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DISTRICT COURT

CLARK COUNTY, NEVADA

ENERGY ALLIANCE TECHNOLOGY CORPORATION, a Utah Corporation, Appellant, vs. ENVIRONMENTAL APPLIED TECHNOLOGY CORPORATION f/k/a ENERGY ALLIANCE TECHNOLOGY CORPORATION, a Nevada Corporation Appellee.	Case No. A-21-839930-B Dept. No. 13

NOTICE OF APPEAL

Appellant ENERGY ALLIANCE TECHNOLOGY CORPORATION, a Utah Corporation (hereinafter "Appellant"), by and through its attorney of record, Lance A. Maningo of MANINGO LAW, hereby appeals to the Supreme Court of Nevada from:

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(1) Order Granting Plaintiff's Motion to Confirm Arbitration Award and Request to Enter Judgement and Order Denying Defendant's Countermotion to Vacate Arbitration Award, or in the Alternative, to Stay Confirmation and Final Judgement, which was filed on November 3, 2021. Please see **Exhibit A.**

Dated this 22 day of November, 2021.

MANINGO LAW

By: _____

Lance A. Maningo
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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that on the 22 day of November, 2021, a true and correct copy of the foregoing NOTICE OF APPEAL was served to the following parties by electronic transmission through the Odyssey eFileNV system:

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Attorney for Plaintiff

An Employee of Maningo Law

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EXHIBIT "A"

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Attorneys for Plaintiff Environmental Applied Technology Corporation f/k/a Energy Alliance Technology Corporation

DISTRICT COURT

CLARK COUNTY NEVADA

ENVIRONMENTAL APPLIED TECHNOLOGY CORPORATION f/k/a ENERGY ALLIANCE TECHNOLOGY CORPORATION, a Nevada corporation; Plaintiff, v. ENERGY ALLIANCE COMPANY, a Utah corporation; Defendant.	Case No. A-21-839930-B Dept. No. XIII **ORDER GRANTING MOTION TO CONFIRM ARBITRATION AWARD AND REQUEST TO ENTER JUDGMENT** **-AND-** **ORDER DENYING COUNTERMOTION TO VACATE ARBITRATION AWARD, OR IN THE ALTERNATIVE, TO STAY CONFIRMATION** **-AND-** **FINAL JUDGMENT**

THIS MATTER having come on for hearing on October 18, 2021, on Plaintiff Energy Alliance Technology Corporation's *Motion to Confirm Arbitration Award and Request to Enter Judgment*. Appearing at the hearing were Charles E. Gianelloni, Esq. and Jeff Singletary, Esq. of

the law firm of Snell & Wilmer L.L.P., counsel for Plaintiff, and Lance A. Maningo, Esq., counsel for Defendant Energy Alliance Company. The Court heard and considered the Motion and its supporting papers, as well as Defendant's *Countermotion to Vacate Arbitration Award or, in the Alternative, to Stay Confirmation of Arbitration Award Pending an Evidentiary Hearing and Decision of Related Cases* and its supporting papers, and all arguments and reports from counsel at the hearing, and good cause having been shown:

IT IS HEREBY ORDERED that the October 18, 2021 Motion to Confirm Arbitration Award and Request to Enter Judgment is **GRANTED.**

IT IS FURTHER ORDERED that the Final Arbitration Award, attached as Exhibit 1, is **CONFIRMED.**

IT IS FURTHER ORDERED that judgment is entered in favor of Plaintiff ENVIRONMENTAL APPLIED TECHNOLOGY CORPORATION f/k/a ENERGY ALLIANCE TECHNOLOGY CORPORATION on the terms stated in the attached Final Award, which is wholly incorporated into this Order and Judgment.

IT IS FURTHER ORDERED that Defendant's Countermotion to Vacate Arbitration Award or, in the Alternative, to Stay Confirmation of Arbitration Award Pending an Evidentiary Hearing and Decision of Related Cases is **DENIED.**

IT IS SO ORDERED.

Dated this 3rd day of November, 2021

ABG

EE8 BE2 0E45 5832
Mark R. Denton
District Court Judge

Respectfully submitted by:

SNELL & WILMER L.L.P.

/s/ Charles E. Gianelloni
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Attorneys for Plaintiff Environmental Applied Technology Corporation

Approved by:

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EXHIBIT 1

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION® | AMERICAN ARBITRATION ASSOCIATION®

American Arbitration Association

COMMERCIAL ARBITRATION TRIBUNAL

In the Matter of the Arbitration between:

Environmental Applied Technology Corporation fka Energy Alliance Technology Corporation, hereinafter referred to as "Claimant" or "EATC NV"

-and-

Energy Alliance Technology Company, hereinafter referred to as "Respondent" or "EATC UT"

AAA Case No: 01-21-0002-1637

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the parties, having been duly sworn, having duly heard the proofs and allegations of Claimant, being represented by Jeffrey M. Singletary, Esq., including the testimony of Mr. Andrew Soulakis, and having reviewed Claimant's Arbitration Brief dated July 20, 2021, exhibits (J01-22), and submission on attorneys' fees, expenses, and costs, hereby make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

A. Procedural Background

1. On or about March 4, 2021, Claimant initiated this arbitration proceeding ("this Arbitration") against Respondent.

2. Respondent was duly noticed of this Arbitration and the deadlines imposed by the Preliminary Hearing and Scheduling Order #1 dated June 7, 2021 ("Scheduling Order"), which was, on June 8, 2021, mailed by AAA to Respondent via U.S. and Certified Mail (# 9489 0090 0027 6094 8239 10), at 9700 Baden Avenue, Chatsworth, CA 91311, and sent via email to preston.tyree@eatcinc.com.

3. Thereafter, all documents submitted in this Arbitration have been served on Respondent via email and/or U.S. Mail.

4. Respondent has failed to appear and participate in this Arbitration, failed to obtain a postponement or extension of the deadlines set forth in the Scheduling Order, and failed to attend the Final Hearing properly noticed for and held on July 22, 2021, at 9:30 a.m. PST.

5. After waiting approximately ten minutes for a representative of Respondent to appear, I found that, given the above, the Final Hearing should proceed in the absence of Respondent.

6. The findings set forth in this Award are based on the evidence submitted by Claimant, not on any default of Respondent in this Arbitration.

B. The Parties

7. Claimant is a corporation that was founded and organized in Nevada in 2014, and is registered in California, originally under the name Fortuneswell Corporation. Claimant's principal place of business is in Glendale, California. Claimant is a company in the energy industry, with a particular focus on fossil fuel enhancement additives.

8. Respondent is a corporation that was founded and organized in Utah in 2014. Respondent's principal place of business is in North Centerville, Utah, and prior to that time, Sherman Oaks, California. At the time of the Final Hearing, Respondent was a corporation not in good standing. Like Claimant, Respondent is a company in the energy industry. Respondent staked its early success on its represented ownership of the BIO-T Formula—a revolutionary component of fossil fuel enhancement additives.

9. Until December 31, 2018, Claimant was a wholly-owned subsidiary of Respondent.

C. The BIO-T Formula and the Agreement

10. In 2015, Respondent—through its agents, including its President and Director, Preston Tyree ("Mr. Tyree")[1]—began supplying the BIO-T Formula to Claimant. Claimant thereafter began using the BIO-T Formula in its fossil fuel enhancement additives. Claimant ran diagnostic testing on the BIO-T Formula, marketed the product containing the BIO-T Formula, and became a leader in this industry sector. Claimant demonstrated that it is on this data and marketing that clients have relied, and continue to rely, on the product for which the BIO-T Formula is utilized.

11. On December 31, 2018, Claimant and Respondent entered into the Asset Transfer and Dividend Distribution Agreement (the "Agreement"), whereby Claimant acquired all of Respondent's assets. (*See* Exhibit J01.) As the key consideration for the deal, Claimant acquired the BIO-T Formula and all related rights, materials, product, inventory, and equipment related to it. (*Id.* at Section 2.1(b)(i), Schedule A.)

12. Section 2.1(b)(i) of the Agreement provides, "EATC UT shall transfer to EATC NV all of EATC UT's and such other EATC UT Entities' respective right, title and interest in and to the EATC UT Assets." This includes the following:

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[1] Mr. Tyree is a current shareholder of Respondent, and one of the three board members for Claimant.

> All associated intellectual property relating to BIO-T, meaning any copyrights, patents or patent applications, trademarks, and goodwill and all other intangible assets, including, without limitation, if and to the extent in existence, any and all trade secrets, inventions, designs, copyrights, non-registered trademarks and other intellectual property, know-how manufacturing methods, formulas, and processes.

(*See* Exhibit J01 at Schedule A.)

13. In exchange for Respondent's assets, a series of transactions took place that resulted in Claimant distributing its stock to Respondent's shareholders. (*See* Exhibit J01 at Sections 2.1-2.2, 3.1-3.3.)

14. Claimant "spun off" completely from Respondent and ceased to be a subsidiary of Respondent as of December 31, 2018.

15. Claimant made clear, at all relevant times, that its interest in contracting with Respondent was to obtain the BIO-T Formula. Respondent, in turn, represented that it had been assigned the patent to the BIO-T Formula, that it owned the BIO-T Formula and that it would be providing to Claimant complete ownership of the product through the Agreement. Respondent's representations regarding the BIO-T Formula are the only reason the Agreement was entered into and fully executed.

D. Respondent Fails to Comply with the Agreement

16. For about a year after the Agreement was executed, what was believed to be the BIO-T Formula was supplied to Claimant with no problems—it was received as needed and used in Claimant's product. Vladimir Podlipskiy ("Mr. Podlipskiy"), the scientist who supplied the confidential components of the BIO-T Formula, and had always been the custodian of the product, continued in this role after the Agreement was executed.

17. Claimant had previously raised concerns over Mr. Podlipskiy's status as the only custodian of the BIO-T Formula—largely to avoid potential disruptions if anything happened to Mr. Podlipskiy. (*See e.g.,* Exhibits J02-05.)

18. Claimant made numerous attempts to gain custody of the BIO-T Formula and its complete formulation. (*Id.*) Mr. Podlipskiy never relinquished control over the BIO-T Formula; instead, he only provided an incomplete formulation and claimed to keep sole custody of the "secret ingredient," to be provided to Claimant upon request. (*See* Exhibit J06.)

19. Claimant chose not to fight the arrangement, at the time, because the process ran relatively smoothly.

20. In early 2020, Mr. Podlipskiy, at Mr. Tyree's urging, began refusing to supply Claimant with the BIO-T Formula. The refusal put Claimant in a precarious situation, as Claimant only had a limited supply left on hand.

21. Claimant became unable to manage and fulfill its clients' demands as its supply dwindled.

22. At the same time, on February 27, 2020, Mr. Tyree sent a demand letter to Mr. Soulakis—Claimant's CEO—demanding numerous corporate documents on behalf of Claimant's board of directors, comprising of himself, Mr. Soulakis, and Harry Hibler. (*See* Exhibit J07.) Claimant responded to Mr. Tyree, providing him with most of the records he requested. (*See* Exhibit J08.)

23. In light of the above, Claimant ran diagnostic tests on the remaining BIO-T Formula that it still had on hand. (*See* Exhibit J09.) These tests demonstrated that the product that was being supplied by Mr. Podlipskiy, since execution of the Agreement, was different than the BIO-T Formula provided in 2015. (*See id.*)

24. Respondent, through Mr. Tyree, then claimed that Respondent never owned the BIO-T Formula in the first place. (*See* Exhibit J10.)

25. In an Answer dated July 6, 2021, in separate litigation in California, styled as *Environmental Applied Technology Corporation fka Energy Alliance Technology Corporation v. Preston Tyree et al*, Los Angeles Superior Court, Case No. 21STCV07476 ("the California Action"), Mr. Tyree stated that (i) he and Mr. Hibler are the "joint owners of the patent rights on which the BIO-T Formula is based" (*id.* at ¶ 5(a)), (ii) "[d]espite making the BIO-T Formula available for use by [Respondent], and later by [Claimant], [Mr. Tyree] and Mr. Hibler never assigned, licensed or otherwise transferred to [Respondent] . . . right or interest [] in the BIO-T Formula . . . ." (*id.* at ¶ 5(b)), and (iii) under the Agreement, Claimant "alleged acquisition of the BIO-T Formula consisted only of a limited (non-exclusive) right, at the pleasure of Defendant and Mr. Hibler, to use the BIO-T Formula in the manufacture, blending and marketing of fuel additive products and nothing more" (*id.* at ¶ 39)). These statements in Mr. Tyree's Answer constitute judicial admissions under Nevada law and are, therefore, admissible here. *See, e.g., Smith v. Zilverberg*, 481 P.3d 1222, 1229 n.6 (Nev. 2021) (holding party to statements made in pleading under the "doctrine of judicial admissions").

26. The Agreement does not, expressly or implicitly, state that Respondent does not own the BIO-T Formula or that Respondent is conveying only the "limited (non-exclusive) right" to use the BIO-T Formula.

27. Unbeknownst to Claimant, it had been receiving a different product despite Respondent's representations regarding its ownership, and use of, the BIO-T Formula in the Agreement. Mr. Soulakis confirmed during the Final Hearing that the BIO-T Formula was the only reason Claimant entered into the Agreement.

28. Respondent misrepresented its ownership of the BIO-T Formula to induce Claimant into entering into the Agreement, and then orchestrated the withholding of the BIO-T Formula in breach of the Agreement.

E. Indemnity Under the Agreement[2]

29. Article 9 of the Agreement defines the indemnity obligations of the parties. (*See* Exhibit J01 at Article IX.) Section 9.3 of the Agreement specifically governs Respondent's indemnification responsibilities, providing:

> Following the Effective Time and subject to Section 12.1, EATC UT shall, and shall cause EATC UT Entities to, indemnify, defend, and hold harmless each EATC NV Entity and its Affiliates, and each of their respective current or former directors, officers, employees, agents, and each of the heirs, executors, administrators, successors and assigns of any of the foregoing (each, a "EATC NV Indemnified Party"), from and against any and all Liabilities

[2] I address the indemnification provisions in the Agreement with respect to only Claimant's request for attorneys' fees and costs. If Claimant has an indemnification claim and/or separate claims for relief relating to potential Third Party Claims (as defined in the Agreement), no such claims were at issue in this Arbitration.

arising out of or resulting from any of the following items:

> (a) each breach by EATC UT or any EATC UT Entity of this Agreement, subject to any specific limitation on liability contained in the applicable agreement and without duplication taking into account the performance by each EATC NV Entity of its indemnification obligations in the agreement.

(*Id.* at Section 9.3 (emphasis in original).)

30. As early as May 27, 2020, and at numerous times thereafter, Claimant notified Respondent of its intent to hold Respondent to its indemnification responsibilities, in compliance with the Agreement. Respondent failed to respond to Claimant's notices, and did not dispute its indemnification responsibilities stemming from this Arbitration.

31. The liabilities at issue bring this Arbitration within the indemnification principles of the Agreement. It is on these facts that the Agreement's attorneys' fees provision, found in Section 10.3(c), is applicable to this Arbitration. Section 10.3 specifically provides:

> Costs of the arbitration shall be borne equally by the parties involved in the matter, except that each party shall be responsible for its own expenses, unless and to the extent otherwise determined by the arbitrator; provided, in the case of any Disputes relating to the parties rights and obligations with respect to indemnification under this Agreement, the prevailing party shall be entitled to reimbursement by the other party of its reasonable out-of-pocket fees and expenses (including attorneys' fees) incurred in connection with the arbitration.

(*See* Exhibit J01 at Section 10.3(c).)

32. Claimant requests an award of $96,960.68 in attorneys' fees and costs. (*See* Declaration of Jeffrey M. Singletary executed on July 30, 2021 ("Mr. Singletary's Declaration") at ¶ 15.)

33. If any Findings of Fact are properly Conclusions of Law, they shall be treated as though appropriately identified and designated.

CONCLUSIONS OF LAW

1. A breach of contract claim lies where there is: (i) the existence of a valid contract; (ii) a breach by the defendant; and (iii) damage as a result thereof. *See Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 899 (9th Cir. 2013) (citing *Richardson v. Jones*, 1 Nev. 405, 408 (Nev. 1865)). [3]

[3] The Agreement "shall be governed by, and construed in accordance with, the Laws of the State of Nevada, regardless of the Laws that might otherwise govern under applicable principles of conflicts of laws thereof." (*See* Exhibit J01 at Section 10.4.) Likewise, the arbitration provision in the Agreement states that the Arbitrator is "bound exclusively by the laws of the State of Nevada without regard to its choice of law rules." (*Id.* at Section 10.3(b).)

2. An enforceable contract requires "an offer and acceptance, meeting of the minds, and consideration." *Anderson v. Sanchez*, 132 Nev. 357, 360, 373 P.3d 860, 863 (2016). "A meeting of the minds exists when the parties have agreed upon the contract's essential terms." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 378 (Nev. 2012).

3. Consideration requires something that is "bargained for and given in exchange for an act or promise." *Zhang v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 120 Nev. 1037, 1042 n.22 (Nev. 2004), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224 (Nev. 2008).

4. The Agreement must be construed under the well-known rules of contract interpretation. *See Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005) ("Generally, when a contract is clear on its face, it 'will be construed from the written language and enforced as written.' The court has no authority to alter the terms of an unambiguous contract.").

5. Accepting Mr. Tyree's admissions in the California Action as true (*see* J10), Respondent executed the Agreement believing it was only conveying the limited (non-exclusive) right, at the pleasure of Messrs. Tyree and Hibler, to use the BIO-T Formula in the manufacture, blending and marketing of fuel additive products and nothing more, and Claimant executed the Agreement understanding and intending that the conveyance of the BIO-T Formula in Schedule A to the Agreement meant something different. In that case, the required meetings of the mind on all essential terms does not exist on the Agreement, which voids the Agreement altogether, instead of giving rise to breach of contract damages. *See Chudacoff v. Univ. Med. Ctr.*, 954 F. Supp. 2d 1065, 1085 (D. Nev. 2013) ("Under Nevada law, an enforceable contract is formed when there is offer, acceptance, meeting of the minds, and consideration.").

6. Alternatively, Claimant demonstrated that it is entitled to rescission under either of the following distinct theories: (i) fraudulent inducement, and (ii) Respondent's failure to perform. *See e.g., Awada v. Shuffle Master, Inc.*, 123 Nev. 613, 622-23 (Nev. 2007) (affirming trial court's rescission of a contract based on fraudulent inducement); *Canepa v. Durham*, 62 Nev. 417, 427 (Nev. 1944) ("A partial failure of performance of a contract will not give ground for its rescission unless it defeats the very object of the contract or renders that object impossible of attainment, or unless it concerns a matter of such prime importance that the contract would not have been made if default in that particular had been expected or contemplated.") (internal quotation marks omitted).[4]

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[4] Section 12.13 of the Agreement also contemplates the equitable relief awarded here:

> In the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the affected party shall have the right to specific performance and injunctive or other equitable relief of its rights under this Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The other party shall not oppose the granting of such relief. The parties hereto agree that the remedies at law for any breach or threatened breach hereof, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing and posting of any bond with such remedy are waived.

(*See* Exhibit J01 at Section 12.13.)

7. "Rescission is an equitable remedy which totally abrogates a contract and which seeks to place the parties in the position they occupied prior to executing the contract." *Bergstrom v. Estate of DeVoe,* 109 Nev. 575, 577 (Nev. 1993). Rescission of a contract can be accomplished either "legall[y]" or "equitabl[y]." *Great Am. Ins. Co. v. Gen. Builders, Inc.,* 113 Nev. 346, 353 n. 6 (Nev. 1997). Under a theory of "equitable recission," "the aggrieved party brings an action in a court with equitable jurisdiction asking the court to nullify the contract." *Id.* Whether to rescind a contract lies within a finder of fact's broad discretion. *Canepa v. Durham,* 65 Nev. 428, 437 (1948).

8. Under Nevada law, a party to a contract may seek rescission of that contract based on fraud in the inducement. *See Awada,* 123 Nev. at 622; *see also Havas v. Alger,* 85 Nev. 627, 631-33 (Nev. 1969) (affirming rescission of a vehicle sales contract where the purchased vehicle was one year older than represented). The elements for fraudulent inducement are: (i) defendant's false representation; (ii) defendant's knowledge or belief that the representation was false (or knowledge that it had an insufficient basis for making the representation); (iii) defendant's intention to induce plaintiff to consent to the contract's formation; (iv) plaintiff's justifiable reliance on the misrepresentation; and (v) damage to plaintiff resulting from such reliance. *See J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.,* 120 Nev. 277, 290-91 (Nev. 2004). Claimant proved by clear and convincing evidence each of these elements in this Arbitration.

9. Respondent (i) made a false representation about its ownership of the BIO-T Formula, and/or (ii) orchestrated withholding of the BIO-T Formula, despite selling the BIO-T Formula to Claimant for its stock.

10. Respondent necessarily knew that its representations were false at the time they were made. Respondent withheld delivery of the product. When it did deliver, Respondent delivered a product that was different than the BIO-T Formula from 2015. And, Respondent now claims that it never owned the BIO-T Formula in the first place. Respondent knew, at the time it entered into the Agreement, that it would not, and could not, perform.

11. Respondent intended to induce Claimant into entering the Agreement with its false representations. Claimant made clear that its primary goal in entering into the Agreement was to gain ownership of the BIO-T Formula.

12. Claimant justifiably relied on the false representations. Claimant entered into the Agreement with the primary goal of acquiring the BIO-T Formula and all related assets. If not for these representations, Claimant would not have contracted with Respondent.

13. Claimant has suffered particular money damages as a result of Respondent's actions. Claimant may face future damages stemming from third-party claims arising from product representations using data from the BIO-T Formula received in 2015.

14. Also, Nevada has long recognized the right to rescind a contract on another party's failure to perform. *See e.g., Canepa,* 62 Nev. at 427. The Supreme Court of Nevada has said:

> A partial failure of performance of a contract will not give ground for its rescission unless it defeats the very object of the contract or renders that object impossible of attainment, or unless it concerns a matter of

> such prime importance that the contract would not have been made if default in that particular had been expected or contemplated.

Id. (internal quotation marks omitted). Courts interpreting this standard have required there to be a "substantial breach," which has involved as little as failure to pay money. *See Harrington v. Tackett,* No. 3:18-CV-00028-WGC, 2020 WL 5749997, at *11-12 (D. Nev. 2020) (applying Nevada law and finding failure to pay more than $20,000 on a $300,000 contract warranted rescission); *see also Havas,* 85 Nev. at 633-35 (affirming trial court's holding to rescind vehicle sales contract where the subject car was inoperable and, as a result, there was a failure of consideration).

15. By proving that Respondent has failed to deliver the BIO-T Formula since the execution of the Agreement—either by withholding the same or never having ownership of it—Claimant has shown, by a preponderance of the evidence, that Respondent failed to perform.

16. The Agreement was supposed to be an exchange of Claimant's stock for Respondent's assets, including the BIO-T Formula. Claimant's chief interest in Respondent's assets was the BIO-T Formula. Claimant performed its end of the bargain by distributing its stock to Respondent. Respondent failed to perform its obligations by (i) misrepresenting its ownership of the BIO-T Formula, and/or (ii) orchestrating withholding of the BIO-T Formula. By failing to adhere to its contractual obligations, Respondent is in "substantial breach."

17. Nevada law authorizes an award of attorneys' fees when provided for in a contract. *See* NRS 18.010(1) ("The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law."). Costs are likewise routinely awarded to a prevailing party. *See* NRS 18.020 (outlining the numerous situations for which a prevailing party is entitled to costs); NRS 18.050 (allowing a prevailing party to recover costs in the discretion of the court).

18. Rescission of a contract does not preclude recovery based on an attorneys' fees and costs provision in the void contract. *See Mackintosh v. California Fed. Sav. & Loan Ass'n,* 113 Nev. 393, 406, 935 P.2d 1154, 1162 (1997) (agreeing with case that held "that when parties enter into a contract and litigation later ensues over that contract, attorney's fees may be recovered under a prevailing-party attorney's fee provision contained therein even though the contract is rescinded or held to be unenforceable.") (citation omitted).

19. Claimant's entitlement to attorneys' fees and costs here stems from the indemnification provisions in the Agreement, which is specifically authorized by Section 10.3(c) of the Agreement. (*See* Exhibit J01 at Section 10.3(c).)[5]

20. Under Section 9.3 of the Agreement, Respondent is to indemnify Claimant from, and against any, "[l]iabilities" resulting from, "each breach by EATC UT or any EATC UT Entity of this Agreement, subject to any specific limitation on liability contained in the applicable agreement and without duplication taking into account the performance by each EATC NV Entity of its indemnification obligations in the agreement." (*Id.* at Section 9.3(a).) "Liabilities" also covers "attorneys' fees, the costs and expenses of all demands . . .[.]" (*Id.* at Page 7 of 29.)

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[5] Alternatively, Claimant would be entitled to an award of its attorneys' fees (and costs) because it did not recover more than $20,000 in this Arbitration. *See* NRS 18.010(2)(a) ("In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party: . . . When the prevailing party has not recovered more than $20,000 . . . ."); *see also* NRS 18.050.

21. Claimant is, therefore, entitled to reasonable attorneys' fees and costs as the prevailing party in this Arbitration. *See, e.g., Women's Fed. Sav. & Loan Ass'n of Cleveland v. Nevada Nat. Bank,* 623 F. Supp. 469, 470 (D. Nev. 1985) ("A plaintiff may be considered the prevailing party . . . if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing the suit.").

22. When considering the reasonableness of attorneys' fees, Nevada courts look to the following four factors:

> (a) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill;
> (b) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation;
> (c) the work actually performed by the lawyer: the skill, time and attention given to the work; and
> (d) the result: whether the attorney was successful and what benefits were derived.

Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969); *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530, 549 (Nev. 2005).

23. In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court," which "is tempered only by reason and fairness." *Shuette,* 124 P.3d at 548–49. "Accordingly, in determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.*

24. Here, the qualities and skills of Mr. Singletary, the other attorneys, and the paralegals who worked with him in this Arbitration, are not disputable. And, the hourly rates charged by Claimant's counsel (from $295 to $680) are well within the prevailing market rates for commercial litigation in Nevada. *See e.g., In re USA Commercial Mortg. Co. v. USA SPE LLC,* Case Nos. 2:07-CV-892-RCJ-GWF and 3:07-CV-241-RCJ-GWF, 2013 WL 3944184, *20 (D. Nev. 2013) ("The Court finds that those suggested hourly rates are reasonable in comparison to prevailing market rates for complex commercial litigation in Nevada of between $350 and $775 an hour...."); *see also Ingram v. Oroudjian,* 647 F.3d 925, 928 (9th Cir. 2011) (agreeing with "[o]ther circuit courts [that] have held that judges are justified in relying on their own knowledge of customary rates and their experience concerning reasonable and proper fees.") (citations omitted). As a result, this factor weighs in favor of the reasonableness of the attorneys' and paralegal fees.

25. As to the second and third factors, the work performed by Mr. Singletary and his team is evidenced by his Declaration and the invoices attached thereto as Exhibit 1. The number of hours expended were reasonable. This factor, thus, weighs in favor of the reasonableness of the fees.

26. Fourth and finally, the result of the work performed by Mr. Singletary and his team on behalf of Claimant resulted in Claimant prevailing in this Arbitration. This successful result satisfies the fourth prong of the *Brunzell* test. I find that Claimant is entitled to recover reasonable attorneys' fees in the amount of $71,892.50.

27. Additionally, Claimant seeks to recover the administrative fees of the American Arbitration Association paid by Claimant in the amount of $6,250, the Arbitrator compensation totaling $4,950, and travel costs incurred to attend the Final Hearing totaling $818.18.

28. I find that, under the circumstances of this Arbitration and the factors set forth in *Brunzell*, $83,910.68 represents a reasonable amount of fees, expenses, and costs that Claimant is entitled to be awarded for prosecuting and prevailing in this Arbitration against Respondent.

29. If any Conclusions of Law are properly Findings of Fact, they shall be treated as though appropriately identified and designated.

Based on the above Findings of Fact and Conclusions of Law, I AWARD as follows:

1. Judgment is hereby entered in favor of Claimant EATC NV and against Respondent EAC UT.

2. For its remedy, Claimant EATC NV has elected, and is hereby awarded, rescission of the Agreement. Claimant EATC NV and Respondent EATC UT shall be restored to their original positions before the execution of the Agreement. This relief shall include, among other things, Respondent EATC UT returning to Claimant EATC NV all stock issued to Respondent's shareholders pursuant the Agreement, and Claimant EATC NV returning to Respondent EATC UT all assets conveyed by Respondent EATC UT to Claimant EATC NV, including, but not limited to, the alleged BIO-T Formula.

3. Claimant EATC NV is also awarded, and Respondent EATC UT shall pay Claimant EATC NV, the sum of EIGHTY-THREE THOUSAND NINE HUNDRED TEN DOLLARS AND SIXTY-EIGHT CENTS ($83,910.68), which represents the amount of reasonable attorneys' fees, costs, and expenses Claimant EATC NV is entitled to recover as the prevailing party.

4. The above sum shall accrue post-judgment interest at the applicable statutory rate of interest commencing on August 17, 2021, until paid in full.

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5. This Award is in full settlement of all claims submitted to this Arbitration. All claims asserted in this Arbitration not expressly granted herein are hereby denied.

Dated: August 16, 2021.

Arbitrator Signature: Nikki L Baker

Subscribed and sworn to before me
this 16th day of August, 2021.

NOTARY PUBLIC
My Commission expires: March 14, 2022

ERIN L. PARCELLS
Notary Public, State of Nevada
No. 06-104446-1
My Appt. Exp. Mar. 14, 2022

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Environmental Applied Technology Corporation, Plaintiff(s) vs. Energy Alliance Technology Company, Defendant(s)	CASE NO: A-21-839930-B DEPT. NO. Department 13

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 11/3/2021

Sonja Dugan	sdugan@swlaw.com
Charles Gianelloni	cgianelloni@swlaw.com
Jill Math	jmath@swlaw.com
Docket Docket	docket_las@swlaw.com
Aleem Dhalla	adhalla@swlaw.com
Lance Maningo	lance@maningolaw.com
Madisyn Schaus	madisyn@maningolaw.com
D'Andrea Dunn	ddunn@swlaw.com

Lance A. Maningo
MANINGO LAW
Nevada Bar No. 6405
400 South 4th Street, Suite 650
Las Vegas, Nevada 89101
702.626.4646
lance@maningolaw.com
Attorney for Appellant

DISTRICT COURT

CLARK COUNTY, NEVADA

ENERGY ALLIANCE TECHNOLOGY CORPORATION, a Utah Corporation, Appellant, vs. ENVIRONMENTAL APPLIED TECHNOLOGY CORPORATION f/k/a ENERGY ALLIANCE TECHNOLOGY CORPORATION, a Nevada Corporation Appellee.	Case No. A-21-839930-B Dept. No. 13

CASE APPEAL STATEMENT

Appellant, ENERGY ALLIANCE TECHNOLOGY COMPANY, a Utah Corporation ("Appellant"), by and through their counsel of record, Lance A. Maningo of MANINGO LAW, hereby files this Case Appeal Statement.

1. Name of appellant filing this Case Appeal Statement:

Defendant, ENERGY ALLIANCE TECHNOLOGY COMPANY, a Utah Corporation.

2. Identify the Judge issuing the decision, judgment, or order appealed from:

The Honorable Mark R. Denton.

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant, ENERGY ALLIANCE TECHNOLOGY COMPANY, a Utah Corporation is represented by Lance A. Maningo of Maningo Law, 400 South Fourth Street, Suite 650, Las Vegas NV 89101.

4. Identify each plaintiff and the name and address of appellate counsel, if known, for each plaintiff (if the name of a plaintiff's appellate counsel is unknown, indicated as much and provide the name and address of that plaintiffs' trial counsel):

Appellee, ENVIRONMENTAL APPLIED TECHNOLOGY CORPORATION f/k/a ENERGY ALLIANCE TECHNOLOGY CORPORATION, a Nevada Corporation is represented by Charles E. Gianelloni Esq. of Snell & Wilmer LLP, 3883 Howard Hughes Parkway, Suite 1100, Las Vegas, N 89169 and Jeff M. Singletary, Esq. of Snell & Wilmer LLP,600 Anton Boulevard, Suite 1400, Costa Mesa, CA 92626.

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

Jeff M. Singletary was granted permission to appear under SCR 42 on October 21, 2021 by The Honorable Mark R. Denton.

6. Indicated whether appellant was represented by appointed or retained counsel in the district court:

Appellant is represented by retained counsel.

MANINGO LAW
400 South 4th Street, Suite 650
Las Vegas, Nevada 89101
www.maningolaw.com

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellant is represented by retained counsel.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

Appellant was not granted leave to proceed in forma pauperis.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint indictment, information, or petition was filed):

August 23, 2021.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This is a civil breach of contract case that was handled via arbitration. The Arbitration was initiated by Appellee against Appellant to advance a sham claim to divest Appellee's related entity from millions of shares. Appellee litigated an arbitration against itself, wherein the Board of Directors for Appellee and Appellant were the same. Appellee in obtaining a default judgment elected an unconstitutional remedy, wherein the arbitrator divested millions of non-party Appellee shareholders from their property rights without notice. Appellee moved to confirm the fraudulent arbitration award and Appellant filed a countermotion to Vacate Arbitration Award, or in the Alternative Stay Confirmation and Final Judgment while a companion lawsuit against Appellees moved forward. Appellant now appeals from: (1) Order Granting Plaintiff's Motion to Confirm Arbitration Award and Request to Enter Judgement

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400 South 4th Street, Suite 650
Las Vegas, Nevada 89101
www.maningolaw.com

and Order Denying Defendant's Countermotion to Vacate Arbitration Award, or in the Alternative, to Stay Confirmation and Final Judgement, which was filed on November 3, 2021.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

This case has not previously been the subject of an appeal to or original writ proceeding in the Supreme Court.

12. Indicate whether this appeal involves child custody or visitation:

This case does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

This case does involve the possibility of settlement.

DATED this 22nd day of November, 2021.

MANINGO LAW

By: _____

Lance A. Maningo
Nevada Bar No. 6405
400 South 4th Street, Suite 650
Las Vegas, Nevada 89101
Attorney for Appellant

MANINGO LAW
400 South 4th Street, Suite 650
Las Vegas, Nevada 89101
www.maningolaw.com

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of November, 2021, I did serve a true and correct copy of the foregoing CASE APPEAL STATEMENT by electronically serving parties using the Odyssey E-Filing System as follows:

Charles E. Gianelloni	cgianelloni@swlaw.com
Sonja Dugan	sdugan@swlaw.com
Jill Math	jmath@swlaw.com
Docket Docket	docket_las@swlaw.com
Aleem Dhalla	adhalla@swlaw.com
D'Andrea Dunn	ddunn@swlaw.com

An Employee of MANINGO LAW

MANINGO LAW
400 South 4th Street, Suite 650
Las Vegas, Nevada 89101
www.maningolaw.com

Lance A. Maningo
MANINGO LAW
Nevada Bar No. 6405
400 South 4th Street, Suite 650
Las Vegas, Nevada 89101
702.626.4646
lance@maningolaw.com
Attorney for Appellant

DISTRICT COURT

CLARK COUNTY, NEVADA

ENERGY ALLIANCE TECHNOLOGY CORPORATION, a Utah Corporation, Appellant, vs. ENVIRONMENTAL APPLIED TECHNOLOGY CORPORATION f/k/a ENERGY ALLIANCE TECHNOLOGY CORPORATION, a Nevada Corporation Appellee.	Case No. A-21-839930-B Dept. No. 13

NOTICE OF POSTING BOND FOR COSTS ON APPEAL

NOTICE IS HEREBY GIVEN that Defendant, ENERGY ALLIANCE TECHNOLOGY CORPORATION, a Utah Corporation, in the above-entitled action, by and through its attorney, Lance A. Maningo of MANINGO LAW, deposited with the Clerk of this Court, in compliance with NRAP 7, a check in the amount of $500.00 for security for costs on appeal, a copy of which is attached hereto. Please see **Exhibit A**.

DATED this 22 day of November, 2021

MANINGO LAW

By: _____
Lance A. Maningo
Nevada Bar No. 6405
400 South 4th Street, Suite 650
Las Vegas, Nevada 89101
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of November, 2021, I did serve a true and correct copy of the foregoing NOTICE OF POSTING BOND FOR COSTS ON APPEAL by electronically serving parties using the Odyssey E-Filing System as follows:

Charles E. Gianelloni	cgianelloni@swlaw.com
Sonja Dugan	sdugan@swlaw.com
Jill Math	jmath@swlaw.com
Docket Docket	docket_las@swlaw.com
Aleem Dhalla	adhalla@swlaw.com
D'Andrea Dunn	ddunn@swlaw.com

An Employee of MANINGO LAW

MANINGO LAW
400 South 4th Street, Suite 650
Las Vegas, Nevada 89101
www.maningolaw.com

EXHIBIT “A”

CASH ONLY IF ALL *CheckLock™* SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

L MANINGO, LLC
Trust Account
400 South 4th Street Suite 650
Las Vegas, NV 89101
(702) 626-4646

BANK OF NEVADA
94-177/1224

1348

11/22/21

PAY TO THE ORDER OF District Court - Clark County $ 500 —

five hundred DOLLARS

PROTECTED AGAINST FRAUD

PINK ICON DISAPPEARS WITH HEAT

PINK ICON DISAPPEARS WITH HEAT

MEMO cost bond A-21-839930-B

MP

⑈001348⑈ ⑆122401778⑆ 845925409 2⑈

DISTRICT COURT

CASE SUMMARY

CASE NO. A-21-839930-B

Environmental Applied Technology Corporation, Plaintiff(s)	§	Location:	**Department 13**
	§	Judicial Officer:	**Denton, Mark R.**
vs.	§	Filed on:	**08/23/2021**
Energy Alliance Technology Company, Defendant(s)	§	Case Number History:	
	§	Cross-Reference Case Number:	**A839930**

CASE INFORMATION

Statistical Closures
11/03/2021 Judgment on Arbitration

Case Type: **Purchase/Sale of Stock, Assets, or Real Estate**

Case Flags: **Appealed to Supreme Court**
Business Court
Commercial Instrument Case

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-21-839930-B
Court	Department 13
Date Assigned	08/24/2021
Judicial Officer	Denton, Mark R.

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Environmental Applied Technology Corporation**	**Gianelloni, Charles E** *Retained*
Defendant	**Energy Alliance Technology Company**	

EVENTS & ORDERS OF THE COURT

DATE		INDEX
08/23/2021	Initial Appearance Fee Disclosure Filed By: Plaintiff Environmental Applied Technology Corporation *[1] Initial Appearance Fee Disclosure*	
08/23/2021	Motion to Confirm Arbitration Award Filed By: Plaintiff Environmental Applied Technology Corporation *[2] Motion to Confirm Arbitration Award and Request to Enter Judgment*	
08/23/2021	Initial Appearance Fee Disclosure Filed By: Plaintiff Environmental Applied Technology Corporation *[3] Initial Appearance Fee Disclosure*	
08/24/2021	Notice of Change *[4] Notice of Change of Case Designation*	
08/24/2021	Clerk's Notice of Hearing *[5] Notice of Hearing*	
09/08/2021	Affidavit of Service Filed By: Plaintiff Environmental Applied Technology Corporation *[6] Declaration of Service (Energy Alliance Technology Company)*	

09/16/2021 Stipulation and Order
[7] Stipulation and Order to Continue Plaintiff's Motion to Confirm Arbitration Award and Request to Enter Judgment and Stipulation and Order to Continue Briefing Deadline

09/17/2021 Notice of Entry of Order
Filed By: Defendant Energy Alliance Technology Company
[8] Notice of Entry

09/28/2021 Opposition and Countermotion
Filed By: Defendant Energy Alliance Technology Company
[9] Defendant's Opposition to Plaintiff's Motion to Confirm Arbitration Award and Request For Judgement and Countermotion to Vacate Arbitration Award, or in the Alternative Stay Confirmation of Arbitration Award Pending an Evidentiary Hearing and Decision of Related Cases

09/28/2021 Appendix
Filed By: Defendant Energy Alliance Technology Company
[10] Appendix in Support of Defendant's Opposition to Plaintiff's Motion to Confirm Arbitration Award and Request For Judgement and Countermotion to Vacate Arbitration Award, or in the Alternative Stay Confirmation of Arbitration Award Pending an Evidentiary Hearing and Decision of Related Cases

10/11/2021 Reply in Support
Filed By: Plaintiff Environmental Applied Technology Corporation
[11] Reply in Support of Motion to Confirm Arbitration Award and Request to Enter Judgment and Opposition to Defendant's Countermotion to Vacate Arbitration Award, or in the Alternative, Stay Confirmation

10/14/2021 **Minute Order** (9:30 AM) (Judicial Officer: Denton, Mark R.)
Re: BlueJeans Appearance
Minute Order - No Hearing Held;
Minute Order - No Hearing Held

10/15/2021 Motion to Associate Counsel
Filed By: Plaintiff Environmental Applied Technology Corporation
[12] Motion to Associate Counsel

10/18/2021 **Motion** (9:00 AM) (Judicial Officer: Denton, Mark R.)
Motion to Confirm Arbitration Award and Request to Enter Judgment
Granted;
Granted

10/18/2021 **Opposition and Countermotion** (9:00 AM) (Judicial Officer: Denton, Mark R.)
Defendant's Opposition to Plaintiff's Motion to Confirm Arbitration Award and Request For Judgement and Countermotion to Vacate Arbitration Award, or in the Alternative Stay Confirmation of Arbitration Award Pending an Evidentiary Hearing and Decision of Related Cases
Denied;
Denied

10/18/2021 **Motion to Associate Counsel** (9:00 AM) (Judicial Officer: Denton, Mark R.)
Motion to Associate Counsel
Granted;
Granted

10/18/2021 **All Pending Motions** (9:00 AM) (Judicial Officer: Denton, Mark R.)
Matter Heard;
Matter Heard

10/18/2021	Clerk's Notice of Hearing *[13] Notice of Hearing*
10/21/2021	Order Admitting to Practice Filed By: Plaintiff Environmental Applied Technology Corporation *[14] Order Admitting to Practice*
10/21/2021	Notice of Entry of Order Filed By: Plaintiff Environmental Applied Technology Corporation *[15] Notice of Entry of Order*
10/26/2021	**Minute Order** (3:30 PM) (Judicial Officer: Denton, Mark R.) *Re: Motion to Confirm Arbitration Award and Request to Enter Judgment and Countermotion to Vacate Arbitration Award or, in the Alternative Stay Confirmation of Arbitration Award Pending an Evidentiary Hearing and Decision of Related Cases* Minute Order - No Hearing Held; *Minute Order - No Hearing Held*
11/03/2021	Order Granting Motion *[16] Order Granting Motion to Confirm Arbitration Award and Request to Enter Judgment and Order Denying Countermotion to Vacate Arbitration Award, or in the Alternative, to Stay Confirmation and Final Judgment*
11/03/2021	Notice of Entry of Order Filed By: Plaintiff Environmental Applied Technology Corporation *[17] Notice of Entry of Order*
11/03/2021	**Judgment Upon Arbitration Award** (Judicial Officer: Denton, Mark R.) Debtors: Energy Alliance Technology Company (Defendant) Creditors: Environmental Applied Technology Corporation (Plaintiff) Judgment: 11/03/2021, Docketed: 11/04/2021
11/22/2021	Notice of Appeal Filed By: Defendant Energy Alliance Technology Company *[18] Notice of Appeal*
11/22/2021	Case Appeal Statement Filed By: Defendant Energy Alliance Technology Company *[19] Case Appeal Statement*
11/22/2021	Notice of Posting of Cost Bond Filed By: Defendant Energy Alliance Technology Company *[20] Notice of Posting Bond for Costs on Appeal*
12/02/2021	**Status Check** (9:00 AM) (Judicial Officer: Denton, Mark R.) *Status Check: SCR 42 Compliance (Jeff Singletary, Esq.)*

DATE	FINANCIAL INFORMATION	
	Defendant Energy Alliance Technology Company	
	Total Charges	24.00
	Total Payments and Credits	24.00
	Balance Due as of 11/24/2021	**0.00**
	Plaintiff Environmental Applied Technology Corporation	
	Total Charges	1,530.00

Total Payments and Credits	1,530.00
Balance Due as of 11/24/2021	**0.00**

Defendant Energy Alliance Technology Company

Appeal Bond Balance as of 11/24/2021	**500.00**

BUSINESS COURT CIVIL COVER SHEET

Clark County, Nevada
Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-21-839930-C
Department 15

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Environmental Applied Technology Corporation f/k/a	Energy Alliance Technology Company
Energy Alliance Technology Corporation	
Attorney (name/address/phone):	Attorney (name/address/phone):
Charles E. Gianelloni (NV Bar #12747); Aleem A. Dhalla (NV Bar #14188)	
Snell & Wilmer L.L.P.	
3883 Howard Hughes Parkway, Suite 1100, Las Vegas, NV 89169	
702.784.5200	

II. Nature of Controversy *(Please check the applicable boxes for both the civil case type and business court case type)*

☐ Arbitration Requested

Civil Case Filing Types

Real Property

Landlord/Tenant
- ☐ Unlawful Detainer
- ☐ Other Landlord/Tenant

Title to Property
- ☐ Judicial Foreclosure
- ☐ Other Title to Property

Other Real Property
- ☐ Condemnation/Eminent Domain
- ☐ Other Real Property

Construction Defect & Contract

Construction Defect
- ☐ Chapter 40
- ☐ Other Construction Defect

Contract Case
- ☐ Uniform Commercial Code
- ☐ Building and Construction
- ☐ Insurance Carrier
- ☒ Commercial Instrument
- ☐ Collection of Accounts
- ☐ Employment Contract
- ☐ Other Contract

Torts

Negligence
- ☐ Auto
- ☐ Premises Liability
- ☐ Other Negligence

Malpractice
- ☐ Medical/Dental
- ☐ Legal
- ☐ Accounting
- ☐ Other Malpractice

Other Torts
- ☐ Product Liability
- ☐ Intentional Misconduct
- ☐ Employment Tort
- ☐ Insurance Tort
- ☐ Other Tort

Civil Writs
- ☐ Writ of Habeas Corpus
- ☐ Writ of Mandamus
- ☐ Writ of Quo Warrant
- ☐ Writ of Prohibition
- ☐ Other Civil Writ

Judicial Review/Appeal/Other Civil Filing

Judicial Review
- ☐ Foreclosure Mediation Case

Appeal Other
- ☐ Appeal from Lower Court

Other Civil Filing
- ☐ Foreign Judgment
- ☐ Other Civil Matters

Business Court Filing Types

CLARK COUNTY BUSINESS COURT
- ☐ NRS Chapters 78-89
- ☐ Commodities (NRS 91)
- ☐ Securities (NRS 90)
- ☐ Mergers (NRS 92A)
- ☐ Uniform Commercial Code (NRS 104)
- ☒ Purchase/Sale of Stock, Assets, or Real Estate
- ☐ Trademark or Trade Name (NRS 600)
- ☐ Enhanced Case Management
- ☐ Other Business Court Matters

WASHOE COUNTY BUSINESS COURT
- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 91)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademark/Trade Name (NRS 600)
- ☐ Trade Secrets (NRS 600A)
- ☐ Enhanced Case Management
- ☐ Other Business Court Matters

August 23, 2021
Date

Signature of initiating party or representative

Charles E. Gianelloni, Esq.
Nevada Bar No. 12747
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200
Facsimile: (702) 784-5252
Email: cgianelloni@swlaw.com

Jeff M. Singletary, Esq.
California Bar No. 233528
(Admitted Pro Hac Vice)
Plaza Tower
600 Anton Blvd., Suite 1400
Costa Mesa, CA 92626-7689
Telephone: (714) 427-7000
Facsimile: (714) 427-7799
Email: jsingletary@swlaw.com

Attorneys for Plaintiff Environmental Applied Technology Corporation f/k/a Energy Alliance Technology Corporation

DISTRICT COURT

CLARK COUNTY NEVADA

ENVIRONMENTAL APPLIED TECHNOLOGY CORPORATION f/k/a ENERGY ALLIANCE TECHNOLOGY CORPORATION, a Nevada corporation; Plaintiff, v. ENERGY ALLIANCE COMPANY, a Utah corporation; Defendant.	Case No. A-21-839930-B Dept. No. XIII **ORDER GRANTING MOTION TO CONFIRM ARBITRATION AWARD AND REQUEST TO ENTER JUDGMENT** **-AND-** **ORDER DENYING COUNTERMOTION TO VACATE ARBITRATION AWARD, OR IN THE ALTERNATIVE, TO STAY CONFIRMATION** **-AND-** **FINAL JUDGMENT**

THIS MATTER having come on for hearing on October 18, 2021, on Plaintiff Energy Alliance Technology Corporation's *Motion to Confirm Arbitration Award and Request to Enter Judgment*. Appearing at the hearing were Charles E. Gianelloni, Esq. and Jeff Singletary, Esq. of

the law firm of Snell & Wilmer L.L.P., counsel for Plaintiff, and Lance A. Maningo, Esq., counsel for Defendant Energy Alliance Company. The Court heard and considered the Motion and its supporting papers, as well as Defendant's *Countermotion to Vacate Arbitration Award or, in the Alternative, to Stay Confirmation of Arbitration Award Pending an Evidentiary Hearing and Decision of Related Cases* and its supporting papers, and all arguments and reports from counsel at the hearing, and good cause having been shown:

IT IS HEREBY ORDERED that the October 18, 2021 Motion to Confirm Arbitration Award and Request to Enter Judgment is **GRANTED**.

IT IS FURTHER ORDERED that the Final Arbitration Award, attached as Exhibit 1, is **CONFIRMED**.

IT IS FURTHER ORDERED that judgment is entered in favor of Plaintiff ENVIRONMENTAL APPLIED TECHNOLOGY CORPORATION f/k/a ENERGY ALLIANCE TECHNOLOGY CORPORATION on the terms stated in the attached Final Award, which is wholly incorporated into this Order and Judgment.

IT IS FURTHER ORDERED that Defendant's Countermotion to Vacate Arbitration Award or, in the Alternative, to Stay Confirmation of Arbitration Award Pending an Evidentiary Hearing and Decision of Related Cases is **DENIED**.

IT IS SO ORDERED.

Dated this 3rd day of November, 2021

ABG

EE8 BE2 0E45 5832
Mark R. Denton
District Court Judge

Respectfully submitted by:

SNELL & WILMER L.L.P.

/s/ Charles E. Gianelloni
Charles E. Gianelloni (NV Bar No. 12747)
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200

Jeff M. Singletary, Esq. (CA Bar No. 233528)
(Admitted Pro Hac Vice)
Attorneys for Plaintiff Environmental Applied Technology Corporation

Approved by:

MANINGO LAW

/s/ Lance A. Maningo
Lance A. Maningo (NV Bar No. 6405)
400 South 4th Street, Suite 650
Las Vegas, NV 89101
Telephone: (702) 626-4646

Attorneys for Defendant Energy Alliance Technology Company

Snell & Wilmer L.L.P.
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

Math, Jill

From: Lance Maningo <Lance@maningolaw.com>
Sent: Tuesday, November 2, 2021 12:05 PM
To: Gianelloni, Charles
Cc: Math, Jill; Madisyn Schaus
Subject: RE: EATC - order on mot. to conform arbitration award and countermotion to vacate

[EXTERNAL] lance@maningolaw.com

Hi Charles- no edits and please e-sign for me.

Thanks,

Lance A Maningo
400 South 4th Street, Ste. 650
Las Vegas, Nevada 89101
702.626.4646
702.660.5535, facsimile
MANINGO LAW
www.maningolaw.com

From: Gianelloni, Charles <cgianelloni@swlaw.com>
Sent: Monday, November 1, 2021 7:54 AM
To: Lance Maningo <Lance@maningolaw.com>
Cc: Math, Jill <jmath@swlaw.com>
Subject: EATC - order on mot. to conform arbitration award and countermotion to vacate

Lance - here's a draft order for your review and comment. If there are no comments or edits, please let me know if I can affix your e-signature and submit to the court for approval. The minute order is also attached for reference.

Thanks,

Charles E. Gianelloni
Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Direct: 702-784-5373
Email: cgianelloni@swlaw.com

EXHIBIT 1

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION® | AMERICAN ARBITRATION ASSOCIATION®

American Arbitration Association

COMMERCIAL ARBITRATION TRIBUNAL

In the Matter of the Arbitration between:

Environmental Applied Technology Corporation fka Energy Alliance Technology Corporation, hereinafter referred to as "Claimant" or "EATC NV"

-and-

Energy Alliance Technology Company, hereinafter referred to as "Respondent" or "EATC UT"

AAA Case No: 01-21-0002-1637

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the parties, having been duly sworn, having duly heard the proofs and allegations of Claimant, being represented by Jeffrey M. Singletary, Esq., including the testimony of Mr. Andrew Soulakis, and having reviewed Claimant's Arbitration Brief dated July 20, 2021, exhibits (J01-22), and submission on attorneys' fees, expenses, and costs, hereby make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

A. Procedural Background

1. On or about March 4, 2021, Claimant initiated this arbitration proceeding ("this Arbitration") against Respondent.

2. Respondent was duly noticed of this Arbitration and the deadlines imposed by the Preliminary Hearing and Scheduling Order #1 dated June 7, 2021 ("Scheduling Order"), which was, on June 8, 2021, mailed by AAA to Respondent via U.S. and Certified Mail (# 9489 0090 0027 6094 8239 10), at 9700 Baden Avenue, Chatsworth, CA 91311, and sent via email to preston.tyree@eatcinc.com.

3. Thereafter, all documents submitted in this Arbitration have been served on Respondent via email and/or U.S. Mail.

4. Respondent has failed to appear and participate in this Arbitration, failed to obtain a postponement or extension of the deadlines set forth in the Scheduling Order, and failed to attend the Final Hearing properly noticed for and held on July 22, 2021, at 9:30 a.m. PST.

5. After waiting approximately ten minutes for a representative of Respondent to appear, I found that, given the above, the Final Hearing should proceed in the absence of Respondent.

6. The findings set forth in this Award are based on the evidence submitted by Claimant, not on any default of Respondent in this Arbitration.

B. The Parties

7. Claimant is a corporation that was founded and organized in Nevada in 2014, and is registered in California, originally under the name Fortuneswell Corporation. Claimant's principal place of business is in Glendale, California. Claimant is a company in the energy industry, with a particular focus on fossil fuel enhancement additives.

8. Respondent is a corporation that was founded and organized in Utah in 2014. Respondent's principal place of business is in North Centerville, Utah, and prior to that time, Sherman Oaks, California. At the time of the Final Hearing, Respondent was a corporation not in good standing. Like Claimant, Respondent is a company in the energy industry. Respondent staked its early success on its represented ownership of the BIO-T Formula—a revolutionary component of fossil fuel enhancement additives.

9. Until December 31, 2018, Claimant was a wholly-owned subsidiary of Respondent.

C. The BIO-T Formula and the Agreement

10. In 2015, Respondent—through its agents, including its President and Director, Preston Tyree ("Mr. Tyree")[1]—began supplying the BIO-T Formula to Claimant. Claimant thereafter began using the BIO-T Formula in its fossil fuel enhancement additives. Claimant ran diagnostic testing on the BIO-T Formula, marketed the product containing the BIO-T Formula, and became a leader in this industry sector. Claimant demonstrated that it is on this data and marketing that clients have relied, and continue to rely, on the product for which the BIO-T Formula is utilized.

11. On December 31, 2018, Claimant and Respondent entered into the Asset Transfer and Dividend Distribution Agreement (the "Agreement"), whereby Claimant acquired all of Respondent's assets. (*See* Exhibit J01.) As the key consideration for the deal, Claimant acquired the BIO-T Formula and all related rights, materials, product, inventory, and equipment related to it. (*Id.* at Section 2.1(b)(i), Schedule A.)

12. Section 2.1(b)(i) of the Agreement provides, "EATC UT shall transfer to EATC NV all of EATC UT's and such other EATC UT Entities' respective right, title and interest in and to the EATC UT Assets." This includes the following:

[1] Mr. Tyree is a current shareholder of Respondent, and one of the three board members for Claimant.

> All associated intellectual property relating to BIO-T, meaning any copyrights, patents or patent applications, trademarks, and goodwill and all other intangible assets, including, without limitation, if and to the extent in existence, any and all trade secrets, inventions, designs, copyrights, non-registered trademarks and other intellectual property, know-how manufacturing methods, formulas, and processes.

(*See* Exhibit J01 at Schedule A.)

13. In exchange for Respondent's assets, a series of transactions took place that resulted in Claimant distributing its stock to Respondent's shareholders. (*See* Exhibit J01 at Sections 2.1-2.2, 3.1-3.3.)

14. Claimant "spun off" completely from Respondent and ceased to be a subsidiary of Respondent as of December 31, 2018.

15. Claimant made clear, at all relevant times, that its interest in contracting with Respondent was to obtain the BIO-T Formula. Respondent, in turn, represented that it had been assigned the patent to the BIO-T Formula, that it owned the BIO-T Formula and that it would be providing to Claimant complete ownership of the product through the Agreement. Respondent's representations regarding the BIO-T Formula are the only reason the Agreement was entered into and fully executed.

D. Respondent Fails to Comply with the Agreement

16. For about a year after the Agreement was executed, what was believed to be the BIO-T Formula was supplied to Claimant with no problems—it was received as needed and used in Claimant's product. Vladimir Podlipskiy ("Mr. Podlipskiy"), the scientist who supplied the confidential components of the BIO-T Formula, and had always been the custodian of the product, continued in this role after the Agreement was executed.

17. Claimant had previously raised concerns over Mr. Podlipskiy's status as the only custodian of the BIO-T Formula—largely to avoid potential disruptions if anything happened to Mr. Podlipskiy. (*See e.g.,* Exhibits J02-05.)

18. Claimant made numerous attempts to gain custody of the BIO-T Formula and its complete formulation. (*Id.*) Mr. Podlipskiy never relinquished control over the BIO-T Formula; instead, he only provided an incomplete formulation and claimed to keep sole custody of the "secret ingredient," to be provided to Claimant upon request. (*See* Exhibit J06.)

19. Claimant chose not to fight the arrangement, at the time, because the process ran relatively smoothly.

20. In early 2020, Mr. Podlipskiy, at Mr. Tyree's urging, began refusing to supply Claimant with the BIO-T Formula. The refusal put Claimant in a precarious situation, as Claimant only had a limited supply left on hand.

21. Claimant became unable to manage and fulfill its clients' demands as its supply dwindled.

22. At the same time, on February 27, 2020, Mr. Tyree sent a demand letter to Mr. Soulakis—Claimant's CEO—demanding numerous corporate documents on behalf of Claimant's board of directors, comprising of himself, Mr. Soulakis, and Harry Hibler. (*See* Exhibit J07.) Claimant responded to Mr. Tyree, providing him with most of the records he requested. (*See* Exhibit J08.)

23. In light of the above, Claimant ran diagnostic tests on the remaining BIO-T Formula that it still had on hand. (*See* Exhibit J09.) These tests demonstrated that the product that was being supplied by Mr. Podlipskiy, since execution of the Agreement, was different than the BIO-T Formula provided in 2015. (*See id.*)

24. Respondent, through Mr. Tyree, then claimed that Respondent never owned the BIO-T Formula in the first place. (*See* Exhibit J10.)

25. In an Answer dated July 6, 2021, in separate litigation in California, styled as *Environmental Applied Technology Corporation fka Energy Alliance Technology Corporation v. Preston Tyree et al*, Los Angeles Superior Court, Case No. 21STCV07476 ("the California Action"), Mr. Tyree stated that (i) he and Mr. Hibler are the "joint owners of the patent rights on which the BIO-T Formula is based" (*id.* at ¶ 5(a)), (ii) "[d]espite making the BIO-T Formula available for use by [Respondent], and later by [Claimant], [Mr. Tyree] and Mr. Hibler never assigned, licensed or otherwise transferred to [Respondent] . . . right or interest [] in the BIO-T Formula . . . ." (*id.* at ¶ 5(b)), and (iii) under the Agreement, Claimant "alleged acquisition of the BIO-T Formula consisted only of a limited (non-exclusive) right, at the pleasure of Defendant and Mr. Hibler, to use the BIO-T Formula in the manufacture, blending and marketing of fuel additive products and nothing more" (*id.* at ¶ 39)). These statements in Mr. Tyree's Answer constitute judicial admissions under Nevada law and are, therefore, admissible here. *See, e.g., Smith v. Zilverberg*, 481 P.3d 1222, 1229 n.6 (Nev. 2021) (holding party to statements made in pleading under the "doctrine of judicial admissions").

26. The Agreement does not, expressly or implicitly, state that Respondent does not own the BIO-T Formula or that Respondent is conveying only the "limited (non-exclusive) right" to use the BIO-T Formula.

27. Unbeknownst to Claimant, it had been receiving a different product despite Respondent's representations regarding its ownership, and use of, the BIO-T Formula in the Agreement. Mr. Soulakis confirmed during the Final Hearing that the BIO-T Formula was the only reason Claimant entered into the Agreement.

28. Respondent misrepresented its ownership of the BIO-T Formula to induce Claimant into entering into the Agreement, and then orchestrated the withholding of the BIO-T Formula in breach of the Agreement.

E. Indemnity Under the Agreement[2]

29. Article 9 of the Agreement defines the indemnity obligations of the parties. (*See* Exhibit J01 at Article IX.) Section 9.3 of the Agreement specifically governs Respondent's indemnification responsibilities, providing:

> Following the Effective Time and subject to Section 12.1, EATC UT shall, and shall cause EATC UT Entities to, indemnify, defend, and hold harmless each EATC NV Entity and its Affiliates, and each of their respective current or former directors, officers, employees, agents, and each of the heirs, executors, administrators, successors and assigns of any of the foregoing (each, a "EATC NV Indemnified Party"), from and against any and all Liabilities

[2] I address the indemnification provisions in the Agreement with respect to only Claimant's request for attorneys' fees and costs. If Claimant has an indemnification claim and/or separate claims for relief relating to potential Third Party Claims (as defined in the Agreement), no such claims were at issue in this Arbitration.

arising out of or resulting from any of the following items:

> (a) each breach by EATC UT or any EATC UT Entity of this Agreement, subject to any specific limitation on liability contained in the applicable agreement and without duplication taking into account the performance by each EATC NV Entity of its indemnification obligations in the agreement.

(*Id.* at Section 9.3 (emphasis in original).)

30. As early as May 27, 2020, and at numerous times thereafter, Claimant notified Respondent of its intent to hold Respondent to its indemnification responsibilities, in compliance with the Agreement. Respondent failed to respond to Claimant's notices, and did not dispute its indemnification responsibilities stemming from this Arbitration.

31. The liabilities at issue bring this Arbitration within the indemnification principles of the Agreement. It is on these facts that the Agreement's attorneys' fees provision, found in Section 10.3(c), is applicable to this Arbitration. Section 10.3 specifically provides:

> Costs of the arbitration shall be borne equally by the parties involved in the matter, except that each party shall be responsible for its own expenses, unless and to the extent otherwise determined by the arbitrator; provided, in the case of any Disputes relating to the parties rights and obligations with respect to indemnification under this Agreement, the prevailing party shall be entitled to reimbursement by the other party of its reasonable out-of-pocket fees and expenses (including attorneys' fees) incurred in connection with the arbitration.

(*See* Exhibit J01 at Section 10.3(c).)

32. Claimant requests an award of $96,960.68 in attorneys' fees and costs. (*See* Declaration of Jeffrey M. Singletary executed on July 30, 2021 ("Mr. Singletary's Declaration") at ¶ 15.)

33. If any Findings of Fact are properly Conclusions of Law, they shall be treated as though appropriately identified and designated.

CONCLUSIONS OF LAW

1. A breach of contract claim lies where there is: (i) the existence of a valid contract; (ii) a breach by the defendant; and (iii) damage as a result thereof. *See Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 899 (9th Cir. 2013) (citing *Richardson v. Jones*, 1 Nev. 405, 408 (Nev. 1865)). [3]

[3] The Agreement "shall be governed by, and construed in accordance with, the Laws of the State of Nevada, regardless of the Laws that might otherwise govern under applicable principles of conflicts of laws thereof." (*See* Exhibit J01 at Section 10.4.) Likewise, the arbitration provision in the Agreement states that the Arbitrator is "bound exclusively by the laws of the State of Nevada without regard to its choice of law rules." (*Id.* at Section 10.3(b).)

2. An enforceable contract requires "an offer and acceptance, meeting of the minds, and consideration." *Anderson v. Sanchez*, 132 Nev. 357, 360, 373 P.3d 860, 863 (2016). "A meeting of the minds exists when the parties have agreed upon the contract's essential terms." *Certified Fire Prot. Inc. v. Precision Constr.,* 128 Nev. 371, 378 (Nev. 2012).

3. Consideration requires something that is "bargained for and given in exchange for an act or promise." *Zhang v. Eighth Judicial Dist. Court of State ex rel. County of Clark,* 120 Nev. 1037, 1042 n.22 (Nev. 2004), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas,* 124 Nev. 224 (Nev. 2008).

4. The Agreement must be construed under the well-known rules of contract interpretation. *See Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005) ("Generally, when a contract is clear on its face, it 'will be construed from the written language and enforced as written.' The court has no authority to alter the terms of an unambiguous contract.").

5. Accepting Mr. Tyree's admissions in the California Action as true (*see* J10), Respondent executed the Agreement believing it was only conveying the limited (non-exclusive) right, at the pleasure of Messrs. Tyree and Hibler, to use the BIO-T Formula in the manufacture, blending and marketing of fuel additive products and nothing more, and Claimant executed the Agreement understanding and intending that the conveyance of the BIO-T Formula in Schedule A to the Agreement meant something different. In that case, the required meetings of the mind on all essential terms does not exist on the Agreement, which voids the Agreement altogether, instead of giving rise to breach of contract damages. *See Chudacoff v. Univ. Med. Ctr.,* 954 F. Supp. 2d 1065, 1085 (D. Nev. 2013) ("Under Nevada law, an enforceable contract is formed when there is offer, acceptance, meeting of the minds, and consideration.").

6. Alternatively, Claimant demonstrated that it is entitled to rescission under either of the following distinct theories: (i) fraudulent inducement, and (ii) Respondent's failure to perform. *See e.g., Awada v. Shuffle Master, Inc.,* 123 Nev. 613, 622-23 (Nev. 2007) (affirming trial court's rescission of a contract based on fraudulent inducement); *Canepa v. Durham,* 62 Nev. 417, 427 (Nev. 1944) ("A partial failure of performance of a contract will not give ground for its rescission unless it defeats the very object of the contract or renders that object impossible of attainment, or unless it concerns a matter of such prime importance that the contract would not have been made if default in that particular had been expected or contemplated.") (internal quotation marks omitted).[4]

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[4] Section 12.13 of the Agreement also contemplates the equitable relief awarded here:

> In the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the affected party shall have the right to specific performance and injunctive or other equitable relief of its rights under this Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The other party shall not oppose the granting of such relief. The parties hereto agree that the remedies at law for any breach or threatened breach hereof, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing and posting of any bond with such remedy are waived.

(*See* Exhibit J01 at Section 12.13.)

7. "Rescission is an equitable remedy which totally abrogates a contract and which seeks to place the parties in the position they occupied prior to executing the contract." *Bergstrom v. Estate of DeVoe,* 109 Nev. 575, 577 (Nev. 1993). Rescission of a contract can be accomplished either "legall[y]" or "equitabl[y]." *Great Am. Ins. Co. v. Gen. Builders, Inc.,* 113 Nev. 346, 353 n. 6 (Nev. 1997). Under a theory of "equitable recission," "the aggrieved party brings an action in a court with equitable jurisdiction asking the court to nullify the contract." *Id.* Whether to rescind a contract lies within a finder of fact's broad discretion. *Canepa v. Durham,* 65 Nev. 428, 437 (1948).

8. Under Nevada law, a party to a contract may seek rescission of that contract based on fraud in the inducement. *See Awada*, 123 Nev. at 622; *see also Havas v. Alger,* 85 Nev. 627, 631-33 (Nev. 1969) (affirming rescission of a vehicle sales contract where the purchased vehicle was one year older than represented). The elements for fraudulent inducement are: (i) defendant's false representation; (ii) defendant's knowledge or belief that the representation was false (or knowledge that it had an insufficient basis for making the representation); (iii) defendant's intention to induce plaintiff to consent to the contract's formation; (iv) plaintiff's justifiable reliance on the misrepresentation; and (v) damage to plaintiff resulting from such reliance. *See J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.,* 120 Nev. 277, 290-91 (Nev. 2004). Claimant proved by clear and convincing evidence each of these elements in this Arbitration.

9. Respondent (i) made a false representation about its ownership of the BIO-T Formula, and/or (ii) orchestrated withholding of the BIO-T Formula, despite selling the BIO-T Formula to Claimant for its stock.

10. Respondent necessarily knew that its representations were false at the time they were made. Respondent withheld delivery of the product. When it did deliver, Respondent delivered a product that was different than the BIO-T Formula from 2015. And, Respondent now claims that it never owned the BIO-T Formula in the first place. Respondent knew, at the time it entered into the Agreement, that it would not, and could not, perform.

11. Respondent intended to induce Claimant into entering the Agreement with its false representations. Claimant made clear that its primary goal in entering into the Agreement was to gain ownership of the BIO-T Formula.

12. Claimant justifiably relied on the false representations. Claimant entered into the Agreement with the primary goal of acquiring the BIO-T Formula and all related assets. If not for these representations, Claimant would not have contracted with Respondent.

13. Claimant has suffered particular money damages as a result of Respondent's actions. Claimant may face future damages stemming from third-party claims arising from product representations using data from the BIO-T Formula received in 2015.

14. Also, Nevada has long recognized the right to rescind a contract on another party's failure to perform. *See e.g., Canepa,* 62 Nev. at 427. The Supreme Court of Nevada has said:

> A partial failure of performance of a contract will not give ground for its rescission unless it defeats the very object of the contract or renders that object impossible of attainment, or unless it concerns a matter of

> such prime importance that the contract would not have been made if default in that particular had been expected or contemplated.

Id. (internal quotation marks omitted). Courts interpreting this standard have required there to be a "substantial breach," which has involved as little as failure to pay money. *See Harrington v. Tackett,* No. 3:18-CV-00028-WGC, 2020 WL 5749997, at *11-12 (D. Nev. 2020) (applying Nevada law and finding failure to pay more than $20,000 on a $300,000 contract warranted rescission); *see also Havas,* 85 Nev. at 633-35 (affirming trial court's holding to rescind vehicle sales contract where the subject car was inoperable and, as a result, there was a failure of consideration).

15. By proving that Respondent has failed to deliver the BIO-T Formula since the execution of the Agreement—either by withholding the same or never having ownership of it—Claimant has shown, by a preponderance of the evidence, that Respondent failed to perform.

16. The Agreement was supposed to be an exchange of Claimant's stock for Respondent's assets, including the BIO-T Formula. Claimant's chief interest in Respondent's assets was the BIO-T Formula. Claimant performed its end of the bargain by distributing its stock to Respondent. Respondent failed to perform its obligations by (i) misrepresenting its ownership of the BIO-T Formula, and/or (ii) orchestrating withholding of the BIO-T Formula. By failing to adhere to its contractual obligations, Respondent is in "substantial breach."

17. Nevada law authorizes an award of attorneys' fees when provided for in a contract. *See* NRS 18.010(1) ("The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law."). Costs are likewise routinely awarded to a prevailing party. *See* NRS 18.020 (outlining the numerous situations for which a prevailing party is entitled to costs); NRS 18.050 (allowing a prevailing party to recover costs in the discretion of the court).

18. Rescission of a contract does not preclude recovery based on an attorneys' fees and costs provision in the void contract. *See Mackintosh v. California Fed. Sav. & Loan Ass'n,* 113 Nev. 393, 406, 935 P.2d 1154, 1162 (1997) (agreeing with case that held "that when parties enter into a contract and litigation later ensues over that contract, attorney's fees may be recovered under a prevailing-party attorney's fee provision contained therein even though the contract is rescinded or held to be unenforceable.") (citation omitted).

19. Claimant's entitlement to attorneys' fees and costs here stems from the indemnification provisions in the Agreement, which is specifically authorized by Section 10.3(c) of the Agreement. (*See* Exhibit J01 at Section 10.3(c).)[5]

20. Under Section 9.3 of the Agreement, Respondent is to indemnify Claimant from, and against any, "[l]iabilities" resulting from, "each breach by EATC UT or any EATC UT Entity of this Agreement, subject to any specific limitation on liability contained in the applicable agreement and without duplication taking into account the performance by each EATC NV Entity of its indemnification obligations in the agreement." (*Id.* at Section 9.3(a).) "Liabilities" also covers "attorneys' fees, the costs and expenses of all demands . . .[.]" (*Id.* at Page 7 of 29.)

[5] Alternatively, Claimant would be entitled to an award of its attorneys' fees (and costs) because it did not recover more than $20,000 in this Arbitration. *See* NRS 18.010(2)(a) ("In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party: . . . When the prevailing party has not recovered more than $20,000 . . . ."); *see also* NRS 18.050.

21. Claimant is, therefore, entitled to reasonable attorneys' fees and costs as the prevailing party in this Arbitration. *See, e.g., Women's Fed. Sav. & Loan Ass'n of Cleveland v. Nevada Nat. Bank,* 623 F. Supp. 469, 470 (D. Nev. 1985) ("A plaintiff may be considered the prevailing party . . . if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing the suit.").

22. When considering the reasonableness of attorneys' fees, Nevada courts look to the following four factors:

> (a) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill;
> (b) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation;
> (c) the work actually performed by the lawyer: the skill, time and attention given to the work; and
> (d) the result: whether the attorney was successful and what benefits were derived.

Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969); *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530, 549 (Nev. 2005).

23. In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court," which "is tempered only by reason and fairness." *Shuette,* 124 P.3d at 548–49. "Accordingly, in determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.*

24. Here, the qualities and skills of Mr. Singletary, the other attorneys, and the paralegals who worked with him in this Arbitration, are not disputable. And, the hourly rates charged by Claimant's counsel (from $295 to $680) are well within the prevailing market rates for commercial litigation in Nevada. *See e.g., In re USA Commercial Mortg. Co. v. USA SPE LLC*, Case Nos. 2:07-CV-892-RCJ-GWF and 3:07-CV-241-RCJ-GWF, 2013 WL 3944184, *20 (D. Nev. 2013) ("The Court finds that those suggested hourly rates are reasonable in comparison to prevailing market rates for complex commercial litigation in Nevada of between $350 and $775 an hour...."); *see also Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011) (agreeing with "[o]ther circuit courts [that] have held that judges are justified in relying on their own knowledge of customary rates and their experience concerning reasonable and proper fees.") (citations omitted). As a result, this factor weighs in favor of the reasonableness of the attorneys' and paralegal fees.

25. As to the second and third factors, the work performed by Mr. Singletary and his team is evidenced by his Declaration and the invoices attached thereto as Exhibit 1. The number of hours expended were reasonable. This factor, thus, weighs in favor of the reasonableness of the fees.

26. Fourth and finally, the result of the work performed by Mr. Singletary and his team on behalf of Claimant resulted in Claimant prevailing in this Arbitration. This successful result satisfies the fourth prong of the *Brunzell* test. I find that Claimant is entitled to recover reasonable attorneys' fees in the amount of $71,892.50.

27. Additionally, Claimant seeks to recover the administrative fees of the American Arbitration Association paid by Claimant in the amount of $6,250, the Arbitrator compensation totaling $4,950, and travel costs incurred to attend the Final Hearing totaling $818.18.

28. I find that, under the circumstances of this Arbitration and the factors set forth in *Brunzell*, $83,910.68 represents a reasonable amount of fees, expenses, and costs that Claimant is entitled to be awarded for prosecuting and prevailing in this Arbitration against Respondent.

29. If any Conclusions of Law are properly Findings of Fact, they shall be treated as though appropriately identified and designated.

Based on the above Findings of Fact and Conclusions of Law, I AWARD as follows:

1. Judgment is hereby entered in favor of Claimant EATC NV and against Respondent EAC UT.

2. For its remedy, Claimant EATC NV has elected, and is hereby awarded, rescission of the Agreement. Claimant EATC NV and Respondent EATC UT shall be restored to their original positions before the execution of the Agreement. This relief shall include, among other things, Respondent EATC UT returning to Claimant EATC NV all stock issued to Respondent's shareholders pursuant the Agreement, and Claimant EATC NV returning to Respondent EATC UT all assets conveyed by Respondent EATC UT to Claimant EATC NV, including, but not limited to, the alleged BIO-T Formula.

3. Claimant EATC NV is also awarded, and Respondent EATC UT shall pay Claimant EATC NV, the sum of EIGHTY-THREE THOUSAND NINE HUNDRED TEN DOLLARS AND SIXTY-EIGHT CENTS ($83,910.68), which represents the amount of reasonable attorneys' fees, costs, and expenses Claimant EATC NV is entitled to recover as the prevailing party.

4. The above sum shall accrue post-judgment interest at the applicable statutory rate of interest commencing on August 17, 2021, until paid in full.

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5. This Award is in full settlement of all claims submitted to this Arbitration. All claims asserted in this Arbitration not expressly granted herein are hereby denied.

Dated: August 16, 2021.

Arbitrator Signature: Nikki L Baker

Subscribed and sworn to before me
this 16th day of August, 2021.

NOTARY PUBLIC
My Commission expires: March 14, 2022

ERIN L. PARCELLS
Notary Public, State of Nevada
No. 06-104446-1
My Appt. Exp. Mar. 14, 2022

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Environmental Applied Technology Corporation, Plaintiff(s) vs. Energy Alliance Technology Company, Defendant(s)	CASE NO: A-21-839930-B DEPT. NO. Department 13

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 11/3/2021

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DISTRICT COURT

CLARK COUNTY NEVADA

ENVIRONMENTAL APPLIED TECHNOLOGY CORPORATION f/k/a ENERGY ALLIANCE TECHNOLOGY CORPORATION, a Nevada corporation; Plaintiff, v. ENERGY ALLIANCE COMPANY, a Utah corporation; Defendant.	Case No. A-21-839930-B Dept. No. XIII **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an *Order Granting Motion to Confirm Arbitration Award and Request to Enter Judgment –and– Order Denying Countermotion to Vacate Arbitration Award, or in the Alternative, to Stay Confirmation –and– Final Judgment* ("Order") was entered in the above-referenced case on November 3, 2021.

///

A copy of said Order is attached as **Exhibit 1**.

DATED this 3rd day of November 2021.

SNELL & WILMER L.L.P.

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On November 3, 2021, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** upon the following by the method indicated:

_____ **BY E-MAIL:** Pursuant to EDCR Rule 7.26(a), by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

_____ **BY U.S. MAIL:** Pursuant to EDCR Rule 7.26(a), by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

_____ **BY U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED:** Pursuant to EDCR Rule 7.26(a), by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

X **BY ELECTRONIC FILING & ELECTRONIC SERVICE:** Pursuant to NRCP 5(b) and Administrative Order 14-2, by submitting to the above-entitled Court for electronic filing and service upon the Court's e-service list for the above-referenced case.

_____ **BY ELECTRONIC SERVICE ONLY:** Pursuant to NRCP 5(b) and Administrative Order 14-2, by submitting to the above-entitled Court for electronic service upon the following Court's e-service list for the above-referenced case:

Lance Maningo, Esq.
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Law Vegas, NV 89101
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Email: lance@maningolaw.com

Counsel for Defendant

Dated: November 3, 2021

Jill Math
An Employee of Snell & Wilmer L.L.P.

EXHIBIT 1

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Attorneys for Plaintiff Environmental Applied Technology Corporation f/k/a Energy Alliance Technology Corporation

DISTRICT COURT

CLARK COUNTY NEVADA

ENVIRONMENTAL APPLIED TECHNOLOGY CORPORATION f/k/a ENERGY ALLIANCE TECHNOLOGY CORPORATION, a Nevada corporation; Plaintiff, v. ENERGY ALLIANCE COMPANY, a Utah corporation; Defendant.	Case No. A-21-839930-B Dept. No. XIII **ORDER GRANTING MOTION TO CONFIRM ARBITRATION AWARD AND REQUEST TO ENTER JUDGMENT** **-AND-** **ORDER DENYING COUNTERMOTION TO VACATE ARBITRATION AWARD, OR IN THE ALTERNATIVE, TO STAY CONFIRMATION** **-AND-** **FINAL JUDGMENT**

THIS MATTER having come on for hearing on October 18, 2021, on Plaintiff Energy Alliance Technology Corporation's *Motion to Confirm Arbitration Award and Request to Enter Judgment*. Appearing at the hearing were Charles E. Gianelloni, Esq. and Jeff Singletary, Esq. of

the law firm of Snell & Wilmer L.L.P., counsel for Plaintiff, and Lance A. Maningo, Esq., counsel for Defendant Energy Alliance Company. The Court heard and considered the Motion and its supporting papers, as well as Defendant's *Countermotion to Vacate Arbitration Award or, in the Alternative, to Stay Confirmation of Arbitration Award Pending an Evidentiary Hearing and Decision of Related Cases* and its supporting papers, and all arguments and reports from counsel at the hearing, and good cause having been shown:

IT IS HEREBY ORDERED that the October 18, 2021 Motion to Confirm Arbitration Award and Request to Enter Judgment is **GRANTED**.

IT IS FURTHER ORDERED that the Final Arbitration Award, attached as Exhibit 1, is **CONFIRMED**.

IT IS FURTHER ORDERED that judgment is entered in favor of Plaintiff ENVIRONMENTAL APPLIED TECHNOLOGY CORPORATION f/k/a ENERGY ALLIANCE TECHNOLOGY CORPORATION on the terms stated in the attached Final Award, which is wholly incorporated into this Order and Judgment.

IT IS FURTHER ORDERED that Defendant's Countermotion to Vacate Arbitration Award or, in the Alternative, to Stay Confirmation of Arbitration Award Pending an Evidentiary Hearing and Decision of Related Cases is **DENIED**.

IT IS SO ORDERED.

Dated this 3rd day of November, 2021

ABG

EE8 BE2 0E45 5832
Mark R. Denton
District Court Judge

Respectfully submitted by:

SNELL & WILMER L.L.P.

/s/ Charles E. Gianelloni
Charles E. Gianelloni (NV Bar No. 12747)
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Jeff M. Singletary, Esq. (CA Bar No. 233528)
(Admitted Pro Hac Vice)
Attorneys for Plaintiff Environmental Applied Technology Corporation

Approved by:

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Attorneys for Defendant Energy Alliance Technology Company

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Las Vegas, Nevada 89169
702.784.5200

Math, Jill

From: Lance Maningo <Lance@maningolaw.com>
Sent: Tuesday, November 2, 2021 12:05 PM
To: Gianelloni, Charles
Cc: Math, Jill; Madisyn Schaus
Subject: RE: EATC - order on mot. to conform arbitration award and countermotion to vacate

[EXTERNAL] lance@maningolaw.com

Hi Charles- no edits and please e-sign for me.

Thanks,

Lance A Maningo
400 South 4th Street, Ste. 650
Las Vegas, Nevada 89101
702.626.4646
702.660.5535, facsimile
MANINGO LAW
www.maningolaw.com

From: Gianelloni, Charles <cgianelloni@swlaw.com>
Sent: Monday, November 1, 2021 7:54 AM
To: Lance Maningo <Lance@maningolaw.com>
Cc: Math, Jill <jmath@swlaw.com>
Subject: EATC - order on mot. to conform arbitration award and countermotion to vacate

Lance - here's a draft order for your review and comment. If there are no comments or edits, please let me know if I can affix your e-signature and submit to the court for approval. The minute order is also attached for reference.

Thanks,

Charles E. Gianelloni
Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Direct: 702-784-5373
Email: cgianelloni@swlaw.com

EXHIBIT 1

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION® | AMERICAN ARBITRATION ASSOCIATION®

American Arbitration Association

COMMERCIAL ARBITRATION TRIBUNAL

In the Matter of the Arbitration between:

Environmental Applied Technology Corporation fka Energy Alliance Technology Corporation, hereinafter referred to as "Claimant" or "EATC NV"

-and-

Energy Alliance Technology Company, hereinafter referred to as "Respondent" or "EATC UT"

AAA Case No: 01-21-0002-1637

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the parties, having been duly sworn, having duly heard the proofs and allegations of Claimant, being represented by Jeffrey M. Singletary, Esq., including the testimony of Mr. Andrew Soulakis, and having reviewed Claimant's Arbitration Brief dated July 20, 2021, exhibits (J01-22), and submission on attorneys' fees, expenses, and costs, hereby make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

A. Procedural Background

1. On or about March 4, 2021, Claimant initiated this arbitration proceeding ("this Arbitration") against Respondent.

2. Respondent was duly noticed of this Arbitration and the deadlines imposed by the Preliminary Hearing and Scheduling Order #1 dated June 7, 2021 ("Scheduling Order"), which was, on June 8, 2021, mailed by AAA to Respondent via U.S. and Certified Mail (# 9489 0090 0027 6094 8239 10), at 9700 Baden Avenue, Chatsworth, CA 91311, and sent via email to preston.tyree@eatcinc.com.

3. Thereafter, all documents submitted in this Arbitration have been served on Respondent via email and/or U.S. Mail.

4. Respondent has failed to appear and participate in this Arbitration, failed to obtain a postponement or extension of the deadlines set forth in the Scheduling Order, and failed to attend the Final Hearing properly noticed for and held on July 22, 2021, at 9:30 a.m. PST.

5. After waiting approximately ten minutes for a representative of Respondent to appear, I found that, given the above, the Final Hearing should proceed in the absence of Respondent.

6. The findings set forth in this Award are based on the evidence submitted by Claimant, not on any default of Respondent in this Arbitration.

B. The Parties

7. Claimant is a corporation that was founded and organized in Nevada in 2014, and is registered in California, originally under the name Fortuneswell Corporation. Claimant's principal place of business is in Glendale, California. Claimant is a company in the energy industry, with a particular focus on fossil fuel enhancement additives.

8. Respondent is a corporation that was founded and organized in Utah in 2014. Respondent's principal place of business is in North Centerville, Utah, and prior to that time, Sherman Oaks, California. At the time of the Final Hearing, Respondent was a corporation not in good standing. Like Claimant, Respondent is a company in the energy industry. Respondent staked its early success on its represented ownership of the BIO-T Formula—a revolutionary component of fossil fuel enhancement additives.

9. Until December 31, 2018, Claimant was a wholly-owned subsidiary of Respondent.

C. The BIO-T Formula and the Agreement

10. In 2015, Respondent—through its agents, including its President and Director, Preston Tyree ("Mr. Tyree")[1]—began supplying the BIO-T Formula to Claimant. Claimant thereafter began using the BIO-T Formula in its fossil fuel enhancement additives. Claimant ran diagnostic testing on the BIO-T Formula, marketed the product containing the BIO-T Formula, and became a leader in this industry sector. Claimant demonstrated that it is on this data and marketing that clients have relied, and continue to rely, on the product for which the BIO-T Formula is utilized.

11. On December 31, 2018, Claimant and Respondent entered into the Asset Transfer and Dividend Distribution Agreement (the "Agreement"), whereby Claimant acquired all of Respondent's assets. (*See* Exhibit J01.) As the key consideration for the deal, Claimant acquired the BIO-T Formula and all related rights, materials, product, inventory, and equipment related to it. (*Id.* at Section 2.1(b)(i), Schedule A.)

12. Section 2.1(b)(i) of the Agreement provides, "EATC UT shall transfer to EATC NV all of EATC UT's and such other EATC UT Entities' respective right, title and interest in and to the EATC UT Assets." This includes the following:

[1] Mr. Tyree is a current shareholder of Respondent, and one of the three board members for Claimant.

> All associated intellectual property relating to BIO-T, meaning any copyrights, patents or patent applications, trademarks, and goodwill and all other intangible assets, including, without limitation, if and to the extent in existence, any and all trade secrets, inventions, designs, copyrights, non-registered trademarks and other intellectual property, know-how manufacturing methods, formulas, and processes.

(*See* Exhibit J01 at Schedule A.)

13. In exchange for Respondent's assets, a series of transactions took place that resulted in Claimant distributing its stock to Respondent's shareholders. (*See* Exhibit J01 at Sections 2.1-2.2, 3.1-3.3.)

14. Claimant "spun off" completely from Respondent and ceased to be a subsidiary of Respondent as of December 31, 2018.

15. Claimant made clear, at all relevant times, that its interest in contracting with Respondent was to obtain the BIO-T Formula. Respondent, in turn, represented that it had been assigned the patent to the BIO-T Formula, that it owned the BIO-T Formula and that it would be providing to Claimant complete ownership of the product through the Agreement. Respondent's representations regarding the BIO-T Formula are the only reason the Agreement was entered into and fully executed.

D. Respondent Fails to Comply with the Agreement

16. For about a year after the Agreement was executed, what was believed to be the BIO-T Formula was supplied to Claimant with no problems—it was received as needed and used in Claimant's product. Vladimir Podlipskiy ("Mr. Podlipskiy"), the scientist who supplied the confidential components of the BIO-T Formula, and had always been the custodian of the product, continued in this role after the Agreement was executed.

17. Claimant had previously raised concerns over Mr. Podlipskiy's status as the only custodian of the BIO-T Formula—largely to avoid potential disruptions if anything happened to Mr. Podlipskiy. (*See e.g.,* Exhibits J02-05.)

18. Claimant made numerous attempts to gain custody of the BIO-T Formula and its complete formulation. (*Id.*) Mr. Podlipskiy never relinquished control over the BIO-T Formula; instead, he only provided an incomplete formulation and claimed to keep sole custody of the "secret ingredient," to be provided to Claimant upon request. (*See* Exhibit J06.)

19. Claimant chose not to fight the arrangement, at the time, because the process ran relatively smoothly.

20. In early 2020, Mr. Podlipskiy, at Mr. Tyree's urging, began refusing to supply Claimant with the BIO-T Formula. The refusal put Claimant in a precarious situation, as Claimant only had a limited supply left on hand.

21. Claimant became unable to manage and fulfill its clients' demands as its supply dwindled.

22. At the same time, on February 27, 2020, Mr. Tyree sent a demand letter to Mr. Soulakis—Claimant's CEO—demanding numerous corporate documents on behalf of Claimant's board of directors, comprising of himself, Mr. Soulakis, and Harry Hibler. (*See* Exhibit J07.) Claimant responded to Mr. Tyree, providing him with most of the records he requested. (*See* Exhibit J08.)

23. In light of the above, Claimant ran diagnostic tests on the remaining BIO-T Formula that it still had on hand. (*See* Exhibit J09.) These tests demonstrated that the product that was being supplied by Mr. Podlipskiy, since execution of the Agreement, was different than the BIO-T Formula provided in 2015. (*See id.*)

24. Respondent, through Mr. Tyree, then claimed that Respondent never owned the BIO-T Formula in the first place. (*See* Exhibit J10.)

25. In an Answer dated July 6, 2021, in separate litigation in California, styled as *Environmental Applied Technology Corporation fka Energy Alliance Technology Corporation v. Preston Tyree et al*, Los Angeles Superior Court, Case No. 21STCV07476 ("the California Action"), Mr. Tyree stated that (i) he and Mr. Hibler are the "joint owners of the patent rights on which the BIO-T Formula is based" (*id.* at ¶ 5(a)), (ii) "[d]espite making the BIO-T Formula available for use by [Respondent], and later by [Claimant], [Mr. Tyree] and Mr. Hibler never assigned, licensed or otherwise transferred to [Respondent] . . . right or interest [] in the BIO-T Formula . . . ." (*id.* at ¶ 5(b)), and (iii) under the Agreement, Claimant "alleged acquisition of the BIO-T Formula consisted only of a limited (non-exclusive) right, at the pleasure of Defendant and Mr. Hibler, to use the BIO-T Formula in the manufacture, blending and marketing of fuel additive products and nothing more" (*id.* at ¶ 39)). These statements in Mr. Tyree's Answer constitute judicial admissions under Nevada law and are, therefore, admissible here. *See, e.g., Smith v. Zilverberg*, 481 P.3d 1222, 1229 n.6 (Nev. 2021) (holding party to statements made in pleading under the "doctrine of judicial admissions").

26. The Agreement does not, expressly or implicitly, state that Respondent does not own the BIO-T Formula or that Respondent is conveying only the "limited (non-exclusive) right" to use the BIO-T Formula.

27. Unbeknownst to Claimant, it had been receiving a different product despite Respondent's representations regarding its ownership, and use of, the BIO-T Formula in the Agreement. Mr. Soulakis confirmed during the Final Hearing that the BIO-T Formula was the only reason Claimant entered into the Agreement.

28. Respondent misrepresented its ownership of the BIO-T Formula to induce Claimant into entering into the Agreement, and then orchestrated the withholding of the BIO-T Formula in breach of the Agreement.

E. Indemnity Under the Agreement[2]

29. Article 9 of the Agreement defines the indemnity obligations of the parties. (*See* Exhibit J01 at Article IX.) Section 9.3 of the Agreement specifically governs Respondent's indemnification responsibilities, providing:

> Following the Effective Time and subject to Section 12.1, EATC UT shall, and shall cause EATC UT Entities to, indemnify, defend, and hold harmless each EATC NV Entity and its Affiliates, and each of their respective current or former directors, officers, employees, agents, and each of the heirs, executors, administrators, successors and assigns of any of the foregoing (each, a "EATC NV Indemnified Party"), from and against any and all Liabilities

[2] I address the indemnification provisions in the Agreement with respect to only Claimant's request for attorneys' fees and costs. If Claimant has an indemnification claim and/or separate claims for relief relating to potential Third Party Claims (as defined in the Agreement), no such claims were at issue in this Arbitration.

arising out of or resulting from any of the following items:

> (a) each breach by EATC UT or any EATC UT Entity of this Agreement, subject to any specific limitation on liability contained in the applicable agreement and without duplication taking into account the performance by each EATC NV Entity of its indemnification obligations in the agreement.

(*Id.* at Section 9.3 (emphasis in original).)

30. As early as May 27, 2020, and at numerous times thereafter, Claimant notified Respondent of its intent to hold Respondent to its indemnification responsibilities, in compliance with the Agreement. Respondent failed to respond to Claimant's notices, and did not dispute its indemnification responsibilities stemming from this Arbitration.

31. The liabilities at issue bring this Arbitration within the indemnification principles of the Agreement. It is on these facts that the Agreement's attorneys' fees provision, found in Section 10.3(c), is applicable to this Arbitration. Section 10.3 specifically provides:

> Costs of the arbitration shall be borne equally by the parties involved in the matter, except that each party shall be responsible for its own expenses, unless and to the extent otherwise determined by the arbitrator; provided, in the case of any Disputes relating to the parties rights and obligations with respect to indemnification under this Agreement, the prevailing party shall be entitled to reimbursement by the other party of its reasonable out-of-pocket fees and expenses (including attorneys' fees) incurred in connection with the arbitration.

(*See* Exhibit J01 at Section 10.3(c).)

32. Claimant requests an award of $96,960.68 in attorneys' fees and costs. (*See* Declaration of Jeffrey M. Singletary executed on July 30, 2021 ("Mr. Singletary's Declaration") at ¶ 15.)

33. If any Findings of Fact are properly Conclusions of Law, they shall be treated as though appropriately identified and designated.

CONCLUSIONS OF LAW

1. A breach of contract claim lies where there is: (i) the existence of a valid contract; (ii) a breach by the defendant; and (iii) damage as a result thereof. *See Rivera v. Peri & Sons Farms, Inc.*, 735 F.3d 892, 899 (9th Cir. 2013) (citing *Richardson v. Jones*, 1 Nev. 405, 408 (Nev. 1865)). [3]

[3] The Agreement "shall be governed by, and construed in accordance with, the Laws of the State of Nevada, regardless of the Laws that might otherwise govern under applicable principles of conflicts of laws thereof." (*See* Exhibit J01 at Section 10.4.) Likewise, the arbitration provision in the Agreement states that the Arbitrator is "bound exclusively by the laws of the State of Nevada without regard to its choice of law rules." (*Id.* at Section 10.3(b).)

2. An enforceable contract requires "an offer and acceptance, meeting of the minds, and consideration." *Anderson v. Sanchez*, 132 Nev. 357, 360, 373 P.3d 860, 863 (2016). "A meeting of the minds exists when the parties have agreed upon the contract's essential terms." *Certified Fire Prot. Inc. v. Precision Constr.,* 128 Nev. 371, 378 (Nev. 2012).

3. Consideration requires something that is "bargained for and given in exchange for an act or promise." *Zhang v. Eighth Judicial Dist. Court of State ex rel. County of Clark,* 120 Nev. 1037, 1042 n.22 (Nev. 2004), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas,* 124 Nev. 224 (Nev. 2008).

4. The Agreement must be construed under the well-known rules of contract interpretation. *See Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d 599, 603 (2005) ("Generally, when a contract is clear on its face, it 'will be construed from the written language and enforced as written.' The court has no authority to alter the terms of an unambiguous contract.").

5. Accepting Mr. Tyree's admissions in the California Action as true (*see* J10), Respondent executed the Agreement believing it was only conveying the limited (non-exclusive) right, at the pleasure of Messrs. Tyree and Hibler, to use the BIO-T Formula in the manufacture, blending and marketing of fuel additive products and nothing more, and Claimant executed the Agreement understanding and intending that the conveyance of the BIO-T Formula in Schedule A to the Agreement meant something different. In that case, the required meetings of the mind on all essential terms does not exist on the Agreement, which voids the Agreement altogether, instead of giving rise to breach of contract damages. *See Chudacoff v. Univ. Med. Ctr.,* 954 F. Supp. 2d 1065, 1085 (D. Nev. 2013) ("Under Nevada law, an enforceable contract is formed when there is offer, acceptance, meeting of the minds, and consideration.").

6. Alternatively, Claimant demonstrated that it is entitled to rescission under either of the following distinct theories: (i) fraudulent inducement, and (ii) Respondent's failure to perform. *See e.g., Awada v. Shuffle Master, Inc.,* 123 Nev. 613, 622-23 (Nev. 2007) (affirming trial court's rescission of a contract based on fraudulent inducement); *Canepa v. Durham,* 62 Nev. 417, 427 (Nev. 1944) ("A partial failure of performance of a contract will not give ground for its rescission unless it defeats the very object of the contract or renders that object impossible of attainment, or unless it concerns a matter of such prime importance that the contract would not have been made if default in that particular had been expected or contemplated.") (internal quotation marks omitted).[4]

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[4] Section 12.13 of the Agreement also contemplates the equitable relief awarded here:

> In the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the affected party shall have the right to specific performance and injunctive or other equitable relief of its rights under this Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The other party shall not oppose the granting of such relief. The parties hereto agree that the remedies at law for any breach or threatened breach hereof, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing and posting of any bond with such remedy are waived.

(*See* Exhibit J01 at Section 12.13.)

7. "Rescission is an equitable remedy which totally abrogates a contract and which seeks to place the parties in the position they occupied prior to executing the contract." *Bergstrom v. Estate of DeVoe,* 109 Nev. 575, 577 (Nev. 1993). Rescission of a contract can be accomplished either "legall[y]" or "equitabl[y]." *Great Am. Ins. Co. v. Gen. Builders, Inc.,* 113 Nev. 346, 353 n. 6 (Nev. 1997). Under a theory of "equitable recission," "the aggrieved party brings an action in a court with equitable jurisdiction asking the court to nullify the contract." *Id.* Whether to rescind a contract lies within a finder of fact's broad discretion. *Canepa v. Durham,* 65 Nev. 428, 437 (1948).

8. Under Nevada law, a party to a contract may seek rescission of that contract based on fraud in the inducement. *See Awada*, 123 Nev. at 622; *see also Havas v. Alger,* 85 Nev. 627, 631-33 (Nev. 1969) (affirming rescission of a vehicle sales contract where the purchased vehicle was one year older than represented). The elements for fraudulent inducement are: (i) defendant's false representation; (ii) defendant's knowledge or belief that the representation was false (or knowledge that it had an insufficient basis for making the representation); (iii) defendant's intention to induce plaintiff to consent to the contract's formation; (iv) plaintiff's justifiable reliance on the misrepresentation; and (v) damage to plaintiff resulting from such reliance. *See J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc.,* 120 Nev. 277, 290-91 (Nev. 2004). Claimant proved by clear and convincing evidence each of these elements in this Arbitration.

9. Respondent (i) made a false representation about its ownership of the BIO-T Formula, and/or (ii) orchestrated withholding of the BIO-T Formula, despite selling the BIO-T Formula to Claimant for its stock.

10. Respondent necessarily knew that its representations were false at the time they were made. Respondent withheld delivery of the product. When it did deliver, Respondent delivered a product that was different than the BIO-T Formula from 2015. And, Respondent now claims that it never owned the BIO-T Formula in the first place. Respondent knew, at the time it entered into the Agreement, that it would not, and could not, perform.

11. Respondent intended to induce Claimant into entering the Agreement with its false representations. Claimant made clear that its primary goal in entering into the Agreement was to gain ownership of the BIO-T Formula.

12. Claimant justifiably relied on the false representations. Claimant entered into the Agreement with the primary goal of acquiring the BIO-T Formula and all related assets. If not for these representations, Claimant would not have contracted with Respondent.

13. Claimant has suffered particular money damages as a result of Respondent's actions. Claimant may face future damages stemming from third-party claims arising from product representations using data from the BIO-T Formula received in 2015.

14. Also, Nevada has long recognized the right to rescind a contract on another party's failure to perform. *See e.g., Canepa,* 62 Nev. at 427. The Supreme Court of Nevada has said:

> A partial failure of performance of a contract will not give ground for its rescission unless it defeats the very object of the contract or renders that object impossible of attainment, or unless it concerns a matter of

> such prime importance that the contract would not have been made if default in that particular had been expected or contemplated.

Id. (internal quotation marks omitted). Courts interpreting this standard have required there to be a "substantial breach," which has involved as little as failure to pay money. *See Harrington v. Tackett,* No. 3:18-CV-00028-WGC, 2020 WL 5749997, at *11-12 (D. Nev. 2020) (applying Nevada law and finding failure to pay more than $20,000 on a $300,000 contract warranted rescission); *see also Havas,* 85 Nev. at 633-35 (affirming trial court's holding to rescind vehicle sales contract where the subject car was inoperable and, as a result, there was a failure of consideration).

15. By proving that Respondent has failed to deliver the BIO-T Formula since the execution of the Agreement—either by withholding the same or never having ownership of it—Claimant has shown, by a preponderance of the evidence, that Respondent failed to perform.

16. The Agreement was supposed to be an exchange of Claimant's stock for Respondent's assets, including the BIO-T Formula. Claimant's chief interest in Respondent's assets was the BIO-T Formula. Claimant performed its end of the bargain by distributing its stock to Respondent. Respondent failed to perform its obligations by (i) misrepresenting its ownership of the BIO-T Formula, and/or (ii) orchestrating withholding of the BIO-T Formula. By failing to adhere to its contractual obligations, Respondent is in "substantial breach."

17. Nevada law authorizes an award of attorneys' fees when provided for in a contract. *See* NRS 18.010(1) ("The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law."). Costs are likewise routinely awarded to a prevailing party. *See* NRS 18.020 (outlining the numerous situations for which a prevailing party is entitled to costs); NRS 18.050 (allowing a prevailing party to recover costs in the discretion of the court).

18. Rescission of a contract does not preclude recovery based on an attorneys' fees and costs provision in the void contract. *See Mackintosh v. California Fed. Sav. & Loan Ass'n,* 113 Nev. 393, 406, 935 P.2d 1154, 1162 (1997) (agreeing with case that held "that when parties enter into a contract and litigation later ensues over that contract, attorney's fees may be recovered under a prevailing-party attorney's fee provision contained therein even though the contract is rescinded or held to be unenforceable.") (citation omitted).

19. Claimant's entitlement to attorneys' fees and costs here stems from the indemnification provisions in the Agreement, which is specifically authorized by Section 10.3(c) of the Agreement. (*See* Exhibit J01 at Section 10.3(c).)[5]

20. Under Section 9.3 of the Agreement, Respondent is to indemnify Claimant from, and against any, "[l]iabilities" resulting from, "each breach by EATC UT or any EATC UT Entity of this Agreement, subject to any specific limitation on liability contained in the applicable agreement and without duplication taking into account the performance by each EATC NV Entity of its indemnification obligations in the agreement." (*Id.* at Section 9.3(a).) "Liabilities" also covers "attorneys' fees, the costs and expenses of all demands . . .[.]" (*Id.* at Page 7 of 29.)

[5] Alternatively, Claimant would be entitled to an award of its attorneys' fees (and costs) because it did not recover more than $20,000 in this Arbitration. *See* NRS 18.010(2)(a) ("In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party: . . . When the prevailing party has not recovered more than $20,000 . . . ."); *see also* NRS 18.050.

21. Claimant is, therefore, entitled to reasonable attorneys' fees and costs as the prevailing party in this Arbitration. *See, e.g., Women's Fed. Sav. & Loan Ass'n of Cleveland v. Nevada Nat. Bank,* 623 F. Supp. 469, 470 (D. Nev. 1985) ("A plaintiff may be considered the prevailing party . . . if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing the suit.").

22. When considering the reasonableness of attorneys' fees, Nevada courts look to the following four factors:

> (a) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill;
> (b) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation;
> (c) the work actually performed by the lawyer: the skill, time and attention given to the work; and
> (d) the result: whether the attorney was successful and what benefits were derived.

Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969); *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530, 549 (Nev. 2005).

23. In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court," which "is tempered only by reason and fairness." *Shuette,* 124 P.3d at 548–49. "Accordingly, in determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.*

24. Here, the qualities and skills of Mr. Singletary, the other attorneys, and the paralegals who worked with him in this Arbitration, are not disputable. And, the hourly rates charged by Claimant's counsel (from $295 to $680) are well within the prevailing market rates for commercial litigation in Nevada. *See e.g., In re USA Commercial Mortg. Co. v. USA SPE LLC*, Case Nos. 2:07-CV-892-RCJ-GWF and 3:07-CV-241-RCJ-GWF, 2013 WL 3944184, *20 (D. Nev. 2013) ("The Court finds that those suggested hourly rates are reasonable in comparison to prevailing market rates for complex commercial litigation in Nevada of between $350 and $775 an hour...."); *see also Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011) (agreeing with "[o]ther circuit courts [that] have held that judges are justified in relying on their own knowledge of customary rates and their experience concerning reasonable and proper fees.") (citations omitted). As a result, this factor weighs in favor of the reasonableness of the attorneys' and paralegal fees.

25. As to the second and third factors, the work performed by Mr. Singletary and his team is evidenced by his Declaration and the invoices attached thereto as Exhibit 1. The number of hours expended were reasonable. This factor, thus, weighs in favor of the reasonableness of the fees.

26. Fourth and finally, the result of the work performed by Mr. Singletary and his team on behalf of Claimant resulted in Claimant prevailing in this Arbitration. This successful result satisfies the fourth prong of the *Brunzell* test. I find that Claimant is entitled to recover reasonable attorneys' fees in the amount of $71,892.50.

27. Additionally, Claimant seeks to recover the administrative fees of the American Arbitration Association paid by Claimant in the amount of $6,250, the Arbitrator compensation totaling $4,950, and travel costs incurred to attend the Final Hearing totaling $818.18.

28. I find that, under the circumstances of this Arbitration and the factors set forth in *Brunzell*, $83,910.68 represents a reasonable amount of fees, expenses, and costs that Claimant is entitled to be awarded for prosecuting and prevailing in this Arbitration against Respondent.

29. If any Conclusions of Law are properly Findings of Fact, they shall be treated as though appropriately identified and designated.

Based on the above Findings of Fact and Conclusions of Law, I AWARD as follows:

1. Judgment is hereby entered in favor of Claimant EATC NV and against Respondent EAC UT.

2. For its remedy, Claimant EATC NV has elected, and is hereby awarded, rescission of the Agreement. Claimant EATC NV and Respondent EATC UT shall be restored to their original positions before the execution of the Agreement. This relief shall include, among other things, Respondent EATC UT returning to Claimant EATC NV all stock issued to Respondent's shareholders pursuant the Agreement, and Claimant EATC NV returning to Respondent EATC UT all assets conveyed by Respondent EATC UT to Claimant EATC NV, including, but not limited to, the alleged BIO-T Formula.

3. Claimant EATC NV is also awarded, and Respondent EATC UT shall pay Claimant EATC NV, the sum of EIGHTY-THREE THOUSAND NINE HUNDRED TEN DOLLARS AND SIXTY-EIGHT CENTS ($83,910.68), which represents the amount of reasonable attorneys' fees, costs, and expenses Claimant EATC NV is entitled to recover as the prevailing party.

4. The above sum shall accrue post-judgment interest at the applicable statutory rate of interest commencing on August 17, 2021, until paid in full.

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5. This Award is in full settlement of all claims submitted to this Arbitration. All claims asserted in this Arbitration not expressly granted herein are hereby denied.

Dated: August 16, 2021.

Arbitrator Signature: Nikki L Baker

Subscribed and sworn to before me
this 16th day of August, 2021.

NOTARY PUBLIC
My Commission expires: March 14, 2022

ERIN L. PARCELLS
Notary Public, State of Nevada
No. 06-104446-1
My Appt. Exp. Mar. 14, 2022

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Environmental Applied Technology Corporation, Plaintiff(s) vs. Energy Alliance Technology Company, Defendant(s)	CASE NO: A-21-839930-B DEPT. NO. Department 13

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 11/3/2021

Sonja Dugan	sdugan@swlaw.com
Charles Gianelloni	cgianelloni@swlaw.com
Jill Math	jmath@swlaw.com
Docket Docket	docket_las@swlaw.com
Aleem Dhalla	adhalla@swlaw.com
Lance Maningo	lance@maningolaw.com
Madisyn Schaus	madisyn@maningolaw.com
D'Andrea Dunn	ddunn@swlaw.com

DISTRICT COURT
CLARK COUNTY, NEVADA

Purchase/Sale of Stock, Assets, or Real Estate	**COURT MINUTES**	**October 14, 2021**

A-21-839930-B Environmental Applied Technology Corporation, Plaintiff(s)
vs.
Energy Alliance Technology Company, Defendant(s)

October 14, 2021 **9:30 AM** **Minute Order**

HEARD BY: Denton, Mark R. **COURTROOM:** Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled October 18, 2021 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715
Meeting ID: 869 862 085
Participant Passcode: 0049
URL: https://bluejeans.com/869862085/0049

To connect by phone, dial the number provided and enter the meeting ID followed by #.

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by

BlueJeans.

You may also download the BlueJeans app and join the meeting by entering the meeting ID.

PLEASE NOTE the following protocol each participant will be required to follow:

You will be automatically muted upon entry to the meeting. Please remain muted while waiting for your matter to be called. If you are connecting by phone, you can mute/unmute yourself on your phone or by pressing *4.
Do NOT place the call on hold since some phones may play wait/hold music.
Please do NOT use speaker phone as it causes a loud echo/ringing noise.
Please state your name each time you speak so that the court recorder can capture a clear record.
Please be mindful of rustling papers, background noise, and coughing or loud breathing.
Please be mindful of where your camera is pointing.
We encourage you to visit the Bluejeans.com website to get familiar with the BlueJeans phone/videoconferencing system before your hearing.
If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.
Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 10/14/21

DISTRICT COURT
CLARK COUNTY, NEVADA

Purchase/Sale of Stock, Assets, or Real Estate	**COURT MINUTES**	**October 18, 2021**

A-21-839930-B Environmental Applied Technology Corporation, Plaintiff(s)
vs.
Energy Alliance Technology Company, Defendant(s)

October 18, 2021 **9:00 AM** **All Pending Motions**

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 03D

COURT CLERK: Madalyn Kearney
Brittany Ates

RECORDER: Jennifer Gerold

REPORTER:

PARTIES PRESENT: Gianelloni, Charles E Attorney

JOURNAL ENTRIES

- MOTION TO ASSOCIATE COUNSEL...DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO CONFIRM ARBITRATION AWARD AND REQUEST FOR JUDGEMENT AND COUNTERMOTION TO VACATE ARBITRATION AWARD, OR IN THE ALTERNATIVE STAY CONFIRMATION OF ARBITRATION AWARD PENDING AN EVIDENTIARY HEARING AND DECISION OF RELATED CASES...MOTION TO CONFIRM ARBITRATION AWARD AND REQUEST TO ENTER JUDGMENT

Jeff Singletary, Esq. present for Plaintiff. Lance Maningo, Esq. present for Defendant. Counsel present via BlueJeans.

Mr. Gianelloni requested Mr. Singletary be able to argue today. Court noted everything appears to be in order relative to Mr. Singletary's Pro Hac Vice Application. Upon Court's inquiry, Mr. Maningo had no objection to advancing the hearing on that motion to today. All things considered and having reviewed the Motion to Associate Counsel, COURT ORDERED, Motion to Associate Counsel GRANTED and matter SET for Status Check regarding SCR 42 Compliance. Court noted if the record

shows notice of entry of the order was sent to the State Bar there will be no need to appear at the Status Check. Following arguments by Mr. Singletary and Mr. Maningo, COURT FURTHER ORDERED, Motion to Confirm Arbitration Award and Request to Enter Judgment and Countermotion to Vacate Arbitration Award, or in the Alternative Stay Confirmation of Arbitration Award Pending an Evidentiary Hearing and Decision of Related Cases UNDER ADVISEMENT.

12/2/21 9:00 AM STATUS CHECK: SCR 42 COMPLIANCE (JEFF SINGLETARY, ESQ.)

DISTRICT COURT
CLARK COUNTY, NEVADA

Purchase/Sale of Stock, Assets, or Real Estate	**COURT MINUTES**	**October 26, 2021**

A-21-839930-B Environmental Applied Technology Corporation, Plaintiff(s)
vs.
Energy Alliance Technology Company, Defendant(s)

October 26, 2021 **3:30 PM** **Minute Order**

HEARD BY: Denton, Mark R. **COURTROOM:** Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- HAVING further reviewed and considered the parties' filings and argument of counsel pertaining to Plaintiff's "Motion to Confirm Arbitration Award and Request to Enter Judgment" and "Defendant's...Countermotion to Vacate Arbitration Award or, in the Alternative Stay Confirmation of Arbitration Award Pending an Evidentiary Hearing and Decision of Related Cases," heard and taken under advisement on October 18, 2021, and being fully advised in the premises, and having determined that Plaintiff's Motion and supportive contentions are meritorious and that Defendant's Countermotion lacks merits in both of its aspects, the Court GRANTS Plaintiff's Motion and DENIES Defendant's Countermotion. Counsel for Plaintiff is directed to submit a proposed order consistent herewith and with supportive briefing/argument following submission of the same to opposing counsel for signification of approval/disapproval. Instead of seeking to clarify or litigate meaning or any disapproval through correspondence to the Court or to counsel with copies to the Court, any such clarification or disapproval should be the subject of appropriate motion practice.

IT IS SO ORDERED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 10/26/21

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

LANCE A. MANINGO
400 S. 4TH ST., SUITE 650
LAS VEGAS, NV 89101

DATE: November 24, 2021
CASE: A-21-839930-B

RE CASE: ENVIRONMENTAL APPLIED TECHNOLOGY CORPORATION fka ENERGY ALLIANCE TECHNOLOGY CORPORATION vs. ENERGY ALLIANCE TECHNOLOGY CORPORATION

NOTICE OF APPEAL FILED: November 22, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

☒ $250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)**

☐ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
- NRAP 7: Bond For Costs On Appeal in Civil Cases
- *Previously paid Bonds are not transferable between appeals without an order of the District Court.*

☐ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; NOTICE OF POSTING BOND FOR COSTS ON APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING MOTION TO CONFIRM ARBITRATION AWARD AND REQUEST TO ENTER JUDGMENT -AND- ORDER DENYING COUNTERMOTION TO VACATE ARBITRATION AWARD, OR IN THE ALTERNATIVE, TO STAY CONFIRMATION -AND- FINAL JUDGMENT; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

ENVIRONMENTAL APPLIED TECHNOLOGY CORPORATION fka ENERGY ALLIANCE TECHNOLOGY CORPORATION,

Plaintiff(s),

vs.

ENERGY ALLIANCE TECHNOLOGY CORPORATION,

Defendant(s),

Case No: A-21-839930-B

Dept No: XIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 24 day of November 2021.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk