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JS-6

6 Attorneys for Plaintiff, Elite Air Conditioning Inc.

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

11 United States, For the Use of Elite
12 Air Conditioning, Inc.

13 Plaintiff,

14 vs.

15 BVB Construction, Inc.; The
16 Hanover Insurance Company; and
17 DOES 1 through 10 inclusive,

Defendants.

CASE NO. 5:18-cv-01956 MWF (SPx)
Judge Michael W. Fitzgerald

ORDER ON STIPULATION TO
ARBITRATE AND STAY PENDING
ARBITRATION

19 Plaintiff ELITE AIR CONDITIONING, INC. (“ELITE AIR”) and Defendant
20 BVB CONSTRUCTION, INC. (“BVB”), have stipulated to the following:

21 1. BVB was the general contractor on a construction project with Owner,
22 United States of America, through the Federal Aviation Administration, more
23 particularly identified and known as Project Number WP-16-01461, located at 2555
24 E. Avenue P, Palmdale, California 93550 (“Project”).

25 2. Plaintiff ELITE AIR was a subcontractor to BVB and provided
26 construction labor and materials to the Project.

27 3. On or about September 7, 2016, BVB and ELITE AIR entered into a
28 written Subcontract Agreement, under which ELITE AIR agreed to perform HVAC

1 work at the Project as outlined in Exhibit “A” scope of work attached to the
2 Subcontract Agreement.

3 4. The written Subcontract Agreement contains a provision which
4 requires BVB and ELITE AIR to arbitrate Project-related disputes if elected by
5 BVB in its sole discretion. Specifically, the “DISPUTE RESOLUTION
6 PROCESS” section 38, provides as follows:

7 “F. All claims, disputes and other matters in question between the
8 Contractor and the Subcontractor arising out of or related to this
9 Agreement or the breach thereof, except as specifically governed by
10 the foregoing provisions and except for claims which have been
11 waived by the making and acceptance of final payment shall be
12 decided by arbitration in accordance with the Construction Industry
13 Arbitration rules of the American Arbitration Association, at the sole
14 discretion of the Contractor. If a demand for arbitration is filed by the
15 Subcontractor, the Contractor will advise the Subcontractor within
16 thirty (30) days after receipt of such a demand for arbitration if the
17 Contractor exercises the option to arbitrate or rejects arbitration; such
18 election, once made, shall be binding. The filing of a demand for
19 arbitration by the Contractor shall be deemed an election to arbitrate
20 and shall constitute the exercise of the option of the Contractor to
21 proceed with arbitration. The Contractor may consolidate arbitration
22 with the Owner, Owner’s representative any other subcontractor, or
any other party having an interest in the proceeding.”

23 5. On September 13, 2018, ELITE AIR filed a Complaint in the U.S.
24 District Court, Central District of California, stating causes of action for (1) Miller
25 Act Bond, (2) Common Counts, and (3) Breach of Contract against Defendants
26 BVB and The Hanover Insurance Company.

27 6. On November 19, 2018, Defendant BVB filed a Motion to Dismiss
28 seeking to enforce the parties’ arbitration clause in the Subcontract Agreement as

1 identified above in paragraph 4.

2 7. Therefore, ELITE AIR and BVB hereby stipulate and agree to submit
3 all claims between them arising out of the contract to arbitration with the American
4 Arbitration Association (“AAA”) under the Construction Industry Arbitration
5 Rules.

6 8. Further, ELITE AIR and BVB hereby stipulate and request that the
7 U.S. District Court issue a stay of the Miller Act Bond claim against Defendant The
8 Hanover Insurance Company, pending completion of AAA binding arbitration of
9 all claims between ELITE AIR and BVB arising out of or related to the written
10 Subcontract Agreement and the PROJECT.

11 **IT IS HEREBY ORDERED** that pursuant to the Parties’ Stipulation and for
12 good cause, the Parties are ordered to arbitration on the breach of contract claim
13 and this matter shall be stayed until completion of arbitration.

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15 IT IS FURTHER ORDERED that the parties shall file a status report on the
16 arbitration every 120 days, beginning April 12, 2019.

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18 Dated: December 11, 2018



19
20 HONORABLE MICHAEL W. FITZGERALD

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