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*Latif Mahjoob and American Combustion Technologies of California, Inc.*

12 **UNITED STATES DISTRICT COURT**

13 **FOR THE DISTRICT OF NEVADA**

14 CH2E NEVADA LLC, a Nevada limited  
15 liability company,

16 Plaintiffs,

17 vs.

18 LATIF MAHJOOB, an individual;  
19 AMERICAN COMBUSTION  
20 TECHNOLOGIES OF CALIFORNIA,  
21 INC., a California corporation; DOES 1-X;  
and ROE COMPANIES XI-XX, inclusive,

22 Defendants.

Case No. 2:15-cv-00694-JCM-NJK

**AMERICAN COMBUSTION  
TECHNOLOGIES OF CALIFORNIA  
INC.'S OPPOSITION TO CH2E'S  
MOTION TO COMPEL AND REQUEST  
TO AMEND STIPULATED  
PROTECTIVE ORDER**

23  
24 **AND RELATED CROSS-ACTIONS**

1 **I. INTRODUCTION**

2 Plaintiff and Counterclaim Defendant CH2E Nevada LLC's ("CH2E") Motion to Compel is  
3 brought in bad faith and with dubious motives. CH2E is a single purpose entity, which was formed  
4 to own a facility to convert used tires to oil and carbon using equipment and technology provided by  
5 Defendant and Counterclaimant American Combustion Technologies of California, Inc. ("ACTI").

6 From the inception, the project was plagued with problems as a result of the fact that CH2E  
7 had never designed, built, or operated such a facility. Nonetheless, ACTI's equipment worked and  
8 produced oil and carbon. During the course of the project, a principal of a Kazakhstan entity called  
9 Capital Partners, which provided the funding for and controlled CH2E, indicated his desire to build  
10 renewable energy equipment and attempted to pressure the President of ACTI into a partnership  
11 whereby Capital Partners would gain access to ACTI's technology. ACTI refused the requests on  
12 the basis that it did not want to share its intellectual property with Capital Partners or its principals.

13 In the fall of 2014, the price of oil plummeted, going from approximately \$115 a barrel to  
14 under \$60. Not surprisingly, around the same time, CH2E decided to effectively shutter its  
15 operations at the Colorado facility. CH2E then sued ACTI and ACTI countersued CH2E for its  
16 failure to pay for the equipment.

17 CH2E's motion is disingenuous in that it claims that ACTI has not produced "design  
18 drawings." ACTI has produced, and CH2E is in possession, of multiple sets of "design" drawings  
19 that show the dimensions and specifications of all the equipment, the piping and instrumentation  
20 diagrams ("P&ID"), assembly and installation drawings, and overall design of the system. The only  
21 item at issue is CH2E's recent request that ACTI provide it with a complete set of proprietary  
22 *manufacturing drawings* that would enable CH2E, and more importantly its investors or any third-  
23 party, to completely steal ACTI's technology. The critical difference between the manufacturing  
24 drawings and the thousands of pages of "design" drawings that CH2E already possesses is that the  
25 manufacturing drawings show the step by step process as to how to build the equipment, which  
26 CH2E does not need as part of its case. CH2E's motion is completely devoid as to any explanation  
27 why it needs to be able to build the equipment. Moreover, a review of CH2E's motion reveals that  
28 CH2E has not identified a single piece of relevant information that it claims is necessary for its case

1 that is contained only in the manufacturing drawings, and is not otherwise available through  
2 information already in its possession or by inspecting the actual equipment at its site. Indeed, CH2E  
3 has not provided a declaration from any expert or otherwise establishing that the *manufacturing*  
4 *drawings* are necessary to assess any purported flaws in the design of the equipment.

5 Notwithstanding the foregoing, ACTI initially offered to provide portions of the  
6 manufacturing drawings for areas that CH2E specifically identified as having alleged design flaws  
7 in an attempt to resolve the dispute. ACTI repeated its concern that providing CH2E with the  
8 complete set of manufacturing drawings would allow CH2E with access to ACTI's proprietary  
9 designs and trade secrets that it spent years developing, and for which Capital Partners had already  
10 expressed a desire to use. However, CH2E wholly rejected this offer and refused to even engage in  
11 a discussion regarding the specific pieces of the equipment that it claimed were improperly  
12 designed. Instead, CH2E simply reiterated its demand that ACTI provide the complete set of its  
13 proprietary manufacturing drawings.

14 Concerned by CH2E's position, but in order to avoid unnecessary motion practice, ACTI  
15 offered to provide the complete set of manufacturing drawings on an attorneys' eyes only basis,  
16 with the proviso that such drawings could be reviewed by any experts or consultants retained by  
17 CH2E's attorneys, but no copies could be made of the documents. The concern was that CH2E is  
18 essentially a shell company and its acting CEO is an officer in Capital Partners. If the drawings  
19 were to get out there is no way to unring the bell, and recourse against CH2E would be meaningless.

20 Again, CH2E refused this offer. Moreover, as set forth below, the purported basis for  
21 CH2E's refusal is meritless and raises significant concerns. ACTI is happy to work with this Court  
22 and CH2E to craft a solution so that CH2E is provided with any information needed for trial, while  
23 at the same time protecting ACTI's proprietary technology and designs. However, CH2E has  
24 wholly refused to cooperate in such a process.

25 Therefore, ACTI requests that is Court deny CH2E's Motion to Compel and in the event all  
26 or part of the manufacturing drawings are ordered to be disclosed, the Court amend the Protective  
27 Order to provide a suitable framework for production.

28

1 **II. STATEMENT OF RELEVANT FACTS**

2 **A. Background on CH2E and the Project**

3 ACTI has been informed that CH2E is a single purpose entity that was formed to own and  
4 operate a facility in Hudson, Colorado to convert used tires into oil and carbon. At present, it is  
5 ACTI's understanding that CH2E has a skeleton staff in Colorado. Upon information and belief, the  
6 primary investor in CH2E is Capital Partners, a company based out of Kazakhstan, and whose  
7 principals are Burak Oymen, a Turkish national, and Serzhan Zhumashov, a Kazakh national. The  
8 current acting CEO of CH2E is Robert Zecher. However, his primary position is with Capital  
9 Partners.

10 During the project with CH2E, Burak Oymen requested a meeting with Latif Mahjoob, the  
11 president of ACTI. Declaration of Latif Mahjoob ("Mahjoob Decl.") ¶ 2. At the meeting, Mr.  
12 Oymen expressed interest in exploiting ACTI technology and designs as he wanted to enter the  
13 rapidly growing waste to energy field. *Id.* Mr. Burak proposed that ACTI enter into a partnership  
14 with him, which would provide him access to ACTI technology. *Id.* Mr. Mahjoob politely rejected  
15 Mr. Burak's entreaties. *Id.*

16 Neither CH2E nor Capital Partners had designed, built or operated a waste to energy plant  
17 prior to the Hudson, Colorado project. Nonetheless, CH2E's former CEO Francis Beland and COO  
18 Ashley Daye had worked with ACTI for a significant period prior to the Purchase Agreement  
19 operating ACTI's pilot unit and conducting all testing, studies, and analysis that they deemed fit.  
20 With the price of crude oil over \$100, CH2E's business plan was to use ACTI equipment and  
21 technology to convert tire shreds into oil and carbon through a process called pyrolysis. Pyrolysis  
22 involves exposing organic material to high temperatures while starving the material of oxygen and  
23 halogen. Depending on the temperature at which the material is pyrolyzed, the tires will turn into  
24 gas, oil, and carbon/ash. The amount of carbon/ash will depend on the qualities of the tire shreds.

25 The parties dispute the performance of the equipment. ACTI's contends that CH2E made  
26 unauthorized modifications to the equipment, ran it in a manner inconsistent with the operating  
27 guidelines, and failed to engineer and build the auxiliary equipment that it was required to do.

28 In late Summer of 2014, after a period of de-bugging CH2E's facility, Mr. Beland and Mr.

1 Daye had the ACTI equipment running 24 hours a day for an extended period. Despite the fact that  
2 they were the two individuals most knowledgeable about ACTI's equipment, Mr. Oymen of Capital  
3 Partners forced them out of CH2E. Later, once the price of oil dropped in the fall of 2014, CH2E  
4 effectively shuttered its operations.

5 **B. CH2E's Failure to Meet and Confer Efforts with Respect to ACTI's Proprietary**  
6 **Manufacturing Drawings**

7 As part of the contract, ACTI provided numerous drawings, designs, and other information  
8 about ACTI's equipment to CH2E. This included installation and set-up drawings, P&IDs,  
9 specifications, and dimensions for the pieces of equipment that comprise the pyrolysis units.

10 Mahjoob Decl. ¶ 3. CH2E is in possession of all relevant drawings and designs except the actual  
11 manufacturing drawings that provide the blueprint for building the equipment from scratch. The  
12 dimensions, P&IDs, assembly/installation, and specification drawings, contain information as to the  
13 size of the equipment and how the system works. *Id.* at ¶ 3.

14 The Stipulated Protective Order was entered by this Court on October 5, 2016. [ECF No.  
15 27]. Roughly six months later, on April 4, 2016, CH2E served the discovery at issue in the instant  
16 Motion to Compel seeking the manufacturing drawings that Mr. Mahjoob referenced in his  
17 deposition as being proprietary.

18 In response to CH2E's requests, ACTI offered to meet and confer regarding the specific  
19 basis for CH2E's request. Declaration of James Kawahito ("Kawahito Decl.") ¶ 2, Ex. 1. As part of  
20 the meet and confer process, ACTI inquired as to why the existing drawings and other documents  
21 that CH2E is in possession of are inadequate to establish any of its purported theories on the alleged  
22 design flaws. *Id.* at ¶ 3. CH2E refused to provide any explanation. *Id.* ACTI then questioned what  
23 information CH2E was unable to glean from studying or analyzing the as-built equipment that it has  
24 on-site. *Id.* Again, CH2E completely refused to address this question. *Id.* Instead, CH2E simply  
25 demanded that ACTI produce the complete set of its proprietary manufacturing drawings without  
26 redaction. *Id.*

27 Second, notwithstanding the fact that CH2E could not identify why it needed the actual  
28 manufacturing drawings, ACTI indicated that it would be willing to consider providing

1 manufacturing drawings for specific pieces of equipment CH2E challenged or for which the existing  
2 information in its possession was insufficient. *Id.* at ¶ 4. CH2E not only refused to even discuss the  
3 specific areas of alleged design flaws, but also refused to provide any explanation as to why the  
4 manufacturing drawings were necessary in light of the multitude of drawings, designs, and other  
5 information in its possession. *Id.*

6 CH2E's abject refusal to even engage in a discussion about its purported need for the  
7 manufacturing drawings elevated ACTI's concerns about the motives behind CH2E's request.  
8 Nonetheless, despite the fact that CH2E's requests sought arguably irrelevant, yet highly  
9 proprietary, information, ACTI offered to provide the complete set of manufacturing drawings to  
10 CH2E on the grounds that the parties amend the Stipulated Protective Order to allow ACTI to  
11 provide the drawings on an Attorneys' Eyes Only basis, which would permit any experts/consultants  
12 retained by CH2E's attorneys to review the drawings. *Id.* at ¶ 5. In order to control the duplication  
13 of the proprietary information, ACTI requested that no copies be made of the documents provided.

14 CH2E again rejected ACTI's offer. In particular, CH2E proffered the specious argument  
15 that the no copying provision was inconvenient because it had attorneys in different offices working  
16 on the matter. *Id.* at ¶ 7, Ex. 3. CH2E's justification is meritless as ACTI was and continues to be  
17 willing to provide a set of the drawings for each office as long as CH2E's attorneys' are prohibited  
18 from making electronic or other copies.<sup>1</sup>

19 Next, CH2E asserted that the proposed solution was unfair in that ACTI could review the  
20 plans, but its client could not. *Id.* However, this is necessarily the case in any "attorneys' eyes  
21 only" designation. CH2E did not identify any specific employees or officers for whom it deemed  
22 critical that they review the drawings. The equipment as well as the process by which the feed is  
23 converted into gas, oil, and carbon is highly technical and requires a scientific background in the  
24 area of pyrolysis and/or thermal depolymerization to understand. Indeed, as far as ACTI is aware,  
25 its CEO has no engineering or other science background, and ACTI is not familiar with any other

26  
27 <sup>1</sup> CH2E's contention that the no copying provision would prevent it from using the drawings at a 30(b)(6) deposition of  
28 ACTI's corporate representative (Motion at p. 12) is specious. The parties could easily stipulate to allow CH2E to make  
a copy for purposes of the Court Reporter and the deponent or ACTI could arrange to provide such copies. The point is  
simply that all sets of drawings must be strictly accounted for and returned at the conclusion of the litigation.



1 current employees who have the chemical and mechanical engineering background necessary to  
2 assess the manufacturing drawings as they relate to the performance of the equipment.

3 Based on ACTI's concern that (1) CH2E is essentially a shell company, with no assets aside  
4 from the tire facility in Colorado; (2) the CEO's primary position is with a Central Asian investor  
5 group that previously stated an interest in exploiting ACTI's technology and equipment; (3) the  
6 items that CH2E demanded are highly sensitive and proprietary in nature and of little relevance; (4)  
7 there is a lack of recourse against CH2E in the event the manufacturing drawings are  
8 used/leaked/sold to or by a third party; and (5) CH2E's refusal to agree to any reasonable limitations  
9 on the production of the drawings or safeguards against accidental or intentional mishandling, ACTI  
10 indicated that it would not supply the complete set of proprietary drawings absent intervention from  
11 the Court.

### 12 **III. STANDARD OF REVIEW**

13 Pursuant to Rule 26(c), courts have broad discretion to find that a "trade secret or other  
14 confidential research, development, or commercial information not be revealed or be revealed only  
15 in a specified way." Fed. R. Civ. P. 26(c)(1)(G). While trade secrets are not afforded "automatic  
16 and complete immunity from disclosure," courts must weigh the claims of privacy against the need  
17 for disclosure. Advisory Committee Notice to 1970 Amendments to Rule 26(c). "In light of the  
18 protection afforded trade secrets by Rule 26(c)(7), courts have attempted to reconcile the competing  
19 interests in trade secrets disputes." *In re Remington Arms Co.*, 952 F.2d 1029, 1032 (8<sup>th</sup> Cir. 1991).  
20 First, the party opposing discovery must demonstrate that the information requested is a trade secret  
21 under Rule 26(c)(7) and that its disclosure would be harmful to the party's interest in the property.  
22 *Id.* "The burden then shifts to the party seeking discovery to show that the information is relevant  
23 to the subject matter of the lawsuit and is necessary to prepare the case for trial." *Id.* The Ninth  
24 Circuit has held that "disclosure of trade secrets will be required only where such disclosure is  
25 relevant and necessary to the prosecution or defense of a particular case." *Hartley Pen. Co. v. U.S.*  
26 *Dis. Ct. for S.D. Cal.*, 287 F.2d 324, 330-31 (9<sup>th</sup> Cir. 1961). The party seeking disclosure bears the  
27 burden of establishing "that the trade secret sought is relevant and necessary to the prosecution or  
28 defense of the case before a court is justified in ordering disclosure." *Id.*

1 **IV. ARGUMENT**

2 As set forth below there is no question there that the manufacturing drawings constitute trade  
3 secrets. Furthermore, CH2E has failed to meet its burden of identifying the specific need for the  
4 trade secret information and demonstrating that the information it seeks is not available through  
5 other means – i.e. design drawings in its possessions, the as-built equipment at its facility, or a  
6 narrowly tailored production of specific components of the manufacturing drawings.

7 **A. The Manufacturing Drawings are Proprietary Trade Secrets**

8 ACTI spent decades making improvements to the proprietary technology, which can convert  
9 virtually any type of organic biomass to energy. The technology was specifically designed to be  
10 flexible and handle not only rubber, but also plastics, wood chips, municipal solid waste, sewage  
11 sludge, medical waste, green waste, etc. Indeed, CH2E was originally interested in purchasing  
12 ACTI technology and equipment to convert plastic waste into energy.

13 Drawings, designs, P&IDs, and other documents showing the size, technical specifications,  
14 dimensions, interconnection of equipment, instrumentation used to control equipment, process  
15 piping sizes and identification, identification of components and subsystems, valves, and flow of  
16 materials through the equipment, were provided by ACTI to CH2E. Indeed, these materials were  
17 given to CH2E pursuant to the Purchase Agreement, which required ACTI to provide “detailed  
18 equipment and arrangement drawings.” However, as the president of ACTI, Latif Mahjoob, stated  
19 in his deposition, the manufacturing drawings are highly proprietary, ACTI does not provide the  
20 actual manufacturing drawings of its equipment to any customers or anyone outside of ACTI.  
21 Exhibit E to the Declaration of Greg Szewczyk at 189:5-189:22-239:2; 190:6-7. In fact, only a  
22 select few employees have access to such drawings within ACTI. Mahjoob Decl. ¶ 4.

23 The manufacturing drawings contain the blueprints to building the equipment. As such, they  
24 are carefully guarded. *Id.* at ¶ 4. The complete set of manufacturing drawings indisputably contain  
25 information that is irrelevant to this case. For example, the drawings contain the size and type of  
26 screws and washers that are used, the characteristics of the various metal parts, welding instructions,  
27 sequences for the fabrication, the diameter and spacing for the holes for the screws, directions on  
28 how to fabricate the gear boxes, etc. None of these items are relevant to the claims in the case, yet



1 are demanded by CH2E as part of the complete manufacturing drawings.

2 **B. CH2E Has Not Identified The Relevancy of the Manufacturing Drawings Given**  
3 **the Design Documents and Equipment in its Possession**

4 CH2E's brief baldly describes the documents it seeks as "critical" design documents.  
5 However, its motion is completely devoid of any explanation as to why the manufacturing drawings  
6 are "critical" in light of the thousands of pages of design documents it is in possession of and the  
7 actual equipment that it maintains control of at its facility. There is no explanation whatsoever as to  
8 what relevant information the manufacturing drawings contain that cannot be ascertained from  
9 existing drawings, designs, specification and dimensions, P&IDs or the equipment itself. Moreover,  
10 even if CH2E could scratch together some basis for the production of the manufacturing drawings, it  
11 certainly cannot justify its position that ACTI must provide the complete un-redacted set as opposed  
12 to areas where CH2E and/or its expert/consultant claim deficiencies exist and cannot be analyzed  
13 based on otherwise available materials.

14 As part of the meet and confer process, ACTI requested that CH2E identify any specific  
15 items that it or its experts/consultants need in order to assess the functionality or design of the  
16 equipment, which are contained in the manufacturing drawings but not otherwise available to CH2E  
17 through the documents previously provided by ACTI or by taking any measurements of the  
18 equipment itself. Not surprisingly, CH2E could not identify a single, specific item. Indeed, CH2E's  
19 attorneys refused to even engage in such a dialogue, and simply insisted that ACTI must turn over  
20 the entire set of drawings.

21 CH2E's nebulous claim that the complete set of manufacturing drawings is required because  
22 the entire system allegedly did not work as promised and warranted does not address the underlying  
23 deficiency in its reasoning. Again, CH2E has not identified why the design documents in its  
24 possession, the P&IDs, and the as-built equipment are insufficient to identify any system-wide  
25 inefficiencies. Moreover, CH2E's vague assertion that the manufacturing drawings would show  
26 "inefficiencies that occur as the product travels throughout the system from component to  
27 component" is disingenuous at best. The manufacturing drawings do not show the pressure or  
28 movement of product and/or gas between the equipment. Such details are contained in the P&IDs,

1 which CH2E possesses.

2 In an attempt to deflect from its inability to articulate a specific need for the manufacturing  
3 drawings, CH2E attempts to conflate the calculations for the design of the equipment and the  
4 drawings themselves. Motion at p. 6. However, the two items are completely distinct. The  
5 manufacturing drawings are essentially blueprints and do not contain any calculations. ACTI has  
6 agreed to provide any calculations that it can locate and has already provided such details in  
7 response to CH2E's discovery. ACTI is not withholding any calculations or "design" documents  
8 aside from the manufacturing drawings at issue in this motion.

9 Finally, CH2E asserts that the complete manufacturing drawings are somehow necessary to  
10 adjudicate whether ACTI breached its agreement to provide CH2E with complete and detailed  
11 design drawings as required under the contract. This argument is specious at best. As set forth  
12 *supra*, there is a difference between design drawings, which ACTI provided to CH2E during the  
13 project, and manufacturing drawings. At no point during the project did CH2E claim that the  
14 contract required ACTI turn over its proprietary manufacturing drawings. Moreover, even if CH2E  
15 is now taking such position, the claim will turn on the parties' intent and there is no reason why  
16 ACTI must now turn over the actual drawings to assess the parties' intent at the time of contract.

17 While CH2E refused to identify any specific areas where it purportedly needs the  
18 manufacturing drawings as part of the meet and confer process, its Complaint lists specific alleged  
19 problems with ACTI's design – none of which require an examination of the manufacturing  
20 drawings. Complaint at ¶ 70. For example, CH2E claims that the burners were built to close to the  
21 retort tubes. *Id.* However, CH2E certainly does not need the step-by-step process for the  
22 fabrication of the retorts to analyze this issue. Indeed, it can simply review the dimensional  
23 drawings of the retorts and the burner. In the alternative, it can measure the distances and  
24 specifications based on the actual as-built equipment in its possession.

25 Next, CH2E complains that the retort tubes were improperly welded. *Id.* Again, there is no  
26 reason why the manufacturing drawings are necessary to show a defect in the welding. CH2E also  
27 alleges that the condenser tanks, oil and gas scrubbers, de-mister, and recirculation systems did not  
28 function properly. However, CH2E does not provide any basis why the manufacturing drawings, as

1 opposed to the design drawings showing the dimensions and specifications for the pieces are  
2 necessary.

3 CH2E also contends that certain valves used on pipes were designed for use with corn and  
4 grain. ACTI did not design these valves, but purchased them from third parties. *Id.* As such, the  
5 manufacturing drawings would not shed light on CH2E's dubious claim.

6 CH2E's Complaint also asserts that an independent inspection identified "3 separate design  
7 defects which render it mathematically impossible for the Equipment, as designed, to operate at the  
8 promised and warranted levels. . ." Complaint at ¶ 81. In particular, CH2E claims that the pyrolysis  
9 unit is incapable of transferring the necessary heat to the tires; the area of the pyrolysis unit which  
10 separates gas vapors from carbon black powder causes the powder to get sucked in the gas; and the  
11 condenser/cooling system is insufficient to cool the gas. CH2E has notably refused to produce any  
12 documents or information related to this purported investigation, including the mathematical  
13 calculations that allegedly make it impossible for the equipment to perform. Nevertheless, it is clear  
14 that CH2E was able to perform such an analysis with the drawings it has and an examination of the  
15 equipment in its possession. Because of CH2E's failure to engage in good faith in the meet and  
16 confer process, CH2E has not demonstrated what, if anything, the manufacturing drawings contain  
17 that CH2E was unable to analyze based on the information it has in its possession.

18 It is not surprising that CH2E has not submitted a declaration of any expert or other  
19 individual with a chemical/mechanical engineering background regarding CH2E's purported need  
20 for the manufacturing drawings. Indeed, it is difficult to imagine that any issues regarding the  
21 system or the system-wide performance cannot be evaluated using the design documents already in  
22 CH2E's possession or any analysis of the actual equipment. Moreover, to the extent any specific  
23 additional design documents are required, ACTI is willing to provide those discrete areas as already  
24 offered during the meet and confer process.

25 ACTI does not intend to rely upon the manufacturing drawings for its defense in this matter.  
26 Indeed, all relevant components related to the design of the equipment can be gleaned from  
27 information provided to CH2E, equipment currently in CH2E's possession from the project, or  
28

1 testimony from witnesses.<sup>2</sup>

2 Because CH2E has failed to articulate the relevance of the manufacturing drawings, this  
3 Court should deny it motion. Nonetheless, as set forth below, to the extent this Court orders  
4 production of the drawings, either partially or in full, ACTI respectfully requests that the Court  
5 amend the Protective Order to allow ACTI to produce the drawings, or a portion thereof, on an  
6 Attorneys' Eyes Only basis with safeguards in place to prevent the drawings from being disclosed.

7 **C. To the Extent This Court Orders the Manufacturing Drawings be Produced,**  
8 **Reasonable Safeguards Should be put in Place.**

9 As set forth above, the manufacturing drawings contain highly confidential, trade secret  
10 information, including the step-by-step process for copying ACTI's technology and equipment.  
11 CH2E's blanket refusal to agree upon reasonable restrictions to protect the integrity of this  
12 information raises red flags.

13 In particular, contrary to CH2E's position, ACTI is not concerned with any single investor.  
14 Rather, ACTI is worried that as a single-purpose entity, whose operations are effectively shuttered,  
15 ACTI will have no meaningful recourse in the event that the drawings end up in the hands of third  
16 parties through inadvertence, carelessness, or nefarious motives. Improvements that it spent  
17 decades making and protecting the secrecy of could essentially be wiped out instantaneously.

18 While CH2E complains that amending the Protective Order to allow for an Attorneys Eyes  
19 Only designation would prejudice it since it would not be able to share the documents with its client,  
20 CH2E has conspicuously not identified any of its employees or officers it believes should have  
21 access to the manufacturing drawings. Indeed, is unclear who, if anybody, at CH2E would have the  
22 scientific background or knowledge to interpret and draw conclusions about the designs from the  
23 drawings. The attorneys' eyes only designation would still permit CH2E's experts and consultants  
24

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25 <sup>2</sup> As set forth above, CH2E purportedly hired a consultant in the Fall of 2014 to perform an analysis  
26 on ACTI's equipment. Based on such an analysis, CH2E alleges in its Complaint that the ACTI's  
27 equipment could not perform as warranted based on mathematical calculations. Complaint at ¶ 80,  
28 81. CH2E reiterates this point in its brief. Motion to Compel at p. 3. However, CH2E has refused to  
provide these calculations through discovery or any data upon which the purported calculations are  
based. In the event the parties are unable to arrive at a resolution, ACTI intends to bring a motion to  
compel the data and the calculations (as opposed to any consultant opinion).

1 to review the plans.

2 Thus, as proposed by ACTI during the meet and confer process, ACTI proposes that the  
3 Court amend the existing Protective Order to permit an Attorneys' Eyes Only designation with  
4 respect the manufacturing drawings. Pursuant to the AEO designation, ACTI willing to produce  
5 partial or complete portions of the manufacturing drawings. However, ACTI would request that the  
6 following conditions be put into place: (1) ACTI will provide sets of drawings for each office  
7 where CH2E's attorneys are working out of; (2) no copies electronic or otherwise, including photos,  
8 be made of the drawings; (2) one individual at Ballard & Spahr LLP shall be designated as the  
9 custodian of the manufacturing drawings; (3) all individuals (attorneys' and their  
10 consultants/experts) who are provided access to the drawings are logged including the full name,  
11 date, and time; (4) each individual provided access to the drawings shall execute an agreement  
12 advising them of the confidential nature of the information, the limited scope of their review, and  
13 making them personally liable for any unauthorized disclosure; and (5) all copies shall be returned  
14 upon the conclusion of the case. *See In re Remington Arms Co*, 952 F.2d at 1033.<sup>3</sup>

15 Given CH2E's corporate status, the fact that its CEO's primary position is with an  
16 investment group whose principal has already expressed a desire to exploit ACTI technology, and  
17 the fact that ACTI would have limited or no recourse against CH2E in the event the drawings are  
18 inadvertently or otherwise leaked, CH2E's claim that the existing Protect Order is sufficient to  
19 protect ACTI's most critical trade secrets provides ACTI with little comfort.

20 **D. ACTI is Willing to Produce the Designs for the Pilot Unit Aside From the**  
21 **Manufacturing Drawings**

22 CH2E's request for design drawings for the "pilot unit" suffer from similar infirmities, and  
23 once again demonstrate its unwillingness to meet and confer in good faith. ACTI has a pilot unit at  
24 its headquarters in California that it uses to test feed, display the technology, and conduct research  
25 and development. Mahjoob Decl. ¶ 5. The pilot unit has a capacity of about 200 lbs per hour  
26

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27 <sup>3</sup> In the event that some or all of the measure requested are not adopted, ACTI requests that CH2E  
28 post a bond in the amount of \$10 million to protect against the risk of injury from the disclosure of  
the manufacturing drawings. *See In re Remington Arms Co*, 952 F.2d at 1033.

1 depending on the density of the feed. The pilot unit does not operate solely on tires, but also can be  
2 configured to run on other feed including plastics, wood chips, coal, municipal solid waste pellets,  
3 etc. *Id.* at ¶ 5. Moreover, components are regularly added and removed from the pilot unit  
4 depending on the circumstances of its operation. ACTI does not have specific drawings for the pilot  
5 unit as to its operations with rubber shreds from the period where CH2E took control of it and ran it  
6 for roughly six months. Moreover, the configuration requested by CH2E contained multiple  
7 condensing tanks, which the pilot unit never used. *Id.* at ¶6. The pilot unit also does not have any  
8 automatic feed system or a carbon removal system, which were designed and installed by CH2E at  
9 its plant. While the core design of the pyrolysis unit is similar to that of the pilot unit and derives  
10 from the same principals, the pilot unit is less than 1/15 the capacity of the CH2E units.

11 Nonetheless, ACTI does have and is in the process of gathering and producing general  
12 design drawings for the base pilot unit (excluding components for feeds other than tires or other  
13 items related to ACTI's R&D) including three dimensional drawings, assembly and set-up  
14 drawings, etc. ACTI also has manufacturing drawings for the base pilot unit, which it is unwilling  
15 to produce absent protections for its intellectual property/trade secrets as set forth above.

16 **V. CONCLUSION**

17 For the foregoing reasons, ACTI respectfully request that this Court deny CH2E's Motion to  
18 Compel. In addition, ACTI asks that the Court award ACTI its expenses in opposing CH2E's  
19 motion, including attorneys' fees, pursuant to Federal Rule of Civil Procedure 37.

20 KAWAHITO & WESTRICK LLP

21  
22 Dated: November 1, 2016

23 By: /s/ James Kawahito  
24 James Kawahito  
25 KAWAHITO WESTRICK LLP  
26 Attorney of Record for  
27 American Combustion Technologies of  
28 California, Inc. and Latif Mahjoob



**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of November 2016, and pursuant to Fed. R. Civ. P. 5(b), a true and correct copy of the foregoing **AMERICAN COMBUSTION TECHNOLOGIES OF CALIFORNIA INC.'S OPPOSITION TO CH2E'S MOTION TO COMPEL AND REQUEST TO AMEND STIPULATED PROTECTIVE ORDER** was electronically filed and served through the Court's CM/ECF system, which will send a notice of electronic filing to the following:

Roger P. Thomasch  
Gregory P. Szewczyk  
BALLARD SPAHR LLP  
1225 17th Street, Suite 2300  
Denver, Colorado 80202-5596

Abran E. Vigil  
Nevada Bar No. 7548  
100 North City Parkway, Suite 1750  
Las Vegas, Nevada 89106-4617

Peter L. Haviland  
BALLARD SPAHR LLP  
2029 Century Park East, Suite 800  
Los Angeles, CA 90067-2909

/s/ Sebastian Burnside  
**Sebastian Burnside**

1 JAMES KAWAHITO (*Pro Hac Vice*)  
Email: jkawahito@kswlawyers.com  
2 KAWAHITO WESTRICK LLP  
10474 Santa Monica Blvd. Ste 405  
3 Los Angeles, California 90025  
Telephone: (310) 746-5300  
4 Facsimile: (310) 593-2520

5 HECTOR CARBAJAL  
Nevada Bar No. 6247  
6 MATTHEW C. WOLF  
Nevada Bar No. 10801  
7 CARBAJAL & MCNUTT LLP  
625 South Eighth Street  
8 Las Vegas, Nevada 89101  
Telephone: (702) 384-1170  
9 Facsimile: (702) 384-5529  
hjc@cmlawnv.com  
10 mcw@cmlawnv.com

11 Attorneys for Defendants  
12 *Latif Mahjoob and American Combustion Technologies of California, Inc.*

13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE DISTRICT OF NEVADA**

15 CH2E NEVADA LLC, a Nevada limited  
liability company,

16 Plaintiffs,

17 vs.

18 LATIF MAHJOOB, an individual;  
19 AMERICAN COMBUSTION  
TECHNOLOGIES OF CALIFORNIA,  
20 INC., a California corporation; DOES 1-X;  
and ROE COMPANIES XI-XX, inclusive,

21 Defendants.  
22

Case No. 2:15-cv-00694-JCM-NJK

**DECLARATION OF JAMES  
KAWAHITO IN SUPPORT OF  
OPPOSITION TO MOTION TO  
COMPEL**

23  
24 **AND RELATED CROSS-ACTIONS**  
25  
26  
27  
28

**DECLARATION OF JAMES KAWAHITO**

1  
2 I, James Kawahito, declare as follows:

3 1. I have personal knowledge of the facts stated in this declaration and if called as a  
4 witness, I could and would competently testify. I am a partner at Kawahito Westrick LLP  
5 counsel of record for Defendant and Counterclaimant in this action. I make this declaration in  
6 support of the Opposition to Motion to Compel.

7 2. In response to CH2E's documents requests served on or around April 4, 2016 and  
8 ACTI's responses, I offered to meet and confer to determine the reason as to why CH2E  
9 contended that the proprietary trade secret drawings were relevant. Attached hereto and marked  
10 as Exhibit 1 is a true and correct copy of e-mail correspondence between myself and counsel for  
11 CH2E on August 26, 2016 regarding the discovery at issue.

12 3. During a call with Greg Szewczyk to discuss the discovery, I inquired as to why  
13 the existing drawings and other documents that CH2E is in possession of are inadequate to  
14 establish any of its purported theories on the alleged design flaws. Mr. Szewczyk did not  
15 provide any explanation. I also asked that CH2E set forth what information it was unable to  
16 glean from studying or analyzing the as-built equipment that it has on-site. Mr. Szewczyk  
17 refused to engage in this dialogue. Instead, he demanded that ACTI produce the complete set of  
18 its proprietary manufacturing drawings without redaction.

19 4. As part of the meet and confer process with Mr. Szewczyk, I also indicated that  
20 ACTI would be willing to consider providing manufacturing drawings for specific pieces of  
21 equipment CH2E challenged or for which the existing information in its possession was  
22 insufficient. Mr. Szewczyk refused to discuss the specific areas of alleged design flaws and  
23 refused to provide any explanation as to why the manufacturing drawings were necessary in light  
24 of the multitude of drawings, designs, and other information in its possession.

25 5. In an effort to avoid motion practice, I informed Mr. Szewczyk that ACTI would  
26 be willing to provide the complete set of manufacturing drawings to CH2E on the grounds that  
27 the parties amend the Stipulated Protective Order to allow ACTI to provide the drawings on an  
28 Attorneys' Eyes Only basis, which would allow any experts/consultants retained by CH2Es'

1 attorneys to review the drawings. In order to control the duplication of the proprietary  
2 information, ACTI requested that no copies be made of the documents provided.

3 6. Mr. Szewczyk rejected ACTI's offer and refused to amend the Stipulated  
4 Protective Order. A true and correct copy of an e-mail received by me from Mr. Szewczyk on  
5 September 27, 2016 is attached hereto and marked as Exhibit 2.

6 7. A true and correct copy of an e-mail received by me from Mr. Szewczyk on  
7 October 12, 2016 is attached hereto and marked as Exhibit 3.

8 I declare under penalty of perjury under the laws of the United States that the foregoing is  
9 true and correct. Executed on November 1, 2016 at Los Angeles, California.

10  
11 /s/ James Kawahito  
12 James Kawahito  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of November 2016, and pursuant to Fed. R. Civ. P. 5(b), a true and correct copy of the foregoing **DECLARATION OF JAMES KAWAHITO IN SUPPORT OF OPPOSITION TO MOTION TO COMPEL** was electronically filed and served through the Court’s CM/ECF system, which will send a notice of electronic filing to the following:

Roger P. Thomasch  
Gregory P. Szewczyk  
BALLARD SPAHR LLP  
1225 17th Street, Suite 2300  
Denver, Colorado 80202-5596

Abran E. Vigil  
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Peter L. Haviland  
BALLARD SPAHR LLP  
2029 Century Park East, Suite 800  
Los Angeles, CA 90067-2909

/s/ Sebastian Burnside  
**Sebastian Burnside**

# EXHIBIT 1



**James Kawahito**

---

**From:** James Kawahito  
**Sent:** Friday, August 26, 2016 9:17 AM  
**To:** 'Szewczyk, Gregory'  
**Cc:** Haviland, Peter L.; Thornton, Matt  
**Subject:** RE: Conferral regarding ACTI's Responses to CH2E's Second Requests for Production of Documents

Greg, I will respond briefly to the points in your correspondence below, but let's have a call next week to address.

With respect to Request No. 28, ACTI has been unable to locate the underlying data from the more than 100 tests conducted on tires from which the summary, which was produced, was derived. Those tests were performed at a client's facility in China and the underlying data from which the spreadsheet was created belongs to that third-party.

With respect to 31-33, the principal investor of CH2E, Burak Oymen, has already indicated a desire in the past to emulate the pyrolysis system designs developed by ACTI. As he is not a party to this lawsuit and is located abroad, there is a legitimate concern that these requests are not aimed at legitimate discovery, but at stealing the trade secrets and intellectual property of ACTI. That is why I have offered, and you have thus far refused, to have a comprehensive conversation about the types of drawings that ACTI can provide to address your claimed deficiencies in the system while still providing adequate protections for ACTI's intellectual property. For example, if your claim is that the firebox could not reach adequate temperatures, ACTI can provide the drawings for the dimension of the fire box as well as the specifications for the burner. While there is a protective order in place, there is still a balancing of the relevancy that must take place.

Therefore, your claim that you need the precise manufacturing drawings for the entire system, which would allow your client to misappropriate the technology, is apocryphal at best. On multiple occasions, Robert Zecher has indicated that he has a report that identifies the alleged problems with ACTI's design. Nonetheless, you have refused to provide this report or the conclusions contained therein.

In addition, I still have not received a response to my July 22, 2016 letter regarding the deficiencies in CH2E's responses to ACTI's second set of interrogatories.

Please let me know what day you are available to discuss these issues next week.

Thank you.

James

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**From:** Szewczyk, Gregory [mailto:SzewczykG@ballardspahr.com]  
**Sent:** Wednesday, August 24, 2016 11:13 AM  
**To:** James Kawahito <jkawahito@kswlawyers.com>  
**Cc:** Haviland, Peter L. <HavilandP@ballardspahr.com>; Thornton, Matt <ThorntonJ@ballardspahr.com>  
**Subject:** Conferral regarding ACTI's Responses to CH2E's Second Requests for Production of Documents

Jim,

I write in a final attempt to confer regarding American Combustion Technologies of California, Inc.'s ("ACTI") May 18, 2016 Responses (the "Responses") to CH2E Nevada, LLC's ("CH2E") Second Set of Requests for Production of Documents (the "Requests").

As a preliminary matter, ACTI agreed in its Responses to produce documents responsive to numerous of the Requests, including ACTI's internal emails and documentation regarding the Equipment sold to CH2E. ACTI has still not produced any of these admittedly responsive documents, which should have been produced with ACTI's initial disclosures. Please produce these documents—over which there is no dispute—immediately.

Further, as we stated in previous conferrals without response from ACTI, ACTI has never produced a privilege log in this matter notwithstanding the fact that it has objected to producing certain documents on the assertion that they are protected by a privilege. Please produce immediately a privilege log with sufficient information to allow CH2E to assess ACTI's assertion of privilege.

I will address the pending substantive disputes individually.

#### Request No. 28

Request No. 28 seeks the research done by ACTI and Mr. Mahjoob regarding the pyrolysis of tires. ACTI's Responses objected and stated that it would only produce a summary of the research. Roger Thomasch's June 16, 2016 conferral letter explained that a summary was insufficient, and that ACTI was obligated to produce the research and data which supports the summary. ACTI's July 5, 2016 letter agreed to produce "the data it relied upon." However, ACTI produced only a single spreadsheet which purports to summarize its research and data. In light of the fact that Mr. Mahjoob has testified that ACTI has massive amounts of research to support its calculations, ACTI's production of a single summary spreadsheet is insufficient. Please advise on whether ACTI will produce the data and research underlying its calculations. If it does not agree to produce the documents responsive to Request No. 28, we are at an impasse.

#### Request No. 30

With respect to Request No. 30, CH2E will agree to stay this request pending the Court's order on CH2E's Motion to Amend the Complaint. However, should the Court grant the Motion to Amend, CH2E will expect ACTI to immediately supplement its responses and produce documents responsive to Request No. 30.

#### Request Nos. 31 - 33

Request Nos. 31, 32 and 33 request the detailed design drawings for the Equipment and the Pilot Unit. ACTI objected to producing the complete design drawings on the grounds that they purportedly contain proprietary business information.

As made clear in Roger Thomasch's June 16, 2016 Letter, Request Nos. 31 – 33 seek some of the most relevant documents in this case—the detailed design drawings for the Equipment sold by ACTI to CH2E and the detailed design drawings for the Pilot Unit used to induce CH2E into entering into the Purchase Agreement (and upon which certain warranties in the Purchase Agreement are based). The complete drawings for both the Equipment and the Pilot Unit are thus indisputably discoverable under Federal Rules of Civil Procedure 26 and 34, and, in fact, should have been produced with ACTI's initial disclosures. In response to Mr. Thomasch's June 16 letter, you stated that "ACTI will supplement its responses to indicate that it is willing to meet and confer . . . regarding the specific components of the pyrolysis unit in this case at issue." ACTI's offer to produce portions of the most relevant documents of the case is insufficient.

Several of CH2E's claims allege that ACTI's Equipment, as an entire system, could not work as promised and warranted. Complete and detailed design drawings are necessary to determine this claim. The production of partial drawings or component drawings would allow ACTI to hide system-wide inefficiencies. And, in any event, the Purchase Agreement required ACTI to provide complete and detailed design drawings, and ACTI's failure to do so is one of the bases for CH2E's breach of contract claim. Accordingly, ACTI must produce the complete and detailed design drawings which Mr. Mahjoob has admitted exist and are easily obtainable at minimal cost.

Further, the history of discovery in this case proves that the Stipulated Discovery Order necessarily addresses adequately any concerns ACTI may have regarding the purported proprietary nature of any documents. As you will recall, CH2E initially requested the detailed design drawings nearly a year ago in its First Requests for Production of Documents, dated July 16, 2015 (the "First Requests"). ACTI objected on the grounds that the First Requests sought information that was proprietary, but agreed to produce the documents "[s]ubject to an appropriate protective order." The parties thereafter negotiated a stipulated protective order, which they jointly submitted to the Court on October 5, 2015. The Court entered the Stipulated Protective Order with minor modifications on October 6, 2015. Nonetheless, ACTI made no supplemental production. One month later, Mr. Mahjoob admitted under oath that the detailed design drawings exist and are readily available at ACTI's offices. Rather than burden the Court with motion practice regarding ACTI's failure to produce documents under the First Requests, CH2E instead propounded the current Requests which requested documents as they were specifically identified by Mr. Mahjoob.

Simply put, all documents responsive to Request Nos. 31, 32 and 33 must be produced by ACTI immediately. If ACTI believes that some of these documents may classify as "confidential" under the terms of the Stipulated Protective Order which it asked the Court to enter, it is free to designate them in accordance with the terms of that order. Unless ACTI agrees to produce the complete design drawings for the Equipment and Pilot Unit as requested by Request Nos. 31 – 33, we are at an impasse which will require the involvement of the Court.

\* \* \*

We look forward to your response by no later than August 29. In light of the upcoming fact discovery deadline, if we do not receive a response by August 29, we intend to move to compel on all outstanding issues, including the admittedly-relevant documents, the privilege log and the substantive disputes. And, as you know, ACTI will be liable for costs and fees incurred by CH2E in compelling these documents under Federal Rule of Civil Procedure 37's mandatory fee shifting provision.

Greg

**Gregory P. Szewczyk**

Ballard Spahr LLP

1225 17th Street, Suite 2300

Denver, CO 80202

Direct: 303.299.7382

Fax: 303.296.3956

[szewczyk@ballardspahr.com](mailto:szewczyk@ballardspahr.com) | [www.ballardspahr.com](http://www.ballardspahr.com)

# EXHIBIT 2

**James Kawahito**

---

**From:** Szewczyk, Gregory <SzewczykG@ballardspahr.com>  
**Sent:** Tuesday, September 27, 2016 4:18 PM  
**To:** James Kawahito  
**Cc:** Haviland, Peter L.  
**Subject:** CH2E

Jim,

We have conferred with our client, and it cannot agree to the no copy/attorneys eyes only offer. Unless your client will agree to produce the documents pursuant to the stipulated protective order, I believe we are at an impasse.

With respect to the documents you previously agreed to produce, can you please confirm the date by which we will receive the documents?

Greg

**Gregory P. Szewczyk**  
Ballard Spahr LLP  
1225 17th Street, Suite 2300  
Denver, CO 80202  
Direct: 303.299.7382  
Fax: 303.296.3956  
[szewczykg@ballardspahr.com](mailto:szewczykg@ballardspahr.com) | [www.ballardspahr.com](http://www.ballardspahr.com)

# EXHIBIT 3



**James Kawahito**

---

**From:** Szewczyk, Gregory <SzewczykG@ballardspahr.com>  
**Sent:** Wednesday, October 12, 2016 4:31 PM  
**To:** James Kawahito  
**Cc:** Haviland, Peter L.  
**Subject:** RE: CH2E

Jim,

CH2E cannot accept the no-copy attorneys' eyes only provision because, aside from contractual obligations of ACTI, it would be unfairly prejudicial and unworkable. As you know, the Ballard Spahr attorneys on this case operate out of more than one office, which means that the one copy provision would prevent us from discussing internally and effectively representing our client. Further, whereas you and ACTI's expert will have the ability to confer with ACTI's technical specialists regarding the drawings to prepare your case, we and our expert would not be able to confer with our client in the same manner. This will necessarily prejudice CH2E's ability to prepare its case. CH2E's expert would also presumably have to travel to counsel's office to review the document, further impairing the expert's ability to provide adequate opinions. ACTI would therefore gain an unfair advantage by the modification to the Stipulated Protective Order.

With respect to the documents ACTI has agreed to produce, can you please make sure that Peter and Matt Thornton ([thorntonj@ballardspahr.com](mailto:thorntonj@ballardspahr.com)) are on any emails regarding the logistics of the production? I have a trial starting on Monday and will be largely unavailable.

Greg

---

**From:** James Kawahito [mailto:[jkawahito@kswlawyers.com](mailto:jkawahito@kswlawyers.com)]  
**Sent:** Wednesday, September 28, 2016 5:26 PM  
**To:** Szewczyk, Gregory (Denver)  
**Cc:** Haviland, Peter L. (LA)  
**Subject:** Re: CH2E

Greg, I am in Europe until the end of next week. I will produce the documents we previously addressed when I return.

Can you please provide an explanation as to your client's objection to the procedure we discussed with respect to the proprietary design drawings. Obviously, your client's refusal to limit the scope of the drawings as well as its objections to the reasonable safeguards we discussed reinforces my client's suspicion that the request is not aimed at legitimate discovery but rather is an attempt to misappropriate the technology consistent with Mr. Oymen's previous statements to my client.

In any case, I will give you a call when I return to discuss further as we also need to coordinate depositions.

Regards,

Jim

On Sep 28, 2016, at 1:29 AM, Szewczyk, Gregory <[SzewczykG@ballardspahr.com](mailto:SzewczykG@ballardspahr.com)> wrote:

Jim,

We have conferred with our client, and it cannot agree to the no copy/attorneys eyes only offer. Unless

your client will agree to produce the documents pursuant to the stipulated protective order, I believe we are at an impasse.

With respect to the documents you previously agreed to produce, can you please confirm the date by which we will receive the documents?

Greg

**Gregory P. Szewczyk**

Ballard Spahr LLP

1225 17th Street, Suite 2300

Denver, CO 80202

Direct: 303.299.7382

Fax: 303.296.3956

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hjc@cmlawnv.com  
10 mcw@cmlawnv.com

11 Attorneys for Defendants  
*Latif Mahjoob and American Combustion Technologies of California, Inc.*

12  
13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE DISTRICT OF NEVADA**

15 CH2E NEVADA LLC, a Nevada limited  
liability company,

16 Plaintiffs,

17 vs.

18 LATIF MAHJOOB, an individual;  
19 AMERICAN COMBUSTION  
TECHNOLOGIES OF CALIFORNIA,  
20 INC., a California corporation; DOES 1-X;  
and ROE COMPANIES XI-XX, inclusive,

21 Defendants.  
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24 AND RELATED CROSS-ACTIONS  
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Case No. 2:15-cv-00694-JCM-NJK

**DECLARATION OF LATIF MAHJOOB**

**DECLARATION OF LATIF MAHJOOB**

I, Latif Mahjoob, declare as follows:

1. I am the current President of American Combustion Technologies of California, Inc. (“ACTI”). I am an adult resident of the State of California. I make this declaration in support of ACTI’s Opposition to Motion to Compel. If called as a witness, I would testify truthfully to the matters set forth herein. All of the matters set forth in this declaration are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true.

2. During the project with CH2E, Burak Oymen requested a meeting with me in Europe. At the meeting, Mr. Oymen expressed interest in exploiting ACTI technology and designs as he wanted to enter the rapidly growing waste to energy field. Mr. Burak proposed that ACTI enter into a partnership with him, which would provide him access to ACTI technology. I politely rejected Mr. Burak’s proposition as I did not want provide Mr. Burak or his company with access to ACTI’s technology or trade secrets.

3. As part of the contract with CH2E, ACTI provided various drawings, designs, and other information to CH2E. This included installation and set-up drawings, P&IDs, specifications, and dimensions for the pieces of equipment that comprise the pyrolysis units. The dimensions, P&IDs, assembly/installation, and specification drawings, contain relevant information as to the size of the equipment and how the system works.

4. The manufacturing drawings for units built by ACTI are carefully guarded trade secrets with only a select few individuals having access to them. Because they contain the detailed, step-by-step instructions as to how to build the equipment, such drawings are not provided to any customer or any third-party. An interested third-party could take the manufacturing drawings and essentially re-create ACTI’s technology that ACTI spent years developing.

5. ACTI has a pilot unit at its headquarters in California that it uses to test feed, display the technology, and conduct research and development. The pilot unit does not operate

1 solely on tires, but also is configured to run on other feed including plastics, wood chips, coal,  
2 municipal solid waste pellets, etc.

3 6. ACTI does not have specific drawings for the pilot unit as to its operations with  
4 rubber shreds from the period where CH2E took control of it and ran it for roughly six months.  
5 In addition, the configuration requested by CH2E for the project contained multiple condensing  
6 tanks, which the pilot unit never used.

7 I declare under penalty of perjury under the laws of the United States that the foregoing is  
8 true and correct. Executed on November 1, 2016 at Garden Grove, California.

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11 Latif Mahjoob

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of November 2016, and pursuant to Fed. R. Civ. P. 5(b), a true and correct copy of the foregoing **DECLARATION OF LATIF MAHJOOB** was electronically filed and served through the Court's CM/ECF system, which will send a notice of electronic filing to the following:

Roger P. Thomasch  
Gregory P. Szewczyk  
BALLARD SPAHR LLP  
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Los Angeles, CA 90067-2909

/s/ Sebastian Burnside  
**Sebastian Burnside**