

JAMES KAWAHITO (*Pro Hac Vice*)
Email: jkawahito@kawahitolaw.com
KAWAHITO LAW GROUP APC
222 North Sepulveda Blvd., Suite 2222
El Segundo, CA 90245
Telephone: (310) 746-5300
Facsimile: (310) 593-2520

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

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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

CH2E NEVADA LLC, a Nevada limited
liability company,

Plaintiffs,

vs.

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

Defendants.

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

**AMERICAN COMBUSTION
TECHNOLOGIES OF CALIFORNIA
INC.'S OPPOSITION TO CH2E
NEVADA LLC'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

1 **I. INTRODUCTION**

2 Plaintiff and Counterclaim Defendant CH2E Nevada LLC's ("CH2E") Motion for Partial
3 Summary Judgment attempts to skirt the factual issues that are required to be adjudicated at trial.
4 The parties have a fundamental factual disagreement as to what transpired on the project. There is
5 no dispute that American Combustion Technologies of California, Inc. ("ACTI") provided pyrolysis
6 equipment to CH2E for its project in Hudson, Colorado. The parties also concede that the contract
7 ("Agreement") between the parties required that CH2E assemble and install such equipment. ACTI
8 contends that CH2E not only failed to properly install the system, but also made unauthorized
9 modifications to the equipment. CH2E also failed to provide proper auxiliary equipment (outside
10 the pyrolysis unit) necessary for the functioning of the equipment and did not operate it according to
11 guidelines and instruction provided by ACTI. This included using improper sized tire shreds,
12 running the augers at the wrong frequencies, installing a defective carbon removal system, etc.

13 Now, CH2E claims that partial summary judgment on its breach of contract claim is proper
14 because ACTI purportedly did not provide an Installation Acceptance Report or detailed equipment
15 and arrangement drawings. CH2E's position is wholly without merit.

16 As set forth in the Agreement, the purpose of the Installation Acceptance Report was for
17 ACTI to confirm that CH2E had in fact properly installed and erected the equipment provided by
18 ACTI. Once that occurred, ACTI would "accept" CH2E's installation and connection of the
19 equipment. ACTI did not issue an acceptance report because of its position that CH2E never
20 properly installed the equipment. CH2E cannot rely on its own malfeasance as a basis for claiming
21 a breach on the part of ACTI. Notably, there is no evidence that CH2E at any point prior to this
22 lawsuit ever requested an Installation Acceptance Report or proposed language for such report as
23 contemplated by the contract. By failing to properly install the equipment, CH2E prevented ACTI
24 from completing the Installation Acceptance Report.

25 Next, CH2E asserts ACTI breached the contract because it failed to provide "detailed
26 equipment and arrangement drawings." However, CH2E conspicuously fails to offer any evidence
27 of the parties' intent as to the meaning of the term "detailed equipment" drawings. Notably, there is
28 no declaration from either of CH2E's officers who negotiated the contract with ACTI.

1 ACTI provided CH2E with numerous detailed “equipment” drawings showing the
2 dimensions, size, and characteristics of the equipment. In fact, CH2E could not have prepared and
3 assembled its site and the equipment without such drawings. However, CH2E now claims, without
4 any evidentiary support, that the term “detailed equipment” drawings required ACTI to turn over its
5 proprietary, and trade secret manufacturing or design drawings, which detail the process for
6 designing and building the equipment. As Mr. Mahjoob testified in his deposition, that was not the
7 intended meaning of the term, and ACTI would never agree to turn over such drawings to any
8 customer. Indeed, the contract itself supports ACTI’s definition as the drawings were to be used by
9 CH2E as a “basis to prepare the installation site.” Preparing the installation site does not require the
10 blueprint for how ACTI builds its equipment. Rather, the only things necessary are the dimensions
11 and characteristics of the equipment. Indeed, it is no coincidence that at no point during the project
12 did CH2E claim that ACTI had failed to turn over its proprietary design/manufacturing drawings.

13 Next, CH2E maintains that ACTI’s counter-claim for breach of contract is barred because
14 the equipment provided was part of ACTI’s attempts to remedy defective parts. However, CH2E
15 specifically requested the equipment not as a remedy, but rather as an upgrade or to replace
16 equipment that CH2E had negligently broken or destroyed. Furthermore, CH2E’s claim that it spent
17 over \$2 million in payments to third parties, which should be offset against the amounts claimed by
18 ACTI presents the same factual issue as above. In particular, ACTI claims that those amounts were
19 to address issues caused by its improper installation, deficient auxiliary equipment, and failure to
20 properly operate the equipment as opposed to any equipment deficiency.

21 Finally, CH2E Answer itself denies that the Agreement included the additional equipment
22 supplied by ACTI. Thus, to the extent the trier of fact concludes that the items provided by ACTI
23 were done so at the request of CH2E, but outside the original Agreement, ACTI’s claim for unjust
24 enrichment is proper. Based on the foregoing, ACTI respectfully requests that this Court deny
25 CH2E’s motion for partial summary judgment in its entirety.

1 **II. BACKGROUND AND STATEMENT OF UNDISPUTED AND DISPUTED FACTS**

2 **A. Installation Acceptance Report**

3 1. The Agreement at issue was negotiated solely between Latif Mahjoob of ACTI and
4 Francis Beland and Ashley Day, both of whom were officers of CH2E. Declaration of Latif
5 Mahjoob ("Mahjoob Decl.") ¶ 2.

6 2. Jamie Kostura was neither involved in the contract negotiations nor had ever spoken
7 to Latif Mahjoob prior to the execution of the Agreement. Mahjoob Decl. ¶ 2.

8 3. The Agreement called for ACTI to manufacture and deliver the equipment provided
9 in Exhibit A. However, CH2E was responsible for the erection and installation of the equipment at
10 its site. Kostura Decl. ¶ 4, Ex. 1, Sections Ex. A, 2(7)-(8), 7.3, 7.4, 9.2.

11 4. The "correct installation" by CH2E was to be verified by ACTI. Kostura Decl. ¶ 4,
12 Ex. 1, Sections Ex. A, 11.1.1. Assuming CH2E correctly installed the equipment, this would be
13 "documented in an Installation Acceptance Report . . . the wording of which is to be mutually
14 agreed upon before acceptance." *Id.*

15 5. The parties had a mutual obligation to jointly prepare the Installation Acceptance
16 Report. *Id.*

17 6. The purpose of the Installation Acceptance Report was to ensure that CH2E had
18 property installed the system for purposes of the warranty. Mahjoob Decl. ¶ 3; Kostura Decl. ¶ 4,
19 Ex. 1, Sections Ex. A, 12.7.

20 7. At no point during the project did anyone at CH2E propose language or request that
21 the parties jointly prepare an Installation Acceptance Report. Mahjoob Decl. ¶ 4.

22 8. ACTI would not have signed off on an Installation Acceptance Report because CH2E
23 never properly installed the system. *Id.* at ¶ 5; Deposition Transcript of Latif Mahjoob ("Mahjoob
24 Depo.") 247:10-22. For example, among other things, CH2E never installed a proper feed system, a
25 shredding system for the tires, a carbon removal system, etc. Mahjoob Decl. ¶ 5.

26 9. Notwithstanding ACTI's stated problems and issues with CH2E's installation, CH2E
27 wanted to proceed with starting up and running the equipment. *Id.* at ¶ 6.

28 **B. Delivery of Detailed Equipment and Arrangement Drawings**

1 10. Section 9.2 of the Agreement was included to require ACTI to provide drawings
2 showing the specifications and characteristics of the equipment including length, height, width,
3 diameter, contours, connection points, piping diagrams, installation procedures, etc. for the purpose
4 of allowing CH2E to properly plan for the erection and installation of the Agreement. Mahjoob
5 Decl. ¶ 8.

6 11. At no point did the Mr. Beland or Mr. Day discuss ACTI providing its proprietary
7 manufacturing blueprints or design drawings relating to how it designed and/or built the equipment.
8 Mahjoob Decl. ¶ 9.

9 12. ACTI does not provide its proprietary manufacturing blueprints or design drawings
10 to any customer as part of a sale of equipment, and would never have agreed to provide those as part
11 of the Agreement in this matter. Mahjoob Decl. ¶ 11; Mahjoob Depo. 237:22-238:5.

12 13. ACTI provided multiple sets of equipment and arrangement drawings that show the
13 dimensions and specifications of all the equipment, the piping and instrumentation diagrams
14 (“P&ID”), assembly and installation drawings, and overall design of the system. *Id.* at ¶ 10;
15 Mahjoob Depo. 236:10-238:22. CH2E used these drawings to plan for the layout, erection, and
16 installation of the equipment at its facility. Mahjoob Depo. 238:2-22.

17 14. At no point prior to this litigation, did anyone at CH2E demand that ACTI provide its
18 proprietary design/manufacturing drawings related to the equipment. *Id.* at ¶ 12.

19 **C. Equipment Provided by ACTI**

20 15. During the course of the project, CH2E, through Francis Beland and Ashley Day,
21 requested that ACTI source additional equipment and parts beyond those contained in the
22 agreement. *Id.* at ¶ 13.

23 16. For example, CH2E, through Francis Beland and Ashley Day, requested that ACTI
24 provide a carbon activation system to activate the carbon produced by the pyrolysis system in order
25 to improve the quality of carbon for sale to third parties. *Id.* at ¶ 14.

26 17. The carbon activation system was not part of the purchase price in the Agreement
27 and CH2E agreed to separately compensate ACTI for such system. *Id.* at ¶ 15.

18. As part of its answer to ACTI's counterclaim, CH2E admitted that it ordered the equipment, but denied that it was connection with the Agreement. [ECF No. 31] ¶¶ 33-40.

19. The other items listed in Exhibits 1-7 of the Mahjoob Declaration were not for the purposes of correcting any deficiencies in the equipment. They were either additional items requested by CH2E, upgrades, or replacement parts for matters that CH2E negligently broke. As such, they were separately invoiced. Mahjoob Decl. ¶ 16.

20. During the project, CH2E never claimed that these items were necessary to correct deficiencies in the equipment, and therefore should not have been separately invoiced. *Id.* at ¶ 17.

9 **III. ARGUMENT**

This case is a standard breach of contract matter between two sophisticated companies over the purchase of \$10 million of equipment to be used for converting used tires into oil and carbon. CH2E claims the equipment did not perform to the levels set forth in the contract. ACTI maintains that CH2E failed to properly install the system, made various unauthorized modifications, and failed to properly operate the equipment. Nonetheless, the equipment worked and produced oil and carbon, which CH2E sold. However, when the price of oil plummeted in the fall of 2014, CH2E claimed the equipment did not work and decided to seek a refund. The issues in CH2E's motion for partial summary judgment relate to either disputed facts or the interpretation of ambiguous contract provisions, for which CH2E has proffered no witness with personal knowledge to attest to the intended meanings. As such, this Court should deny CH2E's motion in its entirety.

20 **A. CH2E's Claim That ACTI Breached the Agreement as a Matter of Law is** 21 **Without Merit.**

CH2E identified two purported grounds for its claim that ACTI breached the Agreement as a matter of law: (1) it failed to provide an Installation Acceptance Report; and (2) it never turned over its proprietary design drawings/manufacturing blueprints. As set forth below, CH2E's claims are without merit.

26 *1. Installation Acceptance Report*

Pursuant to the terms of the Agreement, ACTI is required to manufacture and deliver the equipment set forth in Exhibit A. However, the equipment can be arranged in different

1 configurations depending on the desired layout of the purchaser. As such, the Agreement required
2 CH2E to perform the erection and installation of the equipment. Kostura Decl. ¶ 4, Ex. 1, Sections
3 Ex. A, 2(7)-(8), 7.3, 7.4, 9.2. To that end CH2E was required to connect the equipment, perform the
4 electrical wiring, pipe the gas routes, etc.

5 In negotiating the Agreement, the parties discussed that the performance and warranty of the
6 equipment depended on proper installation of the equipment by CH2E. Mahjoob Decl. ¶ 3. As
7 such, the parties agreed that upon the conclusion of the installation, assuming ACTI approved of the
8 work performed by CH2E, the parties would then jointly prepare the language for the Installation
9 Acceptance Report. *Id.*; Kostura Decl. ¶ 4, Ex. 1, 11.1.1. This report would then be signed off by
10 ACTI confirming its determination that CH2E had in fact properly installed all equipment. *See*
11 Mahjoob Decl. ¶ 3.

12 The report was never prepared because CH2E never requested such a report and ACTI did
13 not conclude that CH2E had properly installed all equipment, which is part of the disputed facts at
14 issue in this case. Mahjoob Decl. ¶¶ 4, 5; Mahjoob Depo. 247:10-22. CH2E officers Francis
15 Beland and Ashley Day were aware of the issues that ACTI raised, and therefore never requested
16 that ACTI and CH2E jointly prepare such report. *Id.* at ¶ 4. Instead, they decided to begin start-up
17 and sought to address issues relating to the installation during the start-up period, which never
18 happened. *Id.* at ¶ 6.

19 CH2E disingenuously claims that ACTI's breached the Agreement through its failure to
20 complete and submit an Installation Acceptance Report. However, it is CH2E's own breach (failure
21 to properly install the system) that prevented ACTI from performing. ACTI could not prepare a
22 Report accepting CH2E's faulty work

23 At a minimum, a factual dispute exists as to whether CH2E properly installed the system.
24 As such, this Court should deny CH2E's motion for partial summary judgment as to a breach of
25 contract based on the Installation Acceptance Report.

26 2. *ACTI Provided the Contractually Required Drawings*

27 CH2E cites Exhibit A, Section 9.2 of the Agreement regarding the provision of detailed
28 "equipment and arrangement drawings" as its basis for its second claim that ACTI breached the

1 contract. In particular, CH2E claims that the parties contractually agreed that ACTI would provide
2 its proprietary and trade secret design drawings/manufacturing blueprints to CH2E as opposed to
3 equipment and arrangement drawings showing the dimensions, contours, etc. that would enable
4 CH2E to plan the layout of the equipment at its facility. As set forth below, CH2E's strained
5 interpretation is not only contrary to a reasonable reading of the Agreement, but its failure to
6 provide testimony from any of its officers involved in the contract negotiations as to the parties'
7 intent is fatal to its position.

8 Where a contractual provision is ambiguous is a question of law for the Court. Margrave v.
9 Dermody Props., 110 Nev. 824, 827 (1994). A contractual term "is ambiguous if it is reasonably
10 susceptible to more than one interpretation." *Id.* "Where the meaning of a contract is ambiguous
11 and resort to extrinsic evidence is required to ascertain the intention of the parties, summary
12 judgment is inappropriate in the face of contradictory or conflicting evidence."

13 Here, the parties dispute what the Agreement intended by the term "detailed equipment and
14 arrangement drawings." ACTI claims that this term refers to the drawings containing the dimensions
15 and piping diagrams, which would permit CH2E to plan the layout and foundation for such items.
16 Mahjoob Depo. 236:10-238:22; Mahjoob Decl. ¶¶ 8-9. Indeed, as part of the project, ACTI
17 provided multiple sets of "design" drawings that show the dimensions and specifications of all the
18 equipment, the piping and instrumentation diagrams ("P&ID"), assembly and installation drawings,
19 and overall design of the system. Mahjoob Decl. ¶ 10. For the first time as part of this lawsuit,
20 CH2E claims that the parties intended that ACTI would provide it with its proprietary design
21 drawings for the equipment, which detail the step-by-step process as how to design and manufacture
22 the equipment.

23 The Agreement does not define the term "equipment and arrangement drawings." However,
24 Exhibit A, Section 9.2 states that the drawings "will be used and relied upon by Purchaser to prepare
25 the installation site . . . prior to the shipment of the Equipment." There is no reason why the
26 blueprints showing how to design and manufacture the equipment are necessary to prepare the
27 installation site. All that is needed are drawings showing the dimensions and specifications of all
28 equipment, P&IDs, and the assembly and installation drawings, which there is no question that

1 ACTI provided. Mahjoob Decl. ¶ 10. It is no coincidence that CH2E never once demanded the
2 manufacturing/design drawings during the course of the project. *Id.* at ¶ 12. Indeed, if such
3 drawings were in fact required by CH2E for installation and erection of the Equipment, there is no
4 question that a record would exist demanding the manufacturing/design drawings as opposed to the
5 ones that ACTI provided.

6 As set forth above, where a contractual provision is reasonably susceptible to more than one
7 interpretation, courts look to extrinsic evidence to ascertain the parties' intent. Here, CH2E fails to
8 proffer any declarations from the two officers who negotiated the terms of the agreement with
9 ACTI, Francis Beland and Ashley Day. As such, the only evidence of the parties' intent is the
10 uncontradicted testimony and statements of Latif Mahjoob that the parties the provision never meant
11 to encompass ACTI's proprietary manufacturing drawings. *Id.* at ¶ 9, 11; Mahjoob Depo. 236:10-
12 238:22.

13 Because a genuine issue of material fact exists as to the meaning of the term "equipment and
14 arrangement drawings," this Court should deny CH2E's motion.

15 **B. CH2E's Claim That Summary Judgment is Proper On ACTI's Breach of**
16 **Contract Claim is Without Merit**

17 CH2E does not dispute that a question of fact exists as to whether it breached the Agreement
18 by failing to pay the entire contract price and/or for equipment provided by ACTI to CH2E outside
19 those specifically listed in Exhibit A to the Agreement. Instead, CH2E claims that because it
20 purportedly spent \$2 million correcting alleged deficiencies, such amounts exceed ACTI's contract
21 damages.

22 At set forth above, ACTI contends that CH2E never properly installed the system or its own
23 auxiliary equipment, and failed to properly operate the Equipment. Notwithstanding the foregoing,
24 ACTI continued to work with CH2E in the hopes of making the project a success. By November of
25 2014, after problems continually persisted in CH2E's operation and installation of the equipment,
26 ACTI offered to completely take over all aspects for a period of three months to correct the
27 problems that CH2E had created. Kostura Decl. ¶ 11, Ex. 5. CH2E refused ACTI's offer.
28

1 Now, CH2E claims that it spent over \$2 million in payments to third parties to remedy the
2 allegedly defective equipment. In support of this proposition, CH2E submits the declaration of
3 Jamie Kostura, which makes only general, conclusory allegations. However, ACTI disputes that
4 such payments were to remedy defects in ACTI's equipment.

5 As an initial matter, the Agreement requires that ACTI shall promptly replace any defective
6 equipment. Only in the event that "[ACTI] fails to timely deliver replacement equipment, [CH2E]
7 may replace them with items from a third party and charge [ACTI]. . . ." Kostura Decl. ¶ 4, Ex. 1.

8 Here, the vast majority of the items set forth in Exhibit 3 to Kostura's Declaration are parts.
9 There is no evidence that CH2E requested that ACTI replace the specific parts and the reason for
10 such parts. In fact, ACTI has no record of written requests from CH2E to replace the parts listed in
11 Exhibit 3. Mahjoob Decl. ¶ 18. Based on this fact alone, CH2E's motion should be denied.

12 Moreover, there is no evidence that these parts were for ACTI machinery as opposed to that
13 of the auxiliary equipment provided by CH2E. Indeed, a list of equipment and parts supplied by
14 ACTI under the Agreement is set forth in Exhibit A to the Agreement. Because CH2E never
15 specifically requested that ACTI address the parts listed in Exhibit 3, a question of fact exists as to
16 whether the parts were required as a result of defective equipment or rather because of the
17 negligence or improper operation by CH2E. Examples of CH2E's negligence and failure to
18 properly operate the equipment include where CH2E had left the blowers on while working on the
19 knife gates, which caused a fire in the equipment. Mahjoob Decl. ¶ 19, Ex. 8. CH2E also ran the
20 control panel at the wrong voltage, which burned up the panel. Mahjoob Decl. ¶ 20. Another
21 example of CH2E's malfeasance occurred when it operated the augers in the wrong direction
22 resulting in the augers being destroyed. *Id.*

23 CH2E has proffered no evidence aside from a general conclusory statement that CH2E
24 incurred these costs to "cure deficiencies." Even assuming all of the purported items relate to
25 ACTI's equipment, a question of fact exists as to why the equipment was necessary – whether it
26 resulted from deficiencies in the equipment itself of CH2E negligent installation or operation of the
27 equipment.
28

1 **C. ACTI Has Stated a Valid Claim for Unjust Enrichment**

2 During the course of the project, CH2E requested that ACTI provide it with additional
3 equipment and technology outside the items covered in Exhibit A of the Agreement, which ACTI
4 did. Mahjoob Decl. ¶ 13. This equipment included a \$1,000,000 carbon activation system, cyclone
5 separators, a heat exchanger, a display, lights, a motor, transformer, and other equipment as set forth
6 in the invoices provided to CH2E. *Id.* at ¶ 14, Exs 1-7. No written change order was created and
7 the Agreement was never amended to reflect this additional equipment. *Id.*

8 None of the items set forth above were covered in the scope of the original agreement and
9 none were provided to cure any deficiencies in the equipment provided. *Id.* at ¶¶ 15, 16. For
10 example, CH2E ordered the carbon activation to improve the quality of the carbon that the
11 equipment was producing in order to increase its value. *Id.* at ¶ 14. This was completely beyond
12 the scope of the agreement and had nothing to do with any alleged deficiencies. Indeed, if these
13 were items that ACTI was required to provide to remedy defects in the equipment, they would have
14 not have been separately invoiced. Moreover, CH2E would have objected to such invoices. *Id.* at ¶
15 17.

16 CH2E's claim that the unjust enrichment claim is barred because it is covered by the subject
17 matter of the contract is hypocritical at best. As an initial matter, ACTI alleged in Paragraphs 34-40
18 that "in connection with the Purchase Agreement," CH2E ordered the equipment at issue. In its
19 answer, CH2E admitted that it ordered the equipment, but denied that it was in connection with the
20 Purchase Agreement. *See* [ECF No. 31] Answer to Amended Counterclaim ¶¶ 34-40.

21 Thus, on one hand, CH2E denies that the equipment was provided in connection with the
22 Agreement, yet on the other, now seeks summary judgment on ACTI's unjust enrichment claim by
23 arguing that it is in fact subject to the Agreement. CH2E cannot have it both ways. To the extent a
24 trier of fact concludes that such items were not in fact provided pursuant to the purchase agreement,
25 ACTI is entitled to proceed on its unjust enrichment theory.

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28 ///

1 **IV. CONCLUSION**

2 For the foregoing reasons, ACTI and Latif Mahjoob respectfully request that this Court deny
3 CH2E's Motion for Partial Summary Judgment.

4

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KAWAHITO LAW GROUP APC

6

7 Dated: August 7, 2017

By: /s/ James Kawahito

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James Kawahito

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Attorney of Record for

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American Combustion Technologies of
California, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August 2017, 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 NEVADA LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT** was electronically filed and served through the Court's CM/ECF system, which will send a notice of electronic filing to the following:

Abran E. Vigil
Nevada Bar No. 7548
BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617
Telephone: 702.471.7000
Facsimile: 702.471.7070
Email: vigila@ballardspahr.com

Gregory P. Szewczyk (*pro hac vice*)
BALLARD SPAHR LLP
1225 17th Street, Suite 2300
Denver, Colorado 80202-5596
Telephone: 303.292.2400
Facsimile: 303.296.3956
szewczykkg@ballardspahr.com

Peter L. Haviland (*pro hac vice*)
BALLARD SPAHR LLP
2029 Century Park East, Suite 800
Los Angeles, CA 90067-2909
Telephone: 424.204.4400
Facsimile: 424.204.4350
havilandp@ballardspahr.com

/s/ Sebastian Burnside

1 JAMES KAWAHITO (*Pro Hac Vice*)
Email: jkawahito@kawahitolaw.com
2 KAWAHITO LAW GROUP APC
222 North Sepulveda Blvd., Suite 2222
3 El Segundo, CA 90245
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.
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Case No. 2:15-cv-00694-JCM-NJK

**DECLARATION OF LATIF MAHJOOB
IN SUPPORT OF OPPOSITION TO
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

DECLARATION OF LATIF MAHJOOB

I, Latif Mahjoob, declare as follows:

1. I am the President of American Combustion Technologies of California, Inc. (“ACTI”). I am an adult resident of the State of California. 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. As part of the negotiation of the Purchase Agreement (“Agreement”), I dealt exclusively with Francis Beland and Ashley Day. I never spoke to Jamie Kostura prior to the execution of the Agreement.

3. In negotiating the Agreement, the parties discussed that the warranty on the equipment required that CH2E properly install and erect the equipment. To that end, CH2E requested that once they had successfully completed installation, the parties would jointly draft a statement that ACTI had “accepted” CH2E’s installation.

4. At no point during the project do I recall anyone at CH2E proposing language or requesting that the parties jointly prepare an Installation Acceptance Report.

5. Even if CH2E had requested that the parties prepare an Installation Acceptance Report, ACTI would not have signed off because CH2E never properly installed the system. For example, among other things, CH2E never installed a proper feed system, a shredding system for the tires, the carbon removal system, etc.

6. Even though ACTI had problems with CH2E’s installation, Francis Beland and Ashley Day indicated that they wanted to proceed with starting up and running the equipment.

7. Because CH2E was required to install and erect the equipment under the Agreement, they requested drawings showing the specifications and characteristics of the equipment including length, height, width, diameter, contours, connection points, piping diagrams, installation procedures, etc.

8. Section 9.2 of the Agreement was included to require ACTI to provide drawings showing the specifications and characteristics of the equipment including length, height, width,

1 diameter, contours, connection points, piping diagrams, installation procedures, etc. for the
2 purpose of allowing CH2E to properly plan for the erection and installation of the Agreement.

3 9. At no point did Mr. Beland or Mr. Day ever discuss as part of the negotiations for
4 the Agreement that ACTI provide its providing its proprietary manufacturing blueprints or
5 design drawings relating to how it designed and/or built the equipment.

6 10. ACTI provided multiple sets of equipment and arrangement drawings that show
7 the dimensions and specifications of all the equipment, the piping and instrumentation diagrams
8 ("P&ID"), assembly and installation drawings, and overall design of the system. CH2E used
9 these drawings to plan for the layout, erection, and installation of the equipment at its facility.

10 11. ACTI does not provide its proprietary manufacturing blueprints or design
11 drawings to any customer as part of a sale of equipment, and would never have agreed to provide
12 those as part of the Agreement in this matter.

13 12. At no point during the project, after providing the equipment and arrangement
14 drawings identified above, did anyone at CH2E seek or request that ACTI provide its proprietary
15 manufacturing drawings

16 13. During the course of the project, CH2E, through Francis Beland and Ashley Day
17 requested that ACTI source additional equipment and parts beyond those contained in the
18 agreement, which ACTI supplied.

19 14. Although not part of the original agreement, CH2E, through Francis Beland and
20 Ashley Day, requested that ACTI provide a carbon activation system in order to improve the
21 quality of carbon for sale to third parties. CH2E also requested that ACTI provide the equipment
22 listed, which were then invoiced to CH2E. True and correct copies of such invoices are attached
23 hereto as Exhibits 1-7. No written change order was created and the Agreement was never
24 amended to reflect this additional equipment.

25 15. Because the carbon activation system was not covered by the original purchase
26 price, CH2E agreed to separately compensate ACTI for such system. Therefore, ACTI issued an
27 invoice.
28


Latif Mahjoob

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August 2017, and pursuant to Fed. R. Civ. P. 5(b), a true and correct copy of the foregoing **DECLARATION OF LATIF MAHJOOB IN SUPPORT OF OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT** was electronically filed and served through the Court's CM/ECF system, which will send a notice of electronic filing to the following:

Abran E. Vigil
Nevada Bar No. 7548
BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617
Telephone: 702.471.7000
Facsimile: 702.471.7070
Email: vigila@ballardspahr.com

Gregory P. Szewczyk (*pro hac vice*)
BALLARD SPAHR LLP
1225 17th Street, Suite 2300
Denver, Colorado 80202-5596
Telephone: 303.292.2400
Facsimile: 303.296.3956
szewczykkg@ballardspahr.com

Peter L. Haviland (*pro hac vice*)
BALLARD SPAHR LLP
2029 Century Park East, Suite 800
Los Angeles, CA 90067-2909
Telephone: 424.204.4400
Facsimile: 424.204.4350
havilandp@ballardspahr.com

/s/ Sebastian Burnside