

EXHIBIT C

EXHIBIT C

1 **2540**
2 HOLLY S. PARKER, ESQ.
Nevada State Bar No: 10181
3 MARILEE BRETERNITZ, ESQ.
Nevada State Bar No. 12563
4 LAXALT & NOMURA, LTD.
9600 Gateway Drive
5 Reno, Nevada 89521
6 hparker@laxalt-nomura.com
mbreternitz@laxalt-nomura.com
7 Telephone: (775) 322-1170
Facsimile: (775) 322-1865
8 Attorneys for Defendant Alaska
9 Pacific Leasing Company

10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11 IN AND FOR THE COUNTY OF WASHOE

13 MB AMERICA, INC., a Nevada 14 Corporation 15 Plaintiff 16 vs. 17 ALASKA PACIFIC LEASING COMPANY, 18 a Alaska business corporation; and DOES 19 1-THROUGH X, inclusive, 20 Defendants.	CASE NO: CV14-01229 DEPT. NO. 8 <u>NOTICE OF ENTRY OF ORDER</u>
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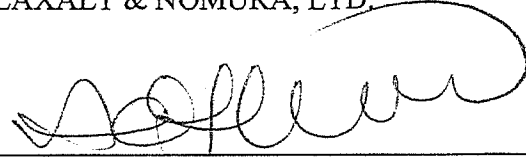
21 Please take notice that the above Court entered its Order Granting Summary Judgment on
22 October 22, 2014, a copy of said Order is attached hereto.
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1 **AFFIRMATION PURSUANT TO NRS 239.B.030**

2 The preceding document does not contain the social security number of any person.

3 DATED this 23rd day of October, 2014.

4 LAXALT & NOMURA, LTD.

5 

6 _____
7 HOLLY S. PARKER, ESQ.

8 Nevada State Bar No: 10181

9 MARILEE BRETERNITZ, ESQ.

10 Nevada State Bar No. 12563

11 LAXALT & NOMURA, LTD.

12 9600 Gateway Drive

13 Reno, Nevada 89521

14 hparker@laxalt-nomura.com

15 mbreternitz@laxalt-nomura.com

16 Telephone: (775) 322-1170

17 Facsimile: (775) 322-1865

18 Attorneys for Defendant Alaska

19 Pacific Leasing Company

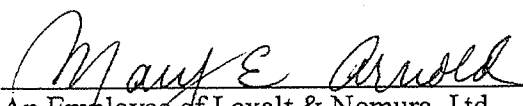
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT & NOMURA, LTD., and that on the 23rd day of October, 2014, I caused to be served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER by:

- ☒ Mail on the parties listed below in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of Laxalt & Nomura, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.
- ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-Flex system, which will electronically mail the filing to the following individuals.
- ☐ Personal delivery by causing a true copy thereof to be hand delivered this date to the address(es) at the address(es) set forth below.
- ☐ Facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.
- ☐ Federal Express or other overnight delivery.
- ☐ Reno/Carson Messenger Service

addressed as follows:

Michael E. Sullivan, Esq.
Robison Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503
Attorneys for Plaintiff MB America, Inc.


An Employee of Laxalt & Nomura, Ltd.

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8
9 MB AMERICA, INC., a Nevada
corporation,

Case No. CV14-01229

Dept. No. 8

10 Plaintiff,

11 vs.

12
13 ALASKA PACIFIC LEASING
COMPANY, a Alaska business
corporation; and DOES I-X, inclusive,

14 Defendant.
15 _____/

16
17 **ORDER GRANTING SUMMARY JUDGMENT**

18 Currently before the court is Defendant Alaska Pacific Leasing Company's
19 ("Alaska Pacific") *Motion for Summary Judgment*. Plaintiff MB America, Inc. ("MB
20 America") opposed the motion on September 26, 2014, and Alaska Pacific filed a
21 reply. This order follows.

22 This dispute arises from a dealership contract entered between Alaska Pacific
23 and MB America, a manufacturer of rock crushing machines. Among other clauses,
24 the contract included an arbitration clause, which stated:

25 **DISPUTES AND MEDIATION.** The parties agree that any disputes
26 or questions arising hereunder, including the construction or
27 application of this Agreement, shall be submitted to mediation
between MB and Dealer with the rules of the American Arbitration
28 Association, of which any hearing or meeting should be conducted in
Reno, NV. Any mediation or settlement by the parties shall be

1 documented in writing. If such mediation modifies the language of this
2 Agreement, the modification shall be put in writing, signed by both
parties and added to this Agreement as an attachment.

3 If mediation between the parties does not result in a mutual satisfying
4 settlement within 180 days after submission to mediation, then each
5 party will have the right to enforce the obligations of this Agreement in
6 the court of law in Reno, Nevada with all reasonable attorney fees,
court costs and expenses incurred by the prevailing party in such
litigation to be paid by the other party.

7
8 MB America filed its complaint in this case on June 6, 2014. Alaska Pacific
9 contends that the complaint was prematurely filed, as the parties in this case
10 had not yet submitted their dispute to mediation, pursuant to the contractual
arbitration clause.

11 The Nevada Supreme Court has consistently recognized Nevada's
12 strong public policy in favor of arbitration because arbitration generally
13 avoids the higher costs and longer time periods associated with traditional
14 litigation. *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 553, 96 P.3d 1159, 1162.
15 "There is a strong public policy favoring contractual provisions requiring
16 arbitration as a dispute resolution mechanism. Consequently, when there is
17 an agreement to arbitrate we have said that there is a 'presumption of
18 arbitrability.'" *Phillips v. Parker*, 106 Nev. 415, 417, 794 P.2d 716, 718 (1990)
19 (citing *Int'l Assoc. Firefighters v. City of Las Vegas*, 104 Nev. 615, 620, 764
20 P.2d 478, 481 (1998)).

21 Arbitration clauses are enforced, however, only after an enforceable
22 agreement to arbitrate is found to exist. *Gonski v. Second Judicial District Court of*
23 *State ex rel. Washoe*, 245 P.3d 1164, 1169 (Nev. 2010). Nevertheless, a court, in its
24 discretion, may invalidate unconscionable arbitration provisions; generally, both
25 procedural and substantive unconscionability must be present in order for the court
26 to exercise its discretion to refuse to enforce an arbitration provision as
27 unconscionable. *D.R. Horton, Inc.* at 553-554, 96 P.3d 1159, 1162.

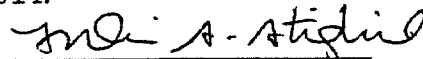
1 In this case, MB America does not allege that the arbitration clause between
2 the parties is unconscionable, or otherwise dispute the validity of the provision.
3 Rather, MB America appears to assert that arbitration is unnecessary, because it
4 only filed this action to establish that there is not a legal dispute between the
5 parties. If a dispute exists, MB America agrees that arbitration is appropriate.

6 Given the pleadings filed in this case, as well as the fact that MB America
7 filed a complaint in this court in the first instance, the court concludes that a legal
8 dispute between the parties appears to exist. The dispute also appears to arise from
9 the parties mutually agreed upon contractual obligations. As MB America does not
10 dispute the validity of the parties' contractual arbitration provision, the court
11 concludes that the parties are required to exhaust this administrative remedy
12 before submitting their dispute to this court.¹

13 Therefore, for the reasons stated above, the court ORDERS Alaska Pacific's
14 *Motion for Summary Judgment* GRANTED. Plaintiff MB America's *Complaint* is
15 DISMISSED, without prejudice.

16 IT IS SO ORDERED.

17 DATED this 22nd day of October, 2014. .

18 

19 LIDIA S. STIGLICH
20 District Judge
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28 ¹The court notes that while the agreement between the parties requires that any mediator follow the
rules of the American Arbitration Association, any selected mediator need not be a member of the
American Arbitration Association.

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
3 Judicial District Court of the State of Nevada, County of Washoe; that on this
4 22ND day of October, 2014, I electronically filed the following with the Clerk of the
5 Court by using the ECF system which will send a notice of electronic filing to the
6 following:

7 Holly Parker, Esq.

8 Michael Sullivan, Esq.

9 Marilee Breternitz, Esq.

10 I deposited in the Washoe County mailing system for postage and mailing
11 with the United States Postal Service in Reno, Nevada, a true copy of the attached
12 document addressed to:

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15 KATHRYN ROGERS
16 Judicial Assistant
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EXHIBIT B

EXHIBIT B

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MB AMERICA, INC., a Nevada
corporation,

Case No. CV14-01229

Dept. No. 8

Plaintiff,

vs.

ALASKA PACIFIC LEASING
COMPANY, a Alaska business
corporation; and DOES I-X, inclusive,

Defendant.

ORDER GRANTING SUMMARY JUDGMENT

Currently before the court is Defendant Alaska Pacific Leasing Company's ("Alaska Pacific") *Motion for Summary Judgment*. Plaintiff MB America, Inc. ("MB America") opposed the motion on September 26, 2014, and Alaska Pacific filed a reply. This order follows.

This dispute arises from a dealership contract entered between Alaska Pacific and MB America, a manufacturer of rock crushing machines. Among other clauses, the contract included an arbitration clause, which stated:

DISPUTES AND MEDIATION. The parties agree that any disputes or questions arising hereunder, including the construction or application of this Agreement, shall be submitted to mediation between MB and Dealer with the rules of the American Arbitration Association, of which any hearing or meeting should be conducted in Reno, NV. Any mediation or settlement by the parties shall be

1 documented in writing. If such mediation modifies the language of this
2 Agreement, the modification shall be put in writing, signed by both
parties and added to this Agreement as an attachment.

3 If mediation between the parties does not result in a mutual satisfying
4 settlement within 180 days after submission to mediation, then each
5 party will have the right to enforce the obligations of this Agreement in
6 the court of law in Reno, Nevada with all reasonable attorney fees,
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litigation to be paid by the other party.

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9 contends that the complaint was prematurely filed, as the parties in this case
10 had not yet submitted their dispute to mediation, pursuant to the contractual
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11 The Nevada Supreme Court has consistently recognized Nevada's
12 strong public policy in favor of arbitration because arbitration generally
13 avoids the higher costs and longer time periods associated with traditional
14 litigation. *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 553, 96 P.3d 1159, 1162.
15 "There is a strong public policy favoring contractual provisions requiring
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26 to exercise its discretion to refuse to enforce an arbitration provision as
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1 In this case, MB America does not allege that the arbitration clause between
2 the parties is unconscionable, or otherwise dispute the validity of the provision.
3 Rather, MB America appears to assert that arbitration is unnecessary, because it
4 only filed this action to establish that there is not a legal dispute between the
5 parties. If a dispute exists, MB America agrees that arbitration is appropriate.

6 Given the pleadings filed in this case, as well as the fact that MB America
7 filed a complaint in this court in the first instance, the court concludes that a legal
8 dispute between the parties appears to exist. The dispute also appears to arise from
9 the parties mutually agreed upon contractual obligations. As MB America does not
10 dispute the validity of the parties' contractual arbitration provision, the court
11 concludes that the parties are required to exhaust this administrative remedy
12 before submitting their dispute to this court.¹

13 Therefore, for the reasons stated above, the court ORDERS Alaska Pacific's
14 *Motion for Summary Judgment* GRANTED. Plaintiff MB America's *Complaint* is
15 DISMISSED, without prejudice.

16 IT IS SO ORDERED.

17 DATED this 22nd day of October, 2014.

18 
19 LIDIA S. STIGLICH
20 District Judge
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I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Kathryn Rogers
KATHRYN ROGERS
Judicial Assistant

EXHIBIT A

EXHIBIT A

1 **\$1425**

2 Michael E. Sullivan, Esq. (SBN 5142)
3 **ROBISON, BELAUSTEGUI, SHARP & LOW**
4 A Professional Corporation
5 71 Washington Street
6 Reno, Nevada 89503
7 Telephone: (775) 329-3151
8 *Attorneys for Plaintiff MB America, Inc.*

9
10 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**
12

13 MB AMERICA, INC., a Nevada
14 corporation,

Case No.: CV14-01229

11 Plaintiff,

Dept. No.: 8

12 v.

**COMPLAINT FOR DECLARATORY
RELIEF**

13 ALASKA PACIFIC LEASING COMPANY,
14 a Alaska business corporation; and DOES
15 I through X, inclusive,

**(Exemption From Arbitration NAR 3
Declaratory Relief Sought)**

16 Defendants.
17 _____ /

18 For its Complaint, Plaintiff alleges as follows:

PARTIES

19 1. Plaintiff MB AMERICA, INC. ("Plaintiff") is a Nevada corporation licensed
20 to conduct business in the State of Nevada.

21 2. Defendant ALASKA PACIFIC LEASING COMPANY ("Defendant") is an
22 Alaska business corporation.

23 3. DOES I through X, inclusive, are fictitious names of Defendants who are
24 the agents representative and/or employees of the named Defendant who are equally
25 responsible for MB America's claims as alleged herein, in either a representative
26 capacity or by virtue of independent actions or omissions. When the true names and
27 identities of these DOE Defendants are ascertained, Plaintiff will seek leave to amend
28 this Complaint to insert their true names and identities.

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1 declaratory judgment from this Court pursuant to NRCP 57 and NRS Chapter 30 that
2 the Agreement is valid and binding on all parties to this action, and that Defendant is not
3 entitled to any relief as is claimed by Defendant.

4 13. Plaintiff has incurred legal fees and court costs associated with
5 prosecuting this action, and hereby seeks reimbursement of those costs and fees to the
6 extent allowed under Nevada law.

7 14. Venue and jurisdiction is proper in Nevada as there is a forum selection
8 clause found in the Agreement (attached here as **Exhibit "1."**) Additionally, and on
9 separate grounds, this contract was consummated in the State of Nevada, and
10 Defendant obtained the goods and services set forth in the contract in the State of
11 Nevada.

12 **SECOND CLAIM FOR RELIEF**

13 **(Specific Performance)**

14 15. Plaintiff incorporates the allegations contained in paragraphs 1 through 14
15 of this Complaint as though set forth fully herein.

16 16. Plaintiff requests this Court to order the parties to mediation as set forth in
17 the parties' Agreement.

18 WHEREFORE, Plaintiff prays for relief as follows:

19 1. For declaratory relief in the form of an order and judgment by this Court
20 finding that the Agreement is valid and enforceable, and that Plaintiff has met its
21 obligation under the terms of its Agreement, and that Defendant is not entitled to any
22 recovery under the Agreement or Nevada or Alaska law, along with any other provision
23 in said contract.

24 2. That Plaintiff be entitled to recover its costs and reasonable attorney's
25 fees incurred herein;

26 3. That this matter be referred to mediation in Nevada; and
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4. For such other and further relief as the Court deems proper.

AFFIRMATION: The undersigned does hereby affirm that this document does not contain the Social Security Number of any person.

DATED this 6th day of June, 2014.

ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

By: 
MICHAEL E. SULLIVAN, ESQ.
Attorneys for Plaintiff MB America, Inc.

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INDEX OF EXHIBITS

1. Agreement dated August 20, 2013 4 pages

EXHIBIT 1

EXHIBIT 1



THE CRUSHING EVOLUTION

MB America, Inc.
8730 Technology Way
Reno, NV 89521
Phone 775-853-1058 - Fax 775-682-4502
www.mbamerica.com

Agreement

This Agreement is made as of the 1 day of August in the year of 2012, by and between "MB America, Inc.", a corporation incorporated under the laws of the state of Nevada, represented by Miriano Ravazzolo who has the necessary powers ("MB"), and "Alaska Pacific Leasing" a corporation incorporated under the laws of the state of Alaska, represented by Mr. David Faulk who has the necessary powers ("Dealer"), and to be administered as follows:

1. **APPOINTMENT AND ACCEPTANCE.** MB appoints Dealer as its exclusive reseller to promote the sale of the Products and Services as defined in paragraph 2 herein, and Dealer accepts the appointment and agrees to promote the sale of MB's Products as defined by this Agreement.
2. **PRODUCTS AND AREA.** The products covered by this Agreement (Products) are "crushing attachments", "screening attachments" and any other product and service manufactured and/or sold by the company "MB SpA" of Breganze, Italy ("Manufacturer") under its own brand name at the date of this agreement. Any new standard or custom Product developed or added by Manufacturer during the lifetime of this Agreement is not automatically included in the Agreement, but has to be agreed upon each time. The Area covered in this agreement is as specified in the Annex A, part I, of this Agreement.
3. **PRICES.** Dealer will purchase the Products at the prices specified in the current Price List, minus the dealer discount, and with the payment terms, as specified in the Annex A, part III, of this Agreement. Unless specifically agreed time by time, the prices are for material picked up by Dealer at one of our warehouses in the US, and do not include any transport or any other accessory cost.

The Price List, discounts and terms can be changed by MB at any moment with an advanced notice of 30 days; however, existing orders and/or proposals will be carried over at the conditions existing at the moment of their acceptance.
4. **WARRANTY AND SERVICE.** The warranty and service terms will be as defined in the Annex C. In any case, Dealer will communicate to MB the date of sale and the name and address of the purchasing entity for every Product sold, within 30 days from the sale; as well as the date of first use for Products that are used for rentals or demonstrations. Failure to do so will void any warranty on the Product, constitute significant breach of the Agreement.
5. **SALES OUTSIDE TERRITORY.** We discourage you selling New Products outside the Territory. Should you do so, you will be assessed a "servicing fee" of twenty percent (20%) of the discounted price of such New Product. The servicing fee, less an administrative assessment of 3%, will be paid to the dealer in whose Territory you sold the New Product, to compensate that dealer for providing support and for any advertising and effort spent in promoting interest in the Product. New Product for the purpose of this paragraph is product in service less than one year, except if sold at auctions.

Bucket Crushers Worldwide



6. **RELATIONSHIP AND CONDUCT OF BUSINESS.** Dealer shall use its best efforts to promote the sale of and solicit orders for the Products and services and will conduct all its business in its own name and in such a manner as it may see fit, pay all its own expenses including all commissions, salaries, bonuses, and expenses of its own employees and sales persons and any and all taxes properly and lawfully associated with doing business as an independent entity in the assigned territory.

MB shall furnish Dealer, at no expense to Dealer, with catalogs, literature, and any other material available for the proper promotion and solicitation of orders for the Products in the assigned territory. MB can contribute to the marketing activities of Dealer, as advertising, exhibitions and the like, on a time-by-time base or as result of separate agreements.

MB can participate, at its own expense and decision, to exhibitions, conventions or conferences in any area of the country, and Dealer is not obliged to participate or contribute to said events.

Dealer shall abide by MB's terms and conditions pertaining to the sale of the Products and services, their operations, and their warranty (if any), and shall communicate same to customers. Dealer shall hold MB harmless from and shall indemnify MB for all liability, loss, costs, expenses or damages, including court costs and reasonable attorneys' fees, caused by any misrepresentation made by Dealer or its employees concerning MB's products or services.

Dealer is directly initiating and maintaining the relationship with its customer and will cooperate with the MB to solve possible disputes arising in connection with the Product.

Dealer is an independent entity and shall have sole control of the means of performing under this Agreement. Nothing in this Agreement shall be construed to constitute Dealer as a partner or employee of MB nor shall either have any authority to bind the other in any respect.

7. **BRAND PROTECTION.** Every Product sold to a final user will have to carry all the original logos, branding, identification numbers and serials as supplied by Manufacturer. Dealer will not alter, modify or hide the brand name or logos in any way. Proposals, quotes and invoices to the final users will have to clearly specify the Manufacturer's brand name.

Dealer can produce its own promotional material and/or advertising about the Product. However every document or photo will have to clearly indicate Manufacturer brand and logo, and the drafts of said promotional material or advertising will have to be submitted to MB for approval before printing and/or producing. MB has the faculty to deny the approval within 5 days from the date of receiving the drafts, at its own discretion.

8. **TERM OF AGREEMENT AND TERMINATION.** This Agreement shall be effective on the date listed on page 1 and shall continue in force for an initial term of 1 year.

This Agreement may be terminated by either party:

- (a) By written agreement mutually agreed upon to be terminated at any time; or
- (b) (But not effective during the initial term of the Agreement), for no cause upon at least 90 days' prior written notice to the other party;
- (c) By both parties in case of breach of this agreement, with 30 days written notice.
- (d) After 30 days' written notice if either party has filed or has filed against it a petition in bankruptcy (which is not dismissed within 30 days after it is filed) or after 30 days' written notice if either party has other cause.

9. **RIGHTS UPON TERMINATION.** Upon termination of this Agreement any current order will be carried on as scheduled. MB will however have the option to request a different payment term for

Bucket Crushers Worldwide



any order placed by Dealer from the moment of the notice of termination.

10. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement contains the entire understanding of the parties, shall supersede any other oral or written agreements, and shall be binding upon successors and assigns. It may not be modified in any way without the written consent of an officer or owner of both parties.

11. **SURVIVABILITY OF AGREEMENT; HIERARCHY.** If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. In case that any provision or part thereof in Annex A or Annex C would be considered contrasting with any provision or part in this Agreement, the provisions in Annex A or Annex C will prevail.

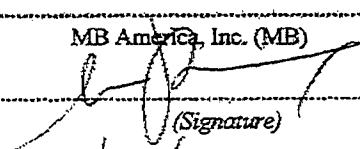
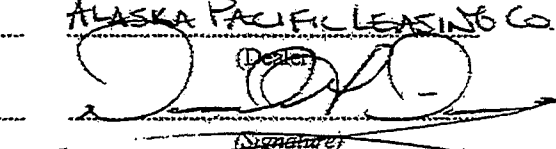
12. **APPLICABLE LAW - WAIVER.** This Agreement shall be construed according to the laws of the State of Nevada. The failure of either party to enforce, at any time or for any period of time, any provisions of this Agreement shall not be construed as a waiver of such provision or of the right of such party thereafter to enforce such provision.

13. **DISPUTES AND MEDIATION.** The parties agree that any disputes or questions arising hereunder, including the construction or application of this Agreement shall be submitted to mediation between MB and Dealer with the rules of the American Arbitration Association, of which any hearing or meeting should be conducted in Reno, NV. Any mediation settlement by the parties shall be documented in writing. If such mediation settlement modifies the language of this Agreement, the modification shall be put in writing, signed by both parties and added to this Agreement as an attachment.

If mediation between the parties does not result in a mutual satisfying settlement within 180 days after submission to mediation, then each party will have the right to enforce the obligations of this Agreement in the court of law of Reno, Nevada with all reasonable attorney fees, court costs and expenses incurred by the prevailing party in such litigation to be paid by the other party.

14. **NOTICES.** All notices, demands or other communications by either party to the other shall be in writing and shall be effective upon personal delivery, or 72 hours after deposited in the United States mail, first class certified postage prepaid, or by email.

IN WITNESS WHEREOF, the officers or owners of both parties hereto have executed this Agreement to be effective on the day and year listed on page one of this Agreement written in multiple counterparts, each of which shall be considered an original.

MB America, Inc. (MB)	ALASKA PACIFIC LEASING CO., INC.
	
(Signature)	(Signature)
8/20/2012	AUGUST 17, 2012

Bucket Crushers Worldwide

MB America, Inc
Dealer Agreement with
Alaska Pacific Leasing
9191 Old Seward Highway Unit #15
Anchorage, Alaska, 99515

Annex A

Part I – Territory

The territory will be the States of Alaska.

Part II - Sales Objectives:

After 120 days from the execution of this Agreement, MB will submit to Dealer a Target Sales Objective for the remaining time of the agreement, which will consider the market situation and the potentials of the line.

Part III - Discount and Payments:

The discount reserved is 36% (thirty-six percent) on the current price list and its modifications. Dealer will pay the shipping costs from one of our warehouses to his premises.

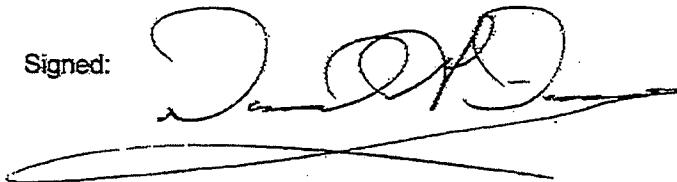
The payments will be by check or wire transfer as follows:

- 10% at the order
- final amount, including transport and any other costs, before shipping.

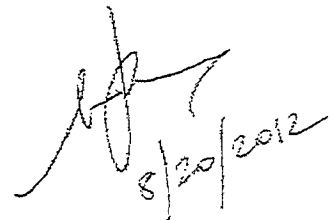
MB America will establish a maximum credit line with Dealer, which will not be exceeded at any moment.

Any delay in the payment will allow MB America to request and charge the payment of compounded interests of 1.5% monthly.

Signed:



Date: AUGUST 17, 2012



IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

MB AMERICA, INC., A NEVADA
CORPORATION,
Appellant,

vs.

ALASKA PACIFIC LEASING COMPANY, A
ALASKA BUSINESS CORPORATION,
Respondent.

No. 66860

Electronically Filed
Nov 25 2014 09:50 a.m.

Tracie K. Lindeman
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Department Eight (8)

County Washoe Judge Stiglich

District Ct. Case No. CV14-01229

2. Attorney filing this docketing statement:

Attorney Michael E. Sullivan Telephone (775) 329-3151

Firm Robison, Belaustegui, Sharp & Low

Address 71 Washington Street
Reno, Nevada 89503

Client(s) MB America, Inc.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Holly S. Parker and Marilee Breternitz Telephone (775) 322-1170

Firm Laxalt & Nomura, Ltd.

Address 9600 Gateway Drive
Reno, Nevada 89521

Client(s) Alaska Pacific Leasing Company

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

Appellant MB America and Respondent Alaska Pacific Leasing Company entered into a contract that contained a mediation provision requiring the parties to submit disputes arising out of the contract to mediation in Reno, Nevada. When respondent threatened to file a lawsuit in Alaska for a dispute arising out of the contract, appellant filed a complaint in Nevada District Court seeking a declaratory judgment that (1) the contract between the parties was valid, and (2) the parties are required under the terms of that contract to submit all disputes to mediation in Reno, Nevada. Respondent moved for summary judgment on the ground that the parties must submit all disputes to mediation even though they had threatened to sue Appellant in Alaska! Respondent alternatively argued that the Nevada district court action should be stayed pending mediation. That motion miscast the issues before the district court. Regardless, the district court granted the motion for summary judgment and dismissed appellant's case without resolving the dispute of whether the parties' contract is valid, and whether under the provisions of the contract, the parties are required to mediate in Reno, Nevada. This appeal follows.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

1. Whether, on a complaint seeking declaratory relief that the parties' contract was valid, and that the parties are required to submit contractual disputes to mediation in Reno, Nevada, the district court erred in granting summary judgment and ordering the parties to mediation when the contract mandates "mediation" and not "arbitration" without resolving the fundamental underlying dispute between the parties as to where the mediation must take place; and
2. Whether the district court abused its discretion in declining to stay the district court action in light of the fact that both parties alternatively argued that a stay pending mediation would be appropriate. The Respondent refused to mediate in Reno, Nevada and instead demanded AAA mediation outside of Reno, Nevada.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: It is well settled that arbitration is favored under Nevada public policy. This appeal raises the question of whether a district court must hear a motion seeking declaratory relief as to where that arbitration must be held before dismissing the complaint and ordering the parties to arbitration.

13. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from October 22, 2014

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served October 23, 2014

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed November 7, 2014

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The district court's order entering summary judgment dismissed the entire complaint and was therefore a final judgment pursuant to NRAP 3A(b)(1).

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff: MB America, Inc.

Defendant: Alaska Pacific Leasing Company

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff MB America, Inc. sued Defendant Alaska Pacific Leasing Company for (1) Declaratory Relief; and (2) Specific Performance;

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
 - Any tolling motion(s) and order(s) resolving tolling motion(s)
 - Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
 - Any other order challenged on appeal
 - Notices of entry for each attached order
-

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

MB America, Inc.

Name of appellant

Nov. 25, 2014

Date

Michael E. Sullivan

Name of counsel of record

Mike Sullivan

Signature of counsel of record

Nevada, Washoe

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 25th day of November, 2014, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Holly S. Parker, Esq.
Marilee Breternitz, Esq.
Laxalt & Nomura, Ltd.
9600 Gateway Drive
Reno, Nevada 89521

Dated this 25th day of November, 2014

Meerna Meier

Signature

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INDEX OF EXHIBITS TO DOCKETING STATEMENT

26. File-stamped copies of the following documents:

Exhibit "A"	Complaint, filed June 6, 2014
Exhibit "B"	Order Granting Summary Judgment, filed October 22, 2014
Exhibit "C"	Notice of Entry of Order, filed October 23, 2014