IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 78256

TONOPAH SOLAR ENERGY, LLC,

Appellant,

v.

BRAHMA GROUP, INC.,

Respondent.

Petition for Writ of Prohibition, or, Alternatively, Mandamus
Fifth Judicial District Court
The Honorable Steven Elliott, District Court Judge
District Court Case No. **CV 39348**

REAL PARTY IN INTEREST'S MOTION TO STRIKE JOINDER FILED BY COBRA THERMOSOLAR PLANTS. INC. AND AMERICAN HOME ASSURANCE COMPANY TO PETITIONER'S MOTION TO STAY DISTRICT COURT PROCEEDINGS OR, ALTERNATIVELY, FOR LEAVE TO FILE RESPONSE THERETO

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Attorneys for Real Party in Interest, Brahma Group, Inc.

I. INTRODUCTION/SUMMARY OF MOTION

Real Party in Interest, Brahma Group, Inc. ("Brahma") hereby moves the Court to strike the "Joinder" filed by Third-Party Defendants Cobra Thermosolar Plants, Inc. and its surety, American Home Assurance Company (the "Cobra Parties to the Motion to Stay the Underlying District Court Case Pending Resolution of its Petition for Writ of Prohibition, or, Alternatively, Mandamus (the "Motion") filed by Petitioner Tonopah Solar Energy. LLC's ("TSE"). The Nevada Rules of Appellate Procedure do not permit a "joinder," especially one (like the present) making new arguments in support of the Motion. Alternatively, to the extent the Court permits, receives and considers the Joinder, Brahma respectfully moves the Court for leave to file Brahma's Response to the Joinder, submitted herewith as **Attachment 1**.

II. STATEMENT OF FACTS

TSE commenced this writ proceeding by filing its Petition (the "Petition") on March 6, 2019. Brahma filed its Answer to Writ Petition on November 21, 2019. TSE filed its Reply on January 6, 2020. On January 14, 2020, the District Court for the Fifth Judicial District of Nevada (per Judge Elliot) entered an Order denying the Cobra Parties' motion to stay proceedings (the "Order Denying Stay"). On January 10, 2020 (before entry of the Order Denying Stay), TSE filed a Motion to Stay Proceedings in this proceeding. Pursuant to NRAP 27(a)(3)(A), Brahma timely filed is Response to that Motion on January 17, 2020. Also, on January 17, 2020, the Cobra Parties filed a Joinder to TSE's Motion, which Joinder is the subject matter of the present Objection and Motion to Strike.

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III. ARGUMENT

A. The Court Should Strike the Joinder.

While the Cobra Parties are parties to the District Court proceeding from which the present Petition arises, they (1) did not join, respond to or argue for or against the District Court Motion (8 PA 84-225- the "Underlying Motion") and Order (8 PA 870-877 - the "Underlying Order"), that form the basis of the Petition, filed on March 6, 2019. *See e.g.*, Petition p. 1. Indeed, the transcript of the hearing on that underlying motion demonstrates that while counsel for the Cobra Parties was present, he made no substantive argument whatsoever. *See e.g.,* 8 PA 816-818.[1]

1. The Cobra Parties have no standing here.

More fundamentally, the Underlying Motion sought no relief pertaining to the Cobra Parties and the Underlying Order granted/denied no relief to the Cobra Parties. Not surprisingly, the Cobra Parties did not respond to, or seek leave to respond to (or join in), the Petition, for which TSE is the Petitioner and Brahma is the Real Party in Interest. Brahma filed its Answer to Writ Petition on November 21, 2019 and TSE replied on January 6, 2020. The Cobra Parties' Joinder is the first time it has appeared or contributed anything to this writ proceeding. Again, this is not surprising. Brahma respectfully submits that while the Cobra Parties are parties to the District Court Action they are not parties to this writ proceeding and, for this and other reasons set forth below, have no right to join in TSE's motion.

While the Joinder announces the Cobra Parties' intention "in the near future" to file a separate Writ Petition to compel the District Court to stay the action (see Joinder p. 3), it has not done so yet. As Brahma argues in its Response to TSE's Motion to Stay, TSE lacks standing to seek a stay in this proceeding (to which it is

[1] The Cobra Parties were served no later than October 11, 2018. *See* 8 PA 890.

at least nominally a party[2]) of an action in the District Court to which it is no longer a party by virtue of the Federal Court Injunction. *See* Response pp. 4-5.

In the same way, the Cobra Parties have no standing – in this proceeding arising out of a different underlying order– to seek a stay of the District Court proceedings. They are certainly entitled to ***seek*** a stay of the District Court proceedings by way of a ***separate*** writ petition (seeking reversal of the District Court's denial of Cobra's motion for stay), as they state they will do. However, the Cobra Parties may not seek such relief by intervening into a writ proceeding pertaining to a wholly separate underlying order.

2. The Rules do not permit a "Joinder."

Even if the Cobra Parties are deemed to be parties to and/or have standing in this writ proceeding, the Nevada Rules of Civil Procedure do not appear to permit a Joinder and there is no rule that expressly permits a party to file a Response to a Joinder. *See e.g.*, NRAP 27 (allowing for a Motion, a Response and a Reply). Here, the Cobra Parties have made substantial substantive arguments in support of the issuance of a stay of proceedings on grounds ***other than*** those asserted by TSE in its Motion.

The Cobra Parties submitted their Joinder on the date responses to the Motion were due, leaving Brahma no time to adequately prepare and timely respond to the Joinder. Even if the Joinder is deemed a Motion, it should have been so designated, and Brahma would be entitled to a period of seven days to file a Response to the same. This Objection and Motion to Strike (and the Response submitted alternatively

[2] As Brahma has argued, in the Answer and in its Response to TSE's Motion, the Federal Court Injunction (as defined in the Response), prohibits litigation of the Removed Claims (against TSE, as defined in the Response) in "any state court" of Nevada. *See* Response p. 2. This also arguably means that the Removed Claims (from which this Petition arises) cannot be litigated in this Court and that TSE is also no longer a party to its own writ petition. *See id*., n.2.

with this Objection – see below and Attachment 1) are being submitted within that time frame.

Because there is no basis in the Rules for a Joinder, and because the Cobra Parties lack standing in this proceeding to join or seek a stay, the Court should strike the Cobra Parties' Joinder.

B. The Court Should Grant Brahma Leave To File A Response To The Joinder.

Out of an abundance of caution, in the event the Court denies Brahma's Motion to Strike the Joinder, and because the Rules do not expressly provide for the right to respond to a Joinder, Brahma hereby respectfully requests leave to file a Response to the Joinder, a copy of which is submitted herewith as Attachment 1. Also, out of an abundance of caution, Brahma is separately filing its Response to Joinder conditioned on the Court's leave to file the same.

IV. CONCLUSION

Based on the foregoing, Brahma respectfully requests that the Court Strike the Cobra Parties' Joinder or, alternatively, grant Brahma leave to file a Response to that Joinder.

Respectfully submitted this 24th day of January, 2020.

PEEL BRIMLEY LLP
/s/ Eric Zimbelman

_____

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Attorneys for Respondent Brahma Group, Inc.

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFCR 9(f), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 24th day of January, 2020, I caused the above and foregoing document, **REAL PARTY IN INTEREST'S MOTION TO STRIKE JOINDER FILED BY COBRA THERMOSOLAR PLANTS. INC. AND AMERICAN HOME ASSURANCE COMPANY TO PETITIONER'S MOTION TO STAY DISTRICT COURT PROCEEDINGS OR, ALTERNATIVELY, FOR LEAVE TO FILE RESPONSE THERETO,** 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;
- ☒ pursuant to NEFCR 9, upon all registered parties via the Nevada Supreme Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;**
- ☐ to be hand-delivered;

to the attorney(s) and/or party(ies) listed below :

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ATTACHMENT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 78256

TONOPAH SOLAR ENERGY, LLC,

Appellant,

v.

BRAHMA GROUP, INC.,

Respondent.

Petition for Writ of Prohibition, or, Alternatively, Mandamus
Fifth Judicial District Court
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REAL PARTY IN INTEREST'S RESPONSE TO JOINDER FILED BY COBRA THERMOSOLAR PLANTS. INC. AND AMERICAN HOME ASSURANCE COMPANY TO PETITIONER'S MOTION TO STAY DISTRICT COURT PROCEEDINGS

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Attorneys for Real Party in Interest, Brahma Group, Inc.

I. INTRODUCTION/SUMMARY OF RESPONSE

Real Party in Interest, Brahma Group, Inc. ("Brahma") hereby responds to the Joinder (the "Joinder") to Petitioner Tonopah Solar Energy. LLC's ("TSE") Motion to Stay the Underlying District Court Case Pending Resolution of its Petition for Writ of Prohibition, or, Alternatively, Mandamus (the "Motion") filed by Third-Party Defendants Cobra Thermosolar Plants, Inc. and its surety, American Home Assurance Company (the "Cobra Parties"). By separate submission, Brahma has objected and moved to strike the Joinder or, in the alternative, to permit the following Response to the Joinder. To the extent the Court permits and considers the Joinder, the Court should reject it, on the following grounds (among others) more fully discussed below:

- The District Court has already considered and correctly rejected to the Cobra Parties' contention that there are no substantive claims against Cobra in the District Court. To the contrary, Brahma's Claim on Surety Bond (against the Cobra Parties and their Surety Bond,[1] not TSE) is expressly created by NRS 108.2421;
- The Cobra Parties voluntarily submitted to the District Court proceedings when they recorded the Surety Bond and cannot now complain that they must defend Brahma's claim;
- The Cobra Parties' motion to intervene in the federal court action between Brahma and TSE is hotly contested, remains pending, and may not be decided for many months.
- The Cobra Parties are not prejudiced in discovery when, among other things, TSE is subject to subpoena in the District Court; and

[1] The term "Surety Bond" is more fully identified below.

- A stay of proceedings will certainly not "allow Brahma's claims to proceed in an orderly manner and without prejudice" where, after nearly two years of litigation, Brahma is (owing to TSE's and the Cobra Parties' delaying tactics) nowhere near a trial on the merits of its right to payment of nearly $13 million.

II. ARGUMENT

A. Judge Elliott Correctly Concluded That Brahma's Claim On Surety Bond Is An Independent Cause Of Action.

The Cobra Parties are parties to the District Court proceeding solely because they recorded a surety bond (the "Surety Bond") pursuant to NRS 108.2413 to 108.2425 (the "Bonding Statute") to release Brahma's claim of lien against TSE's property and work of improvement (the "Claim of Lien"). Nothing in the Nevada Mechanic's Lien Statute (NRS 108.221 through 108.246 inclusive) required the Cobra parties to do this. Having done so, however, the Cobra Parties submitted themselves to the jurisdiction of the Nye County Court and appointed the Clerk of the Court as their agent pursuant to NRS 108.2423 which provides in part:

> By entering into a surety bond given pursuant to NRS 108.2415, the ***principal and surety submit themselves to the jurisdiction of the court*** in which an action or suit is pending on a notice of lien on the property described in the surety bond, and ***the principal and surety irrevocably appoint the clerk of that court as their agent*** upon whom any papers affecting the liability on the surety bond may be served. ***The liability of the principal may be established by the court in the pending action***.

Cobra (not TSE) is the Surety Bond principal against whom Brahma has a claim and against whom it seeks to obtain a judgment, along with the surety and the Surety Bond, in the county in which the Work of Improvement is located (Nye County).

While Brahma also has claims against TSE, those contract-based claims now reside in the Federal Court by virtue of the injunction TSE sought and obtained from the Federal Court.

Despite this clear statutory cause of action, Cobra contends that "there are no substantive claims against Cobra or AHAC in this (Nye County) action" and that "Brahma will have to prove its case against TSE before it may foreclose against the Surety Bond." *See* Joinder p. 2. Judge Elliott correctly rejected this contention as follows:

> By posting the Surety Bond pursuant to NRS 108.2415(1), the Cobra Parties caused Brahma's Lien (recorded against the Work of Improvement) to be released. Brahma's Lien now attaches to the Surety Bond, which (i) replaces the Work of Improvement as security for Brahma's Lien, and (ii) entitles Brahma to bring its action against the Surety Bond in this Court.[2]

Judge Elliott also correctly rejected Cobra's contention that NRS 108.2421 requires a lien claimant (such as Brahma) to bring an action against its debtor (here, TSE) in the same action as it brings its Claim on Surety Bond, as follows:

> The Court does not find this argument to be persuasive. Nothing in NRS 108.2421 mandates that a lien claimant must bring an action against its debtor in the same action as the principal and surety who caused a surety bond to be issued. To the contrary, NRS 108.2421 simply confirms that a lien claimant is "entitled to bring an action against … the lien claimant's debtor in any court of competent jurisdiction that is located within the county where the property upon which the work of improvement is located."

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[2] *See* **Exhibit C** to Brahma's Response to TSE's Motion to Stay (Order Denying Cobra's Motion to Stay), p. 3.

Stated differently, while Brahma may bring its Claim on Surety Bond in the same action as it brings is claims against the debtor, it is ***not required*** to do so. By contrast, NRS 108.2421(1) ***entitles*** Brahma to bring its action on the surety bond and its principal and surety in Nye County.

Here, because TSE wants the claims against it to be heard in Federal Court, it removed those claims and obtained an injunction from the Federal Court precluding Brahma from litigating such claims in any state court.[3] More specifically, the Federal Court enjoined Brahma "from litigating the following claims alleged against [TSE] in any state court action: 1) breach of contract, 2) breach of implied covenant of good faith and fair dealing and 3) violation of NRS 624." The Federal Court did ***not*** enjoin Brahma from proceeding on its remaining claims in the Nye County Court -- specifically, Brahma's claims against the Cobra Parties and the Surety Bond. Specifically, the Federal Court ruled:

> Although Brahma has recorded mechanics' liens against the Work of Improvement, all ***such liens are no longer attached after surety bonds were recorded*** releasing the liens pursuant to NRS 108.2415(6). Furthermore, ***this Court has only ever had contractual and quasi-contractual claims before it***, so there is ***no possibility that the parallel proceedings will result in inconsistent dispositions*** of a single res. [4]

Moreover, and while the Cobra Parties confidently advise this Court that "it is likely" the Federal Court will grant their Motion to Intervene (see Joinder, p. 3), Brahma

[3] Not surprisingly, the Cobra Parties (like TSE) repeat their tired mantra that "Brahma engaged in forum shopping" as if: (1) TSE did not desperately want to get out of Nye County, (2) the Cobra Parties have not moved to intervene in the Federal Court, and (3) TSE and the Cobra Parties have not lost every contested motion heard in Nye County, all of which is true. *See* ***Appendix 1*** hereto (Chart of Nye County Motions).

[4] 1 RPIA 132-33.

respectfully begs to differ. If the Federal Court permits the Cobra Parties to intervene if will be joining a non-diverse party (Cobra) into an action that was removed solely on the basis of diversity. For this reason and others, Brahma has opposed that motion. In any event, and while Cobra suggests a stay would impose but a minor inconvenience to Brahma, a stay while the Federal Court considers Cobra's Motion to Intervene is likely to delay the case by as much as a year. By way of the most relevant example, TSE filed its injunction motion in October 2018 (6 PA 503) and Judge Boulware's decision granting the same was issued in September 2019, nearly one year later. 1 RPIA 128.

B. The Cobra Parties Volunteered.

The Cobra Parties complain that "[a]s principal and surety on the bond, Cobra and AHAC bear all the risk and the ultimate cost of TSE's defenses." First, this is simply inaccurate because, as TSE's contractor, Cobra (or its surety) has the ability to recoup from TSE those amounts it (or its surety) may be required to pay Brahma for a judgment arising out of the Nye County action. More fundamentally, and even if the Cobra Parties do "bear all the risk" they voluntarily placed themselves in this position by recording the Surety Bond. No statute required Cobra to cause a bond to be recorded to release a lien against TSE's property and work of improvement.

Even if Cobra was obligated to step into Brahma's dispute with TSE and record a Surety Bond (as bond principal), by contract or otherwise, a proceeding on a surety bond without the claimant's debtor as a party is hardly unusual. As Judge Elliot noted, based on his personal experience, contractors sometimes "become insolvent or otherwise judgment proof and, like here, their bonding companies were required to stand in their shoes and defend claims against the contractors in the forum 'where the property upon which the work of improvement is located.'"[5]

[5] *See* **Exhibit C** to Brahma's Response to TSE's Motion to Stay (Order Denying Cobra's Motion to Stay), p. 5.

Fundamentally, this case is no different because, for whatever reason,[6] a third party (Cobra) secured (from its own surety) and recorded a surety bond to release the debtor's (TSE) property and work of improvement. Finally, the fact that Cobra recorded a surety bond to release a claim of lien arising from a contract to which it was not a party strongly indicates that it has a means of recourse against TSE in the event Brahma obtains judgment.

C. The Cobra Parties Will Not Be Hampered In Discovery.

The Cobra Parties also complain, without supporting evidence, that "have already experienced difficulty retrieving evidence they need to defend their claims." They specifically contend that they will be hampered in discovery because TSE, as a non-party, refuses to participate, including by responding to the Cobra Parties' written requests for discovery. Joinder, p. 4. Speaking from the other side of their mouths, the Cobra Parties also complain that they "face[] the real possibility of duplicative discovery" if the two actions (state and federal) are allowed to simultaneously proceed (even though they are only a party to one of those actions, in Nye County). Joinder, p. 3. The Cobra Parties also did not advise this Court that they have already received thousands of documents from Brahma, ***including numerous documents produced by TSE*** in the Federal Court Action.[7]

The Cobra Parties also argue that this Court "must either stay the Nye County Action as to all parties or require TSE to comply with Cobra and AHAC's discovery requests." Joinder, p. 5. Yet the Cobra Parties have made no effort to enforce their discovery requests in Nye County by way of an NRCP 37 motion. The Cobra Parties' position also ignores an obvious solution to TSE's obstinance – issuing a third-party subpoena to TSE pursuant to NRCP 45 for TSE's documents, a remedy the Cobra

[6] Brahma still does not know– and neither TSE nor Cobra have ever explained – why Cobra chose to record the Surety Bond.

[7] See **Exhibit D** hereto (Brahma Initial Disclosures).

Parties have yet to even attempt. In essence, the Cobra Parties are seeking discovery relief ***in a writ action*** (filed by different party), which they never sought below.

Similarly, the Cobra Parties argue that they should "not be forced to defend themselves against Brahma's claims ***if TSE is not forced to remain an active party*** to the litigation …" Joinder, p. 6 (emphasis added). Stated differently, the Cobra Parties are also asking this Court, in writ action filed by a different party, to overrule or reverse an injunction issued by the Federal Court and restore TSE as a party to the Nye County Action. The Cobra Parties seem confused as to what is actually before this Court. [8]

D. A Stay Rewards The Cobra Parties' Delay Tactics.

The Cobra Parties argue, apparently with a straight face, that granting a stay of the Nye County proceedings will "allow Brahma's claims to proceed in an orderly manner and without prejudice." Joinder, pp. 3-4. It will do nothing of the kind. For nearly two years, Brahma has been forced by TSE and the Cobra Parties to engage in procedural motion after procedural motion bringing Brahma's claims nowhere near a hearing on the merits.[9] The Joinder is nothing more than a continuation of the Cobra Parties' and TSE's dilatory tactics designed to delay and obstruct Brahma's efforts to collect the nearly $13 million it is owed (not including attorney's fees, costs and statutory interest). As a Nevada contractor and lien claimant Brahma is entitled to – but so far has not received - the full protections of Nevada's mechanic's lien statute. *See Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc.*, 124 Nev.

[8] Despite seeking relief for matters not even before this Court, the Cobra Parties complain of "procedural gamesmanship" from Brahma. Joinder p. 5. Pot meet kettle.

[9] *See e.g.*, Appendix 1. It is worth noting that in denying one of those motions (TSE's Motion to Expunge Brahma's Lien) the District Court concluded that Brahma's Lien was "not frivolous nor was it made without reasonable cause" and later awarded its Brahma fees and costs for successfully defending the motion to expunge. 3 PA 273; 1 RPIA 12.

1102, 1117-18, 197 P.3d 1032, 1042 (Nev. 2008) (Nevada public policy favors "preserving laws that provide contractors secured payment for their work and materials.").

III. CONCLUSION

Based on the foregoing, Brahma respectfully requests that the Court reject the Cobra Parties' Joinder and deny TSE's Motion to Stay the District Court Proceedings.

Respectfully submitted this 24th day of January, 2020.

PEEL BRIMLEY LLP

/s/ Eric Zimbelman

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25(b) and NEFCR 9(f), I certify that I am an employee of **PEEL BRIMLEY, LLP**, and that on this 24th day of January, 2020, I caused the above and foregoing document, **REAL PARTY IN INTEREST'S RESPONSE TO JOINDER FILED BY COBRA THERMOSOLAR PLANTS. INC. AND AMERICAN HOME ASSURANCE COMPANY TO PETITIONER'S MOTION TO STAY DISTRICT COURT PROCEEDINGS**, 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;
- ☒ pursuant to NEFCR 9, upon all registered parties via the Nevada Supreme Court's electronic filing system;
- ☐ pursuant to EDCR 7.26, to be sent **via facsimile;**
- ☐ to be hand-delivered;

to the attorney(s) and/or party(ies) listed below:

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EXHIBIT D

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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 **BRAHMA GROUP, INC.'S INITIAL LIST OF WITNESSES AND DOCUMENTS PURSUANT TO NEV. R. CIV. P. 16(a)(1)**
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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BRAHMA GROUP, INC., a Nevada corporation,

Third-Party 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,

Third-Party Defendants.

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

Plaintiff-in-Intervention,

vs.

BRAHMA GROUP, INC., a Nevada corporation, TONOPAH SOLAR ENERGY LLC, a Delaware limited liability company, 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, and TOE TENANTS I through X, inclusive,

Defendants-in-Intervention.

BRAHMA GROUP, INC. a Nevada corporation,

Plaintiff,

vs.

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

Defendants.

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BRAHMA GROUP, INC.'S INITIAL LIST OF WITNESSES AND DOCUMENTS PURSUANT TO NEV. R. CIV. P. 16(a)(1)

BRAHMA GROUP, INC. ("BGI"), by and through its attorneys of record PEEL BRIMLEY LLP and hereby submits their Initial List of Witnesses and Documents pursuant to Nev. R. Civ. P. 16.1(a)(1 as follows:

A. WITNESSES

1. 30(b)(6) Witness for Brahma Group, Inc.
c/o PEEL BRIMLEY LLP
3333 E. Serene Ave, Suite 200
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The 30(b)(6) Person(s) designated by BGI is expected to testify regarding their knowledge of the facts and circumstances surrounding the allegations set forth in the Complaint and all Cross-Actions to this matter.

2. Sean Davis
Brahma Group, Inc.
c/o PEEL BRIMLEY LLP
3333 E. Serene Ave, Suite 200
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Mr. Davis is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in the Complaint and all Cross-Actions to this matter.

3. David Zimmerman, Vice-President and General Counsel
Brahma Group, Inc.
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Telephone: (702) 990-7272

Mr. Zimmerman is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in the Complaint and all Cross-Actions to this matter.

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4. Ted Ahlin
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Mr. Ahlin is a member of BGI's project management team and is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in the Complaint and all Cross-Actions to this matter.

5. Clay Stanaland
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Henderson, NV 89074
Telephone: (702) 990-7272

Mr. Stanaland is a member of BGI's project management team and is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in the Complaint and all Cross-Actions to this matter.

6. Karen Morris
Brahma Group, Inc.
c/o PEEL BRIMLEY LLP
3333 E. Serene Ave, Suite 200
Henderson, NV 89074
Telephone: (702) 990-7272

Ms. Morris is a Project Administrative Assistant and is expected to testify regarding her knowledge of the facts and circumstances surrounding the allegations set forth in the Complaint and all Cross-Actions to this matter.

7. 30(b)(6) Witness for Tonopah Solar Energy ("TSE")
c/o WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
Telephone: (702) 938-3838

The 30(b)(6) Person(s) designated by TSE is expected to testify regarding their knowledge of the facts and circumstances surrounding the allegations set forth in Complaint and all Cross-Actions to this matter.

PEEL BRIMLEY LLP
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HENDERSON, NEVADA 89074
(702) 990-7272 ♦ FAX (702) 990-7273

8. 30(b)(6) Witness for Crescent Dunes Solar Energy Facility ("Crescent")
c/o WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
Telephone: (702) 938-3838

The 30(b)(6) Person(s) designated by Crescent is expected to testify regarding their knowledge of the facts and circumstances surrounding the allegations set forth in Complaint and all Cross-Actions to this matter.

9. Rob Howe
SolarReserve
520 Broadway
6th Floor
Santa Monica, CA 90401
Telephone: (310) 315-2200

Mr. Howe is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in Complaint and all Cross-Actions to this matter.

10. Russ Meacham
PIC Group, Inc.
1000 Parkwood Circle, Suite 1000
Atlanta, GA 30339
Telephone: 770-850-0100

Tel: 770-850-0100The 30(b)(6) Person(s) designated by Crescent is expected to testify regarding their knowledge of the facts and circumstances surrounding the allegations set forth in Complaint and all Cross-Actions to this matter.

11. 30(b)(6) Witness for Pic Group, Inc.
PIC Group, Inc.
1000 Parkwood Circle, Suite 1000
Atlanta, GA 30339
Telephone: 770-850-0100

The 30(b)(6) Person(s) designated by Crescent is expected to testify regarding their knowledge of the facts and circumstances surrounding the allegations set forth in Complaint and all Cross-Actions to this matter.

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(702) 990-7272 ♦ FAX (702) 990-7273

12. 30(b)(6) Witness for Cobra Thermosolar Plants, Inc. ("Cobra")
c/o WEIL & DRAGE, APC
2500 Anthem Village Drive
Henderson, NV 89052
Telephone: (702) 314-1905

The 30(b)(6) Person(s) designated by Cobra is expected to testify regarding their knowledge of the facts and circumstances surrounding the allegations set forth in Complaint and all Cross-Actions to this matter.

13. 30(b)(6) Witness for American Home Assurance Company ("AHAC")
c/o WEIL & DRAGE, APC
2500 Anthem Village Drive
Henderson, NV 89052
Telephone: (702) 314-1905

The 30(b)(6) Person(s) designated by AHAC is expected to testify regarding their knowledge of the facts and circumstances surrounding the allegations set forth in Complaint and all Cross-Actions to this matter.

14. 30(b)(6) Witness for H&E Equipment Services, Inc.
c/o GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP
1140 N. Town Center Drive, Suite 300
Las Vegas, NV 89144-0596
Telephone: (702) 836-9800

The 30(b)(6) Person(s) designated by AHAC is expected to testify regarding their knowledge of the facts and circumstances surrounding the allegations set forth in Complaint and all Cross-Actions to this matter.

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(702) 990-7272 ♦ FAX (702) 990-7273

15. 30(b)(6) Witness for FTI Consulting ("FTI")
1001 17th Street, Suite 1100
Denver, CO 80202

The 30(b)(6) Person(s) designated by FTI is expected to testify regarding their knowledge of the facts and circumstances surrounding the allegations set forth in Complaint and all Cross-Actions to this matter.

16. Justin Pugh
FTI Consulting
1001 17th Street, Suite 1100
Denver, CO 80202

Mr. Pugh is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in Complaint and all Cross-Actions to this matter.

17. Chris LeWand
FTI Consulting
1001 17th Street, Suite 1100
Denver, CO 80202

Mr. LeWand is expected to testify regarding his knowledge of the facts and circumstances surrounding the allegations set forth in Complaint and all Cross-Actions to this matter.

18. BGI reserves the right to designate and/or utilize any witness designated by any other party to this action.

19. BGI reserves the right to designate any expert as necessary.

20. BGI reserves the right to designate any witness (including expert witness) necessary for rebuttal or impeachment purposes.

21. BGI reserves the right to supplement its Initial List of Witnesses pursuant to Nev. R. Civ. P. 16.1 as new witnesses become known throughout discovery.

B. **DOCUMENTS**

BGI discloses the following documents Bates Stamped Nos. **BGI000001 through BGI76865** (https://app.box.com/s/wvs92vtlxbho9m9oofvyn70omjocrevh).

Redacted portions of these documents contain information such as dates of birth, banking information, social security numbers, Attorney/Client Privilege-Work Product Doctrine.

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DOCUMENT(S)	BATES NOS.
Approved Change Orders	BGI00001 – BGI00070
Contract	BGI000071 – BGI00091
Invoices (Paid)	BGI00092 – BGI04099
Invoices (Unpaid)	BGI04100 – BGI07886
Notices of Lien	BGI07887 – BGI07991
Notice of Right to Lien	BGI07992 – BGI07994
Notices of Withholding	BGI07995 – BGI08735
Timesheets & Daily Logs (2017)	BGI08736 – BGI10049
Timesheets & Daily Logs (2018)	BGI10050 – BGI10291
Brahma Invoice Data	BGI10292
Notices of Withholding	BSI10293 – BGI10304
Work Orders	BGI10305 – BGI12896
Additional Conditional Waivers	BGI12897 – BGI12930
Brahma's Flow Chart	BGI12931
Proof of Payments	BGI12932 – BGI12971
List of Sub Suppliers	BGI12972
Liberty Industrial Group NV Shares	BGI12973
Invoices (Paid)	BGI12974 – BGI13283
Brahma Group, Inc.'s Stock Certificate	BGI13284 – BGI13285
J.T. Thorpe & Son, Inc.'s Stock Certificate	BGI13286
LIG Stock transfer to TMC	BGI13287 – BGI13292
Grant Bargain Sale Deed to Tonopah Solar Energy Recorded May 24, 2011	BGI13293 – BGI13297

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Development Agreement between Nye County and Tonopah Solar Energy Recorded August 2, 2011	BGI13298 – BGI13455
Grant of Generation – Tie Easement Recorded September 14, 2011	BGI13456 – BGI13476
Right-of-Way Grant Recorded September 23, 2011	BGI13477 – BGI13499
Construction and Permanent Deed of Trust Recorded October 26, 2011	BGI13500 – BGI13529
UCC Financial Statement Recorded October 27, 2011	BGI13530 – BGI13536
Re-Recorded Right-of-Way Recorded January 5, 2017	BGI13537 – BGI13563
Brahma's 10-Day Notice of Intent to Stop Work dated July 13, 2018	BGI13564 – BGI13567
Brahma's Amended 10-Day Notice of Intent to Stop Work dated July 17, 2018	BGI13568 – BGI13571
Brahma's Notice of Termination of Agreement dated August 17, 2018	BGI13572
Brahma's Notice of Termination of Agreement Certified Mail Receipt	BGI13573
Demand Letter/Request for Mediation to Justin Jones dated April 19, 2018	BGI13574 – BGI13576
Read Response re Response to Notice Withholding	BGI13577
Return Mail Receipt to 10 Day Notice	BGI13578
Return Mail Receipt to Amended 10-Day Notice	BGI13579
Tonopah's Equipment List	BGI13580 – BGI13585
E-mail Production of Clay Stanaland, Ted Ahlin, David Zimmerman, Mark Hauber and Sean Davis	BGI13586 – BGI57492

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Email Production of Karen Morris and Kyle Davis	BGI57493 – BGI76856
Notice of Stopping Work/Notice of Intent to Terminate Agreement dated August 2, 2018 to Tonopah Solar Energy	BGI076857 - BGI076859
USPS Proof of Delivery, Tracking No. 70122210000147136542 dated August 21, 2018	BGI76860 - BGI76861
USPS Attempted Delivery, Tracking No. 70122210000147136559	BGI76862 - BGI76865

TSE Disclosures: BGI hereby also discloses all witnesses and documents produced by TSE in its Initial Disclosures, First Supplement, Second Supplement, Third Supplement and Fourth Supplement produced in the matter of *Brahma v. Tonopah Solar Energy,* Case No. 2:18-cv-01747, in the United States District Court, District of Nevada, as more fully described in the attached *Exhibit A*. Such documents are disclosed and produced with this Initial Disclosures.

BGI reserves the right to designate any document or other item of tangible evidence designated by any other party to this action.

BGI reserves the right to designate any document or other item of tangible evidence necessary for rebuttal or impeachment purposes.

BGI reserves the right to supplement its Initial List of Documents pursuant to Nev. R. Civ. P. 16.1 as new documents become known throughout discovery.

C. COMPUTATION OF DAMAGES

Brahma calculates its damages as follows:

Brahma has invoiced TSE for work, materials or equipment totaling $27,315,971.63, has been paid $14,456,393.89 and is owed $12,859,577.44, exclusive of interest, costs and attorney's fee. Brahma's mechanic's lien and claim on surety bond, as amended, is therefore $12,859,577.44, exclusive of interest, costs and attorney's fee.

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D. INSURANCE AGREEMENTS

BGI is not aware of any insurance agreements at this time, and specifically reserves the right to supplement this initial disclosure to add relevant information, if subsequent information and investigation so warrant.

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 27th day of June, 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 27th day of June, 2019, I caused the above and foregoing document entitled **BRAHMA GROUP, INC.'S INITIAL LIST OF WITNESSES AND DOCUMENTS PURSUANT TO NEV. R. CIV. P. 16(a)(1)**, 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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Attorneys for H&E Equipment Services, Inc.

Teresa M. Hansen

An Employee of Peel Brimley LLP

APPENDIX 1

APPENDIX 1

to

Brahma's Response to Joinder

Chart of Motions – Nye County

Date filed	**Name/description**	**Filed by**	**Date Denied (NOE)**	**Date Granted (NOE)**
6/1/2018	Motion to Expunge	TSE	11/1/2018 (Brahma Opposed)	
10/18/2018	Motion to Strike or Dismiss	TSE	1/28/2018 (Brahma Opposed)	
10/19/2018	Motion to Amend	Brahma		1/28/2019 (TSE Opposed)
11/1/2018	Motion for Fees and Costs (NRS 108.2275(6)(C)	Brahma		1/9/2019 (TSE Opposed)
11/16/2018	Motion to Intervene	H&E Equipment (lien/bond claimant)		5/13/2019 (TSE Opposed)
12/17/2018	Motion to Consolidate	Brahma		3/15/2019 (TSE Opposed)
2/21/2019	Motion to Dismiss	Cobra	4/16/2019 (Dismissed by Stipulation)	
3/25/2019	Counter-Motion to File Consolidated Amended Pleading	Brahma		4/22/2019 (TSE Opposed)
10/15/2018	Motion to Stay Proceedings	Cobra	1/14/2019 (Brahma opposed)	
10/30/2019	Motion to Compel PMK Deposition of Cobra	Brahma		11/21/2019 (Stipulation on the record, written order pending)