 requested a joint check, what did you mean? That there
22 was an agreement prior that there wouldn't be a joint
23 check?
24 A. No. That is how it was explained to Keith
25 and Angelo, that the pay would go to CAM, and then CAM

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1 would distribute funds.
2 Q. Who explained that?
3 A. Pete Fergen with Keith and Angelo.
4 Q. Pete Fergen said, Mojave won't issue a joint
5 check?
6 A. I don't know if Pete said those words
7 specifically.
8 Q. What did you mean, then, by what you said?
9 A. I am just saying that they met with CAM and
10 Cashman on how payments were going to flow. And I just
11 have to show a check that is made to CAM, and CAM
12 solely, for that amount.
13 Q. Does Mojave ever issue joint checks?
14 A. I typically try not to.
15 Q. Why?
16 A. To me they are just more of a headache to
17 deal with.
18 Q. If you are concerned that a sub isn't going
19 to pay a supplier, isn't it safer to issue a joint
20 check?
21 A. No. I view it as if I get an unconditional
22 from that supplier, then I know they are paid, then I
23 can issue a check to that individual.
24 Q. But if the check exchange for the
25 unconditional doesn't clear the bank, the unconditional

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1 isn't valid anymore under the law.
2 MR. BOSCHEE: Okay. I am going to have to
3 object to that since you put "under the law" at the end
4 of your question, but answer if you can.
5 THE WITNESS: You will have to clarify that
6 statement.
7 BY MS. LLOYD:
8 Q. So if you were to issue a check, wouldn't it
9 be safer to issue a joint check to the supplier and the
10 sub, and get releases from both; that way you know
11 you're paying and your funds are good and those
12 releases are good.
13 A. Possibly if the minority participation isn't
14 involved, but not with the minority participation.
15 Q. And just to clarify, you don't have anything
16 in writing from Whiting Turner on this project that
17 says you can't issue a joint check?
18 A. No.
19 Q. And can you tell me where you get that
20 requirement from? Is it some other handbook? Is it
21 some regulation somewhere, some guideline?
22 A. I believe it's a federal regulation.
23 Q. That says you can't issue joint checks?
24 A. I am not sure if it says -- if it says you
25 cannot issue a joint check.

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1 Q. But that is why you don't issue joint checks?
2 A. In this instance, yes.
3 Q. And then just to clarify, you weren't sure
4 who -- if CAM provided materials from anyone else on
5 this project. You said Chris Myers would know that?
6 A. Yeah, I am not sure.
7 Q. And then can you describe to me the basis for
8 Mojave's allegation in its counterclaim that CAM was
9 Cashman's agent?
10 A. Could you clarify? I am not sure what you
11 are asking.
12 Q. In your counterclaim against Cashman in this
13 case, Mojave states that CAM was Cashman's agent. Do
14 you know the factual basis for that claim?
15 A. I don't know the legal -- the legal facts for
16 that.
17 Q. Why does Mojave think that?
18 A. Because we contracted with CAM, and then CAM
19 went out and contracted with Cashman.
20 Q. Doesn't that just make CAM your subcontractor
21 and Cashman CAM's subcontractor?
22 A. I am not sure how the legal terms work.
23 Q. And didn't Mojave introduce CAM and Angelo
24 to Cashman?
25 A. I am not sure.

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1 Q. You referred to a meeting between Pete and
2 Keith and Angelo. So do you know how CAM came to be
3 Mojave's subcontractor on this project?
4 A. Again, looking for the minority
5 participation.
6 Q. So did Mojave after meeting CAM introduce CAM
7 to Cashman?
8 A. I am assuming we did then.
9 Q. Okay. And then do you consider there to be a
10 contract between Mojave and Cashman?
11 A. No.
12 Q. So in CAM's failure to complete the work, do
13 you consider CAM to have breached its contract with
14 you, Mojave?
15 A. I haven't really thought about it in those
16 terms.
17 Q. So if you incurred damages because CAM didn't
18 complete the generator startup, Mojave would pursue
19 those damages against CAM, its subcontractor?
20 MR. BOSCHEE: Calls for a legal conclusion,
21 but go ahead and answer it you can.
22 THE WITNESS: I'm not sure.
23 BY MS. LLOYD:
24 Q. And then can you tell me the basis for the
25 allegation in your counterclaim that Mojave relied upon

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1 the unconditional provided by Cashman? How did -- what
2 did Mojave do in reliance upon that unconditional?
3 A. Could you clarify that? Because I am not
4 understanding what you mean.
5 Q. Mojave included in their counterclaim an
6 allegation that they relied upon the unconditional
7 release provided by Cashman. Can you tell me how
8 Mojave relied upon it?
9 A. Because Mojave paid CAM and CAM paid Cashman.
10 And then we got the unconditional release and then CAM
11 and Cashman struck a separate deal between the two.
12 Q. What do you mean they struck a separate deal?
13 A. By Cashman taking a postdated check. To me
14 it becomes a promissory note. I mean, basically
15 Cashman loaned CAM the money to be repaid in a certain
16 number of days.
17 Q. So you have personal knowledge of that
18 agreement?
19 A. No, I am just saying that Cashman took a
20 postdated check.
21 Q. So you are assuming that is what that meant?
22 A. Yes.
23 Q. So what if Shane didn't know the check was
24 postdated when he took the check?
25 MR. BOSCHEE: Objection. Calls for

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1 speculation.
2 MS. LLOYD: Well, he is speculating right
3 now.
4 BY MS. LLOYD:
5 Q. Then what do you think about that?
6 A. But he did; he knew.
7 Q. How did he know it was postdated?
8 A. Because he held the check. And in fact,
9 Keith went over to Pete Fergen's house on a Saturday
10 night after picking up the check looking for payment.
11 And then I got an e-mail over the weekend from Pete
12 asking me why we didn't pay Cashman, why Cashman wasn't
13 paid by CAM. And I told them they were. And Shane
14 told me, No, I just deposited the check. I just
15 haven't told everybody yet.
16 Q. Okay. Give me time frame here.
17 A. I am not sure of the exact dates, but Cashman
18 received the check from CAM. Shane sat on the check.
19 This may have been -- and I am not sure. It may be a
20 Wednesday that they came in, or a Thursday. But on a
21 Saturday night Keith went to Pete's personal residence
22 looking -- asking him why they weren't paid for the
23 generator, the 755,000. Pete told him he thought he
24 was already paid, and that is when Pete sent me an
25 e-mail.

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1 And on Monday morning I got on the phone with
2 Shane immediately and I said, What is going on with
3 this? Because Keith went to Pete's house on Saturday
4 night asking why Cashman wasn't paid. And I said, And
5 you have been paid. And he said, Yeah. I have held
6 the check. I just didn't tell anybody. I have now
7 deposited it and I will let everybody know I was paid
8 on the job.
9 Q. So I don't know why that infers to there was
10 an agreement. I don't know.
11 A. Well, if you take a postdated check and you
12 hold it for the time period, to me it's a verbal
13 agreement.
14 Q. But you aren't aware of any agreement?
15 A. No.
16 Q. You are just assuming there is an agreement?
17 A. Yes.
18 Q. So Mojave has claimed damages against Cashman
19 for the startup cost. Are you aware of that?
20 A. Yes.
21 Q. What is the basis of claiming the damages
22 against Cashman?
23 MR. BOSCHEE: Object to the extent it calls
24 for a legal conclusion. I am going to object.
25

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1 BY MS. LLOYD:
2 Q. Well, the factual basis.
3 A. I am not sure of the legal basis for this.
4 Q. Well, you told me you don't have a contract
5 with Cashman. You testified you don't have a contract
6 with Cashman, right?
7 A. Correct.
8 Q. Are you aware of another reason why Cashman
9 should have to pay you for the startup costs?
10 MR. BOSCHEE: Same objection.
11 THE WITNESS: I am not sure of the legal
12 terms.
13 (Whereupon, a recess was taken.)
14 (Exhibit 11 marked.)
15 BY MS. LLOYD:
16 Q. Are you familiar with this document?
17 A. I think. I don't think I have seen this
18 before, though.
19 Q. No. Do you know what it is?
20 A. I am assuming it's our bonding company
21 contacting Whiting Turner.
22 Q. Like in response to a claim?
23 A. Or else just to release retention possibly.
24 I am not sure exactly, but I know when we had to get
25 retention release there had to be a release of a

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1 consent of surety. Well, no, I got my dates mixed up
2 when the retention got paid.
3 Q. When were you paid out on --
4 A. That is what I am trying to remember. I
5 would have to go back and look. I can't remember if it
6 was around this time frame or if it was 2012.
7 Q. That you were complete and paid out on the
8 project?
9 A. Yeah.
10 Q. Okay. And then can you tell me what Mojave
11 did in response to Cashman's lien claim?
12 A. We filed a bond to basically remove the lien
13 off the property and put it onto a mechanic's lien
14 bond.
15 Q. Did you contact Cashman concerning the lien?
16 A. I don't remember if I did or not.
17 Q. Do you know if anyone else at Mojave
18 contacted Cashman about the lien?
19 A. I am not sure.
20 Q. Did you try to talk to Cashman about the
21 claim or what it was based on?
22 A. I know Cashman came into our office maybe
23 the -- I think August of 2010 or 2011 time period. I
24 forget which one.
25 Q. Whenever the payment was --

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1 A. Yeah.
2 Q. And did what?
3 A. They basically asked us for a check for
4 755,000.
5 Q. And what was Mojave's response?
6 A. Our response was we already paid CAM and
7 Cashman had already been paid.
8 Q. But Cashman hadn't been paid; CAM had been
9 paid, right?
10 A. Well, I mean, I just know a check went to
11 Cashman and we got our release.
12 Q. And did Mojave consider contacting Cashman
13 about doing the startup work separately?
14 A. We asked Cashman to do the startup work, to
15 provide the batteries, and every time it was rejected.
16 Q. Were you offering payment in exchange for the
17 services?
18 A. No.
19 Q. Why not?
20 A. Because our stance was Cashman had already
21 been paid and that was part of the contract.
22 Q. So you'd rather pay someone else to do the
23 work than pay Cashman to do the work?
24 A. Cashman refused to do the work, period.
25 Q. But you weren't offering payment for the

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1 work, right?
2 A. Correct.
3 Q. But you had to pay someone else to do the
4 work?
5 A. Correct.
6 Q. So didn't anyone at Mojave consider talking
7 to Cashman about negotiating the claim considering what
8 happened?
9 A. I am not sure what you mean by "negotiate the
10 claim."
11 Q. Talking to Cashman. If you were going to
12 pay, say, Gentech to come out and do work, you could
13 have paid Cashman to do the same work, right?
14 A. Yeah.
15 Q. Was that ever a consideration?
16 A. No. Because my understanding was Cashman
17 refused to go out to the project unless they were paid
18 the 755,000.
19 Q. If Mojave didn't get paid on a project, would
20 they keep working?
21 A. Yes.
22 Q. Even if they were told they were not going to
23 get paid?
24 A. I have never known us not to finish a
25 project.

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1 Q. Even if you don't get paid?
2 A. Yes.
3 Q. Has a check ever bounced to you in exchange
4 for a payment application?
5 A. I mean, on smaller work, yes.
6 Q. So if Mojave is told they are not going to
7 get paid, they continue to work on a project?
8 A. Depending on when we are told we are not
9 getting paid.
10 Q. Okay.
11 A. I mean if we sign a contract. And a general
12 expects us to go out and do work and for no payment --
13 I mean, if they say from day one, Here's a $10 million
14 contract; we're not going to pay you a penny to do this
15 work, well, of course we are not going to go out and do
16 it. But if we are in the middle of something -- I
17 mean, there is always disputes on change orders.
18 Q. But this was a failure of payment for the
19 entire amount to Cashman. They didn't get paid a penny
20 for this work.
21 A. I disagree with that statement.
22 Q. Well, I mean, Angelo -- I think we can agree
23 that Angelo took the money. He got the money and
24 instead of paying Cashman he took the money. That is
25 what the records show.

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1 A. Yes.
2 Q. So Cashman didn't get paid a penny on the
3 project.
4 A. But that was -- to me that was Cashman's
5 choice by taking a postdated check. That was their
6 risk of them getting paid on a project.
7 Q. Well, I mean, I guess it's neither here nor
8 there. They didn't get a penny and they supplied that
9 equipment to the project. So I'm sure you can
10 understand their frustration.
11 A. Yes and no.
12 Q. Do you still not check disadvantaged business
13 entities when you contract with them? Do you have the
14 same process in place now that you had when you first
15 contracted with CAM?
16 A. I don't think we made any real changes.
17 Q. So you don't check to make sure that they are
18 solvent or they can manage these type of funds when you
19 are giving them large payments and expecting them to
20 pay --
21 A. Well, in hindsight we may change the process
22 of how we do something for future. But I mean, we will
23 cross that bridge when we get to the next DB.
24 Q. Since this project you haven't had other
25 contracts that require you to use DBE?

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A. Like I said before, we may have had some requirements, but it might have been with, let's say, a Nedco.
Q. Like a real company?
A. A Nedco or via Hampton. If we can get their requirement that way, we will do it that way also.
Q. Instead of having like this person who just kind of gets inserted the middle, but really doesn't have a function or a company, really? I mean, they have a company, but I wouldn't call it a legitimate company.
A. I am not going to comment on that statement.
Q. Okay. And then were you aware that Cashman made a bond claim on Whiting Turner's payment performance bond?
A. No, I am not. I thought our mechanic's lien bond took care of Cashman's claim.
Q. Okay. And then were you aware there was a meeting between Cashman and Mojave at some point after Angelo's check failed to clear?
A. Right. That is what we were talking about before.
Q. Were you part of that meeting?
A. I was in that meeting, yes.
Q. Who was at that meeting?

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A. Troy, myself from Mojave, and I am trying to remember from Cashman's side. I think it was Keith. I think it was a Mike, Joel. There may have been one other person from Cashman.
Q. Where did that meeting take place?
A. In our office, our main conference room.
Q. What was the purpose of that meeting?
A. I wasn't sure. Cashman wanted to come over and talk about what was owed on the project.
Q. And so what was the substance? Like, what did you guys talk about?
A. I said -- to me the gist was Cashman just basically came over and asked us what we were doing to collect the funds for Cashman. And I mean, our statement to Cashman was we weren't the damaged party, so we cannot get any information on Angelo. I mean, Cashman was the one that was going to have to go out and pursue, you know, all the information that they needed.
Q. And was there anything else discussed at the meeting?
A. I mean, it was just I am sure talking about that project to other projects.
Q. And then how kind of was it left? How was the City Hall project left at that meeting?

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A. I think it was Mike and I -- I won't swear to it, but I thought Mike made the statement, If you want to pay us the 755 again, then we will take it. Otherwise, we are filing a lien on the project and in two or three months we will be paid in full.
Q. And then what was, I guess, Mojave's response? Was there a response?
A. My response was I wanted to know who you can get to collect a lien in two or three months because it's impossible.
Q. Was there anything else talked about in the meeting in reference to the equipment or Angelo?
A. I think Cashman provided bank statements from Angelo, because we had asked them for that also, just trying to help us try and track him down.
Q. Were you looking after Angelo's payment -- you didn't pay them. Were you looking for Angelo? Did you try to go out and find him, or anyone from Mojave try to locate him?
A. Yeah. I mean, we tried to contact him on cell phone. I even went on the Internet and did some searches on Angelo. And I gave Shane his address, because I didn't know if he had this as a residence for him. I said, I'm not sure if it's a valid address on him or not, but I think that is the one Shane went out

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to in the middle of May to meet Angelo to get the second check. That is when I said to Shane, You are lucky you got that second check because the first one you don't have a leg to stand on.
Q. Yeah. He's probably lucky he didn't get harmed at that point. Shane I mean, not Angelo.
So do you recall anything else happening after those communications between Mojave and Cashman?
A. I think maybe Joel may have called once or twice and said, Have you guys made any headway on it? I mean, we looked where we could, but I mean, we could only pursue it so far because, again, we weren't the party that was damaged.
Q. Well, kind of. I mean, at this point --
A. At this point we are.
Q. So you weren't able to locate Angelo, or you never spoke with him after that payment didn't clear?
A. I may have gotten him one day when Shane called me and said the third check didn't clear. I mean, you got the, I am headed out of the country and I will get it taken care of.
Q. So then after the payment on the City Hall project, all those payments like April of 2011, did you make any other payments to Angelo after that point or to CAM?

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A. No.
Q. And then is that sort of when all his work on these other contracts stopped too?
A. Pretty much that's when everything -- that is when CAM basically disappeared.
Q. Did you guys ever send him a correspondence about failing to complete his duties on the contract or anything like that?
A. I don't think we did. I guess we just thought it was such a blatant item that he was gone.
Q. Can you think of anything else that you would testify to at trial that we haven't discussed here today?
A. In regards to what?
Q. The case, the claims, Mojave's claims against Cashman, Cashman's claims on the project.
A. At this time, I mean, I couldn't think of anything else.
Q. And then is Mojave released as to the City Hall project? Is all the work done? You don't have any more work on the project?
A. We don't have any work. There's still a dispute on the underground portion of the contract.
Q. But not on the portion that included the generators?

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A. Correct. That contract is closed completely. The underground is the only item that still has an open item on it.
Q. Do you have any knowledge as to whether Whiting Turner has been paid by the owner for the generator equipment?
A. I don't have any knowledge of that.
Q. Or if there is negotiations between Whiting Turner and the owner about the generator equipment?
A. I am not privileged to that information.
MS. LLOYD: I think we are done.
MR. BOSCHEE: I do have just one or two clarification questions, because I wasn't clear on something. I made a note about it.
EXAMINATION
BY MR. BOSCHEE:
Q. You testified a little bit earlier about the day that the checks were exchanged in your conference room. You were there, it sounds like for part of it, but not for all of it. Is that accurate? Or who was in the conference room during this check exchange in April?
A. The first check exchange between Mojave and CAM was in my office with Francis, my accounts payable person, Angelo and myself. Because just with him not

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paying us, I didn't want to bring that up. So I wanted that handled between us. And then Angelo and Francis went in and I assume it was Shane that was in there, but I am not sure who was there from Cashman.
Q. Some representative from Cashman went into your conference room with Francis and CAM, and that's when they exchanged the checks?
A. Yes.
MS. LLOYD: And you were not there?
THE WITNESS: No.
BY MR. BOSCHEE:
Q. Did you guys ever accept a postdated check from CAM for the Mojave Systems portion of the work we talked about earlier?
A. No. I mean, we were -- we were behind on getting paid on that one.
Q. Right. But when you got the check, you got a contemporaneous check and deposited it at the same time they deposited your check, correct?
A. I think we deposited it the next day because I think Angelo came in probably about 4:30 or so in the afternoon and then just exchanged and took it at the end of the day.
Q. And there was nothing -- when CAM left your office, went to the conference room with Francis, met

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with somebody from Cashman, couldn't CAM have just signed Mojave's check over to Cashman right then and there and been done with it? Wouldn't that have gotten Cashman paid right then and there with funds you knew were good?
A. Yes, but then Cashman would have owed CAM money.
Q. Cashman would have had to write a check --
A. That was offered originally to do it that way, but Cashman refused to do that also.
Q. Who was that offered by?
A. That was from Pete Fergen to Keith.
Q. Okay. And when did that happen?
A. I think at the start of the project.
MR. BOSCHEE: Okay. I just wanted to ask a couple of clarifications. I am done.
MS. LLOYD: Can I clarify, then?
FURTHER EXAMINATION
BY MS. LLOYD:
Q. Were you there when Pete talked to Keith about that agreement you just referred to?
A. No.
Q. So how do you know that that was offered?
A. That is what Pete told me.
Q. Okay. And then if we can go back really

1 quickly to Exhibit 10, the checks from CAM to Mojave, I
2 think you testified you got these at the same time in
3 that meeting?
4 A. Yes.
5 Q. Can you look at the dates on those checks?
6 A. One is the 27th and one is the 28th.
7 Q. Do you know what date that meeting occurred
8 on?
9 A. I think it was the 26th. Like I said, it was
10 late in the afternoon.
11 Q. So you accepted two postdated checks from
12 CAM?
13 A. I am not sure if we did. I would have to go
14 back and look at the exact days.
15 MS. LLOYD: Okay. That is it.
16 MR. BOSCHEE: And you have -- just for my
17 clarification. You have got -- for all the checks we
18 have looked at here, you have got something in your
19 accounting or some paperwork matching up the checks to
20 invoice numbers that you can provide to me and then
21 we'll provide to Jennifer; is that right?
22 THE WITNESS: Yes.
23 MR. BOSCHEE: Okay.
24 (Thereupon, the deposition
25 concluded at 1:20 p.m.)

1 CERTIFICATE OF DEPONENT
2 PAGE LINE CHANGE REASON
3
4
5
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9
10
11
12
13
14 * * * * *
15 I, Brian Bugni, deponent herein, do hereby
certify and declare the within and foregoing
16 transcription to be my deposition in said action; that
I have read, corrected and do hereby affix my signature
17 to said deposition under penalty of perjury.
18
BRIAN BUGNI, Deponent
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
2 STATE OF NEVADA)
) ss:
3 COUNTY OF CLARK)
4 I, Christy L. DeJonker, a duly commissioned
Notary Public, Clark County, State of Nevada, do hereby
5 certify: That I reported the deposition of Brian
Bugni, commencing on Thursday, January 10, 2012, at
6 11:00 a.m.
7 That prior to being deposed, the witness was
duly sworn by me to testify to the truth. That I
8 thereafter transcribed my said shorthand notes into
typewriting and that the typewritten transcript is a
9 complete, true and accurate transcription of my said
shorthand notes. That review of the transcript was
10 requested.
11 I further certify that I am not a relative,
employee or independent contractor of counsel of any of
12 the parties; nor a relative, employee or independent
contractor of the parties involved in said action; nor
13 a person financially interested in the action; nor do I
have any other relationship with any of the parties or
14 with counsel of any of the parties involved in the
action that may reasonably cause my impartiality to be
15 questioned.
16 IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this
17 14th day of January, 2013.
18
19
20
CHRISTY LYN DeJONKER, CCR NO. 691
21
22
23
24
25

EXHIBIT 16

DISTRICT COURT
CLARK COUNTY, NEVADA

CASHMAN EQUIPMENT COMPANY, a Nevada corporation, Plaintiff,	CASE NO.: A642583 DEPT. NO.: 32
vs.	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; DOES 1-10, inclusive; and ROE CORPORATIONS 1-10, inclusive; Defendants.	
AND ALL RELATED MATTERS.	

DEPOSITION OF CHRISTOPHER MEIERS
Taken on Thursday, January 31, 2013
At 1:00 p.m.
6725 Via Austi Parkway, #290
Las Vegas, Nevada

Reported by: RENE' HANNAH, CCR #326

APPEARANCES:
For the Plaintiff: JENNIFER LLOYD, ESQ.
Pezzillo Lloyd
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Las Vegas, Nevada 89119
(702) 233-4225
jrobinson@pezzillolloyd.com

For the Defendant Mojave Electric:

SHEMILLY A. BRISCOE, ESQ.
Cotton, Driggs, Walch, Holley,
Woloson, Thompson
400 South Fourth Street
Third Floor
Las Vegas, Nevada 89101
(702) 791-0308

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EXHIBITS

(NRCP Rule 30(b)(4) was waived by the parties prior to commencement of the deposition.)

Thereupon,

CHRISTOPHER MEIERS,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LLOYD:

Q Hi.

A Hi.

Q My name is Jennifer Lloyd. We met earlier. We're here in the case Cashman Equipment versus CAM, et cetera, A642583. If you can go ahead and state your name for the record.

A Christopher Meiers.

Q And can you spell your last name?

A M-E-I-E-R-S.

Q Okay. Have you ever had your deposition taken before?

A No.

Q Okay. Let's go over a few of the ground rules. It's question and answer. We need verbal responses. The court reporter is taking down everything that we say, so it's important that we not speak at the same time so she can make an

accurate record. You can take a break at any time, except for when a question is pending I would ask that you answer the question and then take the break. Your testimony is under oath, just as it would be in a court of law. If you don't understand a question or you want me to clarify a question, please ask and I'll do the best to do so, because we want your best testimony here today. Is there any reason you can't give complete and truthful testimony today?

A No.

Q What did you do to prepare for your deposition?

A Met with Shemilly and Brian.

Q I don't want to get into any communications. Did you review any documents?

A No.

Q Or talk to anyone at Mojave?

A No.

Q Do you hold any professional licenses?

A State journeyman's license. Wisconsin.

Q In what area? Is that to a specific field?

A Electrical.

Q Were you a contractor in Wisconsin?

A No.

Q How long have you had that license in Wisconsin?

A Boy, oh, boy. Probably going on 16 years.

Q And what's the highest level of education you have achieved?

A Technical school.

Q And what technical school did you attend?

A Northeast Wisconsin Technical College.

Q And is that a specific type of degree?

A Degree, associates degree in electricity.

Q When did you graduate from there?

A 1990.

Q And then I have to ask this question, even though I don't like to. Have you been convicted of any crimes within the last ten years?

A No.

Q Okay. And where is your current employment at?

A Mojave Electric.

Q And how long have you been employed by Mojave?

A A little over 16 years.

Q And what's your current position?

A Project manager.

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Q Have you been a project manager the entire time you have been at Mojave?
A Yes.
Q Can you briefly describe your job duties as project manager?
A Tracking jobs, schedules, coordinating with my field staff, submitting pay applications.
Q Do you get assigned to one particular project?
A Multiple projects at the same time.
Q Sounds fun.
MS. BRISCOE: He wishes it was one.
THE WITNESS: I wish it was one, yes.
BY MS. LLOYD:
Q So today when I say project, I'm going to be referring to the New Las Vegas City Hall project, because that's the project that is at the center of this litigation. Can you describe what Mojave's scope of work was on the project?
A Electrical installation.
Q So the full electrical package, all the electrical work for the job?
A Correct.
Q And when I deposed Mr. Bugni he said it was under two contracts. Can you describe to me?

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A There was an underground contract for Nevada Power, and there was the regular building contract.
Q Okay. And what was your role on this project?
A Project manager.
Q So can you describe to me kind of your daily involvement with the project?
A Meet with my general foreman, discuss where he is with the project in relationship to the general contractor's schedule, make sure he's got all his material and the manpower that he requires to do the project, and solve any problems he may have on the job.
Q So are you the primary contact with the general contractor?
A Yes.
Q For Mojave? Okay. And when do you get involved with the project?
A As soon as my office tells me we have the job.
Q Okay. So once the contract is signed you would become involved, or do you become involved in the bidding, like in the bid process?
A More or less after the contract is signed

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and turned over to us, or a letter of intent.
Q And so who was involved in the bidding process?
A That would be our estimating department.
Q And for this project was it Pete Fergen?
A He's more of our purchasing department.
Q So for a job like this, I guess when you're bidding it can you describe to me, do you know how the bidding process works between the purchasing and the estimating?
A Actually, no.
Q Okay.
A I don't get involved in that end of it.
Q So once it comes to you it's kind of a complete bid package, you have all the schedule of values already set?
A I have to create the schedule of values.
Q Okay. So what I'm going to do is pull out the contract. We can mark it as Exhibit 1.
(Plaintiff's Exhibit 1 marked.)
BY MS. LLOYD:
Q If you would take a look at this document. Are you familiar with the document?
A Yes.
Q Okay. So when you said you create the

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schedule of values, do you create the schedule of values that's included with this contract, page 1143?
A No.
Q Who would create this schedule of values?
A Estimating.
Q So when you said you create one, when do you create it?
A I create the pay application schedule of values.
Q Do you use this to create it?
A As a reference guide.
Q How would it change, I guess from one to the other?
A My opinion of what something costs.
Q Okay. So then let's look at the pay aps, too.
(Plaintiff's Exhibit 2 marked.)
BY MS. LLOYD:
Q Now, this was produced in this order, which is why it's in this order, but you can tell me, because I don't think it's complete. So if you want to take a look at them, can you describe to me what they are?
A What they are as in the item numbers?

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1 Q Yeah. If you want to just tell me
2 generally what they are.
3 A Line by line, or?
4 Q No, we just want to just start with
5 there's three applications for payment, right?
6 A Uh-huh.
7 Q January, 2011, February, 2011, March,
8 2011.
9 A Okay.
10 Q Are these the complete applications for
11 each those months?
12 A No.
13 Q Was the schedule of values larger than
14 what's included here?
15 A Yes.
16 Q Okay. But the equipment that we're
17 concerned with today is the generator equipment.
18 That's included in these particular pages?
19 A Yes.
20 Q Okay. So when I talk about generator
21 equipment I'm talking about the equipment that
22 Cashman supplied. Are you familiar with what that
23 the comprises?
24 A Generator, PSG, UPS, battery pack.
25 Q So you went over what that is. Okay. So

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1 if you can tell me on the schedule of values, and
2 we'll start with the January 1, which is 2597, page
3 2597, where in the schedule of values does the
4 equipment supplied by Cashman through CAM show up?
5 A Line item four.
6 Q Four, emergency generator?
7 A And five.
8 Q UPS system.
9 A Correct.
10 Q Okay. And do these schedule of values
11 match the schedule of values that was included in
12 the contract or did you change it, do you recall?
13 A It looks like it's been changed from what
14 is in the contract.
15 Q And how would a change like that occur?
16 A Depends on what changes came out before
17 the project started.
18 Q Do you recall in this instance what
19 occurred?
20 A No.
21 Q Okay. And when you are given the project
22 you already know what vendors are to be used for
23 specific items?
24 A Not until I receive the large purchase
25 orders.

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1 Q And who generates the large purchase
2 orders?
3 A Our purchasing department.
4 Q Okay. So at the time you were given the
5 project did you know that Cashman was going to be
6 supplying the generator equipment?
7 A Not in the beginning.
8 Q When do you recall about when you realized
9 that?
10 A About a month or two.
11 Q So lines four and five would represent the
12 schedule of values for all of the equipment supplied
13 by Cashman through CAM?
14 A Uh-huh.
15 Q And do you determine when to bill the
16 specific items to Whiting-Turner?
17 A Yes.
18 Q So you determine what percentage complete
19 Mojave was on the job for each particular pay ap?
20 A Yes.
21 Q Okay. And do you then also have a role in
22 approving the vendors' billings?
23 A Yes.
24 Q And how does that process work?
25 A The vendor sends the bill to our office,

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1 the bill goes into our accounts payable, they put it
2 in my inbox, I double check it, make sure what
3 they're billing is actually what they have provided.
4 Q Okay. And so for the generator equipment
5 did you allow CAM to bill at a hundred percent for
6 what was being supplied at some point?
7 A At the time, yes.
8 Q And was the work a hundred percent
9 complete?
10 A No.
11 Q So how was the determination made to let
12 CAM bill it out?
13 A Billing has to be turned in to the general
14 contractor by the 25th of each month. And it has to
15 be prorated to the end of month. So that's how it
16 gets billed out a hundred percent. At the time
17 there was only about two weeks' worth of work left
18 on the generator, which would have put us at the end
19 of the month.
20 Q Which month?
21 A I don't remember.
22 Q Okay. Let's take a look at CAM's invoice.
23 Maybe that will help.
24 (Plaintiff's Exhibit 3 marked.)
25 BY MS. LLOYD:

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Q Are you familiar with this document?
A It doesn't have my signature, so. It looks familiar just because it says CAM Consulting on it, but when I approve an invoice my signature's on it.
Q Could it be the part that's sort of missing at the bottom, or no?
A It could be, because that's usually where I put my initials.
Q So after you sign off on it, then this goes back to your AP?
A Uh-huh.
Q And they make all the other markings?
A Correct.
Q So does this appear to be the invoicing for the generator equipment and UPS?
A Appears to be.
Q So can you describe to me the timeline on the generator equipment, or I guess when it was determined when it was billed, when it was approved, when it was paid?
A Not offhand.
Q Okay.
A Best of my knowledge, when they actually did the work was like December, 2010.

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Q Uh-huh. Let's, I'm getting a little bit ahead. So then can you describe from this invoice or your own knowledge what CAM's role was on the project?
A They're like any other distributor, as far as I'm concerned. Their name is on the large purchase order, and that's who our paperwork goes to to release whatever they are providing.
Q So what was CAM to provide on the?
A Generator, UPS, ATS switches.
Q So when does that work related to the, when would that work commence? When would that work begin?
A Prior to receiving the material?
Q Or I guess even just from the very beginning of the project, like submittals or release to purchase, or how does that whole process, do you coordinate that process?
A I do not coordinate the submittal process. That goes through our purchasing department.
Q Does that occur after the contract?
A Yes.
Q Who in purchasing is the one that would be?
A Pete Fergen.

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Q So would you consider the submittal process to be part of what the scope of work --
A Yes.
Q -- includes?
A Yes.
Q So CAM's work including doing the submittals, submitting them to Mojave for approval, making corrections if needed, and then what's the next step?
A Once they're approved, then there's no other contact until I'm ready to have the things released.
Q And how do you determine when that's going to happen?
A Usually they provide a lead time and I have to judge the lead time as to when the project is actually ready to receive the equipment.
Q So did you contact CAM about the lead time?
A No.
Q Who did you speak with about the lead time?
A That's part of the LPO.
Q The large purchase order?
A The LPO should, LPO usually has the lead

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time on it.
Q And who, did you say purchasing produces the large purchase order?
A Uh-huh.
Q So you're not involved until you need to order the equipment?
A Correct.
Q So when you needed this equipment to be ordered --
A Uh-huh.
Q -- who did you contact?
A We just have paperwork that releases it. I usually send it to my secretary and she sends the document over to CAM that says relays items one, two, three, four, whatever it may be. Whatever I'm ready for at the time.
Q So you communicated directly with CAM to purchase to start, to make the purchases?
A The paperwork.
Q And do you have a record of that communication?
A Not offhand. I don't remember.
Q Do you keep a record of it?
A Usually, yes.
Q Is it just a form letter, something you

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1 send out, or how does it look?
2 A It could be either an email that I send to
3 my secretary, or a phone call.
4 Q And who was your secretary at this time on
5 the project?
6 A Crystal DeSayers (sic).
7 Q I don't recall seeing anything like that
8 to CAM, so I'm wondering if you would have a copy of
9 it to provide to us.
10 A I don't know offhand.
11 Q Okay. Do you keep a job file with those
12 type of correspondence?
13 A Usually.
14 MS. LLOYD: Shemilly, is it possible that
15 he could do a search for the document?
16 MS. BRISCOE: Yeah, but we already
17 produced the job file. If it was a phone call we
18 wouldn't have a record.
19 MS. LLOYD: He said it would be an
20 email --
21 THE WITNESS: Email or phone call, is what
22 I said.
23 MS. LLOYD: Or a phone call.
24 MS. BRISCOE: I can ask, but I know we
25 gave you the job file already. But I can ask Brian.

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1 MS. LLOYD: Yeah, because there aren't
2 very many emails in the documents provided by
3 Mojave, and there were a bunch of emails from
4 Whiting-Turner to Mojave when you did the
5 Whiting-Turner production, so I know we don't have
6 all of the communication that's came out from Mojave
7 on the job. So, just curious.
8 BY MS. LLOYD:
9 Q So after that point when do you contact
10 CAM again, I guess, or when did you contact CAM
11 again?
12 A I didn't have to because it was going
13 through -- I knew where the equipment was coming
14 from, which was Cashman.
15 Q Uh-huh.
16 A And I already had a relationship with
17 Cashman.
18 Q So you were speaking with Cashman directly
19 about the equipment?
20 A Correct.
21 Q So what did CAM or the principal of CAM,
22 Angelo, did he have any role on this project?
23 A Not that I'm aware of.
24 Q So you aren't aware of him doing any work
25 related to his?

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1 A Other than their name is on the large
2 purchase order.
3 Q You didn't have any contact with him?
4 A Personally, no.
5 Q Do you know if anyone else, like your
6 foreman or anyone else had contact with him on this
7 project?
8 A I do not know.
9 Q Were there any scheduling issues related
10 to when the equipment needed to be delivered?
11 A Yes.
12 Q And can you describe that to me?
13 A It was just a matter of having a clear
14 spot for their semi to pull in. Their semi was
15 delayed by three days.
16 Q Okay.
17 A Just because the street wasn't clear
18 enough for them to bring the semi in and offload it.
19 Q So where did the semi go? Where was it
20 waiting?
21 A I'm not sure. I know it was in town. I
22 don't know exactly where it was staged.
23 Q And was there an extra cost or anything
24 related to the semi not being able to deliver the
25 equipment?

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1 A Yes.
2 Q And what happened with that?
3 A On the invoice, truck layover.
4 Q So that was an additional cost that wasn't
5 anticipated under the original schedule of values?
6 A I would have to go back and look at it.
7 Q Okay. But that's what you recall that was
8 for?
9 A Yes.
10 Q Okay. And who did you speak with about
11 the truck layover?
12 A Cashman.
13 Q And can you tell me who at Cashman you
14 spoke with?
15 A Kym Simons or Rob, I don't recall his last
16 name.
17 Q So when you were scheduling the delivery
18 and those things you were dealing with Cashman
19 personnel directly?
20 A Yes.
21 Q So when the equipment was delivered is it
22 immediately installed at that point or is there
23 another staging period?
24 A Immediately placed in position.
25 Q And is there equipment required to do

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that, like a crane, or?
A Yes.
Q How does that whole process work?
A Yes. That, we schedule a crane. We have to schedule the truck for delivery, and then the crane offloads the generators and places, sets them in place. They don't stage it on-site.
Q So it's part of Mojave's scope to get the crane on-site to unload the generators and place them?
A I would have to go back and look at that particular scope or a contract to see who's contract it was in to provide a crane. I don't remember offhand if it was Mojave or if it was CAM, Cashman.
Q Oh, okay. And at that point was there issue with placing the generators?
A No.
Q Okay. Was there an issue with the equipment room?
A No.
Q Did it have to be modified at some point, something to do with access to the generator equipment, or?
A Nothing for the generator.
Q What was it related to?

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A It depends on which room you're talking about. I mean, there are several rooms that are involved with the generator.
Q Can you describe to me how it's set up and laid out?
A There is a UPS room, basically, that has the transfer switch, the battery racks and stores the batteries for the UPS. There's also a main electrical room for the PSG, which is the paralleling switchgear, and then there's another main electrical room that has all of our main gear.
Q Are those contiguous rooms, are they all connected?
A They're connected by doorways.
Q Okay. And was there any modification related to any of the equipment provided by CAM or Cashman?
A The design process before it was released and during the submittal process, the doors on the generator had to be made basically in half.
Q What was that related to?
A Just being the room available inside of the generator area.
Q Okay. Was that a change order?
A No. That was all in the design process.

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Q So how much contact do you think you had with Cashman personnel on this project?
A How much contact?
Q Yes.
A Not very much.
Q So you weren't involved in the submittal process, right?
A No.
Q And then after the release to order was sent and prior to the delivery, you know, was there any contact with Cashman?
A Yes.
Q And what was that related to?
A Just delivery, scheduling.
Q Making sure it's coming?
A Uh-huh.
Q Okay.
A Correct.
Q And who would you have spoken with at that point?
A Kym Simons.
Q Then who was on-site during the installation?
A Both Kym and Rob.
Q From Cashman?

Page 25

A Correct.
Q Then who was on-site from Mojave?
A Myself, Richard Christensen and numerous other electricians.
Q Was anyone from Whiting-Turner on-site?
A David Lee, Elliott Lloyd.
Q Was anyone from the owner on-site?
A I'm not sure.
Q Did you ever have an opportunity to meet the owner's representative on-site?
A No.
Q So after the equipment is delivered and placed in the side gate --
A Uh-huh.
Q -- what is left for CAM, Cashman to do under the contract?
A After it's delivered to the site they still have to put everything together, which is an exhaust system, and then start-up.
Q Okay. So what's the scheduling on those? Are those immediately done or is there some type of scheduled timeline for other work, or?
A Normally the exhaust system is installed immediately, and then there's a gap in time between that time and when we actually pull our cable and

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1 make our determinations and prepare for start-up.
2 Q So for this particular equipment can you
3 give me what the schedule was to look like for after
4 delivery to start-up?
5 A Cable would have been pulled to the
6 generator. Cable would have been pulled to the PSG.
7 Load bank testing the generator after all the cable
8 was pulled. And after that it would have been UPS
9 battery installation, wiring and bringing the UPS
10 on-line.
11 Q And so was that supposed to happen over a
12 number of weeks, months, or days?
13 A Usually it wouldn't take more than a
14 couple months, especially with an installation that
15 size.
16 Q Okay. So when was the work scheduled to
17 be completed? Like for Mojave, when was it
18 scheduled to be completed?
19 A May, 2011.
20 Q And so for all those items that you were
21 mentioning all that work to be done after it was
22 delivered --
23 A Uh-huh.
24 Q -- was CAM or Angelo involved with any of
25 that work?

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1 A I wouldn't have contacted anybody until we
2 were ready for start-up. Fuel and start-up.
3 Q So who did the exhaust system? Was that
4 Mojave?
5 A No. That should have been Cashman.
6 Q Okay. So after it was delivered, what did
7 Cashman do on-site?
8 A They installed one of the exhaust systems
9 complete. The second exhaust system was not
10 installed complete.
11 Q And when was that to be completed?
12 A They were going to come back at start-up
13 because it wasn't going to take, supposedly take
14 them long to do that.
15 Q So when were you ready for start-up?
16 A May.
17 Q And is that when the battery would have
18 been delivered?
19 A It would have been after that.
20 Q Okay.
21 A Because there is a shelf life for
22 batteries, so you don't order the batteries too far
23 in advance; otherwise, the warranty on the batteries
24 would be up.
25 Q So then when would they actually have been

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1 completed? When would that work, the work related
2 to this generator have been complete? Say
3 everything had gone as it was supposed to go.
4 MS. BRISCOE: Objection to form.
5 BY MS. LLOYD:
6 Q I guess I'm wondering because you kind of
7 said, I believe you testified that essentially it
8 would have been completed by May. That was what the
9 schedule was to?
10 A I'm not positive what the schedule had.
11 Q Okay. But you testified that it should
12 have been basically complete by May, that all of the
13 installation and everything related to the
14 generator, the start-up?
15 A I remember asking for load bank testing in
16 May.
17 Q What's load bank testing?
18 A That's when you actually put a load on the
19 generator and prepare it for start-up.
20 Q Who did you ask for load bank testing?
21 A Cashman.
22 Q Specifically?
23 A Kym Simons. And Rob.
24 Q And when in May was that?
25 A First or second week in May.

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1 Q And what was their response?
2 A We were coordinating where the cables
3 would go, and that was about it. They were
4 preparing for load bank testing.
5 Q And then what happened?
6 A I called for fuel. I told Cashman that
7 they need to order fuel so that we could start it up
8 and do the load bank testing. And that's when I was
9 informed that they weren't going to be doing any
10 more work.
11 Q Do you recall when that was?
12 A May.
13 Q Beginning, end?
14 A Middle.
15 Q So I keep going back. When would the
16 battery have been delivered?
17 A Sometime after that.
18 Q Was that kind of a moving target, given
19 when the completion was supposed to be, or?
20 A Correct.
21 Q And that battery is part of the large
22 purchase order, correct?
23 A Correct.
24 Q So in May when you were informed they
25 weren't going to do any more work, what was left to

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do?
A They had to go through and complete the installation on the exhaust system. They should have done the load bank testing. Fuel should have been delivered. And then they should have gone through all the wiring of the PSG to make sure any remote enunciators, any remote wiring between the generators and the PSG was correct. The program should have been loaded at that time and ready for start-up.
Q So when that wasn't going to be completed by Cashman, what action did you take?
A I had to hire other contractors to complete that work.
Q And who did you hire?
A Jentech and Hampton Tedder.
Q So what work did they complete?
A The installation of the exhaust, the checking of the wiring between the generator and the PSG, the load bank testing. They could not install the program.
Q And did they try to obtain the program?
A We tried, correct.
Q How did you try to obtain the program?
A We asked for the program from Cashman.

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Q Did you do anything else to try to obtain the program?
A Actually tried to call the manufacturer of the paralleling switchgear to see if we could get it from them, and we were denied it as well.
Q Did Jentech or Hampton Tedder take any action concerning the programming?
A No.
Q Did they try to obtain it?
A Not that I'm aware of.
Q So then what items are left incomplete at this point?
A The, after Jentech and after Hampton Tedder?
Q Yeah.
A Would have been the receipt and installation of the battery cabinets, along with the battery racks and batteries themselves.
Q And then that programming?
A The programming was still an issue.
Q So at this point what's left? At this time right now as we sit here, what's left incomplete?
A Program.
Q Who did the battery and all the items you

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just mentioned?
A We did the installation of the racks, the battery and the batteries and the interconnecting wiring, and then Gruber Services was hired to do the testing and start-up.
Q For the batteries?
A Correct. I'm not sure at this time if we had them work on the PSG or the generator.
Q Oh, to try to do the programming part?
A No, would have been more of the testing.
Q Oh, okay.
A More testing and start-up. Not positive.
Q And then you were involved in finding the contractors to do this work?
A No.
Q Who did that?
A Our purchasing department.
Q And so what's the current status of the generator equipment?
A All is complete, except for the programming because they need the codes to do the interface between the building automation system and the paralleling switchgear.
Q So it's operational?
A Correct.

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Q Did CAM perform any other work on this project?
A No.
Q Did they supply materials from any other suppliers?
A Not that I can recall.
Q Okay. Were you involved in the decision to require the generator equipment to be purchased through a specific business entity?
A No.
Q And I believe you testified previously that you're the person who decides what can be built and when it can be built for the equipment that's supplied on the project?
A Correct.
Q How did you determine when full payment should be released for this equipment?
A Because it is a progressive billing. We had to estimate where we were going to be at the end of that month to be able to bill out for that month.
Q So then Mojave gets the money and then pays, or to determine what you were going to include from the CAM billing and your billing, I guess?
A I don't understand your question.
Q I might be confused. Let's rephrase. CAM

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1 didn't get payment for the equipment until April, I
2 think it was the end of April. So I'm just trying
3 to get an idea, did you decide when to release that
4 payment?
5 A No.
6 Q Okay. So how does that process work?
7 A After the invoice comes in and I review
8 it, if everything looks okay I put my signature on
9 it and I turn it back in to our accounts payable.
10 Q And your signature means what to your
11 accounts payable?
12 A That I would agree with those amounts.
13 Q And that you would agree that it was
14 complete?
15 A At the time of estimating at the end of
16 the month, it should have been complete.
17 Q So I believe you just testified that there
18 was going to be work done in May.
19 A Uh-huh.
20 Q And like I said, CAM was paid in full in
21 April.
22 A I'm not knowledgeable on that. I don't
23 pay them.
24 Q Well, because Mr. Bugni basically referred
25 to you in saying that you determine when someone

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1 could bill a hundred percent.
2 A They turn in the bill, correct, and I sign
3 off on it.
4 Q And when it would be paid?
5 A I don't determine when it gets paid.
6 Q Okay. Who determines when it gets paid?
7 A Our accounts payable.
8 Q That's Mr. Bugni?
9 A Yes.
10 Q Okay. So would you have approved a
11 hundred percent payment of the billing before all
12 the work was complete that was required to be
13 complete with the large purchase order?
14 A If it was estimated that it was going to
15 be done at the end of that month for my pay
16 application, yes. I would have said it was going to
17 be done, because I have to guess where we're going
18 to be at the end of that month.
19 Q It looks like CAM submitted their bill in
20 January for a hundred percent. It's dated January.
21 A Okay.
22 Q And so is that because of the way they
23 were supplying the equipment in this case, or do you
24 know how that would work? Because normally I think
25 people bill a person in July for what they've

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1 completed. That's kind of what you're describing.
2 A Uh-huh.
3 Q So in this case that doesn't seem to be
4 how it was done. Do you know why it was done this
5 particular way?
6 A No.
7 Q Because he wasn't complete in January,
8 right?
9 A No.
10 Q And he wasn't complete in February when
11 the invoice was, I guess stamped received by Mojave,
12 right?
13 A Correct.
14 Q But this is a complete billing for
15 everything that he was doing for the generator
16 equipment?
17 A I would have to look at the large purchase
18 order to determine all of the line numbers that they
19 have on here.
20 Q Okay. But if you had the large purchase
21 order, you would be able to know if this was a
22 complete billing?
23 A Yes.
24 Q Do you know when Mojave approximately
25 billed a hundred percent for those generator line

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1 items to Whiting-Turner?
2 A Not offhand.
3 Q When did you consider your work complete
4 on the generator line items?
5 A I'm not sure. I would have to go back and
6 look at my pay applications.
7 Q Do you consider it to be complete right
8 now?
9 A Right now? Yes.
10 Q Even though those certain items aren't
11 done?
12 A The only item that is not done is the code
13 for the interface between the building automation
14 system and paralleling switchgear.
15 Q But your work is closed out on that item?
16 A Correct.
17 Q And so is Whiting-Turner looking to Mojave
18 to get anything else concerning this code?
19 A At this time I'm not sure. I haven't been
20 contacted to try to do any more myself.
21 Q When was your last, I guess contact
22 concerning the code?
23 A I am not sure as of that time.
24 Q And when were you complete on the project?
25 A Would have been around February, 2012.

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Q Is that when the building was opened, if you recall?
A **Yes, it was around then. Not sure on the exact date.**
Q Did you do any work concerning the generator equipment after that point, did Mojave?
A **No.**
Q When did you first find out that Cashman hadn't received payment for the equipment?
A **May.**
Q And how did you find out?
A **Through Kym Simons. As I stated earlier, it was when I requested them to fill it with fuel.**
Q And were you part of determining how to respond to Cashman about the non-payment by CAM?
A **No.**
Q Did you speak with anyone from CAM after the non-payment, learning of the non-payment?
A **No.**
Q And I can't recall, I may have asked this before, but did you ever speak with Angelo Carvalho from CAM?
A **No.**
Q Is that unusual, to not speak with --
A **No.**

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Q -- the vendor on equipment like this?
A **No.**
Q Or is it just because you had Cashman and you knew to speak with Cashman?
A **Correct. Relationship with Cashman earlier, previously.**
Q Had you ever worked with CAM prior to this project?
A **No.**
Q And then did you work with them on any other projects for Mojave?
A **No.**
(Plaintiff's Exhibit 4 marked.)
BY MS. LLOYD:
Q Can you take a look at this document? Can you tell me what it is?
A **It is a contract supplement.**
Q Issued by?
A **Whiting-Turner.**
Q To?
A **Mojave Electric.**
Q Have you seen it before?
A **Yes.**
Q And can you tell me what the line, third line item on the body, I think it's CRA?

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A **To install a roll-up door on the back of the emergency room.**
Q What was that related to?
A **Access to the PSG.**
Q That's the paralleling switchgear?
A **Correct.**
Q So that was a deductive change order?
A **Correct.**
Q Why?
A **Because they had to install the roll-up door.**
Q And they explained, or they said Mojave should have done it or known, or why was that a deductive?
A **Because the paralleling switchgear was relocated in the room.**
Q By?
A **Mojave.**
Q Oh, so that caused there to be an access issue?
A **Correct.**
Q Do you know when this work was done?
A **Not positive.**
Q And how typically are these issued after the issue arises, I guess?

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A **It varies.**
Q Okay. So it's dated March 23rd. Would there have been a corresponding document from Mojave to Whiting-Turner about that change or was this a Whiting-Turner change?
A **There might have been a document, but I'm not positive.**
Q Do you approve these?
A **Yes, I look at the dollar amounts and then I turn it in to the vice president of construction, and then he signs off on it after he reviews it.**
Q Okay. So when we were talking earlier about changes related to the electrical room, were you talking about this change or were you talking about a different change?
A **Changes to the electrical room.**
Q Well, one the rooms you mentioned that they had to modify the door size, I think you said, related to the generator.
A **That wasn't related to the room itself.**
Q Oh, it was the generator?
A **That was the generator.**
Q Okay.
A **As I stated earlier, it was part of the design process.**

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Q Okay. So this was a change to those rooms that occurred after?
A That was a change to the emergency electrical room.
Q And that was after delivery?
A Correct.
Q And that was because Mojave relocated the equipment inside the room?
A Correct.
Q Do you know what the reason was for relocating the equipment?
A Easier access of feeder cables.
Q So prior to the non-payment was Cashman performing all items that you wanted it to perform?
A Yes.
Q So they were doing the work that you anticipated prior to the issue of the non-payment with them?
A Yes.
Q Do you know when Cashman was last on the project?
A Not offhand.
MS. LLOYD: Let's take a break real quick.
(Recess taken.)
BY MS. LLOYD:

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Q Did you have any discussions with anyone at Cashman about the nonpayment of CAM?
A Keith Lozeau.
Q And what did you talk to Keith about?
A The only thing I talked to him about was when I requested things to be done, his responses were basically, we haven't been paid. That was it.
Q Do you know how many times you spoke with him?
A Not offhand. Maybe four, plus or minus.
Q And was that after Kym said we weren't going to do anything else?
A After.
Q Did Kym refer you to Keith?
A Yes.
Q And prior to that had you spoken with Keith at all about his project?
A Not that I recall.
Q Because I think that your primary contact was Kym?
A Kym. Just because I new Kym from other projects.
Q Okay. And after you became aware of the non-payment did you try to contact CAM?
A No.

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Q Do you know, are you aware if anyone from Mojave tried to contact CAM?
A I'm not aware.
Q And were you involved in deciding what to do about the non-payment on behalf of Mojave?
MS. BRISCOE: Objection. I think this was asked and answered already.
THE WITNESS: I don't understand what you're asking.
BY MS. LLOYD:
Q I'm sure after Mojave became aware of the non-payment, as Mr. Bugni testified, there was a meeting with Cashman. Were you at the meeting with Cashman personnel with Mr. Bugni, and I think possibly Mr. Nelson?
A No.
Q And then did Kym provide you with any information after the non-payment to try to assist you on the project?
A I don't recall.
Q And when was the start-up work completed?
A It wasn't till towards the end of the project.
Q Do you have like a timeline range?
A I would say November, 2012. Around there.

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I'm not positive on the date.
MS. LLOYD: I don't have anything further.
(Whereupon, proceedings were concluded at 2:05 p.m.)

1 *****
2 CERTIFICATE OF DEPONENT
3 PAGE LINE CHANGE REASON
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 * * * * *
12 I, CHRISTOPHER MEIERS, deponent herein, do hereby certify and declare the within and foregoing
13 transcription to be my deposition in said action; that I have read, corrected and do hereby affix my
14 signature to said deposition.
15 _____
CHRISTOPHER MEIERS, Deponent
16 STATE OF NEVADA)
17 SS:
COUNTY OF CLARK)
18 Subscribed and sworn to before me this _____
19 day of _____, 2013.
20
21 _____
Notary Public
22
23
24
25

1 CERTIFICATE OF REPORTER
2 STATE OF NEVADA)
) ss:
3 COUNTY OF CLARK)
4 I, Rene' Hannah, Certified Court Reporter,
5 do hereby certify:
6 That I reported the deposition of
7 CHRISTOPHER MEIERS, commencing on Thursday, January
8 31, 2013, at 1:00 p.m.
9 That prior to being deposed, the witness
10 was duly sworn by me to testify to the truth. That
11 I thereafter transcribed my said shorthand notes
12 into typewriting and that the typewritten transcript
13 is a complete, true and accurate transcription of my
14 said shorthand notes.
15 I further certify that I am not a relative
16 or employee of counsel of any of the parties, nor a
17 relative or employee of the parties involved in said
18 action, nor a person financially interested in
19 the action.
20 IN WITNESS WHEREOF, I have set my hand in
21 my office in the County of Clark, State of Nevada,
22 this_____ day of_____, 2013.
23
_____
24 RENE' R. HANNAH, CCR NO. 326
25

EXHIBIT 17

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CASHMAN EQUIPMENT COMPANY, a Nevada corporation,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED MATTERS.

CASE NO. A642583

DEPOSITION OF DAVID PHILLIPS
Taken on Thursday, January 10, 2013
At 3:00 p.m.
At 6725 Via Austi Parkway, Suite 290
Las Vegas, Nevada

REPORTED BY: CHRISTY LYN DeJONKER, CCR NO. 691

1 APPEARANCES:
2 For the Plaintiff:
3 JENNIFER R. LLOYD, ESQ.
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5 Las Vegas, Nevada 89119
6
For the Defendants:
7
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8 Cotton, Driggs, Walch,
Holley, Woloson & Thompson
9 400 South Fourth Street
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10 Las Vegas, Nevada 89101
11
12 INDEX
13 WITNESS: DAVID PHILLIPS
14 Examination Further Examination
15 By Ms. Lloyd: 3 37
16 By Mr. Boschee: 33
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EXHIBITS
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20
21 1 Preliminary Notice of Right to Lien 11
22 2 Application and Certification for Payment 26
23 3 Notice of Lien 32
24
25

1 (Prior to the commencement of the deposition, all of
2 the parties present agreed to waive statements by the
3 court reporter, pursuant to Rule 30(b)(4) of NRCP.)
4 Thereupon --
5 DAVID PHILLIPS,
6 was called as a witness, and having been first duly
7 sworn, was examined and testified as follows:
8 EXAMINATION
9 BY MS. LLOYD:
10 Q. Hi, I am Jennifer Lloyd. I am attorney for
11 Cashman Equipment Company in this matter. We are here
12 for your deposition today. You can go ahead and state
13 your name for the record.
14 A. It's David Ross Phillips, P-H-I-L-L-I-P-S.
15 Q. You have done this before.
16 A. Yes, I have.
17 Q. Have you had your deposition taken before?
18 A. Yes, I have.
19 Q. How many times? A number of times?
20 A. Probably a dozen maybe.
21 Q. When was the most recent?
22 A. It's probably been 16, 17 years.
23 Q. Okay. So let's briefly go over the rules.
24 It's question and answer. We need verbal responses to
25 all of the questions. The court reporter is going to

1 take down everything that we say, so we need to not
2 speak at the same time. You can take a break at any
3 time you need, just ask. Except for when a question is
4 pending, I would ask that you answer the question prior
5 to taking the break.
6 If any of my questions are unclear or you
7 don't understand what I am asking, just ask me to
8 rephrase it and I will be happy to do that. Your
9 testimony is under oath today. It's the same oath you
10 take in a court of law.
11 Is there any reason why you cannot give your
12 complete and truthful testimony here today?
13 A. No.
14 Q. What did you do to prepare for your
15 deposition today?
16 A. I met with Shimoli (phonetic) on Tuesday.
17 Q. Not going into the substance of those
18 communications, did you do anything else to prepare for
19 your deposition today?
20 A. No.
21 Q. What is the highest level of education you
22 have obtained?
23 A. I have a degree in architecture from Texas
24 A&M University.
25 Q. And when did you graduate there?

1 A. 1974.
2 Q. And do you hold any professional licenses?
3 A. I am a member of the Construction
4 Specifications Institute.
5 Q. And how long have you been a member there?
6 A. I believe since '88.
7 Q. And have you been convicted of any crimes
8 within the last ten years?
9 A. No.
10 Q. I am required to ask that. I hate to ask
11 that question.
12 A. I know.
13 Q. So tell me about where you are currently
14 employed.
15 A. I am currently employed with ForestCity
16 Construction Services, LLC, which is a business unit of
17 ForestCity Enterprises, Inc. based in Cleveland, Ohio.
18 Q. And what's your position with ForestCity
19 Construction Services?
20 A. Vice president.
21 Q. Of a particular division or just vice
22 president?
23 A. Vice president.
24 Q. Okay. What do your job duties entail?
25 A. I manage our development in construction

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASHMAN EQUIPMENT COMPANY, a Nevada corporation,

Appellant,

vs.

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; QH LAS VEGAS LLC, a foreign limited liability company; PQ LAS VEGAS, LLC, a foreign limited liability company; L W T I C SUCCESSOR LLC, an unknown limited liability company; FC/LW VEGAS, a foreign limited liability company;

Respondents.

Case No: 66452
Case No: 61715
Case No: 65819

Electronically Filed
Jun 17 2015 11:50 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

District Court Case Nos.: **A642583 & A653029**

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9	Errata to Amended Answer to Second Amended Complaint, Counterclaim and Crossclaim	11/10/2011	1	JA00098-99
10	Cashman's Response to Mojave's Counterclaim	11/21/2011	1	JA000100-03
11	Complaint (Filed in A653029)	12/09/2011	1	JA000104-11
12	Motion to Consolidate (re: Case A653029)	01/11/2012	1	JA000112-18
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16	Notice of Entry of Order Granting Motion to Consolidate (Filed in A653029)	02/02/2012	1	JA000129-34
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