1 2 3 4 5 6 7 8 9	Shane M. Biornstad - Bar No. 250202 Bryan Whitmer-Cabrera - Bar No. 249170 Ryan D. O'Dea - Bar No. 273478 SHULMAN BASTIAN FRIEDMAN & BUI L 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: SBiornstad@shulmanbastian.com BCabrera@shulmanbastian.com ROdea@shulmanbastian.com	County of San Diego 2/6/2025 2:01:16 PM Clerk of the Superior Court
10	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
11	COUNTY OF SAN DIEGO –	NORTH COUNTY DIVISION
12		
13	IHI POWER SERVICES CORP.,	25CU007391N Case No.
14		
15	Plaintiff,	COMPLAINT FOR:
16	v.	1. Breach of Contract; and
17	CAMSTON CARLSBAD ASSET 1, LLC,	2. Breach of Implied Covenant of Good Faith and Fair Dealing
18	Defendant.	
19		DEMAND FOR JURY TRIAL
20		[Unlimited Jurisdiction]
21 22		
22	Plaintiff IHI POWER SERVICES CO	RP. (referred to herein as "Plaintiff"), hereby
24		STON CARLSBAD ASSET 1, LLC (referred to
25	herein as " <u>Defendant</u> ") as follows:	
26	THE P.	ARTIES
27		
28		
SHULMAN BASTIAN FRIEDMAN & BUI LLP 100 Spectrum Center Drive		
Suite 600 Irvine, CA 92618	COMPLAINT AND DEM	IAND FOR JURY TRIAL

1	1. Plaintiff IHI Power Services Corp. is a Delaware corporation conducting business in
2	the State of California, County of San Diego. Plaintiff's principal business address is located in the
3	City of Aliso Viejo, State of California.
4	2. Plaintiff is informed and believes and thereon alleges that at all times relevant herein,
5	Defendant Camston Carlsbad Asset 1, LLC is and was a Delaware limited liability company doing
6	business in the County of San Diego, State of California, with its principal business address located
7	at 2856 Whiptail Loop E, Carlsbad, California 92010.
8	JURISDICTION AND VENUE
9	3. The amount of damages sought in this action exceeds \$25,000.00. This action is
10	properly brought in the County of San Diego in that performance under the parties' contract giving
11	rise to this complaint occurred in the County of San Diego, and that the parties' contract provides
12	venue shall be exclusively within the County of San Diego. Furthermore, the place of contract,
13	breach, injury, and loss occurred in San Diego County.
14	THE FACTS
15	4. Plaintiff provides operation and maintenance services, technical support, asset
16	management and environmental, health and safety services to owners of industrial facilities.
17	5. On December 29, 2021, Plaintiff and Defendant entered into that certain Operations
18	and Maintenance Agreement (the "O&M Agreement").
19	6. Pursuant to the O&M Agreement, Defendant delegated to Plaintiff the overall
20	responsibility to manage, maintain and operate (the "Services") a facility owned by Defendant,
21	located in or around Carlsbad, California that processed certain electronic waste (the "Facility").
22	7. Pursuant to the O&M Agreement, in exchange for Plaintiff providing the Services to
23	Defendant associated with the Facility, Defendant was required to compensate Plaintiff by paying
24	monthly fees and reimbursable costs.
25	8. On November 8, 2024, Defendant issued a notice of termination for convenience (the
26	"Termination Notice") to Plaintiff, indicating Defendant's termination of the O&M Agreement
27	without cause ("Termination for Convenience").
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SHULMAN BASTIAN FRIEDMAN & BUI LL 100 Spectrum Center Dri Suite 600 Irvine, CA 92618 9. Termination for Convenience was permissible under Section 8.3 of the O&M
 Agreement. However, in the event Defendant elected Termination for Convenience, "Defendant
 shall pay to [Plaintiff] (i) any unpaid Reimbursable Costs (including all demobilization costs and
 other costs approved in writing by Owner), plus (ii) all unpaid IPSC Fees" (hereinafter
 ("Termination Fees").

6 10. Shortly after receipt of the Termination Notice, Plaintiff provided Defendant with a
7 calculation of the Termination Fees due and owing to Plaintiff under the O&M Contract (the
8 "<u>Invoice</u>").

9 11. Despite Defendant's Termination for Convenience, and despite Plaintiff providing
10 Defendant with the Invoice which calculated the Termination Fees due and owing, Defendant failed
11 to tender payment to Plaintiff for the Termination Fees.

12 12. Section 7.10 of the O&M Agreement provides Defendant with twenty (20) days to
13 dispute any amounts asserted to be due and owing under an invoice submitted by Plaintiff, including
14 but not limited to amounts asserted to be due and owing in the Invoice.

15 13. As of the filing of this Complaint, and more than twenty (20) days after Plaintiff
provided to Defendant the Invoice, Defendant did not dispute and has never disputed any amount
Plaintiff asserted was due and owing under the Invoice. Notwithstanding Defendant's lack of
dispute regarding the Invoice, Defendant has failed to tender payment to Plaintiff associated with
the Invoice.

14. The O&M Agreement contains a dispute resolution provision requiring that Plaintiff
and Defendant attempt to resolve a dispute as follows: "All disputes arising in connection with this
Agreement shall be settled, if possible, by negotiation of the Parties. If the matter is not resolved by
negotiations, either Party may, by the giving of written notice [(a "<u>Notice of Dispute</u>")], cause the
matter to be referred to a meeting of appropriate higher management of the Parties. Such meeting
[(the "<u>Meeting</u>")] shall be held within ten (10) Business Days following the giving of such written
notice."

27 15. Negotiations between Plaintiff and Defendant were not successful. On December
28 31, 2024, Plaintiff submitted a Notice of Dispute to Defendant regarding Defendant's failure to pay

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the Termination Fees and the Invoice. The Notice of Dispute demanded Defendant's payment
 Termination Fees.

3 16. Despite Plaintiff's good faith attempts to procure Defendant's cooperation with the
4 dispute resolution process under the O&M Agreement, Defendant and its representatives canceled
5 the Meeting set up between the parties to resolve the dispute.

6 17. More than twenty (20) days have passed since Plaintiff sent the Notice of Dispute to
7 Defendant, yet Defendant has failed to pay the Termination Fees, which total \$475,811.75 without
8 inclusion of accrued interest (the "Damage Amount").

9 18. Pursuant to the O&M Agreement, "[a]ny amount owed to either Party hereunder by 10 the other Party shall accrue interest each day from the date that such amount is due until the date 11 paid at the Reference Rate per annum, computed and compounded daily." The O&M Agreement 12 defines the Reference Rate as "the rate published in the Wall Street Journal from time to time as the 13 "prime rate" plus 1%.." As such, the Damage Amount has been accruing interest since the Invoice 14 was submitted to Defendant.

15 19. Defendant has breached the O&M Agreement in the manner set forth herein, and
16 Plaintiff has been compelled to commence litigation to enforce its rights thereunder.

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FIRST CAUSE OF ACTION

Breach of Contract

(Against Defendant)

20 20. Plaintiff hereby repeats, repleads, and incorporates herein by reference as though
21 fully set forth herein each and every allegation contained in paragraphs 1 through 19, above.

22 21. Plaintiff and Defendant for valuable consideration each entered into a contract, the
23 O&M Agreement as identified hereinabove, which is a binding written agreement.

24 22. At all times herein mentioned, Plaintiff fully performed its obligations and duties
25 under the O&M Agreement, except for those obligations and duties that may have been excused as
26 a result of Defendant's conduct.

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4 COMPLAINT AND DEMAND FOR JURY TRIAL

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1	23. The Termination Fees are allowed, permitted and compensable under the O&M		
2	Agreement. The Damage Amount is solely comprised of the Termination Fees and must be paid in		
3	full, plus interest, by Defendant pursuant to the terms of the O&M Agreement.		
4	24. Defendant failed to do something that the O&M Agreement required it to do.		
5	Defendant was required to pay the Invoice for the Termination Fees. Defendants failed to pay the		
6	Invoice. Defendant was required to pay the Damage Amount as a result of the Dispute Notice.		
7	Defendant failed to pay the Damage Amount despite service of the Dispute Notice. Defendant was		
8	8 required to participate in a Meeting with Plaintiff within ten (10) days of the Dispute Notice.		
9	Defendant failed to participate in the Meeting.		
10	25. Plaintiff suffered harm. Each of Defendant's breaches of the O&M Agreement were		
11	a substantial factor in causing Plaintiff's harm.		
12	26. As a proximate result of Defendant's conduct, Plaintiff has sustained damages of		
13	\$475,811.75 constituting permissible Termination Fees under the O&M Agreement, plus interest		
14	and other general damages according to proof at trial.		
15	SECOND CAUSE OF ACTION		
16	Breach of Implied Covenant of Good Faith and Fair Dealing		
17	(Against Defendant)		
18	27. Plaintiff hereby repeats, repleads, and incorporates herein by reference as though		
19	fully set forth herein each and every allegation contained in paragraphs 1 through 26, above.		
20	28. In every contract or agreement there is an implied promise of good faith and fair		
21	dealing. This implied promise means that each party will not do anything to unfairly interfere with		
22	the right of any other party to receive the benefits of the contract. Good faith means honesty of		
23	purpose without any intention to mislead or to take unfair advantage of another. Generally speaking,		
24	it means being faithful to one's duty or obligation.		
25	29. Defendant violated its duty to act fairly and in good faith.		
26	30. Plaintiff and Defendant entered into a contract, namely the O&M Agreement.		
27	31. Plaintiff did all, or substantially all of the significant things that the O&M Agreement		
28 TAN	required it to do.		

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COMPLAINT AND DEMAND FOR JURY TRIAL

1	32. A	All conditions required for Defendant's performance had occurred, and Defendant's	
2	performance was not excused.		
3	33. I	Defendant prevented Plaintiff from receiving the benefits under the O&M	
4	Agreement.		
5	34. H	By doing so, Defendant did not act fairly and in good faith.	
6	35. I	Plaintiff was harmed by Defendant's conduct.	
7	36. I	Defendant's conduct was a substantial factor in causing Plaintiff's harm.	
8	37. A	As a direct and proximate result of Defendant's conduct, the Plaintiff suffered general	
9	damages in excess of the jurisdictional limits of this court, the exact amount of which will be		
10	established according to proof at trial.		
11	WHER	EFORE, Plaintiff prays for judgment as follows:	
12	1. 7	That Judgment be entered in favor of the Plaintiff and against Defendant.	
13	2. I	For an award damages, including general damages, as to all causes of action in an	
14	amount not less than \$475,811.75, plus accrued interest.		
15	3. H	For such other and further relief as the Court deems just and proper.	
16		SHULMAN BASTIAN FRIEDMAN & BUI LLP	
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17		10	
	DATED: Febru	ary 6, 2025 By: Buyan Cabrera	
17	DATED: Febru	ary 6, 2025 By: Bryan Cabura Bryan Whitmer-Cabrera	
17 18	DATED: Febru	ary 6, 2025 By: Buyan Cabrera	
17 18 19	DATED: Febru	ary 6, 2025 By: Bryan Cabura Bryan Whitmer-Cabrera	
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 17 18 19 20 21 22 23 24 25 26 27 28 	DATED: Febru	ary 6, 2025 By: Bryan Cabrera Bryan Whitmer-Cabrera	

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1	DEMAND FOR JURY TRIAL	
2	Plaintiff herein hereby demands a trial by jury in this action.	
3	SHULMAN BASTIAN FRIEDMAN & BUI LLP	
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5	Dated: February 6, 2025 By: Dupan Cabrera	
6	Dated: February 6, 2025 By: Diffu California Bryan Whitmer-Cabrera	
7	Attorneys for Plaintiff	
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Irvine, CA 92618	COMPLAINT AND DEMAND FOR JURY TRIAL	