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2010 JAN -4 P 2:09  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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DOUGLAS DRILL SERVICES, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DOUGLAS DRILL SERVICES, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DAN'S WATER WELL & PUMP )  
SERVICE, INC.; DAN'S WATER )  
WELLS, )  
 )  
Defendant(s) )  
 )  
DAN'S WATER WELLS & PUMP )  
SERVICE, INC.; and DAN'S WATER )  
WELLS, )  
 )  
Counterclaimants, )  
 )  
DOUGLAS DRILL SERVICES, INC. )  
Counterdefendant, )

Case No.: C-09-05737 EDL  
REPLY TO COUNTERCLAIMS

Counterdefendant, DOUGLAS DRILL SERVICES, INC., (hereinafter "DDS") hereby answers  
the Counterclaim filed by DAN'S WATER WELL & PUMP SERVICE, INC., a California Corporation,  
and DAN'S WATER WELLS, an entity of unknown form (hereinafter collectively "DAN'S") as follows:

1 DDS denies each and every allegation of the Counterclaim unless such allegation is specifically  
2 admitted herein. The paragraph numbering of the responses below corresponds to the numbering of  
3 paragraphs in the Counterclaim and any response so numbered is deemed to be a response to the same  
4 numbered paragraph of the Counterclaim.

5 1. DDS is without knowledge or information sufficient to form a belief as to the truth of these  
6 allegations and therefore denies each and every allegation.

7 2. Admitted.

8 3. Admitted.

9 4. Admitted only that DAN'S purchased drilling equipment and services and denied as to the  
10 description given.

11 5. Admitted.

12 6. Denied.

13 7. Denied.

14 8. Admitted that DDS delivered only 500 Of 1,000 feet of drill steels ordered and delayed  
15 delivery of the remaining 500 until they were paid for, and denied as to the remaining allegations.

16 9. DDS incorporates its prior denials and admissions by reference.

17 10. Admitted.

18 11. Denied

19 12. Denied

20 13. Denied

21 14. DDS incorporates its prior denials and admissions by reference. Admitted.

22 15. Denied.

23 16. Denied.

24 17. Denied.

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**AFFIRMATIVE DEFENSES**

1 AS AND FOR SEPARATE AFFIRMATIVE DEFENSES to each cause of action directed to  
2 DDS, DDS alleges as follows:

3 **FIRST AFFIRMATIVE DEFENSE**

4 As a First Affirmative Defense, DDS allege that DAN'S have failed to state a cause of action.

5 **SECOND AFFIRMATIVE DEFENSE**

6  
7 As a Second Affirmative Defense, DDS allege that the claims of DAN'S are barred by the  
8 applicable Statutes of Limitation.

9 **THIRD AFFIRMATIVE DEFENSE**

10 As a Third Affirmative Defense, DDS allege that the alleged debt is unenforceable due to a lack  
11 of consideration.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 As a Fourth Affirmative Defense, DDS allege that the alleged debt is unenforceable due to a  
14 failure of consideration.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 As a Fifth Affirmative Defense, DDS allege that his non-performance, if any, is excused by  
17 DAN'S' breach of contract.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 As a Sixth Affirmative Defense, DDS allege that the claims of DAN'S are barred by the  
20 Doctrine of Laches.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 As a Seventh Affirmative Defense, DDS allege that the claims of DAN'S are barred by the  
23 Doctrine of Unclean Hands.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 As an Eighth Affirmative Defense, DDS allege that the claims of DAN'S are barred by waiver.  
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**NINTH AFFIRMATIVE DEFENSE**

As a Ninth Affirmative Defense, DDS allege that the claims of DAN'S are barred by its' own fraud in the inducement in the transactions that allegedly created the indebtedness based upon which DAN'S now seek to collect.

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**TENTH AFFIRMATIVE DEFENSE**

As a Tenth Affirmative Defense, DDS allege that the claims of DAN'S are barred due to DDS' mistakes of fact in the transaction that allegedly created the indebtedness based upon which DAN'S now seek to collect.

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**ELEVENTH AFFIRMATIVE DEFENSE**

As an Eleventh Affirmative Defense, DDS allege that the claims of DAN'S are barred by the doctrine of estoppel.

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**TWELFTH AFFIRMATIVE DEFENSE**

As a Twelfth Affirmative Defense, DDS allege that if DDS are found to be liable to DAN'S for any amount, which is denied, then DDS should be allowed a credit or setoff against such liability for amounts already recovered by DAN'S and also for claims that DDS have against DAN'S.

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**THIRTEENTH AFFIRMATIVE DEFENSE**

As a Thirteenth, separate and distinct affirmative defense, DDS allege that the relief sought by DAN'S is barred because conditions precedent to performance by DDS were never performed by DAN'S, satisfied or waived by DDS.

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**FOURTEENTH AFFIRMATIVE DEFENSE**

As a Fourteenth, separate and distinct affirmative defense, DDS allege that the obligations that DAN'S seek to enforce have been extinguished through payment in full.

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**FIFTEENTH AFFIRMATIVE DEFENSE**

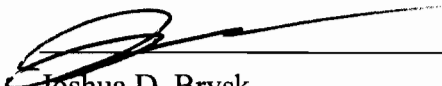
As a Fifteenth, separate and distinct affirmative defense, DDS allege that the parties have reached an accord which was subsequently satisfied, thereby relieving any obligations of DDS to DAN'S.



2. For costs of suit incurred herein;
3. For attorney's fees
4. and For such other and further relief as the Court may deem proper

Dated: January 4, 2010

**The Law Offices of James G. Schwartz  
A Professional Corporation**

  
\_\_\_\_\_  
Joshua D. Brysk  
Attorneys for Counterdefendat  
DOUGLAS DRILL SERVICES, INC.

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**PROOF OF SERVICE**

I am a citizen of the United States and am employed in the County of Alameda; I am over 18 years of age, and I am not a party to the within action; my business address is: Law Offices of James G. Schwartz, 7901 Stoneridge Drive, Suite 401, Pleasanton, California; on January 4, 2010, I served the within: **Reply to Counterclaims** on the parties listed below in said action, in the manner indicated below:

James Braden  
Law Offices of James M. Braden  
44 Montgomery Street, Suite 1210  
San Francisco, CA 94104

**(VIA HAND DELIVERY) – Via Courier**

I caused said document(s) to be delivered to the above addresses.

**BY MAIL**

**REGULAR**  **CERTIFIED**  **RETURN RECEIPT REQUESTED**

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pleasanton, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**(FACSIMILE)**

I caused said document(s) to be transmitted via facsimile to the above facsimile number(s).

**(ELECTRONIC MAIL)**

I caused said document(s) to be transmitted via electronic mail.

**(VIA UNITED PARCEL SERVICE / U.S. POSTAL SERVICE EXPRESS MAIL / FEDERAL EXPRESS)**

I am "readily familiar" with the firm's practice of collection and processing of correspondence for shipment via United Parcel Service / U.S. Postal Service Express Mail / Federal Express. Under that practice, it would be deposited with United Parcel Service / U.S. Postal Service Express Mail / Federal Express on that same day with postage thereon fully prepaid at Pleasanton, California, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 4, 2010 at Pleasanton, California.

  
\_\_\_\_\_  
Marina Ware