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 7 Attorneys for Defendant CHARLES ABBOTT  
 ASSOCIATES, INC.

8 **UNITED STATES DISTRICT COURT**  
 9  
**DISTRICT OF NEVADA**

11 TOP RANK BUILDERS, INC., a Nevada  
 Corporation; and EFRAIN RENE MORALES  
 12 MORENO, individually; and as sole officer and  
 shareholder of TOP RANK BUILDERS, INC.,

13 Plaintiffs,

14 v.

16 CHARLES ABBOTT ASSOCIATES, INC., a  
 California Corporation; WILLIAM B.  
 17 BROWNING, an individual; AMERICAN  
 WIND & SOLAR, INC., a Nevada Corporation;  
 18 SUNDANCE BUILDERS, LLC, a Nevada  
 Limited Liability Company; THOMAS R.  
 19 FRANK, an individual; COUNTY OF NYE, a  
 20 political subdivision of the State of Nevada;  
 DOES I through X, inclusive; and ROE  
 21 ENTITIES XI through XX, inclusive,

22 Defendants.  
 23

Case No.: 2:16-cv-02903-APG-CWH

**STIPULATION AND ORDER TO STAY  
 ACTION TO ALLOW PARTIES TO  
 ATTEND MEDIATION AND TO EXTEND  
 THE DISCOVERY CUT OFF DATE AND  
 DISPOSITIVE MOTION DEADLINE TO  
 ALLOW FOR THE COMPLETION OF  
 ALL PENDING DISCOVERY IF  
 MEDIATION IS NOT SUCCESSFUL**

**(Second Request)**

24 Pursuant to LR 6-2 and 26-4 the Parties, through their respective counsel of record, hereby  
 25 agree and stipulate and request this Court to issue a stay in the pending discovery to allow the  
 26 Parties to participate in mediation or a settlement conference. The Parties further request that the  
 27 current discovery cut-off date be extended to expire thirty (30) days after conclusion of mediation  
 28 or the settlement conference and the dispositive motion deadline be extended to expire at sixty (60)

1 days after the conclusion of mediation or settlement conference. In support of this Stipulation and  
2 Request, the Parties state as follows:

3 **A. DISCOVERY COMPLETED TO DATE**

4 **i. Production of Witnesses and Documents:**

5 1. Plaintiffs Top Rank Builders, Inc. (“TRB”) and Efrain Rene Morales Moreno  
6 (“Morales”) (collectively, the “Plaintiffs”) produced their Initial List of Witnesses and Documents.

7 2. Plaintiffs produced their First Supplemental List of Witnesses and Documents.

8 3. Plaintiffs produced their Second Supplemental List of Witnesses and Documents.

9 4. Defendant Nye County (“Nye”) produced its Initial List of Witnesses and  
10 Documents.

11 5. Defendant Nye produced its First Supplement to List of Witnesses and Documents.

12 6. Defendant Nye produced its Second Supplement to List of Witnesses and  
13 Documents.

14 7. Defendant Charles Abbott Associates, Inc. (“CAA”) produced its Initial List of  
15 Witnesses and Documents.

16 8. Defendant CAA produced its First Supplement to List of Witnesses and  
17 Documents.

18 9. Defendant CAA produced its Second Supplement to List of Witnesses and  
19 Documents.

20 10. Defendant CAA produced its Third Supplement to List of Witnesses and  
21 Documents.

22 11. Defendant CAA produced its Fourth Supplement to its List of Witnesses and  
23 Documents.

24 12. Defendant William B. Browning (“Browning”) produced his Initial List of  
25 Witnesses and Documents.

26 13. Defendant American Wind & Solar, Inc. (“AWS”) produced its Initial List of  
27 Witnesses and Documents.  
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**ii. Written Discovery and Responses:**

14. Plaintiff TRB issued its First Set of Interrogatories to Defendant CAA.

15. Plaintiff TRB issued his First Set of Interrogatories to Defendant Nye.

16. Plaintiff TRB issued its First Set of Interrogatories to Defendant AWS.

17. Plaintiff TRB issued its First Set of Interrogatories to Defendant Browning.

18. Plaintiff TRB issued its First Set of Request for Production of Documents to Defendant CAA.

19. Plaintiff TRB issued its Second Set of Request for Production of Documents to Defendant CAA.

20. Plaintiff TRB issued its First Set of Request for Production of Documents to Defendant Nye.

21. Plaintiff TRB issued its First Set of Request for Production of Documents to Defendant Browning.

22. Plaintiff TRB issued its First Set of Request for Production of Documents to Defendant AWS.

23. Plaintiff Morales issued his First Set of Interrogatories to Defendant CAA.

24. Plaintiff Morales issued his First Set of Interrogatories to Defendant Nye.

25. Plaintiff Morales issued his First Set of Interrogatories to Defendant Browning.

26. Plaintiff Morales issues his First Set of Request for Production of Documents to Defendant CAA.

27. Plaintiff Morales issues his First Set of Request for Production of Documents to Defendant Nye.

28. Plaintiff Morales issues his First Set of Request for Production of Documents to Defendant Browning.

29. Plaintiff Morales issues his First Set of Request for Admissions to Defendant Browning.

30. Plaintiff Morales issues his First Set of Request for Admissions to Defendant Nye.

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31. Defendant CAA issued its First Set of Interrogatories to Plaintiff TRB.

32. Defendant CAA issued its First Set of Interrogatories to Plaintiff Morales.

33. Defendant CAA issued its First Set of Interrogatories to Defendant Nye.

34. Defendant CAA issued its First Set of Request for Production of Documents to Plaintiff TRB.

35. Defendant CAA issued its Second Set of Request for Production of Documents to Plaintiff TRB.

36. Defendant CAA issued its Third Set of Request for Production of Documents to Plaintiff TRB.

37. Defendant CAA Issued its First Set of Request for Admissions to Defendant Nye.

38. Defendant CAA issued its First Set of Request for Admissions to Defendant AWS.

39. Defendant CAA issued its First Set of Request for Admissions to Defendant Browning.

40. Defendant Nye issued its First Set of Interrogatories to Plaintiff TRB.

41. Defendant Nye issued its First Set of Interrogatories to Plaintiff Morales.

42. Defendant Nye issued its First Set of Request for Production of Documents to Plaintiff TRB.

43. Defendant Nye issued its First Set of Request for Production of Documents to Plaintiff Morales.

44. Defendant Browning issued his First Set of Interrogatories to Plaintiff TRB.

45. Defendant Browning issued his First Set of Interrogatories to Plaintiff Morales.

46. Defendant Browning issued his First Set of Request for Production of Documents to Plaintiff TRB.

47. Defendant Browning issued his First Set of Request for Production of Documents to Plaintiff Morales.

48. Defendant Browning issued his First Set of Request for Admissions to Plaintiff TRB.

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49. Defendant Browning issued his First Set of Request for Admissions to Plaintiff Morales.

50. Defendant CAA issued its responses to Plaintiff TRB's First Set of Interrogatories to Defendant CAA.

51. Defendant Nye issued its responses to Plaintiff TRB's First Set of Interrogatories to Defendant Nye.

52. Defendant AWS issued its responses to Plaintiff TRB's First Set of Interrogatories to Defendant AWS.

53. Defendant Browning issued its responses to Plaintiff TRB's First Set of Interrogatories to Defendant Browning.

54. Defendant Browning issued its first supplement to answers to Plaintiff TRB's First Set of Interrogatories to Defendant Browning.

55. Defendant CAA issued its responses to Plaintiff TRB's First Set of Request for Production of Documents to Defendant CAA.

56. Defendant CAA issued its responses to Plaintiff TRB's Second Set of Request for Production of Documents to Defendant CAA.

57. Defendant Nye issued its responses to Plaintiff TRB's First Set of Request for Production of Documents to Defendant Nye.

58. Defendant Browning issued his responses to Plaintiff TRB's First Set of Request for Production of Documents to Defendant Browning.

59. Defendant AWS issued its responses to Plaintiff TRB's First Set of Request for Production of Documents to Defendant AWS.

60. Defendant CAA issued its responses to Plaintiff Morales' First Set of Interrogatories to Defendant CAA.

61. Defendant Nye issued its responses to Plaintiff Morales' First Set of Interrogatories to Defendant Nye.

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- 62. Defendant Browning issued his responses to Plaintiff Morales' First Set of Interrogatories to Defendant Browning.
- 63. Defendant Browning issued his first supplement to answers to Plaintiff Morales' First Set of Interrogatories to Defendant Browning.
- 64. Defendant CAA issued its responses to Plaintiff Morales' First Set of Request for Production of Documents to Defendant CAA.
- 65. Defendant Nye issued its responses to Plaintiff Morales' First Set of Request for Production of Documents to Defendant Nye.
- 66. Defendant Browning issued his responses to Plaintiff Morales' First Set of Request for Production of Documents to Defendant Browning.
- 67. Defendant Browning issued his responses to Plaintiff Morales' First Set of Request for Admissions to Defendant Browning.
- 68. Defendant Browning issued his supplement to answers to Plaintiff Morales' First Set of Request for Admissions.
- 69. Defendant Nye issued its responses to Plaintiff Morales' First Set of Request for Admissions to Defendant Nye.
- 70. Plaintiff TRB issued its responses to Defendant CAA's First Set of Interrogatories to Plaintiff TRB.
- 71. Plaintiff Morales' issued his responses to Defendant CAA's First Set of Interrogatories to Plaintiff Morales.
- 72. Defendant Nye issued its responses to Defendant CAA's First Set of Interrogatories to Defendant Nye.
- 73. Plaintiff TRB issued its responses to Defendant CAA's First Set of Request for Production of Documents to Plaintiff TRB.
- 74. Plaintiff TRB issued its responses to Defendant CAA's Second Set of Request for Production of Documents to Plaintiff TRB.

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75. Plaintiff TRB issued its responses to Defendant CAA's Third Set of Request for Production of Documents to Plaintiff TRB.

76. Defendant Nye issued its responses to Defendant CAA's First Set of Request for Admissions to Defendant Nye.

77. Defendant AWS issued its responses to Defendant CAA's First Set of Request for Admissions to Defendant AWS.

78. Defendant Browning issued his responses to Defendant CAA's First Set of Request for Admissions to Defendant Browning.

79. Plaintiff TRB issued its responses to Defendant Nye's First Set of Interrogatories to Plaintiff TRB.

80. Plaintiff Morales issued his responses to Defendant Nye's First Set of Interrogatories to Plaintiff Morales.

81. Plaintiff TRB issued its responses to Defendant Nye's First Set of Request for Production of Documents to Plaintiff TRB.

82. Plaintiff Morales' issued his responses to Defendant Nye's First Set of Request for Production of Documents to Plaintiff Morales.

**iii. Experts:**

83. Plaintiffs TRB and Morales have produced their initial list of expert witnesses, summaries and designations.

84. Defendants CAA and Browning have produced their rebuttal expert witnesses, qualifications and reports.

**iv. Depositions**

85. Deposition of Plaintiff Efrain Rene Morales, individually and as 30(b)(6) witness for Plaintiff TRB.

86. Custodian of Record Depositions for Green Cross of America, Inc. (non-appearance), SATI Construction and Nye Farm Tech (non-appearance).

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87. Deposition of Nye County’s 30(b)(6) Witness for Nye County’s licensing and Permitting Policies and Procedures and Knowledge as to Projects involving Green Cross of America, Inc.

- 88. Deposition Faith Simunick, former CAA employee.
- 89. Deposition of Pamela Webster, Nye County Manager.
- 90. Deposition of Peter Gnecco, Green Cross of America, Inc.
- 91. Deposition of Gary Carlson, AIA.
- 92. Deposition of William Browning.
- 93. Deposition of Nye Farm Tech, Ltd.’s 30(b)(6) Witness.

**v. Third Party Subpoenas for Records**

94. Defendant CAA issued subpoena duces tecum to the State of Nevada Board of Contractors.

- 95. Defendant CAA issued its subpoena duces tecum to Green Cross of America, Inc.
- 96. Defendant CAA issued its subpoena duces tecum to SATI Construction.
- 97. Defendant CAA issued its subpoena duces tecum to Nye Farm Tech, Ltd.
- 98. Defendant Nye issued its subpoena duces tecum to Green Cross of America, Inc.
- 99. Plaintiff TRB issued its subpoena duces tecum to the State of Nevada Board of

Contractors.

**B. DISCOVERY REMAINING-IN PROGRESS**

The Parties have the following depositions scheduled for this action:

- 1. The Deposition of the 30(b)(6) witness for Esmeralda County;
- 2. The Deposition of Guy Marzola, Green Cross of America, Inc.
- 3. The Deposition of Kevin Fisher, Green Cross of America, Inc.
- 4. The Deposition of Sean Wilson, TRB and designated as non-retained expert for

Plaintiffs TRB and Morales.

- 5. The Deposition of Dan Ames, D&J Electrical.
- 6. The Deposition of Geraldo Guzman, Ganda Concrete.



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7. The Deposition of L. Darrell Lacy, Nye.

8. Plaintiffs TRB and Morales' responses to Defendant Browning's written discovery due one week after resumption of discovery.

9. Any and all supplements to prior discovery requests (written and/or at deposition) wherein the responding party represented that they will supplement their response at a future date.

Based on the amounts of fees and costs incurred by the Parties to date, discussions have arisen about staying all remaining discovery and litigation and placing this matter into mediation or settlement conference. The fees and costs estimated by the Parties moving forward to complete discovery; file dispositive motions, oppositions and replies; appear at hearings and court ordered conferences; engage in extensive pre-trial litigation; and finally prepare for and attend trial is estimated to be a significant. Extensive discovery has assisted the Parties in identifying and eliminating claims, issues, damages and to assess any potential risks to the Parties in the action. Therefore, the Parties believe the time is ripe and there is universal interest in the Parties to pursue an avenue to stop the further incursion of fees and costs and to engage in meaningful settlement discussions concerning the action.

If mediation or settlement conference is not successful, the Parties request the present discovery cut-off date be extended to expire thirty (30) days after the formal termination of mediation or settlement conference. The Parties further request that any remaining discovery in this action following an unsuccessful mediation or settlement be limited to the discovery pending at the time the Parties entered into this stipulation. The Parties stipulate that following the conclusion of an unsuccessful mediation or settlement conference, no additional depositions or written discovery is allowed other than the items expressly stated herein as pending and needing completion.

The Parties also stipulate to file notice of recommencement of discovery to the Court, confirming the commencement date of the resumption of discovery, if the mediation or settlement conference is unsuccessful.

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1 **C. REASONS WHY DISCOVERY WAS NOT COMPLETED**

2 As shown herein, the Parties have expended considerable time, energy and costs litigating  
3 this action. Many depositions have been taken and extensive written discovery and production of  
4 documents from the Parties and third parties have been acquired. Based on the discovery to date,  
5 there is an opportunity for the Parties to engage in detailed, meaningful settlement discussions in  
6 this action in a good faith effort at resolution. Therefore, the Parties stipulate that the time is ripe  
7 for settlement discussions that may ultimately resolve this action. The remaining discovery stated  
8 herein has been previously and timely scheduled in anticipation of completion prior to the current  
9 discovery cut-off date of March 13, 2018. However, the Parties will incur significant fees and  
10 costs completing the discovery and then proceeding to file dispositive motions. These projected  
11 fees and costs could be directed toward meaningful settlement discussions that may resolve the  
12 action.

13 The Parties all represent that this extension is being made in good faith and not to  
14 needlessly delay the proceedings.

15 **D. PROPOSED SCHEDULE FOR COMPLETION OF DISCOVERY**

16

	<b>Current Deadline</b>	<b>Proposed New Deadline</b>
17 Close of discovery	March 13, 2018	<b>30 days following the formal conclusion of mediation or settlement conference</b>
18 Amend Pleadings/Add Parties	N/A	N/A
19 Initial Experts	September 14, 2017	N/A
20 Rebuttal Experts	February 9, 2018	N/A
21 Dispositive Motions	April 17, 2018	<b>60 days following the formal conclusion of mediation or settlement conference</b>

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1 **E. CURRENT TRIAL DATE**

2 To the knowledge of the Parties, no trial date has been scheduled in this action.

3 DATED this 9<sup>th</sup> day of March, 2018.

DATED this 9<sup>th</sup> day of March, 2018.

4 WEIL & DRAGE, APC

THE WRIGHT LAW GROUP, P.C.

5 */s/ John T. Wendland*

*/s/ John Henry Wright*

6 \_\_\_\_\_  
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Las Vegas, NV 89102

13 Attorneys for Defendant,

Attorneys for Plaintiffs,

14 CHARLES ABBOTT ASSOCIATES, INC.

TOP RANK BUILDERS, INC. and EFRAIN

RENE MORALES MORENO

15 DATED this 9<sup>th</sup> day of March, 2018.

DATED this 9<sup>th</sup> day of March, 2018.

16 MARQUIS AURBACH COFFING

WOODBURY LAW

17 */s/ Craig Anderson*

*/s/ Rodney S. Woodbury*

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Attorneys for Defendants,

24 Las Vegas, Nevada 89145

AMERICAN WIND & SOLAR, INC. and

25 Attorneys for Defendant,

WILLIAM BROWNING

26 COUNTY OF NYE

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1 DATED this 9<sup>th</sup> day of March, 2018.

2 WILSON, ELSER, MOSKOWITZ,  
3 EDELMAN & DICKER LLP

4 /s/ David S. Kahn

5 \_\_\_\_\_  
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8 300 S. Fourth Street, 4<sup>th</sup> Fl.  
9 Las Vegas, Nevada 89101  
10 Attorneys for Defendant  
11 WILLIAM BROWNING

10 **ORDER**

11 IT IS SO ORDERED. IT IS FURTHER ORDERED that the parties must file a joint  
12 status report upon completion of the settlement conference or by June 11, 2018,  
13 whichever is sooner.

13 DATED: March 12, 2018

14 \_\_\_\_\_  
15   
16 UNITED STATES MAGISTRATE JUDGE

17 CASE NO. 2:16-cv-02903-APG-CWH  
18 Top Rank Builders, Inc. v. Charles Abbott  
19 Associates, Inc.

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