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KAREN ELLISON, RECORDER

APN# _____

Recording Requested by/Mail to:

Name: Maupin, Cox & LeGoy

Address: 4785 Caughlin Parkway

City/State/Zip: Reno, NV 89519

Mail Tax Statements to:

Name: Jack Dolan

Address: 1855 Plumas St., Suite 1

City/State/Zip: Reno, Nv 89519

Findings of Fact, Conclusions of Law, and Judgment

Title of Document (required)

------(Only use if applicable)-----

The undersigned hereby affirms that the document submitted for recording
DOES contain personal information as required by law: (check applicable)

Affidavit of Death – NRS 440.380(1)(A) & NRS 40.525(5)

Judgment – NRS 17.150(4)

Military Discharge – NRS 419.020(2)

Enrique B. Schaefer
Signature

ENRIQUE B. SCHAEFER
Printed Name

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TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Andersen DEPUTY

1 Case No. 16-CV-01241

2 Dept. No. I

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IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF

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NEVADA IN AND FOR THE COUNTY OF LYON

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JMB STAINLESS LLC, a Nevada limited liability company; JOHN B. DOLAN, an individual,

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Plaintiffs,

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vs.

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RAD RAILS LLC, a Nevada limited liability company; DOUG LIPPINCOTT, an individual; AND DOES 1-25, INCLUSIVE,

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Defendants.

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RAD RAILS LLC, a Nevada limited liability company; and DOUG LIPPINCOTT, an individual,

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Counterclaimants,

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vs.

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JMB STAINLESS LLC, a Nevada limited liability company; JOHN B. DOLAN, an individual,

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Counterdefendants.

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

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A four-day bench trial in this matter took place before the Court from March 13, 2018 through March 16, 2018. Plaintiffs appeared through their counsel, Enrique R. Schaerer, Esq., of Maupin, Cox & LeGoy. Defendants appeared through their counsel, Ryan J. McElhinney, Esq., of Barber Law Group. The Court now makes the following findings of fact and

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1 conclusions of law, and enters the below judgment:

2 **FINDINGS OF FACT**

3 1. Plaintiffs owned a tea tank. Without Plaintiffs' knowledge or permission,
4 Defendant RAD RAILS LLC sold the tank for \$10,500 and deposited the proceeds in a bank
5 account for Defendant RAD RAILS and not Plaintiffs.

6 2. Plaintiffs own a two-ton Harrington hoist, which Defendant RAD RAILS did
7 not return to Plaintiffs and has in its possession.

8 3. Plaintiff JOHN B. DOLAN provided Defendant DOUG LIPPINCOTT with
9 personal loans of \$16,551.81, and Defendant agreed to repay those loans pursuant to an oral
10 agreement. Insofar as LIPPINCOTT did not owe those loans to DOLAN, LIPPINCOTT now
11 owes those loans to DOLAN pursuant to a valid written assignment. LIPPINCOTT owes
12 DOLAN \$16,551.81, plus interest, and LIPPINCOTT has failed to repay DOLAN.

13 4. Plaintiff DOLAN provided Defendant LIPPINCOTT with accounting services,
14 and LIPPINCOTT agreed to pay for those services. A final invoice of \$11,342.25 for those
15 services was issued on or about December 8, 2014. The preponderance of the evidence does not
16 establish that DOLAN wrote off any of those fees. Insofar as LIPPINCOTT did not owe those
17 fees to DOLAN, LIPPINCOTT now owes those fees to DOLAN pursuant to a valid written
18 assignment. LIPPINCOTT owes DOLAN accounting fees of \$11,342.25, plus interest, and
19 LIPPINCOTT has failed to pay DOLAN.

20 5. Plaintiffs agreed to rent RAD RAILS' facility at Mound House, Nevada, for
21 \$3,500.00 per month for June, July, and August of 2016. Alternatively, Plaintiffs benefitted
22 from use of the RAD RAILS facility during those months.

23 6. Plaintiffs caused some physical damage to the door and concrete floor of the
24 Mound House facility when retrieving equipment from the property.

25 7. Any finding of fact hereinafter construed to constitute a conclusion of law is
26 hereby adopted as such to the same extent as if it were originally so denominated.

1 CONCLUSIONS OF LAW

2 1. Plaintiffs proved by a preponderance of the evidence that Defendant RAD
3 RAILS converted Plaintiffs' tea tank and Plaintiffs suffered damages for the conversion in the
4 amount of \$10,500.00. Thus, RAD RAILS owes Plaintiffs damages for conversion of the tea
5 tank in the amount of \$10,500.00, plus legal interest since October 21, 2016, the date of filing
6 of the Complaint.

7 2. Plaintiffs also proved by a preponderance of the evidence Defendant RAD
8 RAILS' conversion of Plaintiffs' two-ton Harrington hoist, which is in the possession of RAD
9 RAILS, who is ordered to return the hoist to Plaintiffs.

10 3. Plaintiffs did not prove by a preponderance of the evidence conversion of the
11 roundup rings, turntable, tank head, swamp cooler units, design software, jack stands, Bader
12 belts, band simplexes, rigging straps, iron worker, or XMT welder. There was no proof the
13 turntable was in a different condition before August 16, 2016, when Plaintiffs fired the
14 Defendants. There was no proof the tank head was not altered in the regular course of business.
15 There was no proof of mitigation of damages as to the design software. There was no proof of
16 an inventory of the specific type of jack stands. There was no proof that any Bader belts, band
17 simplexes, and rigging straps, which are consumable items, were left in working condition.
18 There was no proof the iron worker and XMT welder had been inspected by a mechanic. In any
19 event, damages for the above items are speculative. Plaintiffs' witnesses Cody Zumalt and
20 Jason Auger have no credibility as to damages given they are not in the business of buying and
21 selling the above items.

22 4. Plaintiffs did not prove by a preponderance of the evidence breach of the
23 independent-contractor contract. There was proof Plaintiffs knew about the speculation tanks at
24 the time they were being built, and those tanks are a cost of doing business.

25 5. Plaintiff DOLAN proved by a preponderance of the evidence Defendant
26 LIPPINCOTT's breach of personal-loan contracts. The personal-loan contracts were oral, and

1 interest was not specified in writing. DOLAN did not demand payment until the filing of the
2 Complaint, and LIPPINCOTT failed to pay. Thus, LIPPINCOTT owes DOLAN damages for
3 breach of the personal-loan contracts in the amount of \$16,551.81, plus interest at the legal rate
4 under NRS 99.040 since October 21, 2016.

5 6. Plaintiff DOLAN also proved by a preponderance of the evidence Defendant
6 LIPPINCOTT's breach of an accounting-fee contract. DOLAN provided LIPPINCOTT with
7 accounting services, and LIPPINCOTT agreed to pay for those services. A final invoice for
8 those services was issued on or about December 8, 2014. The note at the bottom of the invoice
9 did not establish a contract for interest. A handwritten note on a Memorandum of
10 Understanding that accounting fees would be "written off at execution" had no effect because
11 the agreement as presented to the Court was not fully executed. The agreement says it is
12 between three parties, including DOLAN and LIPPINCOTT, but there was no proof the third
13 party ever executed the agreement or that its terms were ever performed. The preponderance of
14 the evidence does not establish that DOLAN otherwise wrote off the accounting fees. DOLAN
15 did not demand payment until the filing of the Complaint. Thus, LIPPINCOTT owes DOLAN
16 damages for breach of the accounting-fee contract in the amount of \$11,342.25, plus interest at
17 the legal rate under NRS 99.040 since October 21, 2016.

18 7. Plaintiffs did not prove by clear and convincing evidence intentional
19 interference with current or future contracts. Plaintiffs ceased operations on August 16, 2016
20 and did not resume business. Plaintiffs did not demand the return of property until late August
21 2016. Defendants could directly compete after they were fired.

22 8. Plaintiffs did not prove by a preponderance of the evidence breach of fiduciary
23 duty. There was no fiduciary relationship between Plaintiffs and Defendants after Plaintiffs
24 fired Defendants on August 16, 2016. There was a limited fiduciary relationship before, but
25 damages for breach of such a relationship are speculative.

26 9. Plaintiffs did not prove by a preponderance of the evidence negligence.

1 10. Defendant RAD RAILS proved by a preponderance of the evidence breach of a
2 facility-rent contract and unjust enrichment for facility use. There was proof of a clear
3 expectation Plaintiffs would rent the RAD RAILS facility for \$3,500.00 per month for June,
4 July, and August of 2016. There also was proof of Plaintiffs' unjust enrichment in the form of
5 appreciation of the benefit of facility use; at least seven tanks were produced there. Thus,
6 Plaintiffs owe RAD RAILS damages for breach of the facility-rent contract and unjust
7 enrichment for facility use in the amount of \$10,500.00, plus legal interest since October 21,
8 2016.

9 11. Defendant RAD RAILS did not prove by a preponderance of the evidence
10 breach of an equipment-rent contract, breach of the implied covenant of good faith and fair
11 dealing as to the equipment-rent contract, and unjust enrichment for equipment use. There was
12 insufficient proof that Plaintiffs agreed to rent RAD RAILS equipment in Plaintiffs' business;
13 discussions to that effect were nebulous. While there was proof of Plaintiffs' appreciation of
14 the benefit of equipment use, there was no proof of damages—other than Defendants' own self-
15 serving documents and testimony. Thus, as damages were speculative, Defendants' unjust-
16 enrichment claim fails for equipment use.

17 12. Defendants proved by a preponderance of the evidence that Plaintiffs caused
18 some physical damage to the door and concrete floor of the Mound House facility when
19 retrieving equipment from the property. However, Defendants presented no evidence of any
20 monetary damages caused by the physical damage, or any evidence of the cost of repairs.
21 Defendants are not entitled to purely speculative monetary damages despite establishing
22 liability.

23 13. Defendants did not prove by clear and convincing evidence fraudulent
24 misrepresentation. There was no proof of any specific fraudulent misrepresentation, nor any
25 proof that Defendants relied on any such misrepresentation.

26 14. Defendants did not prove by a preponderance of the evidence breach of any

1 fiduciary duty. There was no breach of any fiduciary duty.

2 15. Neither Plaintiffs nor Defendants proved by clear and convincing evidence
3 oppression, fraud, or malice; thus, punitive damages are not available.

4 16. Any conclusion of law hereinafter construed to constitute a finding of fact is
5 hereby adopted as such to the same extent as if it were originally so denominated.

6 **JUDGMENT**

7 1. Defendant RAD RAILS owes Plaintiffs damages for conversion of the tea tank
8 in the amount of \$10,500.00, plus legal interest since October 21, 2016. Plaintiffs owe
9 Defendant RAD RAILS damages for breach of the facility-rent contract and unjust enrichment
10 for facility use in the amount of \$10,500.00, plus interest. **The above sums cancel out and**
11 **offset each other.** Thus, neither party owes the other party anything on the above claims.

12 2. Defendants shall deliver to Plaintiffs the two-ton Harrington hoist at A-Z
13 Stainless LLC's location in Fallon, Nevada **no later than April 6, 2018.** Defendants shall not
14 tamper with or damage the hoist in any way. If Plaintiffs discover any problem with the hoist,
15 Plaintiffs may file a motion with the Court no later than April 20, 2018.


16 3. Defendant LIPPINCOTT owes Plaintiff DOLAN damages for breach of the
17 personal-loan contracts in the amount of \$16,551.81, plus legal interest under NRS 99.040
18 since October 21, 2016. Defendant LIPPINCOTT owes Plaintiff DOLAN damages for breach
19 of the accounting-fee contract in the amount of \$11,342.25, plus interest under NRS 99.040
20 since October 21, 2016. Thus, **Defendant LIPPINCOTT owes Plaintiff DOLAN damages in**
21 **the total amount of \$27,894.06,** plus prejudgment and post-judgment interest under NRS
22 99.040 since October 21, 2016. NRS 99.040 sets forth a legal rate of the prime interest rate,
23 plus 2 percent, in six-month periods between January 1 and July 1 of each year. Judgment is
24 entered March 20, 2018, and **Defendant LIPPINCOTT owes Plaintiff DOLAN prejudgment**
25 **interest in the amount of \$2,365.07,** as follows:

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Six-Month Time period	Legal Rate (prime + 2%)	Daily Rate (÷ 365 days)	Days in period (x # of days)	Principal (x amount)	Interest for each period
7/1/2016 – 12/31/2016	5.50%	0.015%	71 days	\$27,894.06	\$298.43
1/1/2017 – 6/30/2017	5.75%	0.016%	181 days	\$27,894.06	\$795.36
7/1/2017 – 12/31/2017	6.25%	0.017%	184 days	\$27,894.06	\$878.85
1/1/2018 – 3/20/2018	6.5%	0.018%	79 days	\$27,894.06	\$392.43

LIPPINCOTT will owe DOLAN post-judgment interest that will accrue at the legal rate under NRS 99.040 after March 20, 2018.

Dated this 13th day of April, 2018.


 Hon. John P. Schlegelmilch
 District Judge

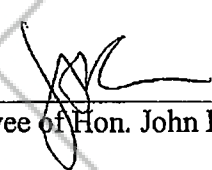
CERTIFICATE OF SERVICE

I hereby certify that I, Jeffrey D. Koelemay, am an employee of the Honorable John P. Schlegelmilch, District Judge, and that on this date pursuant to NRCP 5(b), I mailed at Yerington, Nevada, a true copy of the foregoing document addressed to:

Enrique R. Schaerer, Esq.
Maupin, Cox & Legoy
4785 Caughlin Pkwy.
Reno, NV 89519
Attorney for Plaintiffs

Ryan J. McElhinney, Esq.
The Barber Law Group
557 Washington St.
Reno, NV 89503
Attorney for Defendants

DATED: This 13 day of April, 2018.


Employee of Hon. John P. Schlegelmilch

CLRTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

Date: June 8, 2018

Tanya Sceirine, Court Administrator
Third Judicial District Court of the State of Nevada, in and for Lyon County.

By Victoria Toran

Deputy

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