

IN THE SUPREME COURT OF THE STATE OF NEVADA

**Supreme Court Case No. 78256
District Court Case No. CV 39348**

Electronically Filed
Jan 06 2020 04:13 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Tonopah Solar Energy, LLC,
Petitioner

v.

The Fifth Judicial District Court, State of Nevada, Nye County, and
the Honorable Steven P. Elliott, Senior Judge,
Respondent

and

Brahma Group, Inc.,
Real Party in Interest.

**PETITIONER'S REPLY APPENDIX
VOLUME II**

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CHRONOLOGICAL INDEX

Date Filed	Description	Bates Number	Volume(s)
12/21/2018	Brahma Mechanic's Lien Foreclosure Complaint Against Surety Bond and Summons	PRA 1-12	I
12/21/2018	Brahma Group, Inc.'s Motion to Consolidate Case CV39799 with Case CV39348	PRA 13-22	I
01/07/2019	TSE's Opposition to Brahma's Motion to Consolidate Case No. CV39799 with Case No. CV39348	PRA 23-31	I
01/14/2019	Brahma Group, Inc.'s Reply to Tonopah Solar Energy, LLC's Opposition to Motion to Consolidate Case No. CV39799 with Case No. CV39348 (without exhibits)	PRA 32-42	I
02/21/2019	Defendants Cobra Thermosolar Plants, Inc.'s and American Home Assurance Company's Motion to Dismiss Plaintiff Brahma Group, Inc.'s First Amended Complaint in Case No. CV39799	PRA 43-81	II
03/13/2019	Notice of entry of Order Granting Brahma's Motion to Consolidate Case No. CV39799 with Case No. CV39348	PRA 82-89	II
03/25/2019	Brahma Group, Inc.'s Opposition to Cobra Thermosolar Plants, Inc.'s Motion to Dismiss and Countermotion for leave to File a single Consolidated Amended Complaint (without exhibits)	PRA 90-104	II
04/10/2019	TSE's Opposition to Brahma's Countermotion for Leave to File a	PRA 105-116	II

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04/22/2019	Brahma Group, Inc.'s (1) Second Amended Complaint; and (2) First Amended Third Party Complaint	PRA 124-136	III
04/22/2019	Order Granting Brahma's Countermotion for Leave to File a Single Consolidated Amended Complaint	PRA 137-154	III
06/25/2019	Transcript from Hearing on 06/25/2019	PRA 155-198	III
09/25/2019	Order	PRA 199-207	III
10/15/2019	Cobra Thermosolar Plants, Inc.'s and American Home Assurance Company's Motion to Stay	PRA 208-222	IV
10/18/2019	Motion to Intervene as Defendants	PRA 223-246	IV
11/01/2019	Brahma Group, Inc.'s Opposition to Cobra Thermosolar Plants, Inc. and American Home Assurance Company's Motion to Stay (without exhibits)	PRA 247-260	IV
11/01/2019	Tonopah Solar Energy, LLC's Joinder, or Alternatively, Response to Cobra's and AHAC's Motion to Intervene and Defendants	PRA 261-265	IV
11/08/2019	Cobra Thermosolar Plants, Inc.'s and American Home Assurance Company's Reply in Further Support	PRA 266-279	IV

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	of Motion to Stay (without exhibits)		
11/15/2019	Brahma Group, Inc.'s Response to Motion to Intervene (without exhibits)	PRA 280-296	IV
11/18/2019	TSE's Joinder to Cobra's and AHAC's Motion to Stay	PRA 297-302	V
12/09/2019	Reply in further Support of Motion to Intervene as Defendants	PRA 303-311	V
12/11/2019	Cobra Thermosolar Plants, Inc.'s and American Home Assurance Company's First Set of Requests for Production to Plaintiff and Counter-Defendants Tonopah Solar Energy, LLC	PRA 312-323	V

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Date Filed	Description	Bates Number	Volume(s)
03/25/2019	Brahma Group, Inc.'s Opposition to Cobra Thermosolar Plants, Inc.'s Motion to Dismiss and Countermotion for leave to File a single Consolidated Amended Complaint (without exhibits)	PRA 90-104	II
11/01/2019	Brahma Group, Inc.'s Opposition to Cobra Thermosolar Plants, Inc. and American Home Assurance Company's Motion to Stay (without exhibits)	PRA 247-260	IV
01/14/2019	Brahma Group, Inc.'s Reply to Tonopah Solar Energy, LLC's Opposition to Motion to Consolidate Case No. CV39799 with Case No. CV39348 (without exhibits)	PRA 32-42	I
11/15/2019	Brahma Group, Inc.'s Response to Motion to Intervene (without exhibits)	PRA 280-296	IV
04/22/2019	Brahma Group, Inc.'s (1) Second Amended Complaint; and (2) First Amended Third Party Complaint	PRA 124-136	III
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04/15/2019	Brahma Group, Inc.'s Reply to Tonopah Solar Energy's Opposition to Brahma's Countermotion for Leave to File a Single Consolidated Amended Complaint	PRA 117-123	III
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12/11/2019	Cobra Thermosolar Plants, Inc.'s and American Home Assurance Company's First Set of Requests for Production to Plaintiff and Counter-Defendants Tonopah Solar Energy, LLC	PRA 312-323	V
10/15/2019	Cobra Thermosolar Plants, Inc.'s and American Home Assurance Company's Motion to Stay	PRA 208-222	IV
11/08/2019	Cobra Thermosolar Plants, Inc.'s and American Home Assurance Company's Reply in Further Support of Motion to Stay (without exhibits)	PRA 266-279	IV
02/21/2019	Defendants Cobra Thermosolar Plants, Inc.'s and American Home Assurance Company's Motion to Dismiss Plaintiff Brahma Group, Inc.'s First Amended Complaint in Case No. CV39799	PRA 43-81	II
10/18/2019	Motion to Intervene as Defendants	PRA 223-246	IV
03/13/2019	Notice of entry of Order Granting Brahma's Motion to Consolidate Case No. CV39799 with Case No. CV39348	PRA 82-89	II
09/25/2019	Order	PRA 199-207	III
04/22/2019	Order Granting Brahma's Countermotion for Leave to File a Single Consolidated Amended Complaint	PRA 137-154	III
12/09/2019	Reply in further Support of Motion to Intervene as Defendants	PRA 303-311	V
11/01/2019	Tonopah Solar Energy, LLC's Joinder,	PRA 261-265	IV

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	or Alternatively, Response to Cobra's and AHAC's Motion to Intervene and Defendants		
06/25/2019	Transcript from Hearing on 06/25/2019	PRA 155-198	III
11/18/2019	TSE's Joinder to Cobra's and AHAC's Motion to Stay	PRA 297-302	V
04/10/2019	TSE's Opposition to Brahma's Countermotion for Leave to File a Single Consolidated Complaint	PRA 105-116	II
01/07/2019	TSE's Opposition to Brahma's Motion to Consolidate Case No. CV39799 with Case No. CV39348	PRA 23-31	I

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AMERICAN HOME ASSURANCE COMPANY

9
10 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
IN AND FOR THE COUNTY OF NYE

11 TONOPAH SOLOR ENERGY, LLC, a
12 Delaware limited liability company,

13 Plaintiff,

14 vs.

15 BRAHMA GROUP, INC., a Nevada
corporation,

16 Defendant.

17
18 BRAHMA GROUP, INC., a Nevada
corporation,

19 Counter-claimant,

20 vs.

21 TONOPAH SOLOR ENERGY, LLC, a
22 Delaware limited liability company; BOE
BONDING COMPANIES I through X;
23 DOES I through X; ROE CORPORATIONS
I through X; and TOE TENANTS I through
24 X, inclusive,

25 Counter-defendants.

26
27 BRAHMA GROUP, INC., a Nevada
corporation,

28 Third-Party Plaintiff,

) Case No.: CV39348

) Consolidated With

) Case No.: CV39799

) Dept. No.: 2

)
) **DEFENDANTS COBRA THERMOSOLAR**
) **PLANTS, INC.'S AND AMERICAN HOME**
) **ASSURANCE COMPANY'S MOTION TO**
) **DISMISS PLAINTIFF BRAHMA GROUP,**
) **INC.'S FIRST AMENDED COMPLAINT IN**
) **CASE NO. CV39799**

) **[ORAL ARGUMENT REQUESTED]**

) Date of Hearing: _____

) Time of Hearing: _____

1 vs.)
2)
3 COBRA THERMOSOLAR PLANTS, INC.,)
4 a Nevada corporation; AMERICAN HOME)
5 ASSURANCE COMPANY, a surety; BOE)
6 BONDING COMPANIES I through X;)
7 DOES I through X; ROE CORPORATIONS)
8 I through X, inclusive,)
9)
10 Third-Party Defendants.)
11)
12 H&E EQUIPMENT SERVICES, INC, a)
13 Delaware corporation,)
14)
15 Plaintiff-In-Intervention,)
16 vs.)
17)
18 BRAHMA GROUP, INC, a Nevada)
19 corporation, TONOPAH SOLAR ENERGY)
20 LLC, a Delaware limited liability company,)
21 COBRA THERMOSOLAR PLANTS, INC, a)
22 Nevada corporation; AMERICAN HOME)
23 ASSURANCE COMPANY, a surety; BOE)
24 BONDING COMPANIES I through X;)
25 DOES I through X; ROE CORPORATIONS)
26 I through X, and TOE TENANTS I through)
27 X, inclusive,)
28 Defendants-In-Intervention.)
29)
30 BRAHMA GROUP, INC., a Nevada)
31 corporation,)
32)
33 Plaintiff,)
34 vs.)
35)
36 COBRA THERMOSOLAR PLANTS, INC.,)
37 a Nevada corporation; AMERICAN HOME)
38 ASSURANCE COMPANY, a surety; BOE)
39 BONDING COMPANIES I through X;)
40 DOES I through X; ROE CORPORATIONS)
41 I through X, inclusive,)
42)
43 Defendants.)
44)
45)

1 DEFENDANTS COBRA THERMOSOLAR PLANTS, INC.'S AND AMERICAN HOME
2 ASSURANCE COMPANY'S MOTION TO DISMISS PLAINTIFF BRAHMA GROUP,
3 INC.'S FIRST AMENDED COMPLAINT IN CASE NO. CV39799

4 COME NOW Defendants COBRA THERMOSOLAR PLANTS, INC. (hereinafter,
5 "Cobra") and AMERICAN HOME ASSURANCE COMPANY (hereinafter, "AHAC")
6 (collectively, "Defendants"), by and through their attorneys of record, the law firm of WEIL &
7 DRAGE, APC, and hereby file their Motion to Dismiss Plaintiff BRAHMA GROUP, INC.'s
8 (hereinafter, "BGI") First Amended Complaint filed in Case No. CV39799.

9 This Motion is based on the Memorandum of Points and Authorities submitted herein, all
10 pleadings, papers, and files herein, the evidence adduced at hearing, and any oral argument this
11 Honorable Court will entertain.

12 DATED this 21st day of February, 2019.

13 WEIL & DRAGE, APC

14 
15

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22 Attorneys for Defendants,

23 COBRA THERMOSOLAR PLANTS, INC. and

24 AMERICAN HOME ASSURANCE COMPANY

1 NOTICE OF MOTION

2 PLEASE TAKE NOTICE that the foregoing **DEFENDANTS COBRA**
3 **THERMOSOLAR PLANTS, INC.'S AND AMERICAN HOME ASSURANCE**
4 **COMPANY'S MOTION TO DISMISS PLAINTIFF BRAHMA GROUP, INC.'S FIRST**
5 **AMENDED COMPLAINT IN CASE NO. CV39799** will be heard before the above-entitled
6 Court located at 1520 E. Basin Avenue, Pahrump, Nevada 89060, in Department 2, on the ____
7 day of _____, 2019, at _____ a.m./p.m., or as soon thereafter as counsel may be
8 heard.

9 Oral argument is requested.

10 DATED this 21st day of February, 2019.

11 WEIL & DRAGE, APC

12 

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21 AMERICAN HOME ASSURANCE COMPANY

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 PROCEDURAL HISTORY / RELEVANT FACTS

4 BGI is asserting duplicative and improper claims against Cobra and AHAC. As the Court
5 is aware, on or about September 25, 2018, BGI filed a Third-Party Complaint in Case No.
6 CV39348 asserting a single cause of action against Cobra and AHAC for "Claim Against Surety,
7 Surety Bond and Principal thereon."¹ Nevertheless, on January 11, 2019, BGI filed a new separate
8 action, Case No. CV39799 against Cobra and AHAC asserting, *inter alia*, its "Claim Against
9 Surety, Surety Bond and Principal thereon."² The Claim Against Surety, Surety Bond and
10 Principal thereon in Case Nos. CV39348 and CV39799 are identical.

11 On or about January 24, 2019, the Court consolidated cases CV39348 and CV39799.
12 However, the Court did not expressly hold the cases are to be merged into a single action.
13 Consequently, BGI is presently maintaining the exact same "Claim Against Surety, Surety Bond
14 and Principal thereon" in two separate actions, against the same parties in each action. While the
15 two actions do differ with respect to other claims asserted, there is an improper, redundant claim in
16 the two actions.

17 II.

18 SUMMARY OF LEGAL ARGUMENT

19 Defendants seek dismissal of BGI's duplicative claim in Case No. CV39799, as well as
20 dismissal of BGI's improper claim for unjust enrichment in Case No. CV39799. Nevada case law
21 precedence establishes duplicative claims are inappropriate. Further, inasmuch as BGI alleges a
22 contract exists between BGI and Cobra (specifically, a Settlement Agreement), an independent
23 claim for unjust enrichment against Cobra is not appropriate. Consequently, Defendants
24 respectfully request the Court dismiss BGI's duplicative "Claim Against Surety, Surety Bond and
25

26
27 ¹ BGI's First Amended Counter-Complaint; and Third-Party Complaint in Case No. CV39348 is attached
hereto as *Exhibit 1*.

28 ² BGI's First Amended Complaint in Case No. CV39799 is attached hereto as *Exhibit 2*.

Principal thereon” and dismiss BGI’s Fourth Cause of Action for Unjust Enrichment against Cobra in Case No. CV39799.

III.

LEGAL STANDARD

NRCP 12(b) authorizes the dismissal of a lawsuit when it fails to state a claim upon which relief may be granted. When, after construing the pleading liberally and drawing every fair intendment in favor of the plaintiff, no claim has been stated, dismissal is proper.³ Rule 12(b)(5) of the NRCP authorizes dismissal of a Complaint when the Complaint fails to state a claim upon which relief can be granted. A Motion to Dismiss is properly granted where the allegations in the challenged pleading, taken at “face value” and construed favorably in the Plaintiff’s behalf, fail to state a cognizable claim for relief.⁴

NRCP 12(f) also authorizes the Court to strike redundant claims, stating “Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court’s own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”

IV.

LEGAL ARGUMENT

A. THE COURT SHOULD STRIKE BGI’S REDUNDANT CLAIM AGAINST SURETY, SURETY BOND AND PRINCIPAL THEREON IN CASE NO. CV39799

In *Smith v. Hutchins* the Nevada Supreme Court found “a single cause of action may not be split and separate actions maintained. The wrongful act of the defendant creates the plaintiff’s cause of action. Policy demands that all forms of injury or damage sustained by the plaintiff as a

³ *Brown v. Kellar*, 97 Nev. 582, 583, 636 P.2d 874, 874 (Nev. 1981).

⁴ *See, Morris v. Bank of America Nevada*, 110 Nev. 1274, 886 P.2d 454, 456 (1994).

1 consequence of the defendant's wrongful act be recovered in one action rather than in multiple
2 actions."⁵ Indeed, the *Smith* Court stated "[t]he great weight of authority supports the single cause
3 of action rule when the plaintiff in each case is the same person."⁶

4 In *Matter of Estate of Sarge*, the Nevada Supreme Court found "[c]onsolidated cases retain
5 their separate identities so that an order resolving all of the claims in one of the consolidated cases
6 is immediately appealable as a final judgment under NRAP 3A(b)(1)."⁷ Additionally, the *Sarge*
7 Court noted, "the federal courts consistently held that consolidation for the purpose of joint trial
8 does not merge the cases into a single cause of action."⁸

9 Here, BGI seeks to assert the exact same claim in *two* separate actions. BGI's "Claim
10 Against Surety, Surety Bond and Principal thereon" asserted in each case are identical. While the
11 cases have been consolidated, pursuant to Nevada case law precedence each action maintains its
12 separate identity. In fact, BGI's counsel is requiring Defendants to separately respond to *both* the
13 First Amended Complaint in Case No. CV39799, as well as the Amended (but not yet filed) Third-
14 Party Complaint in Case No. CV39348.⁹ BGI cannot maintain the exact same cause of action
15 against the exact same defendants in two separate actions. See *Smith, supra*. Therefore,
16 Defendants respectfully request the Court uphold *Smith* and dismiss the duplicative "Claim
17 Against Surety, Surety Bond and Principal thereon" in Case No. CV39799.

18 **B. BGI'S CLAIM OF UNJUST ENRICHMENT IS IMPROPER AND SHOULD BE**
19 **DISMISSED**

20 In *Leasepartners Corp. v. Brooks*, the Nevada Supreme Court held "[a]n action based on a
21 theory of unjust enrichment is not available when there is an express, written contract, because no
22 agreement can be implied when there is an express agreement. 'The doctrine of unjust enrichment

23
24 ⁵ *Smith v. Hutchins*, 93 Nev. 431, 432, 566 P.2d 1136, 1137 (1977). Citing *Reno Club v. Harrah et al.*, 70
Nev. 125, 260 P.2d 304 (1953).

25 ⁶ *Id.*

26 ⁷ *Matter of Estate of Sarge*, 134 Nev. Adv. Op. 105, 432 P.3d 718, 722 (2018).

27 ⁸ *Id.* Citing, *Mikulich v. Carner*, 68 Nev. 161, 169-70, 228 P.2d 257,261 (1951).

28 ⁹ See email correspondence between BGI's counsel and Defendants' counsel dated February 13, 2019, attached
hereto as *Exhibit 3*.

1 or recovery in quasi contract applies to situations where there is no legal contract but where the
2 person sought to be charged is in possession of money or property which in good conscience and
3 justice he should not retain but should deliver to another [or should pay for]."¹⁰

4 In May v. Anderson, the Nevada Supreme Court found that "[b]ecause a settlement
5 agreement is a contract, its construction and enforcement are governed by principles of contract
6 law."¹¹

7 Here, BGI's cause of action for Unjust Enrichment in Case No. CV39799 is not proper.
8 The First Amended Complaint expressly states, BGI contracted with Cobra, that a dispute arose as
9 a result of the contract, the dispute was resolved through settlement, a separate Settlement
10 Agreement was executed, BGI allegedly performed under the terms of the Settlement Agreement,
11 Cobra allegedly did not perform under the terms of the Settlement Agreement, and a new dispute
12 now arises under the terms of the Settlement Agreement.¹² Despite the existence of the Settlement
13 Agreement, BGI now seeks to recover damages against Cobra under a theory of unjust enrichment.

14 Pursuant to May, the Settlement Agreement must be treated as a contract. As BGI is
15 asserting contract, Leasepartners renders BGI's unjust enrichment claim improper. Therefore,
16 Cobra respectfully requests the Court dismiss BGI's Fourth Cause of Action for Unjust
17 Enrichment against Cobra.

18 V.

19 CONCLUSION

20 BGI seeks to improperly assert redundant claims against Defendants in two cases. While
21 the cases are consolidated, each case maintains its own identity. As Nevada case law precedence
22 does not allow BGI to maintain duplicative claims, Defendants Cobra and AHAC respectfully
23

24
25 ¹⁰ *Leasepartners Corp. v. Robert L. Brooks Tr.* Dated November 12, 1975, 113 Nev. 747, 755-56, 942 P.2d
26 182, 187 (1997). Internal citations omitted. Citing, 66 Am.Jur.2d *Restitution* § 11 (1973); see *Lipshie v.*
Tracy Investment Co., 93 Nev. 370, 379, 566 P.2d 819, 824 (1977) ("To permit recovery by quasi-contract
where a written agreement exists would constitute a subversion of contractual principles.").

27 ¹¹ *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Citing, *Reichelt v. Urban Inv. & Dev.*
Co., 611 F.Supp. 952, 954 (N.D.Ill.1985).

28 ¹² See *Exhibit 2*, page 6, line 21 through page 7, line 17.

1 request the Court dismiss BGI's "Claim Against Surety, Surety Bond and Principal thereon" in
2 Case No. CV39799. Additionally, BGI seeks to assert a claim for unjust enrichment against
3 Cobra, despite alleging the existence of a contract between BGI and Cobra. As Nevada case law
4 does not allow recovery under an unjust enrichment claim when a contract exists, Cobra
5 respectfully requests the Court dismiss BGI's Fourth Cause of Action for Unjust Enrichment
6 against Cobra.

7 *The undersigned does hereby affirm, pursuant to NRS 239B.030, that this document does*
8 *not contain personal information as defined in NRS 603A.040 about any person.*

9 DATED this 21st day of February, 2019.

10 WEIL & DRAGE, APC

11
12 

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19 Attorneys for Defendants,

20 COBRA THERMOSOLAR PLANTS, INC. and

21 AMERICAN HOME ASSURANCE COMPANY

1 CERTIFICATE OF SERVICE

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that on the 21st day of
3 February, 2019, service of the foregoing **DEFENDANTS COBRA THERMOSOLAR**
4 **PLANTS, INC.'S AND AMERICAN HOME ASSURANCE COMPANY'S MOTION TO**
5 **DISMISS PLAINTIFF BRAHMA GROUP, INC.'S FIRST AMENDED COMPLAINT IN**
6 **CASE NO. CV39799** was made this date by mailing a true and correct copy of the same, via first-
7 class mail, at Henderson, Nevada, addressed to the following:

8
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19
20 
21 Jeanna Medina, an Employee of
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23
24
25
26
27
28

Exhibit 1

Exhibit 1

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11 FIFTH JUDICIAL DISTRICT COURT
12 NYE COUNTY, NEVADA

14 TONOPAH SOLAR ENERGY, LLC, a Delaware
limited liability company,

15 Plaintiff,

17 vs.

18 BRAHMA GROUP, INC., a Nevada corporation,

19 Defendant.

21 BRAHMA GROUP, INC., a Nevada corporation,

22 Counterclaimant/Lien Claimant,

23 vs.

24 TONOPAH SOLAR ENERGY LLC, a Delaware
25 limited liability company; BOE BONDING
26 COMPANIES I through X; DOES I through X;
27 ROE CORPORATIONS I through X; and TOE
TENANTS I through X, inclusive,

28 Counterdefendant,

FILED
FIFTH JUDICIAL DISTRICT

SEP 25 2010

Terri Pemberton
Clerk
Deputy

CASE NO. : CV 39348
DEPT. NO. : 2

BRAHMA GROUP, INC.'S:
(I) FIRST AMENDED COUNTER-
COMPLAINT; AND
(II) THIRD-PARTY COMPLAINT.

[Arbitration Exemption: Action
Concerning Title to Real Estate]

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HENDERSON, NEVADA 89074
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1 BRAHMA GROUP, INC., a Nevada corporation,

2 Third-Party Plaintiff,

3 vs.

4 COBRA THERMOSOLAR PLANTS, INC., a
5 Nevada corporation; AMERICAN HOME
6 ASSURANCE COMPANY, a surety; BOE
7 BONDING COMPANIES I through X; DOES I
through X; ROE CORPORATIONS I through X,
inclusive,

8 Third-Party Defendants.
9

10
11 FIRST AMENDED COUNTER-COMPLAINT

12 Counterclaimant/Lien Claimant/Third-Party Claimant, BRAHMA GROUP, INC.
13 ("Brahma"), by and through its attorneys of record, the law firm of PEEL BRIMLEY LLP, hereby
14 amends in this action (the "Action"), that certain Mechanic's Lien Foreclosure Complaint
15 ("Original Counter-Complaint") by way of this First Amended Counter-Complaint ("Amended
16 Counter-Complaint"), which is brought against the above-named Counterdefendants. Brahma
17 complains, avers and alleges as follows:

18 THE PARTIES

19 1. Brahma is and was at all times relevant to this Action:

20 a. A Nevada corporation, duly authorized and qualified to do business in the
21 State of Nevada; and

22 b. A duly licensed contractor holding a Nevada State Contractor's License,
23 which license is in good standing.

24 ///

25 ///

26 ///

27

28

2. Brahma is informed and believes and therefore alleges that the U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT ("BLM"), is and was at all times relevant to this Action, an owner or reputed owner of the fee simple title to all or portions of real property located in Nye County, Nevada, and more particularly described as Nye County Parcel Numbers 012-141-01 and 012-151-01 (the "BLM Parcels").¹

3. Brahma is informed and believes and therefore alleges that LIBERTY MOLY, LLC, a Delaware limited liability company ("Liberty"), is and was at all times relevant to this Action, an owner or reputed owner of the fee simple title to all or portions of real property located in Nye County, Nevada, and more particularly described as Nye County Parcel Number 012-431-06 (the "Liberty Parcel").²

4. Counterdefendant TONOPAH SOLAR ENERGY, LLC ("TSE") is and was at all times relevant to this Action:

a. A Delaware limited liability company authorized to do business in Nye County, Nevada;

b. An owner or reputed owner of the fee simple title to all or portions of real property located in Nye County, Nevada, and more particularly described as Nye County Parcel Numbers 012-031-04, 012-131-03, 012-131-04, 012-140-01, 012-150-01 and 612-141-01 (collectively, the "TSE Parcels");

c. The lessee, tenant or the person, individual and/or entity who claims a license or leasehold estate with respect to the BLM Parcels and the Liberty Parcels; and

d. The owner of those certain improvements and/or leasehold estate (the "Project"):

i. Commonly known as the *Crescent Dunes Solar Energy Project*; and

ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty Parcels.³

¹ The BLM is not a party to this Action and Brahma is not making a claim against the BLM or the fee simple title of the BLM Parcels by way of this Action.

² Liberty is not a party to this Action and Brahma is not making a claim against Liberty or the fee simple title of the Liberty Parcel by way of this Action.

³ The term "Project" as used herein, does not include, and expressly excludes, the fee simple title of the BLM Parcels and the Liberty Parcels.

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1 5. The TSE Parcels, along with the Project, are collectively referred to herein as the
2 “Work of Improvement,” and include all leasehold estates, easements, rights-of-way, common
3 areas and appurtenances related thereto, and the surrounding space as may be required for the
4 convenient use and occupation of the Work of Improvement.

5 6. Brahma does not know the true names of the individuals, corporations, partnerships
6 and entities identified and named as Counterdefendants by the fictitious names of (collectively,
7 the “Doe Defendants”), (i) DOES I through X, (ii) ROE CORPORATIONS I through X, (iii) BOE
8 BONDING COMPANIES I through X, and (iv) TOE TENANTS I through X. Brahma alleges that
9 such Doe Defendants claim a) an interest in or to the TSE Parcels and/or the Work of Improvement,
10 or b) damages arising from the construction of the Work of Improvement, as more fully discussed
11 under the claims for relief set forth below. Brahma will request leave of this Honorable Court to
12 amend this Complaint to show the true names and capacities of each such fictitious Defendant
13 when Brahma discovers such information.

14 7. TSE and the Doe Defendants are collectively referred to in this Amended Counter-
15 Complaint as the “Counterdefendants.”

16 **FIRST CAUSE OF ACTION**
17 **(Breach of Contract)**

18 8. Brahma repeats and realleges each and every allegation contained in the preceding
19 paragraphs of this Amended Counter-Complaint, incorporates them by reference, and further
20 alleges as follows:

21 9. On or about February 1, 2017, BGI entered a Services Agreement (the
22 “Agreement”) with TSE, wherein BGI agreed to provide a portion of the work, materials and/or
23 equipment (the “Work”) for or relating to Work of Improvement.

24 10. BGI furnished the Work for the benefit of and/or at the specific instance and request
25 of TSE and the Work of Improvement and has otherwise performed its duties and obligations as
26 required by the Agreement.

27 ///

28 ///

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1 11. As required by the Agreement, BGI has, and in the form and manner required by
2 the Agreement, provided monthly invoices or payment applications (collectively, "Payment
3 Applications") to TSE for the Work in an amount totaling more than Twenty-Six Million U.S.
4 Dollars (\$26,000,000.00).

5 12. Pursuant to the Agreement and Nevada law, TSE agreed to and is obligated to pay
6 BGI for its Work within no more than 45 days after TSE's receipt of BGI's Payment Applications.

7 13. TSE breached the Agreement by, among other things:

8 a. Failing and/or refusing to pay monies owed to BGI for the Work; and

9 b. Otherwise failing and/or refusing to comply with the Agreement and
10 Nevada law.

11 14. BGI is owed Twelve Million Eight Hundred Fifty-Nine Thousand Five Hundred
12 Seventy-Seven and 74/100 Dollars (\$12,859,577.74—"Outstanding Balance") from TSE for the
13 Work.

14 15. BGI has been required to engage the services of an attorney to collect the
15 Outstanding Balance, and BGI is entitled to recover its reasonable costs, attorney's fees and
16 interest therefor.

17 **SECOND CAUSE OF ACTION**

18 **(Breach of Implied Covenant of Good Faith & Fair Dealing)**

19 16. Brahma repeats and realleges each and every allegation contained in the preceding
20 paragraphs of the Amended Counter-Complaint, incorporates them by reference, and further
21 alleges as follows:

22 17. There is a covenant of good faith and fair dealing implied in every agreement,
23 including the Agreement between BGI and TSE.

24 18. TSE breached its duty to act in good faith by performing the Agreement in a manner
25 that was unfaithful to the purpose of the Agreement, thereby denying BGI's justified expectations.

26 ///

27 ///

28 ///

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1 19. Specifically, but without limitation, TSE breached its duty to act in good faith by:

2 a. Asserting pre-textual, extra-contractual and inaccurate reasons for
3 withholding payment long after the time required by the Agreement and Nevada law had elapsed.

4 b. TSE has improperly withheld moneys totaling more than One Million U.S.
5 Dollars for "retention" in purported reliance upon NRS 624.609(2)(a)(1). While that statutory
6 provision permits withholding (on a payment-by-payment basis) a retention amount, not to exceed
7 five percent (5%), such retention must be authorized pursuant to the Agreement, which it is not.

8 c. Furthermore, and even if the Agreement allowed TSE to withhold retention
9 from monthly payments (which it does not), TSE's withholding of retention amounts retroactively
10 aggregated from Payment Applications issued (and, in some cases, payments previously made)
11 long ago constitutes extreme bad faith.

12 20. Due to the actions of TSE, BGI suffered damages in the amount of or exceeding
13 the Outstanding Balance for which BGI is entitled to judgment in an amount to be determined at
14 trial.

15 21. BGI has been required to engage the services of an attorney to collect the
16 Outstanding Balance, and BGI is entitled to recover its reasonable costs, attorney's fees and
17 interest therefor.

18 **THIRD CAUSE OF ACTION**
19 **(Foreclosure of Notice of Lien)**

20 22. Brahma repeats and realleges each allegation contained in the preceding paragraphs
21 of this Amended Counter-Complaint, incorporates them by reference, and further alleges as
22 follows:

23 23. Brahma provided the Work for the Work of Improvement and is owed the
24 Outstanding Balance for the Work.

25 24. As provided in NRS 108.245, Brahma gave or served a copy of its Notice of Right
26 to Lien on:

27 a. The BLM; and

28 b. TSE, even though it had no statutory duty to do so.

1 25. The Work was provided for the whole of the Work of Improvement, at the special
2 instance and/or request of TSE.

3 26. On or about April 09, 2018, Brahma timely recorded a Notice of Lien in the Official
4 Records of Nye County, Nevada, as Document No. 890822 ("Original Lien"), in the amount of
5 \$6,982,186.24.

6 27. On or about April 16, 2018 and as allowed by NRS 108.229(1), Brahma recorded
7 a Notice of First Amended and Restated Lien in the Official Records of Nye County, Nevada, as
8 Document 891073 and as re-recorded by Brahma in the Official Records of Nye County, Nevada
9 on April 18, 2018, as Document No. 891507, in the amount of \$7,178,376.94 (the "First Amended
10 Lien").

11 28. On or about April 24, 2018 and allowed by NRS 108.229(1), Brahma recorded a
12 Notice of Second Amended and Restated Lien in the Official Records of Nye County, Nevada, as
13 Document 891766, in the amount of \$7,178,376.94 (the "Second Amended Lien").

14 29. On or about July 19, 2018 and as allowed by NRS 108.229(1), Brahma recorded a
15 Third Amended and/or Restated Notice of Lien in the Official Records of Nye County, Nevada,
16 as Document 896269, in the amount of \$11,902,474.75 (the "Third Amended Lien").

17 30. On or about September 14, 2018, Brahma recorded a Fourth Amended and/or
18 Restated Notice of Lien in the Official Records of Nye County, Nevada, as Document 899351 in
19 the amount of \$12,859,577.74 (the "Fourth Amended Lien").

20 31. The (i) Original Lien, (ii) First Amended Lien, (iii) Second Amended Lien, (iv)
21 Third Amended Lien, and (v) Fourth Amended Lien, collectively, the "Lien," were:

- 22 a. In writing;
23 b. Recorded against the Work of Improvement; and
24 c. Were given or served on the authorized agents of the BLM and TSE, or the
25 BLM and/or TSE knew of the existence of the Lien.

26 32. The Lien is in the amount of the Outstanding Balance, which is the amount due and
27 owing Brahma as of the date of this Amended Counter-Complaint.
28

33. In addition to an award of the Outstanding Balance, Brahma is entitled to an award of its attorney's fees, costs, and interest, as provided in Chapter 108 of the Nevada Revised Statutes.

34. Brahma repeats and realleges each allegation contained in the preceding paragraphs of this Amended Counter-Complaint, incorporates them by reference, and further alleges as follows:

36. TSE violated the Statute by failing or refusing to comply with the requirements set forth therein.

38. BGI has been required to engage the services of an attorney to collect the Outstanding Balance due and owing for the Work, and BGI is entitled to recover its reasonable costs, attorney's fees and interest therefore.

1. Enters judgment against the Counterdefendants, and each of them, jointly and severally and to the extent of their interest in the Work of Improvement, in the amount of the Outstanding Balance;

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1 3. Enters judgment declaring that Brahma has a valid and enforceable notice of lien
2 against the Work of Improvement, in the amount of the Outstanding Balance together with costs,
3 attorneys' fees and interest in accordance with NRS Chapter 108;

4 4. Adjudge a lien upon the Work of Improvement for the Outstanding Balance, plus
5 reasonable attorneys' fees, costs and interest thereon, and that this Honorable Court enter an Order
6 that the Work of Improvement, and improvements, such as may be necessary, be sold pursuant to
7 the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of
8 sums due Brahma herein;

9 5. For such other and further relief as this Honorable Court deems just and proper in
10 the premises.

11 **AFFIRMATION PURSUANT TO NRS 239B.030**

12 The undersigned does hereby affirm that the proceeding document does not contain the
13 social security number of any persons.

14 Dated this 24 day of September 2018.

15 PEEL BRIMLEY LLP

16
17 

18 RICHARD L. PEEL, ESQ.
Nevada Bar No. 4359
19 ERIC ZIMBELMAN, ESQ.
Nevada Bar No. 9407
20 RONALD J. COX, ESQ.
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21 3333 E. Serene Avenue, Suite 200
22 Henderson, Nevada 89074-6571
23 Attorneys for Brahma Group, Inc.
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BRAHMA GROUP, INC.'S THIRD-PARTY COMPLAINT

Third-Party Plaintiff, BRAHMA GROUP, INC. ("Brahma"), by and through its attorneys of record, the law firm of PEEL BRIMLEY LLP, brings this Third-Party Complaint ("Third-Party Complaint") in the action (the "Action") against the above-named Third-Party Defendants. Brahma complains, avers and alleges as follows:

THE PARTIES

1. Brahma is and was at all times relevant to this Third-Party Action:

a. A Nevada corporation, duly authorized and qualified to do business in the State of Nevada; and

b. A duly licensed contractor holding a Nevada State Contractor's License, which license is in good standing.

2. Brahma is informed and believes and therefore alleges that the U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT ("BLM"), is and was at all times relevant to this Third-Party Action, an owner or reputed owner of the fee simple title to all or portions of real property located in Nye County, Nevada, and more particularly described as Nye County Parcel Numbers 012-141-01 and 012-151-01 (the "BLM Parcels").⁴

3. Brahma is informed and believes and therefore alleges that LIBERTY MOLY, LLC, a Delaware limited liability company ("Liberty"), is and was at all times relevant to this Third-Party Action, an owner or reputed owner of the fee simple title to all or portions of real property located in Nye County, Nevada, and more particularly described as Nye County Parcel Number 012-431-06 (the "Liberty Parcel").⁵

4. TONOPAH SOLAR ENERGY, LLC ("TSE")⁶ is and was at all times relevant to this Third-Party Action:

a. A Delaware limited liability company authorized to do business in Nye County, Nevada;

⁴ The BLM is not a party to this Action and Brahma is not making a claim against the BLM or the fee simple title of the BLM Parcels by way of this Action.

⁵ Liberty is not a party to this Action and Brahma is not making a claim against Liberty or the fee simple title of the Liberty Parcel by way of this Action.

⁶ While TSE is a party to Brahma's Counterclaim, TSE is not a party to the Third-Party Action.

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1 b. An owner or reputed owner of the fee simple title to all or portions of real
2 property located in Nye County, Nevada, and more particularly described as Nye County Parcel
3 Numbers 012-031-04, 012-131-03, 012-131-04, 012-140-01, 012-150-01 and 612-141-01
4 (collectively, the "TSE Parcels");

5 c. The lessee, tenant or the person, individual and/or entity who claims a
6 license or leasehold estate with respect to the BLM Parcels and the Liberty Parcels; and

7 d. The owner of those certain improvements and/or leasehold estate (the
8 "Project");

9 i. Commonly known as the *Crescent Dunes Solar Energy Project*; and

10 ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty
11 Parcels.⁷

12 5. The TSE Parcels, along with the Project, are collectively referred to herein as the
13 "Work of Improvement," and include all leasehold estates, easements, rights-of-way, common
14 areas and appurtenances related thereto, and the surrounding space as may be required for the
15 convenient use and occupation of the Work of Improvement.

16 6. Brahma is informed, believes and therefore alleges that Third-Party Defendant
17 AMERICAN HOME ASSURANCE COMPANY ("AHAC"):

18 a. Is and was at all times relevant to this Third-Party Action a bonding
19 company duly licensed and qualified to do business as a surety in Nevada; and

20 b. Issued Bond No. 854481 ("Surety Bond") pursuant to NRS 108.2413 as
21 discussed more fully below.

22 7. Brahma is informed, believes and therefore alleges that Third-Party Defendant
23 COBRA THERMOSOLAR PLANTS, INC. ("Cobra"):

24 a. Is and was at all times relevant to this Third-Party Action a Nevada
25 corporation; and

26 b. Is the principal on the Surety Bond.

27
28 ⁷ The term "Project" as used herein, does not include, and expressly excludes, the fee simple title of the BLM Parcels and the Liberty Parcels.

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1 8. Brahma does not know the true names of the individuals, corporations, partnerships
2 and entities identified and named as Third-Party Defendants by the fictitious names of
3 (collectively, the "Doe Defendants"), (i) BOE BONDING COMPANIES I through X, (ii) DOES
4 I through X, and (iii) ROE CORPORATIONS I through X. Brahma alleges that such Doe
5 Defendants claim damages (as an offset) arising from the construction of the Work of
6 Improvement, as more fully discussed under the claims for relief set forth below. Brahma will
7 request leave of this Honorable Court to amend this Third-Party Complaint to show the true names
8 and capacities of each such fictitious Doe Defendants when Brahma discovers such information.

9 9. Cobra, AHAC and the Doe Defendants are collectively referred to in this Third-
10 Party Complaint as the "Third-Party Defendants."

11 **FIRST CAUSE OF ACTION**

12 (Claim Against Surety, Surety Bond and Principal thereon)

13 10. Brahma repeats and realleges each and every allegation contained in the preceding
14 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

15 11. On or about February 1, 2017, Brahma entered a Services Agreement (the
16 "Agreement") with TSE wherein Brahma agreed to provide certain construction related work,
17 materials and/or equipment (the "Work") for the Work of Improvement.

18 12. As provided in NRS 108.245, Brahma gave or served a copy of its Notice of Right
19 to Lien on:

- 20 a. The BLM; and
21 b. TSE, even though it had no statutory duty to do so.

22 13. The Work was provided for the whole of the Work of Improvement, at the special
23 instance and/or request of TSE.

24 14. On or about April 09, 2018, Brahma timely recorded a Notice of Lien in the Official
25 Records of Nye County, Nevada, as Document No. 890822 ("Original Lien"), in the amount of
26 \$6,982,186.24.

27 15. On or about April 16, 2018 and as allowed by NRS 108.229(1), Brahma recorded
28 a Notice of First Amended and Restated Lien in the Official Records of Nye County, Nevada, as

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1 Document 891073 and as re-recorded by Brahma in the Official Records of Nye County, Nevada
2 on April 18, 2018, as Document No. 891507, in the amount of \$7,178,376.94 (the "First Amended
3 Lien").

4 16. On or about April 24, 2018 and allowed by NRS 108.229(1), Brahma recorded a
5 Notice of Second Amended and Restated Lien in the Official Records of Nye County, Nevada, as
6 Document 891766, in the amount of \$7,178,376.94 (the "Second Amended Lien").

7 17. On or about July 19, 2018 and as allowed by NRS 108.229(1), Brahma recorded a
8 Third Amended and/or Restated Notice of Lien in the Official Records of Nye County, Nevada,
9 as Document 896269, in the amount of \$11,902,474.75 (the "Third Amended Lien").

10 18. On or about September 14, 2018, Brahma recorded a Fourth Amended and/or
11 Restated Notice of Lien in the Official Records of Nye County, Nevada, as Document 899351 in
12 the amount of \$12,859,577.74 (the "Fourth Amended Lien").

13 19. The (i) Original Lien, (ii) First Amended Lien, (iii) Second Amended Lien, (iv)
14 Third Amended Lien, and (iv) Fourth Amended Lien, collectively, the "Lien," were:

- 15 c. In writing;
16 d. Recorded against the Work of Improvement; and
17 e. Were given or served on the authorized agents of the BLM and TSE, or the
18 BLM and/or TSE knew of the existence of the Lien.

19 20. The Lien is in the amount Twelve Million Eight Hundred and Fifty-Nine Thousand,
20 Five Hundred and Seventy-Seven Dollars and Seventy-Four Cents. (\$12,859,577.74), which is the
21 amount due and owing Brahma as of the date of this Third-Party Complaint (the "Outstanding
22 Balance").

23 39. On or about September 6, 2018, pursuant to NRS 108.2413, Cobra (as principal)
24 and AHAC (as surety) caused a Surety Bond to be recorded in the Official Records of Nye County,
25 Nevada as Document No. 898975.

26 40. The Surety Bond fails to meet the requirements of NRS 108.2415(1), because it is
27 not in an amount that is 1 ½ times the amount of Brahma's Lien.
28

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1 41. NRS 108.2421 authorizes Brahma, as lien claimant, to bring an action against the
2 principal (Cobra) and the surety (AHAC) on the Surety Bond within this Court.

3 42. Brahma makes claim against and Cobra and AHAC are obligated to Brahma for the
4 Outstanding Balance plus interest, costs and attorney's fees up to the penal sum⁸ of the Surety
5 Bond as provided in Chapter 108 of the Nevada Revised Statutes.

6 **WHEREFORE**, Brahma prays that this Honorable Court:

7 6. Enters judgment against the Third-Party Defendants, and each of them, jointly and
8 severally in the amount of the Outstanding Balance;

9 7. Enters a judgment against the Third-Party Defendants and each of them, jointly and
10 severally, for Brahma's reasonable costs and attorney's fees incurred in the collection of the
11 Outstanding Balance, as well as an award of interest thereon;

12 8. Enters judgment against AHAC up to the penal sum of the Surety Bond.


13 9. For such other and further relief as this Honorable Court deems just and proper in
14 the premises.

15 **AFFIRMATION PURSUANT TO NRS 239B.030**

16 The undersigned does hereby affirm that the proceeding document does not contain the
17 social security number of any persons.

18 Dated this 24 day of September 2018.

19 **PEEL BRIMLEY LLP**

20
21 
22 RICHARD L. PEEL, ESQ.
23 Nevada Bar No. 4359
24 ERIC ZIMBELMAN, ESQ.
25 Nevada Bar No. 9407
26 RONALD J. COX, ESQ.
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28 3333 E. Serene Avenue, Suite 200
Henderson, Nevada 89074-6571
Attorneys for Brahma Group, Inc.

* Brahma has separately excepted to the sufficiency of the penal sum of the Surety Bond under NRS 108.2425. Nothing herein shall be deemed a waiver of any rights and claims that Brahma may possess under contract, at law or in equity.

Exhibit 2

Exhibit 2

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11 Attorneys for Brahma Group, Inc.

12
13 FIFTH JUDICIAL DISTRICT COURT
14 NYE COUNTY, NEVADA

15 BRAHMA GROUP, INC., a Nevada corporation,
16
17 Plaintiff,

18 vs.

19 COBRA THERMOSOLAR PLANTS, INC., a
Nevada corporation; AMERICAN HOME
20 ASSURANCE COMPANY, a surety; BOE
21 BONDING COMPANIES I through X; DOES I
through X; ROE CORPORATIONS I through X,
22 inclusive,

23 Defendants,
24
25
26
27
28

CASE NO. : CV39799
DEPT. NO. : 1

BRAHMA GROUP, INC.'S FIRST
AMENDED COMPLAINT FOR
(AMONG OTHER THINGS):

(I) FORECLOSURE OF NOTICE OF
LIEN AGAINST SURETY BOND;
AND

(II) BREACH OF SETTLEMENT
AGREEMENT.

[Arbitration Exemption: Amount in
Controversy in Excess of \$50,000]

2019 JAN 11 P 1:14

NYE COUNTY, NEVADA

BY
DEPUTY

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1 This First Amended Complaint for (Among Other Things) (i) Foreclosure of Notice of Lien
2 Against Surety Bond, and (ii) Breach of Settlement Agreement ("Amended Complaint"), amends
3 that certain Mechanic's Lien Foreclosure Complaint Against Surety Bond ("Original Complaint")
4 filed with the Court on December 14, 2018 in this action (the "Action"), by Plaintiff, BRAHMA
5 GROUP, INC. ("Brahma").

6 By way of this Amended Complaint against the above-named Defendants, Brahma, by and
7 through its attorneys of record, the law firm of PEEL BRIMLEY LLP, complains, avers, and alleges
8 as follows:

9 THE PARTIES

10 I. Brahma is and was at all times relevant to this Action:

11 a. A Nevada corporation, duly authorized and qualified to do business in the
12 State of Nevada; and

13 b. A duly licensed contractor holding a Nevada State Contractor's License,
14 which license is in good standing.

15 2. Brahma is informed and believes and therefore alleges that the U.S.
16 DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT ("BLM"), is and
17 was at all times relevant to this Action, an owner or reputed owner of the fee simple title to all or
18 portions of real property located in Nye County, Nevada, and more particularly described as Nye
19 County Parcel Numbers 012-141-01 and 012-151-01 (the "BLM Parcels").¹

20 3. Brahma is informed and believes and therefore alleges that LIBERTY MOLY,
21 LLC, a Delaware limited liability company ("Liberty"), is and was at all times relevant to this
22 Action, an owner or reputed owner of the fee simple title to all or portions of real property located
23 in Nye County, Nevada, and more particularly described as Nye County Parcel Number 012-431-
24 06 (the "Liberty Parcel").²

25
26
27 ¹ The BLM is not a party to this Action and Brahma is not making a claim against the BLM or the fee simple title of
the BLM Parcels by way of this Action.

28 ² Liberty is not a party to this Action and Brahma is not making a claim against Liberty or the fee simple title of the
Liberty Parcel by way of this Action.

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1 4. TONOPAH SOLAR ENERGY, LLC ("TSE")³ is and was at all times relevant to
2 this Action:

3 a. A Delaware limited liability company authorized to do business in Nye
4 County, Nevada;

5 b. An owner or reputed owner of the fee simple title to all or portions of real
6 property located in Nye County, Nevada, and more particularly described as Nye County Parcel
7 Numbers 012-031-04, 012-131-03, 012-131-04, 012-140-01, 012-150-01 and 612-141-01
8 (collectively, the "TSE Parcels");

9 c. The lessee, tenant or the person, individual and/or entity who claims a
10 license or leasehold estate with respect to the BLM Parcels and the Liberty Parcels; and

11 d. The owner of those certain improvements and/or leasehold estate (the
12 "Project"):

13 i. Commonly known as the *Crescent Dunes Solar Energy Project*; and

14 ii. Constructed on the BLM Parcels, the TSE Parcels, and the Liberty
15 Parcels.⁴

16 5. The TSE Parcels, along with the Project, are collectively referred to herein as the
17 "Work of Improvement," and include all leasehold estates, easements, rights-of-way, common
18 areas and appurtenances related thereto, and the surrounding space as may be required for the
19 convenient use and occupation of the Work of Improvement.

20 6. Brahma is informed, believes and therefore alleges that Defendant AMERICAN
21 HOME ASSURANCE COMPANY ("AHAC"):

22 a. Is and was at all times relevant to this Action a company duly licensed and
23 qualified to issue surety bonds and do business in Nevada;

24 b. Issued Bond No. 854481 ("Surety Bond") pursuant to NRS 108.2413 as
25 discussed more fully below; and

26 c. Issued a Surety Rider to the Surety Bond as discussed more fully below.

27 ³ While TSE is not a party to this Case, it is a party to Case No. CV 39348 in the Fifth Judicial District Court of Nye
County, which Case Brahma will seek to consolidate this Action into.

28 ⁴ The term "Project" as used herein, does not include, and expressly excludes, the fee simple title of the BLM Parcels
and the Liberty Parcels.

1 7. Brahma is informed, believes and therefore alleges that Defendant COBRA
2 THERMOSOLAR PLANTS, INC. ("Cobra"):

3 a. Is and was at all times relevant to this Action a Nevada corporation;
4 b. Is the principal on the Surety Bond and the Rider; and
5 c. Is a party to a negotiated settlement between Cobra and Brahma for the
6 payment of monies owed to Brahma for work Brahma performed directly for Cobra ("Cobra
7 Work") at the Project.

8 8. Brahma does not know the true names of the individuals, corporations, partnerships
9 and entities identified and named as Defendants by the fictitious names of (collectively, the "Doe
10 Defendants"), (i) BOE BONDING COMPANIES I through X, (ii) DOES I through X, and (iii)
11 ROE CORPORATIONS I through X. Brahma alleges that such Doe Defendants may be liable to
12 Brahma for damages arising from the construction of the Work of Improvement, as more fully
13 discussed under the claims for relief set forth below. Brahma will request leave of this Honorable
14 Court to amend this Amended Complaint to show the true names and capacities of each such
15 fictitious Doe Defendants when Brahma discovers such information.

16 9. Cobra, AHAC and the Doe Defendants, are sometimes referred to in the First Cause
17 of Action of this Amended Complaint (below), (i) individually, as a "Defendant," and (ii)
18 collectively, as the "Defendants".

19 10. Cobra and the Does Defendants, are sometimes referred to in the Second through
20 Fourth Causes of Action (below), (i) individually, as a "Defendant," and (ii) collectively, as the
21 "Defendants".

22 **FIRST CAUSE OF ACTION**
23 **(Claim Against Surety, Surety Bond and Principal thereon)**

24 11. Brahma repeats and realleges each allegation contained in the preceding paragraphs
25 of this Amended Complaint, incorporates them by reference, and further alleges as follows:

26 12. On or about February 1, 2017, Brahma entered a Services Agreement with TSE (the
27 "TSE Agreement") wherein Brahma agreed to provide certain work, materials and/or equipment
28 (the "TSE Work") for the Work of Improvement.

1 13. As provided in NRS 108.245, Brahma gave or served a copy of its Notice of Right
2 to Lien on:

- 3 a. The BLM; and
4 b. TSE, even though it had no statutory duty to do so.

5 14. The TSE Work was provided for the whole of the Work of Improvement, at the
6 special instance and/or request of TSE.

7 15. On or about April 9, 2018, Brahma timely recorded a Notice of Lien in the Official
8 Records of Nye County, Nevada, as Document No. 890822 ("Original Lien"), in the amount of
9 \$6,982,186.24.

10 16. On or about April 16, 2018 (as allowed by NRS 108.229(1)) Brahma recorded a
11 Notice of First Amended and Restated Lien in the Official Records of Nye County, Nevada, as
12 Document 891073 and as re-recorded by Brahma in the Official Records of Nye County, Nevada
13 on April 18, 2018, as Document No. 891507, in the amount of \$7,178,376.94 (the "First Amended
14 Lien").

15 17. On or about April 24, 2018 (as allowed by NRS 108.229(1)) Brahma recorded a
16 Notice of Second Amended and Restated Lien in the Official Records of Nye County, Nevada, as
17 Document 891766, in the amount of \$7,178,376.94 (the "Second Amended Lien").

18 18. On or about July 19, 2018 (as allowed by NRS 108.229(1)) Brahma recorded a
19 Third Amended and/or Restated Notice of Lien in the Official Records of Nye County, Nevada,
20 as Document 896269, in the amount of \$11,902,474.75 (the "Third Amended Lien").

21 19. On or about September 14, 2018 (as allowed by NRS 108.229(1)) Brahma recorded
22 a Fourth Amended and/or Restated Notice of Lien in the Official Records of Nye County, Nevada,
23 as Document 899351 in the amount of \$12,859,577.74 (the "Fourth Amended Lien").

24 20. The (i) Original Lien, (ii) First Amended Lien, (iii) Second Amended Lien, (iv)
25 Third Amended Lien, and (iv) Fourth Amended Lien, collectively, referred to herein as the "Lien,"
26 were:

- 27 a. in writing;
28 b. recorded against the Work of Improvement; and

1 c. given or served on the authorized agents of the BLM and TSE, or the BLM
2 and/or TSE knew of the existence of the Lien.

3 21. The Lien (as amended) is in the amount Twelve Million Eight Hundred and Fifty-
4 Nine Thousand, Five Hundred and Seventy-Seven Dollars and Seventy-Four Cents.
5 (\$12,859,577.74 — "Lienable Amount").

6 22. The Lienable Amount is due and owing Brahma as of the date of this Amended
7 Complaint.

8 23. On or about September 6, 2018, pursuant to NRS 108.2413, Cobra (as principal)
9 and AHAC (as surety) caused the Surety Bond to be recorded in the Official Records of Nye
10 County, Nevada as Document No. 898975.

11 24. On or about October 9, 2018, Cobra (as principal) and AHAC (as surety) caused a
12 Surety Rider ("Rider") to be recorded in the Official Records of Nye County, Nevada as Document
13 No. 900303.

14 25. The Rider increased the penal sum of the Surety Bond to \$19,289,300.61.

15 26. NRS 108.2421(1) authorizes Brahma, as lien claimant, to bring an action against
16 the principal (Cobra) and the surety (AHAC) on the Surety Bond and Rider within this Court.

17 27. Brahma makes claim against the Defendants and AHAC is obligated to Brahma for
18 the Lienable Amount plus interest, costs, and attorney's fees up to the penal sum of the Surety
19 Bond and Rider as provided in Chapter 108 of the Nevada Revised Statutes.

20 **SECOND CAUSE OF ACTION**

21 **(Breach of Settlement Agreement Against Cobra)**

22 28. Brahma repeats and realleges each allegation contained in the preceding paragraphs
23 of this Amended Complaint, incorporates them by reference, and further alleges as follows:

24 29. Prior to the commencement of the Work of Improvement, Brahma previously
25 contracted directly with Cobra to perform the Cobra Work at the Project.

26 30. Brahma performed the Cobra Work and a dispute over payment arose between
27 Brahma and Cobra (the "Cobra Dispute").
28

1 31. Brahma and Cobra (i) negotiated a resolution of the Cobra Dispute, and (ii) agreed
2 to certain terms, which terms were memorialized in writing ("Settlement Agreement").

3 32. Pursuant to the Settlement Agreement, Cobra was to make (i) a first payment to
4 Brahma in the amount of \$2,881,397.67 ("First Payment") upon Brahma providing certain
5 documentation/information concerning the Cobra Work (the "Documentation"), and (ii) a second
6 payment to Brahma in the amount of \$412,224.62 ("Second Payment") upon Brahma providing
7 additional documentation/information ("Additional Documentation").

8 33. Brahma provided the Documentation and Cobra paid Brahma the First Payment.

9 34. Brahma tendered and/or provided Cobra the Additional Documentation to receive
10 the Second Payment, but Cobra has failed to pay Brahma the Second Payment.

11 35. Brahma has tendered and/or performed its duties and obligations as required by the
12 Settlement Agreement.

13 36. The Defendants have breached the Settlement Agreement by failing to tender
14 payment of the Second Payment to Brahma, which Second Payment is due and owing.

15 37. Brahma has been required to engage the services of an attorney to collect the
16 Second Payment, and Brahma is entitled to recover its reasonable costs, attorney's fees, and
17 interest therefore.

18 **THIRD CAUSE OF ACTION**

19 **(Breach of Implied Covenant of Good Faith & Fair Dealing Against Cobra)**

20 38. Brahma repeats and realleges each allegation contained in the preceding paragraphs
21 of this Amended Complaint, incorporates them by reference, and further alleges as follows:

22 39. There is a covenant of good faith and fair dealing implied in every agreement,
23 including the Settlement Agreement.

24 40. The Defendants breached their duty to act in good faith by performing the
25 Settlement Agreement in a manner that was unfaithful to the purpose of the Settlement Agreement,
26 thereby denying Brahma's justified expectations.

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1 41. Due to the actions of the Defendants, Brahma suffered damages in an amount more
2 than the Second Payment, for which Brahma is entitled to judgment in an amount to be determined
3 at trial.

4 42. Brahma has been required to engage the services of an attorney to collect the
5 Second Payment, and Brahma is entitled to recover its reasonable costs, attorney's fees, and
6 interest therefore.

7 **FOURTH CAUSE OF ACTION**
8 **(Unjust Enrichment Against Cobra)**

9 43. Brahma repeats and realleges each allegation contained in the preceding paragraphs
10 of this Amended Complaint, incorporates them by reference, and further alleges as follows:

11 44. This cause of action is being pled in the alternative.

12 45. Brahma tendered and/or provided the Additional Documentation for the benefit
13 and/or at the specific instance and request of the Defendants.

14 46. The Defendants accepted, used, and enjoyed the benefit of the Additional
15 Documentation.

16 47. Brahma has demanded payment of the Second Payment.

17 48. To Date, the Defendants have failed, neglected, and/or refused to pay the Second
18 Payment.

19 49. The Defendants have been unjustly enriched, to the detriment of Brahma.

20 50. Brahma has been required to engage the services of an attorney to collect the
21 Second Payment, and Brahma is entitled to recover its reasonable costs, attorney's fees, and
22 interest therefore.

23 **WHEREFORE**, with respect to the First Cause of Action, Brahma prays that this
24 Honorable Court:

25 1. Enters judgment against the Defendants, and each of them, jointly and severally in
26 the Lienable Amount;

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2. Enters a judgment against the Defendants and each of them, jointly and severally, for Brahma's reasonable costs and attorney's fees incurred in the collection of the Liable Amount, as well as an award of interest thereon;

3. Enters judgment against AHAC up to the penal sum of the Surety Bond and Rider; and

4. For such other and further relief as this Honorable Court deems just and proper in the premises.

WHEREFORE, with respect to the Second through Fourth Causes of Action, Brahma prays that this Honorable Court:

1. Enters judgment against the Defendants and each of them, jointly and severally, in the amount of the Second Payment, plus Brahma's reasonable costs and attorney's fees incurred in the collection of the Second Payment; and

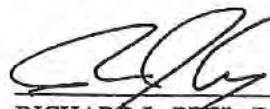
2. For such other and further relief as this Honorable Court deems just and proper in the premises.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the proceeding document does not contain the social security number of any persons.

Dated this 11th day of January 2019.

PEEL BRIMLEY LLP



RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

ERIC ZIMBELMAN, ESQ.

Nevada Bar No. 9407

CARY B. DOMINA, ESQ.

Nevada Bar No. 10567

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Henderson, Nevada 89074-6571

Attorneys for Brahma Group, Inc.

JAN 23 2019

WEIL & DRAGE
ATTORNEYS AT LAW

PRA000078

Exhibit 3

Exhibit 3

From: Jeremy Kilber
Sent: Wednesday, February 20, 2019 11:01 AM
To: Jeremy Kilber
Subject: Our File No. 0630-003 (Brahma vs. Cobra)

From: Richard Peel [mailto:rpeel@peelbrimley.com]
Sent: Wednesday, February 13, 2019 11:25 AM
To: Geoffrey Crisp
Cc: Richard Peel; Eric Zimbelman; Terri Hansen; Ronnie Cox
Subject: Our File No. 0630-003 (Brahma vs. Cobra)
Importance: High

Geoff,

You will recall the following:

- Original Action (Case No. CV 39348) pending before Judge Elliott.
 - TSE originally sued Brahma in Nye County District Court by initiating Case No. CV39348 (the "Original Action").
 - Subsequently, Brahma filed in the Original Action:
 - A Mechanic's Lien Foreclosure Complaint against TSE ("Lien Foreclosure Complaint"); then
 - A First Amended Counter-Complaint (against TSE) and a Third Party Complaint against Cobra Thermosolar Plants, Inc. ("Cobra") and its surety, American Home Assurance Home Company ("AHAC").
 - Brahma has since been granted leave by the Court to file (but has yet to file) a Second Amended Complaint (against TSE) and a Amended Third-Party Complaint (against Cobra and AHAC).
 - We will be filing the Second Amended Complaint and Amended Third-Party Complaint this week.
 - We understand from prior conversations that your office is willing to accept service on behalf of both Cobra and AHAC of this pleading.
- Separate Action (Case NO. CV39799), assigned to Judge Wanker.
 - Because of arguments made by TSE in in the Original Action, Brahma commenced a second action in Nye County District Court (Case No. CV39799) by filing a Mechanic's Lien Foreclosure Complaint Against Surety Bond against Cobra and AHAC.
 - Brahma subsequently filed a First Amended Complaint against Cobra and AHAC, which your office accepted service of some time ago.
 - A copy of the First Amended Complaint is attached hereto.
- Consolidated Action (Case No. CV 39348), pending before Judge Elliott.
 - Brahma subsequently filed (and the Court granted) Brahma's Motion to Consolidate the Separate Action into the Original Action (collectively, the "Consolidated Action").
 - TSE is unwilling to stipulate to allow Brahma to file a Second Amended Complaint (in the Consolidated Action) that would amend and restate the pleadings filed previously against TSE, Cobra and AHAC in the Original and Separate Actions.

Unfortunately, due to TSE's position, Cobra/AHAC will need to separately answer:

- Brahma's First Amended Complaint (filed in the Separate Action); and
- Brahma's Second Amended Complaint and Amended Third-Party Complaint (which will be filed this week in the Consolidated Action).

In light of the foregoing, we ask (and we understand that you have agreed on behalf of Cobra and AHAC) that Cobra/AHAC:

- Answer the First Amended Complaint filed in the Separate Action by no later than February 22, 2019.
- Answer the Second Amended Complaint (to be filed in the Consolidated Action) within two weeks of service of the same on your office.

Please let me know if my understanding of the above is incorrect in any way. Otherwise, we look forward to your clients' answers as noted above.

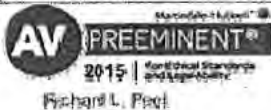
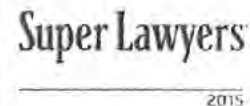
Thank you.

Sincerely,

Richard L. Peel, Esq.
MANAGING PARTNER



☎: NEVADA: 3333 E. Serene Avenue - Suite 200 - Henderson - Nevada - 89074
☎: WASHINGTON: 1215 Fourth Avenue - Suite 1235 - Seattle - Washington - 98161
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(Attorneys licensed to practice in: Nevada • Washington • California • Utah • Arizona • Hawaii • North Dakota • US Court of Federal Claims)

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rcox@peelbrimley.com
Attorneys for Brahma Group, Inc.

**FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA**

TONOPAH SOLAR ENERGY, LLC, a Delaware
limited liability company,

Plaintiff,

vs.

BRAHMA GROUP, INC., a Nevada corporation,

Defendant.

CASE NO. : CV 39348
Consolidated with CV39799
DEPT. NO. : 2

NOTICE OF ENTRY OF ORDER

BRAHMA GROUP, INC., a Nevada corporation,

Counterclaimant/Lien Claimant,

vs.

TONOPAH SOLAR ENERGY LLC, a Delaware
limited liability company; BOE BONDING
COMPANIES I through X; DOES I through X;
ROE CORPORATIONS I through X; and TOE
TENANTS I through X, inclusive,

Counterdefendant,

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1 BRAHMA GROUP, INC., a Nevada corporation,

2 Third-Party Plaintiff,

3 vs.

4 COBRA THERMOSOLAR PLANTS, INC., a
5 Nevada corporation; AMERICAN HOME
6 ASSURANCE COMPANY, a surety; BOE
7 BONDING COMPANIES I through X; DOES I
through X; ROE CORPORATIONS I through X,
inclusive,

8 Third-Party Defendants.

9
10 H&E EQUIPMENT SERVICES, INC., a Delaware
corporation,

11 Plaintiff-in-Intervention,

12 vs.

13 BRAHMA GROUP, INC., a Nevada corporation,
14 TONOPAH SOLAR ENERGY LLC, a Delaware
15 limited liability company, COBRA
THERMOSOLAR PLANTS, INC., a Nevada
16 Corporation; AMERICAN HOME ASSURANCE
COMPANY, a surety; BOE BONDING
17 COMPANIES I through X; DOES I through X;
18 ROE CORPORATIONS I through X, and TOE
TENANTS I through X, inclusive,

19 Defendants-in-Intervention.

20 BRAHMA GROUP, INC. a Nevada corporation,

21 Plaintiff,

22 vs.

23
24 COBRA THERMOSOLAR PLANTS, INC., a
Nevada corporation; AMERICAN HOME
25 ASSURANCE COMPANY, a surety; BOE
BONDING COMPANIES 1 through X; DOES I
26 through X; ROE CORPORATIONS I through X,
inclusive,

27 Defendants.
28

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NOTICE OF ENTRY OF ORDER

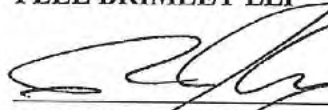
PLEASE TAKE NOTICE that an Order Granting Brahma's Motion to Consolidate Case No. 39799 with Case No. 39348 was filed on **February 19, 2019**, a copy of which is attached as Exhibit 1.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the proceeding document does not contain the social security number of any persons.

Dated this 13th day of March, 2019.

PEEL BRIMLEY LLP



RICHARD L. PEEL, ESQ.

Nevada Bar No. 4359

ERIC ZIMBELMAN, ESQ.

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Attorneys for Brahma Group, Inc.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 13th day of March, 2019, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** to be served as follows:

- ☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ Wiznet, the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☐ to be hand-delivered; and/or
- ☐ other – electronic mail

to the party(ies) and/or attorney(s) listed below at the address and/or facsimile number indicated below:

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Assurance Company*

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Attorneys for H&E Equipment Services, Inc.



An Employee of Peel Brimley LLP

EXHIBIT 1

FILED
FIFTH JUDICIAL DISTRICT

FEB 19 2019

Nye County Clerk
Marianne Yoffee Deputy

1 **ORDR**
2 RICHARD L. PEEL, ESQ.
3 Nevada Bar No. 4359
4 ERIC B. ZIMBELMAN, ESQ.
5 Nevada Bar No. 9407
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15 rcox@peelbrimley.com
16 *Attorneys for Brahma Group, Inc.*

FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

11 TONOPAH SOLAR ENERGY, LLC, a Delaware
12 limited liability company,

13 Plaintiff,

14 vs.

15 BRAHMA GROUP, INC., a Nevada corporation,

16 Defendant.

CASE NO. : CV 39348
DEPT. NO. : 2

**ORDER GRANTING BRAHMA'S
MOTION TO CONSOLIDATE CASE
NO. CV39799 WITH CASE NO. CV
39348**

17 This matter came on for hearing January 24, 2019 (the "Hearing") before the Honorable
18 Senior Judge Steven Elliott on the Motion to Consolidate Case No. CV39799 with Case No. CV
19 39348 ("Motion") filed by BRAHMA GROUP, INC. ("Brahma"). Eric B. Zimbelman, Esq. of
20 PEEL BRIMLEY LLP appeared on behalf of Brahma. Colby L. Balkenbush, Esq. of
21 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC appeared on behalf of Plaintiff
22 TONOPAH SOLAR ENERGY, LLC ("TSE").

23 The Court having considered all the pleadings and papers on file, and having heard
24 argument of counsel, hereby ORDERS as follows, having rendered its oral decision from the
25 bench on January 24, 2019:

26 **I. BASIS FOR CONSOLIDATION**

27 Brahma seeks to consolidate Case No. CV39799 with Case No. CV 39348 pursuant to
28 NRCP 42, which provides in relevant part:

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1 [W]hen actions involving a common question of law or fact are pending before the
2 court, it may order a joint hearing or trial of any or all the matters in issue in the
3 actions; it may order all the actions consolidated; and it may make such orders
concerning proceedings therein as may tend to avoid unnecessary costs or delay.

4 Consolidation is vested in the sound discretion of the trial court. (*Zupancic v. Sierra Vista*
5 *Recreation, Inc.*, 97 Nev. 187, 193, 625 P.2d 1177, 1181 (1981).

6 **II. FINDINGS AND CONCLUSIONS.**

7 1. The Court finds (i) the two cases involve common questions of law or fact, and
8 (ii) consolidation would "avoid unnecessary costs or delay" and provide judicial economy.

9 2. TSE opposed the Motion on several grounds. First, TSE argues that it was
10 procedurally improper for Brahma to file Case No. CV39799 when Case No. CV 39348 is
11 pending in this Court with similar or identical claims. However, in its Motion to Strike Brahma
12 Group, Inc.'s ("Brahma") First Amended Counter-Complaint ("Motion to Strike"),¹ TSE argued
13 that Brahma's proposed amended pleading was improper because "one cannot file a Counter-
14 Complaint into a special proceeding such as this." In support of its position, TSE relied on what
15 it claimed to be "the leading Nevada construction law treatise," LEON F. MEAD II,
16 CONSTRUCTION LAW 286 (2016 Ed.), for the proposition that (i) "it is improper legal
17 procedure to file a counter-claim to a petition under NRS 108.2275," and (ii) "the proper
18 procedure is to file a complaint for foreclosure and to move the petitioning court to consolidate
19 the two matters."

20 3. As discussed in the Court's Order Denying Motion to Strike, the Court does not
21 agree with Mr. Mead's premise and found that there was nothing improper with Brahma filing
22 its Counter-Complaint in the same Case TSE commenced when it filed its Motion to Expunge
23 Brahma's Lien. Additionally, the Court has now come to the conclusion that had Brahma filed a
24 standalone complaint as an independent action and then moved the Court to consolidate that
25 action with Case No. CV 39348 as TSE suggests, the Parties would be in the same position they
26 currently find themselves in.

27
28 ¹ The complete title of that motion was "Tonopah Solar Energy, LLC's Motion to Strike Brahma Group, Inc.'s First Amended Counter-Complaint, or, in the Alternative, Motion to Dismiss Counter-Complaint, or in the Alternative, Motion to Stay this Action until the Conclusion of the Proceedings in Federal Court."

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4. In any event, and especially where TSE has stated its intention to file a Writ Petition to the Nevada Supreme Court with respect to this Court's denial of TSE's Motion to Strike, it was appropriate for Brahma to file Case No. CV39799 and for this Court to consolidate that action into the present action. Specifically, but without limitation, if the Supreme Court were to ultimately overrule this court and determine that it was improper for Brahma to file a counterclaim to a petition under NRS 108.2275, Brahma's time to file a complaint against the applicable surety bond would by then have lapsed pursuant to NRS 108.2421. If, on the other hand, the Nevada Supreme Court rejects TSE's position (or TSE chooses not to challenge the issue), the foreclosure claim filed in Case No. CV39799 is (at worst) moot with no prejudice having been suffered by any party by way of consolidation.

5. The Court also rejects TSE's contention that Case No. CV39799 and Brahma's Motion to Consolidate is futile. The Court finds that Brahma's Complaint filed in Case No. CV39799 is not impermissible claim-splitting and does not violate NRCP 1 or NRCP 15.

6. Based on the foregoing, the Court hereby concludes that Case No. CV39799 may be and is hereby consolidated with Case No. CV 39348.

NOW THEREFORE, IT IS HEREBY ORDERED that Brahma's Motion to Consolidate is **GRANTED** and Case No. CV39799 is hereby consolidated with Case No. CV 39348.

Dated this 12th day February 2019.


Senior Judge Steven Elliott

Submitted by:
PEEL BRIMLEY LLP

/s/
RICHARD L. PEEL, ESQ. (NV Bar No. 4359)
ERIC B. ZIMBELMAN, ESQ. (NV Bar No. 9407)
RONALD J. COX, ESQ. (NV Bar No. 12723)
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14 **FIFTH JUDICIAL DISTRICT COURT**

15 **NYE COUNTY, NEVADA**

16 TONOPAH SOLAR ENERGY, LLC, a Delaware
17 limited liability company,

18 Plaintiff,

19 vs.

20 BRAHMA GROUP, INC., a Nevada corporation,

21 Defendant.

22 BRAHMA GROUP, INC., a Nevada corporation,

23 Lien/Bond Claimant,

24 vs.

25 TONOPAH SOLAR ENERGY LLC, a Delaware
26 limited liability company; BOE BONDING
27 COMPANIES I through X; DOES I through X;
28 ROE CORPORATIONS I through X; and TOE
TENANTS I through X, inclusive,

Counterdefendants,

CASE NO. : CV 39348
DEPT. NO. : 2

Consolidated with:
Case No. CV39799

**BRAHMA GROUP, INC.'S
OPPOSITION TO COBRA
THERMOSOLAR PLANTS, INC.'S
MOTION TO DISMISS AND
COUNTERMOTION FOR LEAVE
TO FILE A SINGLE
CONSOLIDATED AMENDED
COMPLAINT**

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1 BRAHMA GROUP, INC., a Nevada corporation,
2
3 Lien/Bond Claimant and
4 Third-Party Plaintiff,
5
6 vs.
7
8 COBRA THERMOSOLAR PLANTS, INC., a
9 Nevada corporation; AMERICAN HOME
10 ASSURANCE COMPANY, a surety; BOE
11 BONDING COMPANIES I through X; DOES I
12 through X; ROE CORPORATIONS I through X,
13 inclusive,
14
15 Third-Party Defendants.


16 **BRAHMA GROUP, INC.'S OPPOSITION TO COBRA THERMOSOLAR PLANTS,**
17 **INC.'S MOTION TO DISMISS AND COUNTERMOTION FOR LEAVE TO FILE A**
18 **SINGLE CONSOLIDATED AMENDED COMPLAINT**

19 Defendant/Lien Bond Claimant, BRAHMA GROUP, INC. ("Brahma" or "BGI"), by and
20 through its counsel of record, the law firm of Peel Brimley LLP, hereby files its Opposition to the
21 Motion to Dismiss ("Motion") filed by Third-Party Defendant COBRA THERMOSOLAR PLANTS,
22 INC. ("Cobra") and its Bond Surety, American Home Assurance Company ("AHAC").

23 Brahma also concurrently submits its Countermotion for Leave to File a Consolidated
24 Amended Complaint. This Opposition and Countermotion is supported by the papers and pleadings on
25 file herein, the following memorandum of points and authorities, and any oral argument this Court may
26 entertain.

27 Dated this 25 day of March, 2019.

28 PEEL BRIMLEY LLP


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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

As the Court is aware, these consolidated actions are the subject of a lengthy procedural history involving numerous motions, pleadings amendments and related actions filed in Nye County, Clark County and the United States District Court for the District of Nevada. Recently, this Court granted Brahma's Motion to Consolidate Case No. CV39799 with Case No. CV39348 ("Motion to Consolidate") based on NRCP 42(a) and the Court's findings that "(i) these two cases involve common questions of law or fact, and (ii) consolidation would 'avoid unnecessary costs or delay.'"¹

In addition, the Court also recently denied Plaintiff/Counterdefendant Tonopah Solar Energy, LLC's ("TSE") Motion to Strike and Dismiss Brahma's Complaint ("TSE Motion to Strike and Dismiss") and granted Brahma's Motion to Amend.² As a result of these two Orders, Brahma proposed to TSE, in the interest of time, cost and efficiency, that it file a single, clean amended pleading in the consolidated action rather than have separate complaints in the two consolidated actions with partially overlapping claims. In response, TSE refused to stipulate to such consolidated pleading. Shortly thereafter, TSE's affiliate, Cobra, filed the present Motion, citing the same legal contentions relied on by TSE in refusing to stipulate to a consolidated pleading.

It is regrettable that Cobra and TSE have once again chosen to seek dismissal of Brahma's claims through wasteful procedural posturing rather than through a trial on the merits. Nonetheless, the Court should deny Cobra's Motion and grant Brahma's Countermotion for Leave to File a Single Consolidated Amended Complaint for the following non-exclusive reasons:

- While Nevada Supreme Court's recent decision in *Matter of Estate of Sarge*, 134 Nev. Adv. Op. 105, 432 P.3d 718, 721 (2018) conformed to federal practice in holding that "constituent cases retain their separate identities to the extent that a final decision in one is immediately appealable," this does not mean two consolidated cases can never be merged for other purposes. In fact, the United States Supreme Court precedent upon which *Sarge* is based is to the contrary. See *Hall v. Hall*, 138 S. Ct. 1118, 1122, 200 L.

¹ See Exhibit 1, Order Granting Motion to Consolidate.

² See Exhibit 2, Order (I) Denying Tonopah Solar Energy, LLC's Motion to Strike and Dismiss; (II) Granting in Part Tonopah Solar Energy, LLC's Motion for Stay and (III) Granting Brahma Group Inc.'s Motion to Amend.

Ed. 2d 399 (2018) (“[t]his decision does not mean that district courts may not consolidate cases for all purposes in appropriate circumstances.”);

- Cobra’s reliance on *Smith v. Hutchins*, 93 Nev. 431, 432, 566 P.2d 1136, 1337 (1977) for the proposition that the parallel (now consolidated) actions violate the “one action rule” is similarly incorrect based on the same reasons this Court denied TSE’s Motion to Strike and Dismiss, in which TSE argued that the two actions involved impermissible “claim-splitting.” Nothing in the Bond Action “conflicts with a statutory scheme, Cobra’s or TSE’s constitutional rights, or the agreed-upon or stated limits of” Case No. CV 39348, and Cobra fails to make any effort to show how this might be; and
- The Proposed Consolidated Amended Pleading submitted with Brahma’s Countermotion hereto, provides an efficient, non-redundant pleading that Cobra’s motion purports to promote, and as a result, the Court should approve the same.

With respect to Cobra’s separate contention that Brahma’s claim for unjust enrichment should be dismissed simply because Brahma also claims the existence of a written enforceable contract, the Court should deny that motion as (at best) premature. Brahma is entitled to plead “in the alternative” as it has done here. Unless and until Cobra acknowledges that an agreement exists between the parties (a choice Cobra clearly hopes to avoid making), Brahma should be permitted to argue for the existence of a “quasi-contract which requires the defendant to pay to plaintiff the value of the benefit conferred. In other words, the defendant makes restitution to the plaintiff in *quantum meruit*.” See *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 380–81, 283 P.3d 250, 257 (2012).

II. STATEMENT OF FACTS

At the January 24, 2019 hearing, this Court granted Brahma’s Motion to Consolidate and ordered the consolidation of Case Nos. CV39348 (“the Lien Foreclosure Action”) and CV39799 (“the Bond Action”).³ As the Court will recall, Brahma filed the Bond Action out of an abundance of caution because TSE threatened to file a Writ Petition to the Nevada Supreme Court (and it has now done)⁴ arguing that this Court should have dismissed Brahma’s pleading in the Lien

³ See Exhibit 1.

⁴ See Exhibit 3, Writ Petition.

1 Foreclosure Action. The Lien Foreclosure Action was initially commenced by TSE as a special
2 proceeding seeking to expunge Brahma's mechanic's lien pursuant to NRS 108.2275.

3 Relying on LEON F. MEAD II, CONSTRUCTION LAW 286 (2016 Ed.), TSE argued that
4 (i) "it is improper legal procedure to file a counter-claim to a petition under NRS 108.2275,"⁵ and
5 (ii) "The proper procedure is to file a complaint for foreclosure and to move the petitioning court
6 to consolidate the two matters."⁶ Brahma was and remains concerned (now that the Writ Petition
7 has been filed) that if the Writ Petition is granted and Brahma's pleading is stricken or dismissed,
8 the time for Brahma to commence an action against the Surety Bond, the Surety (AHAC) and the
9 Principal on the Surety Bond (Cobra) would have expired unless Brahma filed the allegedly
10 redundant claims in the Bond Action (which is exactly what TSE originally argued Brahma was
11 required to do).

12 In granting Brahma's Motion to Consolidate over TSE's objection, this Court concluded,
13 inter alia:

14 3. As discussed in the Court's Order Denying Motion to Strike, the
15 Court does not agree with Mr. Mead's premise and found that there was nothing
16 improper with Brahma filing its Counter-Complaint in the same Case TSE
17 commenced when it filed its Motion to Expunge Brahma's Lien. Additionally, the
18 Court has now come to the conclusion that had Brahma filed a standalone
complaint as an independent action and then moved the Court to consolidate that
action with Case No. CV 39348 as TSE suggests, the Parties would be in the same
position they currently find themselves in.

19 4. In any event, and especially where TSE has stated its intention to
20 file a Writ Petition to the Nevada Supreme Court with respect to this Court's denial
21 of TSE's Motion to Strike, it was appropriate for Brahma to file Case No. CV39799
22 and for this Court to consolidate that action into the present action. Specifically, but
23 without limitation, if the Supreme Court were to ultimately overrule this court and
24 determine that it was improper for Brahma to file a counter-claim to a petition under
25 NRS 108.2275, Brahma's time to file a complaint against the applicable surety bond
26 would by then have lapsed pursuant to NRS 108.2421. If, on the other hand, the
27 Nevada Supreme Court rejects TSE's position (or TSE chooses not to challenge the
28 issue), the foreclosure claim filed in Case No. CV39799 is (at worst) moot with no
prejudice having been suffered by any party by way of consolidation.

///

⁵ See Exhibit 4 hereto, TSE Reply to Brahma's Opposition to Motion to Strike (exhibits omitted for brevity), p. 7.

⁶ See Exhibit 5 hereto, excerpt from Mead treatise as submitted to this Court by TSE as Exhibit 4 to its Reply to Brahma's Opposition to TSE's Motion to Strike and Dismiss.

1 5. The Court also rejects TSE's contention that Case No. CV39799 and
2 Brahma's Motion to Consolidate is futile. The Court finds that Brahma's Complaint
3 filed in Case No. CV39799 is not impermissible claim-splitting and does not violate
4 NRCP 1 or NRCP 15.⁷

5 By way of this Court's Order Denying TSE's Motion to Strike and Dismiss,⁸ the Court
6 granted Brahma leave to file a Second Amended Complaint in the Lien Foreclosure Action
7 consistent with the Court's decision and its intent to stay the three causes of action that TSE had
8 initially removed to the federal court "until such time as the Federal Court rules on whether this
9 Court has proper jurisdiction over these claims."⁹

10 In compliance with the Order Denying TSE's Motion to Strike and Dismiss and in light of
11 the Consolidation Order, on February 6, 2019, BRAHMA's counsel proposed to TSE's counsel
12 that Brahma file a single "clean" document in the consolidated action that (i) amends Brahma's
13 First Amended Counter-Complaint filed in the Lien Foreclosure Action and (ii) includes a Third-
14 Party Complaint against Cobra, and its surety (AHAC) that would mirror the bond foreclosure
15 claims of the Bond Action, thereby eliminating the need for parallel pleadings.¹⁰ Brahma's
16 proposal would have expressly reserved (i) the parties' respective positions regarding the proper
17 jurisdiction and venue for the Parties' dispute as more fully set forth in the Parties' briefs filed in
18 the Federal Court and (ii) TSE's rights of appeal.¹¹

19 In rejecting TSE's proposal, TSE's counsel wrote:

20 Procedurally, this would be inappropriate as courts view two cases as continuing to
21 exist separately even after consolidation. Federal courts have long held this and the
22 Nevada Supreme Court adopted the federal position on this issue in a December
23 2018 decision. *Matter of Estate of Sarge*, 134 Nev. Adv. Op. 105, 432 P.3d 718,
24 722 (2018) ("We thus overrule our decision in *Mallin* to the extent it holds that cases
25 consolidated in the district court become a single case for all appellate purposes.
26 Consolidated cases retain their separate identities so that an order resolving all of
27 the claims in one of the consolidated cases is immediately appealable as a final
28 judgment under NRAP 3A(b)(1)"); *see also* Wright & Miller, 9A FED. PRAC. &
29 PROC. CIV. § 2382 (3d ed.) ("federal courts have held that actions do not lose their
30 separate identity because of consolidation under Rule 42(a)(2) . . . actions
31 consolidated under Rule 42(a)(2) retain their separate identity."¹²

⁷ See Exhibit 1

⁸ See Exhibit 2.

⁹ See *id.* The stayed claims are (i) Breach of Contract, (ii) Breach of the Duty of Good Faith and Fair Dealing and (iii) Violations of NRS 624 but not the lien and bond foreclosure causes of action at issue here.

¹⁰ See Exhibit 6.

¹¹ See *id.*

¹² See Exhibit 7.

1 While Cobra disingenuously complains in its Motion that “BGI’s counsel is requiring Defendants
2 to separately respond to” Brahma’s pleadings in both actions,¹³ this is only because TSE refused to
3 permit Brahma to file a consolidated pleading.¹⁴

4 Shortly thereafter, Cobra (TSE’s affiliate) filed the present Motion, citing the identical
5 legal contentions and authority relied on by TSE in refusing to stipulate to a consolidated pleading.
6 That TSE and Cobra are coordinating these efforts is not surprising in light of their affiliate
7 relationship. Specifically, and as set forth in TSE’s Counterclaim filed in the federal court, TSE
8 has admitted that:

- 9
- Cobra is an affiliate of Cobra Energy Investment, LLC (“Cobra Energy”);¹⁵
 - Cobra Energy is a member of Tonopah Solar Investments LLC (“TSI”);¹⁶
 - TSI is a member of Tonopah Solar Energy Holdings I, LLC (“TSEH I”);¹⁷
 - TSEH I is a member of Tonopah Solar Energy Holdings II (“TSEH II”);¹⁸
 - and
 - TSEH II is the sole member of TSE.¹⁹
- 12

13
14 In other words, through this complicated maze of shell companies, Cobra is not only affiliate of
15 TSE, it is a part owner of TSE.

16 III. ARGUMENT/AUTHORITY

17 A. The Bond Action Is Not Impermissibly Redundant.

18 Cobra’s request that the Court dismiss Brahma’s entire Complaint on grounds of
19 redundancy, should be denied on grounds similar to those this Court relied on in rejecting TSE’s
20 opposition to Brahma’s Motion to Consolidate. Here, Cobra argues that under *Smith v. Hutchins*,
21 93 Nev. 431, 432, 566 P.2d 1136, 1337 (1977), the parallel (now consolidated) actions violate the
22 so-called “one action rule.”²⁰ There, TSE argued that The Bond Action was “impermissible claim
23

24 ¹³ See Motion p. 7.

25 ¹⁴ See Motion, Exhibit 3. It is also worth noting that Cobra would have required far less time preparing two Answers
than commencing and engaging in the present Motion proceeding.

26 ¹⁵ See Exhibit 8, TSE Counterclaim ¶9.

27 ¹⁶ See TSE Counterclaim ¶3

28 ¹⁷ See TSE Counterclaim ¶3

¹⁸ See TSE Counterclaim ¶2

¹⁹ See TSE Counterclaim ¶2

²⁰ It is worth noting that the term “one action rule” does not appear anywhere in *Smith*, though it does refer to a “single
cause of action rule.” See 93 Nev. at 432

1 splitting”²¹ and “redundant” of prior pleadings such that it should be stricken pursuant to NRCP
2 12(f) as “redundant, immaterial, impertinent, or scandalous matter.”²²

3 As Brahma demonstrated in its Reply brief to TSE’s Motion to Strike or Dismiss:²³

4 TSE offer[ed] no case authority (or rationale of any kind) for rejecting [the Bond
5 Action] purely on the grounds of redundancy. Indeed, the only Nevada case the
6 undersigned has located in which NRCP 12(f) was cited (an unpublished decision)²⁴
7 involved the dismissal of an amended pleading because it “was nearly identical, and
8 therefore redundant, to the original complaint,” which the court had previously
9 dismissed. See *Angel v. Eldorado Casino, Inc.*, No. 59401, 2013 WL 1116822, at
10 *1 (Nev. Mar. 15, 2013).²⁵

11 Unlike *Eldorado Casino*, Brahma’s lien foreclosure claim in the Lien Foreclosure Action survived
12 TSE’s Motion to Dismiss.

13 Moreover, and at least until Brahma files the amended pleading contemplated by the Court’s
14 Order Denying Motion to Strike or Dismiss, Brahma’s claim for lien foreclosure (against the Work of
15 Improvement) in the Lien Foreclosure Action is technically not redundant of the cause of action for
16 Claim Against Surety, Surety Bond and Principal Thereon in the Bond Action. Stated differently, the
17 claim for lien foreclosure in the Lien Foreclosure Action was filed before Cobra and AHAC recorded
18 the Surety Bond to release Brahma’s Notice of Lien (as amended),²⁶ after which Brahma commenced
19 the Bond Action to assert a claim on the Surety Bond. Even if Brahma were to file an amended pleading
20 in the Lien Foreclosure Action to (as it must) assert a claim on the Bond rather than the Work of
21 Improvement, these claims may be easily merged (at least in part) by way of consolidation without
22 prejudice to any party. [See Discussion *infra*].

23 ²¹ See Exhibit 9, TSE Opposition to Motion to Consolidate pp. 5-6.

24 ²² See TSE Opposition to Motion to Consolidate p. 6.

25 ²³ See Exhibit 10.

26 ²⁴ As before, Brahma in no way means to violate NRAP 36(c) by citing this unpublished decision. Rather, the lack of
27 any non-abrogated published decisions is evidence enough that TSE’s reliance on NRCP 12(f) was thin.

28 ²⁵ The only published decision found has been abrogated (on other grounds) and cited Rule 12(f) merely for the
proposition that abuse could be found when a litigant “persistently files documents that are unintelligible, redundant,
immaterial, impertinent, or scandalous.” See *Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev.
44, 61, 110 P.3d 30, 43 (2005), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670
(2008).

²⁶ See NRS 108.2413(6)(b) (the Surety Bond “releases the property described in the surety bond from the lien and the
surety bond shall be deemed to replace the property as security for the lien.”)

1 In any event, like TSE's Motion to Strike or Dismiss, and despite this Court's Order Granting
2 [Brahma's] Motion to Consolidate the Bond Action with the Lien Foreclosure Action, Cobra's present
3 Motion claims that "[Brahma] cannot maintain the exact same cause of action against the exact same
4 defendants in two separate actions" and asks this Court to dismiss the "duplicative" claims in the Bond
5 Action. Other than its reliance on *Smith*, which acknowledges that the single cause of action rule is a
6 "general proposition,"²⁷ Cobra offers no compelling reason for this Court to (as TSE previously asked
7 it do to) put form over substance to give Cobra a procedural victory where it cannot defend the merits
8 of the action.

9 By now, this Court certainly understands that by seeking dismissal of the Bond Action, Cobra
10 and TSE hope to again put the timeliness of Brahma's action on the Bond at risk in the event the
11 Supreme Court grants TSE's Writ Petition (at some delayed and future point in time). Specifically, if
12 TSE successfully convinces the Supreme Court that Brahma's operative pleading filed in the Lien
13 Foreclosure Action was "void," the time for filing a new complaint against the Surety Bond (the Bond
14 Action by then having been dismissed), which is nine months after Brahma was served with notice of
15 the recording of the surety bond,²⁸ would have lapsed.

16 Notwithstanding the transparency of this strategy, Cobra disingenuously suggests that its
17 Motion is a matter of cost, inconvenience or fairness and complains that "Brahma's counsel is requiring
18 Defendants to separately respond to" Brahma's pleadings in both actions.²⁹ In reality, as Brahma's
19 counsel informed Cobra's counsel,³⁰ Cobra is only required to answer both pleadings because TSE
20 (Cobra's affiliate) refused to allow Brahma to file an amended pleading in the Lien Foreclosure Action,
21 including a Third-Party Complaint Against Surety, Surety Bond and Principal Thereon that would have
22 effectively brought Cobra and AHAC into the Lien Foreclosure Action consolidated and simplified
23 pleading for both actions.

27 See *Smith*, 93 Nev. at 432.

28 See NRS 108.2421(1)(b)(1).

29 See Motion p. 7.

30 See Motion, Exhibit 3.

1 As noted above, in rejecting Brahma’s proposed amendment, TSE’s counsel argued that it
2 would be procedurally “inappropriate as courts view two cases as continuing to exist separately
3 even after consolidation,” citing (as Cobra does here) *Matter of Estate of Sarge*, 134 Nev. Adv.
4 Op. 105, 432 P.3d 718, 722 (2018). As discussed below, TSE’s and Cobra’s coordinated analysis
5 is flawed, inapposite, inappropriate and solely intended to gain a procedural hammer to be used
6 against Brahma and its nearly \$13 million Surety Bond claim (exclusive of interest, costs and
7 attorney’s fees) for unpaid work, which TSE and Cobra cannot defend on the merits.

8 **B. *Estate of Sarge* Does Not Preclude Merger “In Appropriate Circumstances.”**

9 As Cobra and TSE have correctly noted, the Nevada Supreme Court in *Matter of Estate of*
10 *Sarge*, 134 Nev. Adv. Op. 105, 432 P.3d 718, 722 (2018) conformed Nevada practice regarding
11 NRCP 42(a) to its federal counterpart, overruling its own precedent of *Mallin v. Farmers Insurance*
12 *Exchange*, 106 Nev. 606, 609, 797 P.2d 978, 980 (1990). *Mallin* held that cases consolidated by a
13 district court “become a single case for all appellate purposes.” See *Sarge*, 432 P.3d at 719 (emphasis
14 added). At their core, *Mallin* and *Sarge* involve an issue of appellate jurisdiction – i.e., whether “an
15 order finally resolving a constituent consolidated case is immediately appealable as a final judgment
16 even where the other constituent case or cases remain pending.” *Id.* at 720. In overruling *Mallin*, the
17 Court in *Sarge* concluded, consistent with federal practice, that such an order is immediately appealable
18 as a final judgment. *Id.* Of course, appellate jurisdiction has nothing to do with the procedural history
19 and vector of this consolidated case or its constituent cases.

20 Cobra and TSE nonetheless contend that *Sarge* also stands for the proposition that
21 consolidation can never merge constituent cases such that there must forever be substantially identical
22 causes of action in the constituent cases (which, as noted, they also claim is improper). This is
23 completely wrong. While *Sarge* does correctly note that in federal practice “consolidation for purposes
24 of joint trial does not merge the cases into a single cause of action,”³¹ the United States Supreme Court
25 precedent upon which *Sarge* is based makes clear that this it never intended to preclude merger in all
26 cases for all purposes. See *Hall v. Hall*, 138 S. Ct. 1118, 1122, 200 L. Ed. 2d 399 (2018). Instead, *Hall*
27 concluded that “constituent cases retain their separate identities at least to the extent that a final
28

³¹ See *Sarge*, 432 P.3d at 721.

1 decision in one is immediately appealable by the losing party.” *Sarge* at 722 quoting *Hall*, 138 S.Ct. at
2 1131 (emphasis added). *Hall* explicitly left open the possibility of merger in appropriate cases, stating:
3 “This decision does not mean that district courts may not consolidate cases for all purposes in
4 appropriate circumstances.” *Hall*, 138 S. Ct. at 1122 (emphasis added).

5 As *Sarge* noted, the *Hall* case determined that “the term ‘consolidate,’ as used in FRCP 42(a),
6 is ambiguous; it can mean ‘the complete merger of discrete units’ or ‘joining together discrete units
7 without causing them to lose their independent character.’” *Sarge* at 722 quoting *Hall*, 138 S.Ct. at
8 1124-25. Accordingly, *Sarge* and *Hall* stand only for the following propositions: (i) consolidation does
9 not necessarily create merger, and (ii) consolidation does not create a merger that precludes an
10 immediate appeal of an otherwise final decision in a constituent case of a consolidated action. To
11 ascribe more meaning than this to *Sarge* (as *Cobra* and *TSE* attempt to do) is to fundamentally
12 misrepresent its holding. Nothing in *Sarge* or *Hall* precludes this Court from (if it deems it necessary
13 or appropriate) merging the “redundant” claims of the two consolidated actions involving the same
14 parties to simplify the pleadings and the consolidated case. As discussed more fully below in *Brahma*’s
15 Countermotion, this is precisely what this Court should do.

16 **C. Cobra’s Motion to Dismiss *Brahma*’s Claim for Unjust Enrichment is Premature.**

17 With respect to *Cobra*’s separate contention that *Brahma*’s claim for unjust enrichment in the
18 Bond Action should be dismissed simply because *Brahma* also claims the existence of a legal contract,
19 the Court should deny that motion as (at best) premature. *Brahma* is entitled to plead in the alternative,
20 as it has done here. See NRCP 8(a)(3) ([a] pleading that states a claim for relief must contain ... a
21 demand for relief sought, which may include relief in the alternative or different types of relief.”)³²

22 First, it is important to clarify that, by way of its First Amended Complaint in the Bond Action,
23 *Brahma* asserted three new causes of action against *Cobra* (in addition to the Claim Against Surety,
24 Surety Bond and Principal Thereon) arising out of a separate relationship between *Brahma* and *Cobra*
25 at the same Work of Improvement.³³ In summary fashion but without limitation, *Brahma* claims that,

26 ³² While *Cobra* does not so explicitly state, this portion of its Motion is made pursuant to NRCP 12(b)(5). On a motion
27 to dismiss for failure to state a claim for relief, the trial court and this court must construe the pleading liberally and
draw every fair intendment in favor of the plaintiff. *San Diego Prestressed v. Chicago Title Ins.*, 92 Nev. 569, 555 P.2d
484 (1976). Allegations in the complaint must be accepted as true. *Id.*

28 ³³ As the Court is aware, *Cobra* and AHAC posted the Surety Bond to release *Brahma*’s Notice of Lien, as amended,
from the Work of Improvement, which lien claim arose from *Brahma*’s work for *TSE*.

1 (i) pursuant to an earlier contract, Brahma performed work for Cobra at the Work of Improvement, (ii)
2 a dispute over payment arose between Brahma and Cobra, (iii) Brahma and Cobra negotiated a
3 resolution of that dispute, which terms were memorialized in writing (the "Settlement Agreement")
4 and (iv) Cobra breached the terms of that Settlement Agreement by failing to pay Brahma as agreed.³⁴
5 Based on these facts, Brahma asserts three causes of action: (i) Breach of Contract, (ii) Breach of the
6 Duty of Good Faith and Fair Dealing and (iii) Unjust Enrichment.³⁵

7 Cobra argues that because Brahma claims the existence of a written agreement (the Settlement
8 Agreement), Brahma may not seek a recovery based on unjust enrichment, citing *Leasepartners Corp.*
9 *v. Robert L. Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997) (an action
10 based on a theory of unjust enrichment is not available when there is an express, written contract,
11 because no agreement can be implied when there is an express agreement.) and *May v. Anderson*, 121
12 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) (because a settlement agreement is a contract, its
13 construction and enforcement are governed by principles of contract law).

14 While these authorities are certainly valid, Brahma's mere assertion of the existence of a valid
15 contract does not preclude Brahma from asserting, in the alternative (i.e., if Court determines that
16 there is no Settlement Agreement) that there is an implied contract entitling Brahma to the reasonable
17 value of its work. *See e.g.*, NRCp 8(a)(3).

18 "Where unjust enrichment is found, the law implies a quasi-contract which requires the
19 defendant to pay to plaintiff the value of the benefit conferred. In other words, the defendant makes
20 restitution to the plaintiff in *quantum meruit*." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev.
21 371, 380–81, 283 P.3d 250, 257 (2012). Where an implied-in-fact contract exists "*quantum meruit*
22 ensures the laborer receives the reasonable value, usually market price, for his services." *Precision*
23 *Constr.*, 128 Nev. at 380 citing Restatement (Third) of Restitution and Unjust Enrichment § 31 cmt. e
24 (2011); *Sack v. Tomlin*, 110 Nev. 204, 208, 871 P.2d 298, 302 (1994) ("The doctrine of *quantum meruit*
25 generally applies to an action ... involving work and labor performed which is founded on a[n] oral
26 promise [or other circumstances] on the part of the defendant to pay the plaintiff as much as the plaintiff
27 reasonably deserves for his labor in the absence of an agreed upon amount.").

28 ³⁴ See Exhibit 11, First Amended Complaint ¶¶ 29-36, Case No. CV39799.

³⁵ See *Id.* ¶¶ 28-50.

1 Here, unless and until Cobra acknowledges the existence and terms of an agreement between
2 the parties (the Settlement Agreement, as Brahma alleges), Brahma should be permitted to argue for
3 the existence of a quasi-contract entitling Brahma to restitution in *quantum meruit*, which is the basis
4 of its claim for unjust enrichment. *See Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371,
5 380–81, 283 P.3d 250, 257 (2012). If the Court were to dismiss Brahma’s alternative cause of action,
6 Brahma may be left without any remedy whatsoever if the Court also concludes (as Cobra will no
7 doubt argue) that there is no enforceable Settlement Agreement under *May v. Anderson*. See 121 Nev
8 at 673-74 (“an enforceable settlement agreement cannot exist when the parties have not agreed to the
9 essential terms of the release because these provisions constitute a material term of the settlement
10 contract.”).

11 By filing its Motion in lieu of an Answer, Cobra has so far avoided taking a position regarding
12 the existence of an enforceable Settlement Agreement. Making the reasonable assumption that, once
13 required to file an Answer, Cobra will deny the existence of an enforceable Settlement Agreement, the
14 foundational basis of Brahma’s claim for unjust enrichment (and the basis of Cobra’s Motion) will be
15 at play. Should Cobra concede the existence and enforceability of the Settlement Agreement, Brahma
16 will happily dismiss its claim for unjust enrichment. Because such an event seems unlikely at best,
17 Brahma should be allowed to proceed with its alternative claim for unjust enrichment.

18 **D. Conclusion.**

19 Based on the foregoing, Brahma respectfully requests that the Court deny Cobra’s Motion in
20 its entirety.

21 **IV. COUNTERMOTION**

22 For all of the reasons set forth in Brahma’s Opposition to Cobra’s Motion, Brahma respectfully
23 seeks leave of this Court to file a single consolidated pleading in this consolidated action substantially
24 in the form attached hereto as **Exhibit 12** (“the Proposed Consolidated Pleading”).

25 **A. The Court Should Grant Leave to Brahma to File and Serve the Proposed**
26 **Consolidated Pleading.**

27 Brahma’s Proposed Consolidated Pleading:

28 ///

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HENDERSON, NEVADA 89074
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- Acknowledges and incorporates this Court's reasoning in (i) denying TSE's Motion to Dismiss or Strike, and (ii) granting Brahma's Motion to Consolidate;
- Simplifies the pleadings and reduces needless paperwork in the interest of judicial economy; and
- Eliminates arguable redundancies in causes of action appearing in both the Lien Foreclosure Action and the Bond Action.


The Proposed Consolidated Pleading also creates no prejudice to any party. Nothing in the Proposed Consolidated Pleading prevents or precludes TSE from maintaining (i) its appeal of the Court's denial of its Motion to Expunge or (ii) its Writ Petition seeking review of this Court's denial of TSE's Motion to Dismiss or Strike. Similarly, those claims already stayed pending the outcome of the motions pending in the federal court will remain stayed. Unlike Cobra and TSE, Brahma seeks no procedural advantage other than the judicial economy the Proposed Consolidated Pleading will afford all parties.

B. Conclusion.

Based on the foregoing, the Court should grant Brahma leave to file and serve the Proposed Consolidated Pleading in substantially the form set forth in this Motion.

Dated this 25 day of March, 2019.

PEEL BRIMLEY LLP



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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of PEEL BRIMLEY LLP and that on this 25th day of March, 2019, I caused the above and foregoing document entitled, **BRAHMA GROUP, INC.'S OPPOSITION TO COBRA THERMOSOLAR PLANTS, INC.'S MOTION TO DISMISS AND COUNTERMOTION FOR LEAVE TO FILE A SINGLE CONSOLIDATED AMENDED COMPLAINT**, to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ Wiznet, the Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile**;
- ☒ to be hand-delivered; and/or
- ☐ other – electronic mail

to the party(ies) and/or attorney(s) listed below at the address and/or facsimile number indicated below:

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FILED
FIFTH JUDICIAL DISTRICT

APR 10 2019

Nye County Clerk
Sarah Westfall Deputy

11 **IN THE FIFTH JUDICIAL DISTRICT OF THE STATE OF NEVADA**

12 **IN AND FOR THE COUNTY OF NYE**

13 TONOPAH SOLAR ENERGY, LLC, a Delaware
limited liability company,

14 Plaintiff,

15 vs.

16 BRAHMA GROUP, INC., a Nevada corporation,

17 Defendant.

Case No. CV 39348
Dept. No. 2

Consolidated with: Case No. CV 39799

**TSE'S OPPOSITION TO BRAHMA'S
COUNTERMOTION FOR LEAVE TO
FILE A SINGLE CONSOLIDATED
COMPLAINT**

**Hearing Date: April 17, 2019
Hearing Time: 10:00 a.m.**

21 BRAHMA GROUP, INC., a Nevada corporation,

22 Counterclaimant/Lien Claimant,

23 vs.

24 TONOPAH SOLAR ENERGY LLC, a Delaware
25 limited liability company; BOE BONDING
26 COMPANIES I through X; DOES I through X;
ROE CORPORATIONS I through X; and TOE
TENANTS I through X, inclusive,

27 Counterdefendant.
28

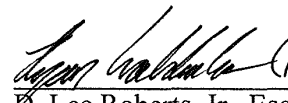


1 BRAHMA GROUP, INC., a Nevada corporation,
2 Third-Party Plaintiff,
3 vs.
4 COBRA THERMOSOLAR PLANTS, INC., a
5 Nevada corporation; AMERICAN HOME
6 ASSURANCE COMPANY, a surety; BOE
7 BONDING COMPANIES I through X; DOES I
8 through X; ROE CORPORATIONS I through X,
9 inclusive,
10 Third-Party Defendants.
11
12 H&E EQUIPMENT SERVICES, INC., a
13 Delaware corporation,
14 Plaintiff-In-Intervention,
15 vs.
16 BRAHMA GROUP, INC., a Nevada corporation,
17 TONOPAH SOLAR ENERGY LLC, a Delaware
18 limited liability company, COBRA
19 THERMOSOLAR PLANTS, INC., a Nevada
20 corporation; AMERICAN HOME ASSURANCE
21 COMPANY, a surety; BOE BONDING
22 COMPANIES I through X; DOES I through X;
23 ROE CORPORATIONS I through X, and TOE
24 TENANTS I through X, inclusive,
25 Defendants-In-Intervention.
26
27 BRAHMA GROUP, INC., a Nevada corporation,
28 Plaintiff,
vs.
COBRA THERMOSOLAR PLANTS, INC., a
Nevada corporation; AMERICAN HOME
ASSURANCE COMPANY, a surety; BOE
BONDING COMPANIES I through X; DOES I
through X; ROE CORPORATIONS I through X,
inclusive,
Defendants.



1 Tonopah Solar Energy, LLC ("TSE"), by and through its undersigned counsel, hereby
2 opposes Brahma Group, Inc.'s Countermotion for Leave to File a Single Consolidated Complaint
3 ("Countermotion"). Based on the following Memorandum of Points and Authorities, Brahma's
4 Countermotion should be denied.

5 DATED this 10th day of April, 2019.

6  (14946); on behalf of
7 D. Lee Roberts, Jr., Esq.
8 Colby L. Balkenbush, Esq.
9 Ryan T. Gormley, Esq.
10 WEINBERG, WHEELER, HUDGINS,
11 GUNN & DIAL, LLC
12 6385 S. Rainbow Blvd., Suite 400
13 Las Vegas, NV 89118
14 Attorneys for Tonopah Solar Energy, LLC

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I. INTRODUCTION

17 The Nevada Supreme Court's December 2018 decision in *Matter of Estate of Sarge*
18 requires that the Court deny Brahma's Countermotion. Prior to the *Sarge* decision, the *Mallin*
19 case arguably permitted courts to merge two consolidated cases into each other. However, *Sarge*
20 expressly overruled *Mallin* and held that consolidated cases "retain their separate identities" and
21 cannot be merged into one another. Moreover, the *Sarge* decision relied in part on the U.S.
22 Supreme Court's decision in *Hall*. In *Hall*, the U.S. Supreme Court stated that "consolidated
23 cases should remain separate as to parties, pleadings, and judgment." Thus, contrary to
24 Brahma's mischaracterization of it, the *Hall* case actually supports denying the Countermotion.

25 Perhaps sensing that its motion faces an uphill battle, Brahma seeks to play the victim
26 and argues that Cobra and TSE are conspiring to achieve some kind of procedural victory against
27 it. Brahma is not a victim nor is it in danger of becoming one. It is a massive national contractor
28 with approximately 2,500 employees and hundreds of millions in yearly revenue that submitted
millions in fraudulent charges on this Project.

TSE opposes the Countermotion because it seeks relief that is expressly barred by



1 Nevada case law and may have unintended consequences as this litigation progresses. The
2 purpose of Nevada's procedural rules is to "secure the just, speedy, and inexpensive
3 determination of every action and proceeding." NRCP 1. Taking these goals into account, the
4 Nevada Supreme Court decided in *Sarge* that consolidated cases should maintain separate
5 pleadings, verdicts and judgments. The Countermotion is a solution in search of a problem. If
6 the Countermotion is denied, both actions (i.e. CV 39348 and CV 39799) will still remain
7 consolidated and be heard together. To the extent judicial economy and convenience are
8 considerations, they have already been achieved by the granting of Brahma's prior Motion to
9 Consolidate.

10 In addition, although it is irrelevant to the merits of the Countermotion, TSE is compelled
11 to point out that, contrary to Brahma's assertions, TSE and Cobra are not ganging up on Brahma
12 and coordinating their defenses. Any similarity between Cobra's and TSE's arguments is either
13 pure coincidence or a product of Cobra's counsel reading the publicly available prior motion
14 work in this case.

15 TSE requests that the Court deny the Countermotion as it seeks relief that is prohibited
16 under the *Sarge* and *Hill* decisions and could have unforeseen procedural ramifications.

17 II. LEGAL ARGUMENT

18 A. The Nevada Supreme Court's December 2018 Decision in *Matter of Estate of* 19 *Sarge* Prohibits the Court From Merging Two Separate Actions into a Single 20 Action and is Directly on Point.

21 To properly understand the *Sarge* decision, it is necessary to first look at the case it
22 overruled – *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 607, 797 P.2d 978, 979 (1990). In
23 *Mallin*, the district court granted a motion to consolidate two insurance coverage actions "for all
24 purposes." *Id.* at 608, 797 P.2d at 980. Put another way, the district court in *Mallin* granted the
25 exact same motion that Brahma is now bringing before this Court. The Nevada Supreme Court
26 upheld the district court's decision and found that because the two actions had merged into one,
27 an order of the district court disposing of one of the two consolidated cases was not appealable
28 since the action as a whole remained undecided. *Id.* at 609, 797 P.2d at 980.



1 *Mallin* remained good law until December 2018 when the Nevada Supreme Court
2 expressly overruled it in *Sarge*, stating as follows:

3
4 [J]oinder for trial . . . does not merge two suits into a single suit . . . We thus
5 overrule our decision in *Mallin* to the extent it holds that cases consolidated
6 in the district court become a single case for all appellate purposes.
7 Consolidated cases retain their separate identities so that an order resolving
all of the claims in one of the consolidated cases is immediately appealable
as a final judgment under NRAP 3A(b)(1).

8 *Matter of Estate of Sarge*, 134 Nev. Adv. Op. 105, 432 P.3d 718, 722 (2018) (emphasis added)
9 (internal citations omitted). The *Sarge* holding is not ambiguous. Prior to December 2018, it
10 was arguably permissible for district courts in Nevada to merge two consolidated cases into a
11 single action “for all purposes” just as Brahma’s Countermotion requests. After *Sarge*, merger
12 of consolidated actions is prohibited. Brahma’s Countermotion is three months too late and
13 should be denied.

14
15 **B. Contrary to Brahma’s Assertions, the U.S. Supreme Court’s Decision in *Hall***
16 ***v. Hall* also Stands for the Proposition that Two Separation Actions Cannot**
Be Merged After Consolidation.

17 Realizing that the *Sarge* decision precludes the relief it seeks, Brahma cites to the U.S.
18 Supreme Court’s decision in *Hall* to support its Countermotion. *Hall v. Hall*, 138 S. Ct. 1118,
19 1120, 200 L. Ed. 2d 399 (2018). However, *Hall* is equally unfavorable to Brahma’s position. In
20 *Hall*, the U.S. Supreme Court analyzed whether cases that are consolidated under FRCP 42(a),
21 which is nearly identical to NRCP 42(a), may be merged into a single case. The Court answered
22 the question in the negative after extensively surveying the history of FRCP 42(a), the 1813
23 statute¹ on which FRCP 42(a) was based and addressing policy concerns. *See generally id.*
24 (“consolidation is permitted as a matter of convenience and economy in administration, but does
25 not merge the suits into a single cause, or change the rights of the parties, or make those who are
26 parties in one suit parties in another.”).

27
28 ¹ 28 U.S.C. § 734 (repealed in 1948).



1 In an attempt to distort the *Hall* holding, Brahma seizes on a section² of the decision that
2 states that the term “consolidate” in FRCP 42(a) is ambiguous. *See* Countermotion at 11:5-15.
3 Brahma goes on to argue that, since the term is ambiguous, merger of two separate actions into
4 one is still permissible in certain circumstances. *Id.*

5 What Brahma leaves out is that, after finding this ambiguity, the U.S. Supreme Court
6 resolved the ambiguity by resorting to FRCP 42(a)’s legislative history and determining that the
7 term “consolidate” meant that the two separate cases are joined together but do not lose their
8 separate character. *Hall*, 138 S. Ct. at 1130 (“No sensible draftsman, let alone a Federal Rules
9 Advisory Committee, would take a term that had meant, for more than a century, that separate
10 actions do not merge into one, and silently and abruptly reimagine the same term to mean that
11 they do.”).

12 The U.S. Supreme Court went on to explain the policy rationale for not permitting merger
13 of two consolidated actions:

14
15 through consolidation under Rule 42(a) one or many or all of the phases of
16 the several actions may be merged. But merger is never so complete in
17 consolidation as to deprive any party of any substantial rights which he may
18 have possessed had the actions proceeded separately. Thus, separate
19 verdicts and judgments are normally necessary.

20 *Id.* (internal citations omitted) (emphasis added).

21 Since separate verdicts and judgments are necessary, allowing the filing of a single
22 merged complaint makes no sense and would only create confusion as to what case a particular
23 decision or order applies to. Indeed, the *Hall* decision notes that federal courts may not merge
24 the pleadings of two consolidated cases as Brahma seeks to do. *Id.* at 1128 (“Treatises
25 summarizing federal precedent applying the consolidation statute also concluded that
26 consolidated cases remain distinct. They recognized that consolidated cases should remain
27
28

² *See Hall*, 138 S. Ct. at 1124 (“Consolidation can thus sometimes signify the complete merger of discrete units: “The company consolidated two branches.” But the term can also mean joining together discrete units without causing them to lose their independent character.”) (discussing the ambiguity of the term).



1 separate as to parties, pleadings, and judgment.”) (emphasis added) (internal citations and
2 quotations omitted).

3 In sum, the U.S. Supreme Court’s decision in *Hill* is consistent with the Nevada Supreme
4 Court’s decision in *Sarge* and supports denial of Brahma’s Countermotion. Both decisions
5 preclude courts from merging two separate cases into one and require that the two cases have
6 separate pleadings and separate judgments.

7 **C. Contrary to Brahma’s Assertions, TSE and Cobra are Not Conspiring to**
8 **Defeat Brahma Via Procedural Trickery. TSE Refused to Stipulate to**
9 **Allowing the Filing of a Single Merged Complaint Because Such Action is**
10 **Prohibited by the Nevada Supreme Court and Could Have Unintended**
11 **Consequences.**

12 Brahma attempts to distract the Court from the above unfavorable case law by accusing
13 TSE and Cobra of ganging up against Brahma to gain some kind of procedural advantage. First,
14 Brahma, a massive contractor with approximately 2,500 employees and hundreds of millions in
15 yearly revenue, is hardly at risk of being taken advantage of in this dispute. Second, Brahma is
16 incorrect that TSE and Cobra are coordinating their defenses. Cobra was the EPC contractor on
17 the Project while TSE was the Project owner. Further, Cobra has no influence over TSE’s
18 conduct of this litigation.

19 TSE is not seeking to gain any procedural advantage but rather to ensure that this case
20 proceeds in the correct procedural manner and to avoid unintended consequences. The *Sarge*
21 case simply prevents the Court from merging the two consolidated cases into a single case.

22 ///

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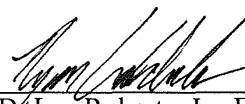


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III. CONCLUSION

The Nevada Supreme Court's decision in *Sarge* precludes courts from merging two consolidated actions into each other as Brahma is seeking to do. Further, the U.S. Supreme Court's decision in *Hall*, upon which the *Sarge* decision in part relied, states that consolidated cases must maintain separate pleadings. For these reasons Brahma's Countermotion should be denied.

DATED this 10th day of April, 2019.

 14946; on behalf of
Dr. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Ryan T. Gormley, Esq.
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Attorneys for Tonopah Solar Energy, LLC



CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of April, 2019, a true and correct copy of the foregoing **TSE'S OPPOSITION TO BRAHMA'S COUNTERMOTION FOR LEAVE TO FILE A SINGLE CONSOLIDATED COMPLAINT** was hand delivered to the following:

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11 **IN THE FIFTH JUDICIAL DISTRICT OF THE STATE OF NEVADA**

12 **IN AND FOR THE COUNTY OF NYE**

13 TONOPAH SOLAR ENERGY, LLC, a Delaware
14 limited liability company,

15 Plaintiff,

16 vs.

17 BRAHMA GROUP, INC., a Nevada corporation,

18 Defendant.

19 BRAHMA GROUP, INC., a Nevada corporation,

20 Counterclaimant/Lien Claimant,

21 vs.

22 TONOPAH SOLAR ENERGY LLC, a Delaware
23 limited liability company; BOE BONDING
COMPANIES I through X; DOES I through X;
24 ROE CORPORATIONS I through X; and TOE
TENANTS I through X, inclusive,

25 Counterdefendant.

26 BRAHMA GROUP, INC., a Nevada corporation,

27 Third-Party Plaintiff,
28

Case No. CV 39348
Dept. No. 2

Consolidated with: Case No. CV 39799

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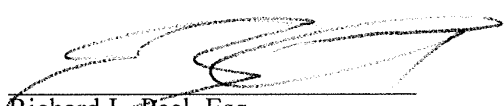


1 vs.
2 COBRA THERMOSOLAR PLANTS, INC., a
3 Nevada corporation; AMERICAN HOME
4 ASSURANCE COMPANY, a surety; BOE
5 BONDING COMPANIES I through X; DOES I
6 through X; ROE CORPORATIONS I through X,
7 inclusive,
8 Third-Party Defendants.
9
10 H&E EQUIPMENT SERVICES, INC., a
11 Delaware corporation,
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13 vs.
14 BRAHMA GROUP, INC., a Nevada corporation,
15 TONOPAH SOLAR ENERGY LLC, a Delaware
16 limited liability company, COBRA
17 THERMOSOLAR PLANTS, INC., a Nevada
18 corporation; AMERICAN HOME ASSURANCE
19 COMPANY, a surety; BOE BONDING
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21 ROE CORPORATIONS I through X, and TOE
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25 BRAHMA GROUP, INC., a Nevada corporation,
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27 vs.
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Nevada corporation; AMERICAN HOME
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inclusive,
Defendants.



RECEIPT OF COPY

RECEIPT OF COPY of TSE'S OPPOSITION TO BRAHMA'S
COUNTERMOTION FOR LEAVE TO FILE A SINGLE CONSOLIDATED
COMPLAINT is hereby acknowledged this 10th of April, 2019.



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