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3 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

4 Electronically Filed
5 Apr 07 2015 09:40 a.m.
6 Tracie K. Lindeman
7 Clerk of Supreme Court

8 MB AMERICA, INC., A NEVADA
9 CORPORATION,

Case No.: 66860

10 Appellant,

11 vs.

12 ALASKA PACIFIC LEASING
13 COMPANY, A ALASKA BUSINESS
14 CORPORATION,

15 Respondent.

16 _____/
17 MB AMERICA, INC., A NEVADA
18 CORPORATION,

Case No.: 67329

19 Appellant,

20 vs.

21 ALASKA PACIFIC LEASING
22 COMPANY, A ALASKA BUSINESS
23 CORPORATION,

24 Respondent.

25 _____/

26 **APPELLANT'S APPENDIX**

27 **VOLUME 2**

28 **Appellant's Counsel:**

Michael E. Sullivan, Esq.
Mark G. Simons, Esq.
Therese M. Shanks, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, Nevada 89503
(775) 329-3151

Respondent's Counsel

Holly S. Parker, Esq.
Laxalt & Nomura, Ltd.
9600 Gateway Drive
Reno, Nevada 89521
(775) 322-1170

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27				
28				

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(b), I certify that I am an employee of ROBISON,
3 BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a
4 true copy of **APPELLANT'S APPENDIX – VOLUME 2** on all parties to this
5 action by the method(s) indicated below:
6

7
8 ✓ by placing an original of true copy thereof in a sealed envelope, with
9 sufficient postage affixed thereto, in the United States mail at Reno, Nevada,
10 addressed to:
11

12
13 Holly S. Parker, Esq.
14 Laxalt & Nomura, Ltd.
15 9600 Gateway Drive
16 Reno, Nevada 89521

17 DATED this 7th day of April, 2015.

18 Merna Meier
19 MERNA MEIER
20
21
22
23
24
25
26
27
28

1950

HOLLY S. PARKER, ESQ.
Nevada State Bar No: 10181
MARILEE BRETERNITZ, ESQ.
Nevada State Bar No. 12563
LAXALT & NOMURA, LTD.
9600 Gateway Drive
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mbreternitz@laxalt-nomura.com
Telephone: (775) 322-1170
Facsimile: (775) 322-1865
Attorneys for Defendant Alaska
Pacific Leasing Company

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

MB AMERICA, INC., a Nevada
Corporation

Plaintiff

vs.

ALASKA PACIFIC LEASING COMPANY,
a Alaska business corporation; and DOES
1-THROUGH X, inclusive,

Defendant.

Case No.: CV14-01229

Dept. No.: 8

DEFENDANT'S VERIFIED MEMORANDUM OF COSTS

Defendant, ALASKA PACIFIC LEASING COMPANY, as the Prevailing Party in the
above captioned action, hereby submits the following Verified Memorandum of Costs pursuant
to NRS § 18.020 and § 18.110:

(1)	Clerk fees (see Exhibit 1).....	\$413.00
(2)	Reporters' fees for depositions	\$0.00
(3)	Jurors' fees	\$0.00
(4)	Witness fees	\$0.00
(5)	Expert witness fees.....	\$0.00
(6)	Interpreter fees	\$0.00
(7)	Process server fees	\$0.00

1 (8) Court reporter\$0.00
 2 (9) Reasonable costs for any bond or undertaking required as part of the action.....\$0.00
 3 (10) Fees of a court bailiff who was required to work overtime\$0.00
 4 (11) Reasonable costs for telecopies.....\$0.00
 5 (12) Photocopies (see Exhibit 1).....\$72.35
 6 (13) Long distance telephone (see Exhibit 1)\$2.89
 7 (14) Postage (see Exhibit 1).....\$0.96
 8 (15) Travel and lodging expense for depositions and discovery\$0.00
 9 (16) Fees charged pursuant to NRS 19.0335\$0.00
 10 (17) Other reasonable and necessary expense (see Exhibit 1).....\$160.55
 11 **Total Costs.....\$649.75**


12 **Affirmation Pursuant to NRS 239B.030**

13 The undersigned does hereby affirm that the preceding document does not contain the
 14 social security number of any person.

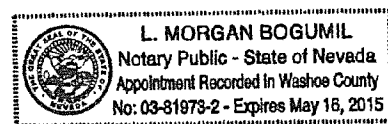
15 STATE OF NEVADA)
 16 : ss.
 17 COUNTY OF WASHOE)

18 Holly Parker, being duly sworn, deposes and says that the items contained in the above
 19 memorandum are correct, to the best of my knowledge and belief, and that the costs have been
 20 necessarily incurred in said action or proceeding by Alaska Pacific Leasing Company (NRS
 21 18.020).

22 DATED: October 29, 2014

23 
 24 HOLLY S. PARKER

25 SUBSCRIBED AND SWORN to before me
 26 this 29 day of October, 2014.



27 
 28 NOTARY PUBLIC

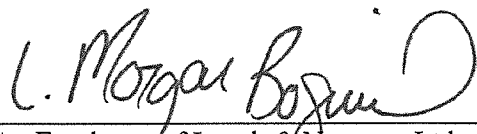
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT & NOMURA, LTD., and that on the 29 day of October, 2014, I caused to be served a true and correct copy of the foregoing Memorandum of Costs by:

- ☒ Mail on the parties listed below in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of Laxalt & Nomura, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.
- ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-Flex system, which will electronically mail the filing to the following individuals.
- ☐ Personal delivery by causing a true copy thereof to be hand delivered this date to the address(es) at the address(es) set forth below.
- ☐ Facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.
- ☐ Federal Express or other overnight delivery.
- ☐ Reno/Carson Messenger Service

addressed as follows:

Michael E. Sullivan, Esq.
Robison Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503
Attorneys for Plaintiff MB America, Inc.


An Employee of Laxalt & Nomura, Ltd.

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FILED
Electronically
2014-10-29 10:07:57 AM
Cathy Hill
Acting Clerk of the Court
Transaction # 4673344 : melwood

EXHIBIT 1

EXHIBIT 1

AA0178

EXHIBIT 1

Date	Amount	Description
8/15/14	213.00	Second Judicial District Court - Filing Fee (H. Parker)
9/15/14	200.00	Washoe County Court Clerk - Filing Fee for MSJ
Court Filing Fees	413.00	
8/15/14	0.45	Photocopy Charge. 3 copies @ \$0.15 per copy.
9/15/14	7.20	Photocopy Charge. 48 copies @ \$0.15 per copy.
9/15/14	58.05	Photocopy Charge. 387 copies @ \$0.15 per copy.
9/24/14	0.15	Photocopy Charge. 1 copy @ \$0.15 per copy.
10/3/14	6.00	Photocopy Charge. 40 copies @ \$0.15 per copy.
9/15/14	0.50	Color - Photocopy Charge. 1 color copy @ \$0.50 per copy.
Photocopies	72.35	
9/16/14	2.89	Long Distance Telephone Charge: 8/28, 9/4 & 9/16/14
Long Distance Telephone	2.89	
10/3/14	0.48	Postage
10/6/14	0.48	Postage
Postage	0.96	
8/16/14	31.06	Lexis Nexis Online Research on 8/15 & 8/16/14 - Invoice # 1408086764 dated 8/31/14
9/12/14	21.80	Lexis Nexis Online Research on 9/11 & 9/12/14 - Invoice # 1409086641 dated 9/30/14
9/15/14	92.69	Lexis Nexis Online Research on 9/8 & 9/15/14 - Invoice # 1409086641 dated 9/30/14
9/15/14	15.00	Delivery services/messengers
Other Reasonable and Necessary Expense	160.55	

Second Judicial District Court
State of Nevada
Washoe County

Electronic Filing

[Home](#)[eFile](#)[Cases](#)[My Profile](#)[Log Out](#)

user: Holly S. Parker

386.210

[Filing Charges](#)

Filing Charges

Report Month

August

August 2014 Charges for Holly S. Parker

Case Title	Client #	Court Case #	Court Division	Description	A Date	Account Authorization Code	Receipt	Fee
MB AMERICA, INC. VS ALASKA PACIFIC LEASING CO (DB)		CV14-01229	Civil	Contract Case: Other Contract - CO	08-15-2014:12:45	XF59D	5779956	
							CCDC466289	\$213.00
							Net Charges:	\$213.00

ENTERED AUG 26 2014

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386.210

LAXALT & NOMURA, LTD.

09/15/2014

2NDJUD

Washoe County Court Clerk

Invoice Date

Invoice No.

Invoice Amount

09/15/2014

386.210 - Filing Fee

\$200.00

G/L # 51010-1 (Client Cost)
386.210 - Alaska Pacific adv. MB America
Filing Fee for MSJ

53565

22

RECEIPT

Second Judicial District Court

Receipt Number: NCDC470618

Date: 15-SEP-2014

Cashier: LBARRACA

Comment:

Payor: CKN53565 LAXALT & NOMURA, LTD

Address:

Description	Amount
-------------	--------

Case: CV14-01229

MB AMERICA, INC. VS ALASKA PA
CIFIC LEASING CO (DB)

Party:

Motion/Summary Ju	200.00
-------------------	--------

Check Pay - Fee A	-200.00
-------------------	---------

Total Fees:	200.00
-------------	--------

Total Payment:	200.00
----------------	--------

Amt. Tendered:	200.00
----------------	--------

Change:	0.00
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AA0181

LexisNexis[®] PowerInvoice[™]

Date Range
08/01/2014 - 08/31/2014

Report Date
09/08/2014

CLIENT	USER NAME	USER ID	DATE	SERVICE	TYPE OF CHARGE	QUANTITY	GROSS AMOUNT	CONTRACT USE	NET AMOUNT	TRANSACTIONAL USE	OUTSIDE CONTRACT	TOTAL BEFORE TAX	TOTAL TAX	TOTAL CHARGES
ALASKA PACIFIC LEASING	BREITMIZ MARI EE	PGS1508	15-AUG-2014	LEXIS LEGAL SERVICES	A DOCUMENT ACCESS	2.00	\$38.00		\$34.51	\$3.49	\$0.00	\$34.51	\$0.00	\$34.51
			16-AUG-2014	LEXIS LEGAL SERVICES	A DOCUMENT ACCESS	5.00	\$300.00		\$272.43	\$27.57	\$0.00	\$27.57	\$0.00	\$27.57
									\$272.43	\$27.57	\$0.00	\$27.57	\$0.00	\$27.57
									\$272.43	\$27.57	\$0.00	\$27.57	\$0.00	\$27.57

777.973 100.300
130.857 100.300
1386.210
100.100
777.973

Currency
US DOLLARS

Exchange Rate to US DOLLARS

Date	Rate	Base Currency
Aug 2014	1.0000	US DOLLARS

LexisNexis[®] PowerInvoice[™]

Date Range
09/01/2014 - 09/30/2014

Report Date
10/08/2014

CLIENT	USER NAME	USER ID	DATE	SERVICE	TYPE OF CHARGE	QUANTITY	GROSS AMOUNT	CONTRACT USE	NET AMOUNT	ADJUSTMENT	TRANSACTIONAL USE	OVER THE GAP	OUTSIDE CONTRACT	TOTAL BEFORE TAX	TAX	TOTAL CHARGES
385 210	BREITMIZ, MARLEE	CG5330E	10-Sep-2014	LEXIS LEGAL SERVICES	LA DOCUMENT ACCESS	12.00	\$152.00		\$138.25			\$0.00	\$0.00	\$13.75	\$0.00	\$13.75
	PARKER, HOLLY	CG0033E	15-Sep-2014	LEXIS LEGAL SERVICES	ONLINE TIME	00:28:26	\$0.00		\$0.00			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
					SEARCHES	2.00	\$64.00		\$58.60			\$0.00	\$0.00	\$5.40	\$0.00	\$5.40
					SINGLE DOCUMENT RETRIEVAL	3.00	\$180.00		\$163.73			\$0.00	\$0.00	\$16.27	\$0.00	\$16.27
					SHEPARD'S SERVICE	3.00	\$45.00		\$40.93			\$0.00	\$0.00	\$4.07	\$0.00	\$4.07
					ONLINE TIME	00:19:07	\$0.00		\$0.00			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
							\$1028.00		\$922.69			\$0.00	\$0.00	\$106.31	\$0.00	\$106.31

386.179 100.300
386.183

386.210
386.212
386.191

386.207

402.010 100.300
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Section Six

PowerInvoiceTM

Date Range

09/01/2014 - 09/30/2014

Report Date

10/08/2014

[illegible]

22.300

63-67

12.300

25-03

302

010-84

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1
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09-1999

29

Currency

US DOLLARS

Exchange Rate to US DOLLARS

Date	Rate	Base Currency
Sep 2014	1.0000	US DOLLARS

1 **2430**
2 Michael E. Sullivan, Esq. (SBN 5142)
3 **ROBISON, BELAUSTEGUI, SHARP & LOW**
4 A Professional Corporation
5 71 Washington Street
6 Reno, Nevada 89503
7 Telephone: (775) 329-3151
8 *Attorneys for Plaintiff MB America, Inc.*

9
10 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF WASHOE**

12 MB AMERICA, INC., a Nevada
13 corporation,

Case No.: CV14-01229

14 Plaintiff,

Dept. No.: 8

15 v.

16 ALASKA PACIFIC LEASING COMPANY,
17 a Alaska business corporation; and DOES
18 I through X, inclusive,

19 Defendants.
20 _____/

21 **PLAINTIFF MB AMERICA, INC.'S MOTION TO RETAX COSTS**

22 COMES NOW, Plaintiff MB America, Inc., by and through its attorneys Robison,
23 Belaustegui, Sharp & Low, and respectfully moves this Court to retax costs as detailed
24 in Defendant's Verified Memorandum of Costs. This motion is based upon the
25 Memorandum of Points and Authorities set forth below, Defendant's Verified
26 Memorandum of Costs, and any other documents the Court wishes to consider.

27 DATED this 3rd day of November, 2014.

28 ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

By: 

MICHAEL E. SULLIVAN, ESQ.
Attorneys for Plaintiff MB America, Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Statutes permitting the recovery of costs would be strictly construed because
3 they are in derogation of common law. Bobby Berosini Ltd. v. People for the Ethical
4 Treatment of Animals, 114 Nev. 1348, 1352, 971, P.2d 383 (1998); Gibellini v. Klindt,
5 110 Nev. 1201, 1205-1206, 885 P.2d 540 (1994); Bergmann v. Boyce, 109 Nev. 670,
6 679, 856 P.2d 560 (1993). Plaintiff requests Defendant's Verified Memorandum of
7 Costs be retaxed with respect to its photocopies and other reasonable and necessary
8 expense (legal research) charges. There was no need to conduct legal research online
9 for a simple boiler plate Motion for Summary Judgment.

10 Defendant's claim of \$72.35 for photocopy expenses and \$160.55 for other
11 reasonable and necessary expenses (legal research) appear to be excessive and unfair
12 and should be reduced. Alaska Pacific Leasing does not provide any substantial
13 documentation for these costs. This case only had one contract and a few emails. The
14 photo copies of the Plaintiff were only \$10.00. Accordingly, Plaintiff requests that
15 Defendant's photocopies costs be reduced from \$72.35 to \$10.00 and its other
16 reasonable and necessary expenses (legal research) be reduced from \$160.55 to \$0.

17 Plaintiff does not dispute the remaining items on Defendant's Verified
18 Memorandum of Costs.

19 **AFFIRMATION:** The undersigned does hereby affirm that this document does not
20 contain the Social Security Number of any person.

21 DATED this 3rd day of November, 2014.

22
23 ROBISON, BELAUSTEGUI, SHARP & LOW
24 A Professional Corporation
25 71 Washington Street
26 Reno, Nevada 89503

27 By: 
28 MICHAEL E. SULLIVAN, ESQ.
Attorneys for Plaintiff MB America, Inc.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON,
3 BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true
4 copy of the attached **PLAINTIFF MB AMERICA, INC.'S MOTION TO RETAX COSTS**
5 on all parties to this action by the method(s) indicated below:
6

7 X by placing an original or true copy thereof in a sealed envelope, with
8 sufficient postage affixed thereto, in the United States mail at Reno,
9 Nevada, addressed to:

10 Holly S. Parker, Esq.
11 Marilee Breternitz, Esq.
12 Laxalt & Nomura, Ltd.
13 9600 Gateway Drive
14 Reno, Nevada 89521
15 *Attorneys for Defendant Alaska Pacific Leasing Company*

16 X by using the Court's CM/ECF Electronic Notification System
17 addressed to:

18 Holly S. Parker, Esq.
19 Marilee Breternitz, Esq.
20 *Attorneys for Defendant Alaska Pacific Leasing Company*

21 _____ by facsimile addressed to:

22 Holly S. Parker, Esq./Marilee Breternitz, Esq. – Fax # 322-1865
23 *Attorneys for Defendant Alaska Pacific Leasing Company*

24 _____ by hand-delivery addressed to:

25 Holly S. Parker, Esq.
26 Marilee Breternitz, Esq.
27 Laxalt & Nomura, Ltd.
28 9600 Gateway Drive
Reno, Nevada 89521
Attorneys for Defendant Alaska Pacific Leasing Company

DATED this 3 day of November, 2014.



2010

HOLLY S. PARKER, ESQ.
Nevada State Bar No: 10181
MARILEE BRETERNITZ, ESQ.
Nevada State Bar No. 12563
LAXALT & NOMURA, LTD.
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Telephone: (775) 322-1170
Facsimile: (775) 322-1865
Attorneys for Defendant Alaska
Pacific Leasing Company

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MB AMERICA, INC., a Nevada
Corporation,

Plaintiff

vs.

ALASKA PACIFIC LEASING COMPANY,
a Alaska business corporation; and DOES
1-THROUGH X, inclusive,

Defendants.

CASE NO: CV14-01229

DEPT. NO. 8

DEFENDANT ALASKA PACIFIC LEASING COMPANY'S
MOTION FOR ATTORNEYS' FEES

Defendant ALASKA PACIFIC LEASING COMPANY ("Alaska Pacific"), by and
through its counsel, Laxalt & Nomura, Ltd., hereby files this Motion for Attorneys' Fees. This
Motion is made based upon the following Memorandum of Points and Authorities, the exhibits
attached hereto, the pleadings and papers filed herein, and any additional information the Court
may wish to consider.

//

//

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff MB America, Inc. ("MB") filed its Complaint in this case on June 6, 2014. As
4 discussed in detail in Alaska Pacific's Motion for Summary Judgment and Reply thereto, MB
5 prematurely filed this action instead of fulfilling its contractual obligation to submit the dispute
6 to mediation prior to seeking court intervention. *See* Mtn. for Summ. J., filed Sep. 15, 2014;
7 Reply, filed Oct. 3, 2014. The parties' Agreement requires disputes or questions arising from the
8 Agreement to be submitted to mediation. Ex. 1 to Mtn. for Summ. J., Agreement between MB
9 and Alaska Pacific, at ¶ 13. The Agreement only provides for Court intervention "if mediation
10 between the parties does not result in a mutually satisfying settlement within 180 days after
11 submission to mediation" *Id.*

12 The Court granted Alaska Pacific's Motion for Summary Judgment on October 22, 2014,
13 and dismissed MB's Complaint without prejudice. Order Granting Summ. J., on file herein.
14 The Court concluded that the parties were required to exhaust the administrative remedy—
15 mediation—before submitting their dispute to the court. *Id.* at p.3: 9-12.

16 Despite the terms of the Agreement, MB filed this action without submitting the matter to
17 mediation and without allowing the required 180 day period following submission to mediation
18 to pass. MB did not dispute the applicability of the Agreement's mediation provision to this
19 case. Therefore, the parties' Agreement supports an award of attorneys' fees to Alaska Pacific.
20 Alaska Pacific should also be awarded its attorneys' fees and costs under NRS 18.010(2)(b) after
21 it was forced to defend against this premature litigation.

22 **II. LEGAL ARGUMENT**

23 **A. The Court should award fees to Alaska Pacific under the Parties' Agreement.**

24 The mediation provision in the Agreement provides that after the parties submit disputes
25 or questions concerning the Agreement to mediation, the parties will have a right to enforce the
26 obligations of the Agreement in a court, with "all reasonable attorney fees, court costs and
27 expenses incurred by the prevailing party in such litigation to be paid by the other party." Mtn.
28

1 for Summ. J., Ex. 1 at ¶ 13. MB failed to comply with the Agreement and did not submit this
2 matter to mediation prior to initiating this litigation. Instead, MB prematurely filed this lawsuit,
3 which Alaska Pacific was forced to defend. The Court granted Alaska Pacific's Motion for
4 Summary Judgment, so it is the prevailing party in this action. As the prevailing party, Alaska
5 Pacific is entitled to attorneys' fees under the terms of the Agreement.

6 **B. The Court should also award Alaska Pacific attorneys' fees under NRS**
7 **18.010(2)(b).**

8 Nevada Revised Statute 18.010(2)(b) provides:

9 In addition to the cases where an allowance is authorized by specific
10 statute, the court may make an allowance of attorney's fees to a
11 prevailing party:

12 Without regard to the recovery sought, when the court finds that the
13 claim, counterclaim, cross-claim or third-party complaint or defense of
14 the opposing party was brought or maintained without reasonable
15 ground or to harass the prevailing party. The court shall liberally
16 construe the provisions of this paragraph in favor of awarding
17 attorney's fees in all appropriate situations

18 The express language of NRS 18.010(2)(b) provides that it must be liberally construed
19 in favor of awarding attorneys' fees whenever appropriate. *See Baldonado v. Wynn Las Vegas,*
20 *LLC*, 124 Nev. 951, 967-68, 194 P.3d 96, 107 (2008). For an award of attorneys' fees to be
21 proper under NRS 18.010(2)(b), "there must be evidence in the record supporting the
22 proposition that the complaint was brought without reasonable grounds or to harass the other
23 party." *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 687 (1995),
24 citing *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 486, 851 P.2d 459, 464 (1993). The Nevada
25 Supreme Court has stated that when determining whether to award attorneys' fees under NRS
26 18.010(2)(b), a trial court must determine whether the plaintiff had "reasonable grounds" for its
27 claims. *Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (1993). "Such an analysis
28 depends upon the *actual circumstances of the case* rather than a hypothetical set of facts
favoring plaintiff's averments." *Id.* (emphasis supplied) (citing *Western United Realty, Inc. v.*

1 *Isaacs*, 679 P.2d 1063, 1069 (Colo. 1984); *Fountain v. Mojo*, 687 P.2d 496, 501 (Colo. Ct.
2 App. 1984)).

3 The actual circumstances of this case demonstrate that an award of attorneys' fees is
4 appropriate. At the time MB filed the Complaint, the parties had not attended mediation, nor
5 had 180 days passed from submission of the matter to mediation. MB had not even made a
6 formal request for mediation when it filed its Complaint. MB claimed the sole reason for filing
7 this lawsuit was to either confirm that there is no legal dispute between the parties (i.e. a
8 determination by the Court that MB owes Alaska Pacific no obligation under the Agreement)
9 or to ask the Court to refer this case to non-binding mediation. *See* Opp. to Mot. for Summ. J.,
10 filed Sep. 26, 2014, Page 3, line 21-Page 4, line 1. Such disputes are involve interpretation of
11 the Agreement and are subject to the mediation requirements.

12 MB was aware of the mediation requirement, and even relied upon it when it filed this
13 litigation. *See* Compl. ¶ 16. MB, however, ignored the mediation requirement and
14 commenced this premature action, which Alaska Pacific was forced to defend. Accordingly,
15 there was no reasonable basis for MB to file this action and Alaska Pacific should be awarded
16 attorneys' fees pursuant to NRS 18.010(2)(b).

17 **C. The attorneys' fees Alaska Pacific incurred are reasonable and were necessarily**
18 **incurred in defending against this premature action.**

19 Alaska Pacific's attorneys and paralegal spent approximately 61.50 hours defending
20 Alaska Pacific's interests in this matter until October 31, 2014; Alaska Pacific seeks
21 reimbursement for \$19,315.00 it was forced to incur in defending this premature case.¹

22 ¹ The amount of attorneys' fees does not include the time spent preparing the Verified Memorandum of
23 Costs or the instant Motion, or any fees incurred after October 31, 2014. The time Alaska Pacific is seeking
reimbursement for is as follows:

24 Partner, Jason W. Peak	1.10 hours at \$350/hour
25 Partner, Holly S. Parker	31.60 hours at \$350/hour
Associate, Marilee Breternitz	28.40 hours at \$275/hour
26 Paralegal, Chris Behling	0.40 hours at \$150/hour

27 *See* Exhibit 1 (Affidavit of Holly S. Parker at ¶ 5). To protect the confidentiality of the invoices, Alaska Pacific has
28 not attached the full invoice descriptions for the time entries. Alaska Pacific is willing and able to provide the more
detailed invoices for the Court's in camera review.

1 Although this matter was recently filed, the circumstances of this action were unique and
2 required Alaska Pacific to engage in immediate investigation of affirmative defenses and filing
3 of a responsive pleading to MB's atypical and premature claims; early motion practice
4 concerning a stay (including a request for order shortening time to prevent immediate discovery
5 events scheduled by MB) and a motion for summary judgment (and factual development
6 regarding documents related to same); and responses to procedural issues raised by MB.
7 Significant time was also spent attempting to communicate regarding potential resolution of the
8 matter in an effort to promote mediation and developing strategy to respond to the ever-changing
9 procedural status of the case created by MB's persistence with the litigation and scheduling of
10 discovery and litigation activities.

11 This is a unique case because, before MB made a mediation request under the
12 Agreement, it prematurely sought to enforce the mediation provision or to seek a declaration
13 under the Contract that it owes no legal obligation to Alaska Pacific. Participating in discovery
14 and normal litigation events before the mediation period passed would have been needlessly
15 expensive and duplicative. Despite Alaska Pacific's attempts to offer a stay of the litigation, MB
16 persisted with moving the litigation forward by scheduling a trial setting and early case
17 conference and other initial case events. *See e.g.* Alaska Pacific's Mot. for Order Shortening
18 Time on Motion for Stay. *See also* Ex. 6 to Plaintiff's Opp. to M. for Summ. J. All fees incurred
19 by Alaska Pacific were necessary to limit the time spent litigating and engaging in events such as
20 discovery, the trial setting, preparation and exchange of initial disclosures, and other litigation
21 events before compliance with the mediation provision.

22 These fees are reasonable based on the qualities and experience of Alaska Pacific's
23 counsel, the character and complexity of the case and the work involved, the amount of work
24 actually performed, and the successful result reached in favor of Alaska Pacific. *See Brunzell v.*
25 *Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). *See also* Affidavit of Holly
26 S. Parker, ¶¶ 5-7, which is attached hereto as Exhibit 1. Alaska Pacific should be awarded
27
28

1 attorneys' fees pursuant to NRS 18.010(2)(b) and/or the Agreement between the parties in the
2 amount of \$19,315.00.

3 **III. CONCLUSION**

4 MB's filing of this action before complying with the terms of the parties' Agreement
5 caused Alaska Pacific to incur attorneys' fees to defend its interests. Alaska Pacific's fees
6 were reasonable and necessary to defend against this premature suit. Pursuant to Agreement
7 and/or NRS 18.010(2)(b), the Court should award Alaska Pacific its attorneys' fees and costs
8 in the amount of \$19,315.00.

9 **AFFIRMATION PURSUANT TO NRS 239.B.030**

10 The preceding document does not contain the social security number of any person.

11 DATED this 10th day of November, 2014.

12 LAXALT & NOMURA, LTD.

13 

14 HOLLY S. PARKER, ESQ.

15 Nevada State Bar No: 10181

16 MARILEE BRETERNITZ, ESQ.

17 Nevada State Bar No. 12563

18 LAXALT & NOMURA, LTD.

19 9600 Gateway Drive

20 Reno, Nevada 89521

21 hparker@laxalt-nomura.com

22 mbreternitz@laxalt-nomura.com

23 Telephone: (775) 322-1170

24 Facsimile: (775) 322-1865

25 Attorneys for Defendant Alaska

26 Pacific Leasing Company

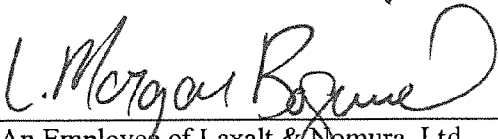
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT & NOMURA, LTD., and that on the 18 day of November, 2014, I caused to be served a true and correct copy of the foregoing **DEFENDANT ALASKA PACIFIC LEASING COMPANY'S MOTION FOR ATTORNEYS' FEES** by:

- ☒ Mail on the parties listed below in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of Laxalt & Nomura, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.
- ☒ By electronic service by filing the foregoing with the Clerk of Court using the E-Flex system, which will electronically mail the filing to the following individuals.
- ☐ Personal delivery by causing a true copy thereof to be hand delivered this date to the address(es) at the address(es) set forth below.
- ☐ Facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.
- ☐ Federal Express or other overnight delivery.
- ☐ Reno/Carson Messenger Service.

addressed as follows:

Michael E. Sullivan, Esq.
Robison Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503
Attorneys for Plaintiff MB America, Inc.


An Employee of Laxalt & Nomura, Ltd.

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INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGES
1	Affidavit of Holly S. Parker In Support of Alaska Pacific Leasing Company's Motion For Attorneys' Fees	7

FILED
Electronically
2014-11-18 10:44:26 AM
Cathy Hill
Acting Clerk of the Court
Transaction # 4700520 : mcholino

EXHIBIT 1

EXHIBIT 1

1 **AFFIDAVIT OF HOLLY S. PARKER IN SUPPORT OF ALASKA PACIFIC LEASING**
2 **COMPANY'S MOTION FOR ATTORNEYS' FEES**

3 STATE OF NEVADA)
4) ss.
5 COUNTY OF WASHOE)

6 I, Holly S. Parker, hereby affirm, under penalty of perjury, that I have personal
7 knowledge as to the facts set forth below and the assertions contained herein are true and
8 correct.

9 1. I am an attorney licensed to practice law in the State of Nevada and an attorney
10 of record for Defendant Alaska Pacific Leasing Company in Case No. CV14-01229, entitled
11 *MB America, Inc. v. Alaska Pacific Leasing Company*.

12 2. I am a junior partner of Laxalt & Nomura, Ltd. Marilee Breternitz is an
13 associate attorney employed by Laxalt & Nomura, Ltd. Chris Behling is a paralegal employed
14 by Laxalt & Nomura, Ltd.

15 3. Laxalt & Nomura, Ltd. began representing Alaska Pacific Leasing Company for
16 the purposes of this case in August, 2014.

17 4. Laxalt & Nomura, Ltd. is a party to a fee agreement with Alaska Pacific
18 Leasing Company, which sets forth the hourly rates charged by Laxalt & Nomura, Ltd. to
19 Alaska Pacific Leasing Company associated with this case. Pursuant to the terms of the fee
20 agreement, Alaska Pacific Leasing Company has been billed at the following rates: Three
21 Hundred and Fifty Dollars (\$350.00) per hour for partner time, Two Hundred and Seventy-
22 Five Dollars (\$275.00) per hour for associate time, and One Hundred and Fifty Dollars
23 (\$150.00) per hour for paralegal time.

24 ///

25 ///

26 ///

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28 ///

 ///

1 5. I have reviewed Laxalt & Nomura, Ltd.'s billing records and have determined
2 that approximately 61.5 hours of time was spent on this case through October 31, 2014 by the
3 following firm members:

4 Partner, Jason W. Peak	1.10 hours
5 Partner, Holly S. Parker	31.60 hours
6 Associate Attorney, Marilee Breternitz	28.40 hours
7 Paralegal, Chris Behling	0.40 hours

8 This total does not include any of the time spent from November 1, 2014 through the
9 present, nor does this total include any of the time spent drafting Alaska Pacific Leasing
10 Company's recently filed Verified Memorandum of Costs or its Motion for Attorneys' Fees.
11 The reasonable hourly rates set forth in the fee agreement, memorialized again above, have
12 been applied only to the hours set forth in this paragraph, yielding a total attorney and
13 paralegal fee of \$19,315.00.

14 6. The above-referenced reasonable hourly rates are appropriate and justified. I
15 am a 2006 graduate, magna cum laude, of Thomas Jefferson School of Law. I have been
16 licensed to practice law in Nevada since 2006. I am admitted to practice in state and federal
17 courts in Nevada.

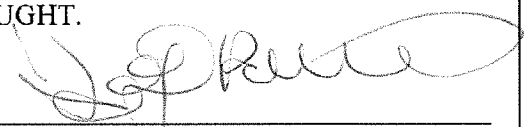
18 Attorney Marilee Breternitz is a 2008 graduate of the University of the Pacific's
19 McGeorge School of Law. She is admitted to practice in the state courts of California, and all
20 state and federal courts in Nevada. She is a former judicial law clerk to the Honorable Connie
21 Steinheimer of the Second Judicial District Court (2011-2013).

22 7. The work performed by Laxalt & Nomura, Ltd. was reasonable and necessary in
23 order to defend Alaska Pacific Leasing Company in this case.

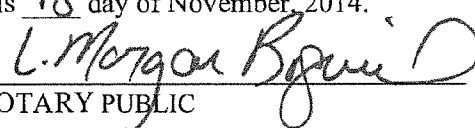
24 8. Bill summaries from Laxalt & Nomura, Ltd.'s billing system of the hours spent
25 on this matter by the above-listed attorneys and paralegal are attached hereto. The summaries
26 indicate that a total of 65.3 hours were spent on the matter through October 31, 2014. As
27 indicated above, Laxalt & Nomura, Ltd. is not seeking fees for filing its Verified Memorandum

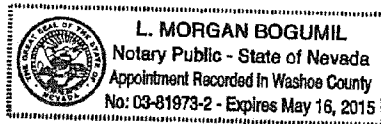
1 of Costs or its Motion for Attorneys' Fees. During October, 3.8 hours were billed on such
2 matters. Laxalt & Nomura, Ltd. will provide the Court with a further itemized billing
3 statement to review *in camera* if the Court determines it is necessary in order to resolve this
4 Motion.

5 FURTHER YOUR AFFIANT SAYETH NAUGHT.

6
7 
HOLLY S. PARKER, ESQ.

8 SUBSCRIBED and SWORN to before me
9 this 18 day of November, 2014.

10 
11 NOTARY PUBLIC



Laxalt & Nomura, LTD.
9600 Gateway Drive
Reno, NV 89521
(775) 322-1170 Fax: (775) 322-1865
Tax ID# 88-0218122

September 10, 2014
Matter Number: 386 00210
INVOICE NUMBER: 35196

JASON RUEDY
ROYCE & BRAIN
1407 W. 31ST AVENUE, 7TH FLOOR
ANCHORAGE, AK 99509

Bill Summary

Matter Number: 386 00210

Title: ALASKA PACIFIC LEASING COMPANY adv. MB AMERICA
OUR CLIENTS: ALASKA PACIFIC LEASING COMPANY and DAVID
FAULK

Previous Balance: \$0.00

Professional Services Rendered
(See Attached List)

Hours Fees

Total For The Above Services 16.20 \$5,400.00

Expenses
(See Attached List)

Costs

Total For The Above Expenses \$426.45

Total for CURRENT PERIOD \$5,826.45

Total Payments \$0.00

AMOUNT DUE \$5,826.45

AA0200

Laxalt & Nomura, LTD.
9600 Gateway Drive
Reno, NV 89521
(775) 322-1170 Fax: (775) 322-1865
Tax ID# 88-0218122

October 7, 2014
Matter Number: 386 00210
INVOICE NUMBER: 35310

JASON RUEDY
ROYCE & BRAIN
1407 W. 31ST AVENUE, 7TH FLOOR
ANCHORAGE, AK 99509

Bill Summary

Matter Number: 386 00210

Title: ALASKA PACIFIC LEASING COMPANY adv. MB AMERICA
OUR CLIENTS: ALASKA PACIFIC LEASING COMPANY and DAVID
FAULK

Previous Balance: \$5,826.45

Professional Services Rendered
(See Attached List)

Hours

Fees

Total For The Above Services

27.60

\$8,640.00

Expenses

(See Attached List)

Costs

Total For The Above Expenses

\$311.96

Total for CURRENT PERIOD \$8,951.96

Total Payments \$5,826.45

AMOUNT DUE \$8,951.96

AA0201

Laxalt & Nomura, LTD.
9600 Gateway Drive
Reno, NV 89521
(775) 322-1170 Fax: (775) 322-1865
Tax ID# 88-0218122

October 30, 2014
Matter Number: 386 00210
INVOICE NUMBER: 0

JASON RUEDY
ROYCE & BRAIN
1407 W. 31ST AVENUE, 7TH FLOOR
ANCHORAGE, AK 99509

Bill Summary

Matter Number: 386 00210

Title: ALASKA PACIFIC LEASING COMPANY adv. MB AMERICA
OUR CLIENTS: ALASKA PACIFIC LEASING COMPANY and DAVID
FAULK

Previous Balance: \$8,951.96

Professional Services Rendered
(See Attached List)

Hours Fees

Total For The Above Services

21.50 \$6,152.50

Expenses
(See Attached List)

Costs

Total For The Above Expenses

-\$95.62

Total for CURRENT PERIOD \$6,056.88

Total Payments \$0.00

AMOUNT DUE \$15,008.84

AA0202

1 **3860**
2 Michael E. Sullivan, Esq. (SBN 5142)
3 **ROBISON, BELAUSTEGUI, SHARP & LOW**
4 A Professional Corporation
5 71 Washington Street
6 Reno, Nevada 89503
7 Telephone: (775) 329-3151
8 *Attorneys for Plaintiff MB America, Inc.*

6 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

9 MB AMERICA, INC., a Nevada
10 corporation,

Case No.: CV14-01229

Dept. No.: 8

11 Plaintiff,

12 v.

REQUEST FOR SUBMISSION

13 ALASKA PACIFIC LEASING COMPANY,
14 a Alaska business corporation; and DOES
15 I through X, inclusive,

16 Defendants.

17 It is requested that the Plaintiff MB America, Inc.'s Motion to Retax Costs that
18 was filed on November 3, 2014, in the above-entitled matter be submitted to the Court
19 for decision. No Opposition has been filed and a request for additional time has not
20 been requested by Defendant Alaska Pacific Leasing Company.

21 **AFFIRMATION:** The undersigned does hereby affirm that this document does not
22 contain the Social Security Number of any person.

23 DATED this 25th day of November, 2014.

24 ROBISON, BELAUSTEGUI, SHARP & LOW
25 A Professional Corporation
26 71 Washington Street
27 Reno, Nevada 89503

28 By: 

MICHAEL E. SULLIVAN, ESQ.
Attorneys for Plaintiff MB America, Inc.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON,
3 BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true
4 copy of the attached **REQUEST FOR SUBMISSION** on all parties to this action by the
5 method(s) indicated below:
6

7 ☒ by placing an original or true copy thereof in a sealed envelope, with
8 sufficient postage affixed thereto, in the United States mail at Reno,
9 Nevada, addressed to:

10 Holly S. Parker, Esq.
11 Marilee Breternitz, Esq.
12 Laxalt & Nomura, Ltd.
13 9600 Gateway Drive
14 Reno, Nevada 89521
15 *Attorneys for Defendant Alaska Pacific Leasing Company*

16 ☒ by using the Court's CM/ECF Electronic Notification System
17 addressed to:

18 Holly S. Parker, Esq.
19 Marilee Breternitz, Esq.
20 *Attorneys for Defendant Alaska Pacific Leasing Company*

21 _____ by facsimile addressed to:

22 Holly S. Parker, Esq./Marilee Breternitz, Esq. – Fax # 322-1865
23 *Attorneys for Defendant Alaska Pacific Leasing Company*

24 _____ by hand-delivery addressed to:

25 Holly S. Parker, Esq.
26 Marilee Breternitz, Esq.
27 Laxalt & Nomura, Ltd.
28 9600 Gateway Drive
Reno, Nevada 89521
Attorneys for Defendant Alaska Pacific Leasing Company

DATED this 25 day of November, 2014.


MERNA MEIER

1 **2645**
2 Michael E. Sullivan, Esq. (SBN 5142)
3 **ROBISON, BELAUSTEGUI, SHARP & LOW**
4 A Professional Corporation
5 71 Washington Street
6 Reno, Nevada 89503
7 Telephone: (775) 329-3151
8 *Attorneys for Plaintiff MB America, Inc.*

9 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
10 **IN AND FOR THE COUNTY OF WASHOE**

11 MB AMERICA, INC., a Nevada
12 corporation,

Case No.: CV14-01229

13 Plaintiff,

Dept. No.: 8

14 v.

15 ALASKA PACIFIC LEASING COMPANY,
16 a Alaska business corporation; and DOES
17 I through X, inclusive,

MB AMERICA, INC.'S OPPOSITION
TO DEFENDANT ALASKA PACIFIC
LEASING COMPANY'S MOTION FOR
ATTORNEYS' FEES

(ORAL ARGUMENT REQUESTED)

18 Defendants.
19 _____ /

20 Plaintiff MB America, Inc. by and through its counsel of record Robison,
21 Belaustegui, Sharp & Low, hereby opposes Defendant Alaska Pacific Leasing
22 Company's motion for attorneys' fees. It is respectfully requested that a hearing be
23 scheduled on this very important matter as it will assist the Court in making its decision
24 regarding attorney's fees. This opposition is made and supported by the Memorandum
25 of Points and Authorities contained herein, the attached Affidavit of Michael E. Sullivan,
26 the attached exhibits, and all pleadings and papers on file.

27 DATED this 10th day of December, 2014.

28 ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, NV 89503

By: 

MICHAEL E. SULLIVAN, ESQ.
Attorneys for Plaintiff MB America, Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On June 6, 2014, MB America, Inc., in good faith, filed a lawsuit for two legitimate
4 purposes: first, Plaintiff was trying to establish that there was not a legal dispute
5 between the parties as it pertained to a three-page agreement, and second, that if in
6 fact a dispute truly exists, then pursuant to the parties' contract (paragraph 13) the
7 dispute must first be submitted to mediation in Reno, Nevada using the American
8 Arbitration Association ("AAA") rules.

9 Before filing the lawsuit, both the primary principal for the Plaintiff and its
10 undersigned counsel made requests of the Defendant to mediate this case in Reno,
11 Nevada. See Plaintiff's Opposition to Defendant's Motion for Summary Judgment at
12 Exhibit "2" and Exhibit "4." The Defendant threatened to file a lawsuit (presumably in
13 Alaska) that would have ignored the express provisions of the parties' agreement and
14 requested an Alaska court to apply Alaska law and rescind the sale of two crusher
15 buckets. Importantly, the Defendant filed an Answer on August 15, 2014 and
16 specifically requested this Court for a declaration and judgment that the distributor
17 agreement is subject to the laws of the State of Alaska and that the Defendant is
18 entitled to relief pursuant to AS 45.45.700 *et seq.*, or, alternatively, under Nevada law.
19 See Defendant's Answer, p. 7, Ins. 24-27.

20 It should be noted that the Plaintiff was never seeking monetary damages in this
21 case. The Plaintiff could not convince the Defendant that mediation was required in
22 Reno, Nevada using the AAA rules. The parties' contract does not require that the AAA
23 itself be used as the mediator. Because the Defendant was threatening a lawsuit to
24 rescind the contract and assert a bogus claim of fraud against Plaintiff, and because the
25 Defendant would not agree to mediation in Nevada, the Plaintiff had nowhere to turn but
26 to this Court to seek relief, not for monetary damages but for specific performance and a
27 declaration of the rights of the parties. Pursuant to NRS 30.050, a party may apply to
28 this court to have this court construe the contract either before or after a breach has

1 been made. See NRS 30.050.

2 It was the hope and intent of the Plaintiff that this Court would stay the
3 proceedings and direct the parties to go to mediation in Nevada, and that if mediation
4 were not successful within 180 days of the mediation, then the parties could bring a
5 lawsuit for monetary damages. Unfortunately, this did not occur. Even to this day, the
6 Defendant continues to refuse to mediate in Nevada.

7 On October 22, 2014, this Court signed an order granting summary judgment in
8 favor of the Defendant, not on the merits of the underlying dispute in which the
9 Defendant is seeking to rescind the sale of two units that purportedly cost \$110,000.00,
10 but rather that the Plaintiff had not submitted the matter to mediation. Unfortunately, the
11 Plaintiff could not submit the matter to mediation because it takes two parties to agree
12 to a mediator, a location, and a mediation process before that event can happen. In
13 other words, the Plaintiff was in a vicious circle. The Plaintiff could not have a mediation
14 without the consent of the Defendant. See Affidavit of Michael E. Sullivan which was
15 previously attached to the Opposition to Defendant's Motion for Summary Judgment,
16 and attached hereto as **Exhibit "1"**, as well as the Declaration of Miriano Ravazzolo
17 attached hereto as **Exhibit "2."** Both the Affidavit and Declaration and the supporting
18 documentation demonstrate that a mediation is warranted, and further demonstrate that
19 the Defendant would not participate in a mediation in Reno, Nevada. This fact is further
20 evidenced by the correspondence from Alaska Pacific Leasing's Alaska counsel, Jason
21 Ruedy, dated September 4, 2014, attached hereto as **Exhibit "4"** and previously
22 attached to Defendant's Motion for Summary Judgment as Exhibit 5 wherein while this
23 case was pending, the Defendant submitted this matter for a demand for mediation
24 through the AAA.¹ This unilateral act by Defendant was clearly improper because the
25 AAA is not the proper party to conduct the mediation and the mediation must be
26 conducted in Reno, Nevada. To date there has been no mediation set up or scheduled

27
28 ¹ The exhibits to Mr. Ruedy's letter are not included herewith; however, the exhibits can
be found attached to Defendant's Motion for Summary Judgment at Exhibit 5. The AAA
will not act upon Defendant's unilateral demand for mediation. This is why a court must
order it.

1 because the Defendant refuses to conduct a mediation in Reno, Nevada. The
2 Defendant does not dispute this fact. The Defendant has never filed a declaration
3 stating that it would participate in mediation in Reno, Nevada. To the contrary, the
4 Defendant refused to do so. Nevertheless, this Court entered its order stating that MB
5 America, Inc. does not allege that the “arbitration” clause between the parties is
6 unconscionable or otherwise dispute the validity of the provision. See this Court’s Order
7 at p.3, Ins. 1-3. This statement made by the Court is true because the Plaintiff wants
8 mediation.² This Court concluded that the parties are required to exhaust the
9 administrative remedy before submitting their dispute to this Court. Id. at p.3, Ins. 9-12.
10 The Court can see from its own footnote 1 that the mediator does not need to be from
11 the AAA. Unfortunately, **Exhibit “4”** attached hereto demonstrates that the Defendant
12 does not agree with the Court’s analysis and submitted the matter to the AAA without
13 the permission or consent of the Plaintiff. Again, the parties are at an impasse.

14 Finally, it should be noted that the Court never decided the merits of this case
15 whatsoever and dismissed this case without prejudice. Accordingly, there can be no
16 legal basis whatsoever for an award of attorneys’ fees as neither party has prevailed on
17 the merits of this case. It should be noted that the merits of the case are whether or not
18 either party owes a legal obligation to the other side. The Defendant ostensibly believes
19 that Plaintiff should be ordered to re-purchase two of the rock-crushing units that were
20 sold two years ago for about \$110,000.00. The Plaintiff disputes that fact. In order for
21 that determination to be made as to who is right or who is wrong requires litigation.
22 Only after the matter has been adjudicated on the merits by a competent court in Reno,
23 Nevada can one consider themselves the prevailing party and request fees.

24 Paragraph 13 of the parties’ contract entitled Disputes and Mediation provides
25 that reasonable attorney’s fees and court costs and expenses incurred are only by a
26 prevailing party in such litigation to be paid by the other party.

27 In order for a party to make an application for attorney’s fees, it must be the

28 ² The Court uses the term “arbitration” when it likely meant “mediation”. There is no
“arbitration” clause – and Defendant refuses to “mediate” in Reno, Nevada despite the
clear language of the contract.

1 “prevailing party” to a litigated matter on the merits of the case. The Defendant is not a
2 prevailing party. This Court is asked to take judicial notice of Paragraph 13 of the
3 parties’ contract, attached hereto as **Exhibit “3.”** Paragraph 13, at the second
4 paragraph, provides as follows:

5 If mediation between the parties does not result in a mutual
6 satisfying settlement within 180 days after submission to
7 mediation, then each party will have the right to enforce the
8 obligations of this Agreement in the court of law of Reno,
Nevada with all reasonable attorney fees, court costs and
expenses incurred by the prevailing party in such litigation to
be paid by the other party.

9 No obligation of the agreement has been decided, and, therefore, any motion by
10 either party for attorney’s fees is premature. In order to recover attorney’s fees, the
11 parties must first go to mediation (which the Plaintiff would love to do if the Defendant
12 would ever cooperate) and then, if mediation is not successful then there will be a trial
13 on the merits of any dispute and the prevailing party (should one exist) may then apply
14 to the Court for all attorney’s fees and costs that were reasonably incurred in the
15 “litigation.”

16 **II. LEGAL ARGUMENT**

17 The Defendant is not the prevailing party in this lawsuit and therefore cannot
18 seek any attorney’s fees whatsoever.

19 **1. “PREVAILING PARTY” STATUS REQUIRES A MATERIAL**
20 **ALTERATION IN THE LEGAL RELATIONSHIP BETWEEN THE**
21 **PARTIES.**

22 The United States Supreme Court held that, “at a minimum, to be considered a
23 prevailing party . . . the plaintiff must be able to point to a resolution of the dispute which
24 changes the legal relationship between itself and the defendant.” Texas State Teachers
25 Ass’n v. Garland Indep. Sch. Dist., 489 U.S. 782, 792 (1989). This definition of
26 “prevailing party” was reaffirmed in 2001, when the Supreme Court again held that the
term “prevailing party” requires that there exist a “material alteration of the legal

27 ///

28 ///

1 relationship of the parties” before attorney fees can be awarded. Buckhannon Bd. &
2 Care Home, Inc. v. W. Virginia Dep’t of Health & Human Res., 532 U.S. 598, 604
3 (2001).

4 The Ninth Circuit expressly adopted the Buckhannon definition of “prevailing
5 party” in Shapiro v. Paradise Valley United School District No. 69, 374 F.3d 857, 864-65
6 (2004). In Shapiro, the Ninth Circuit again reiterated that a party cannot be awarded
7 attorney fees unless it has succeeded on some claim or argument that materially altered
8 the parties’ legal relationship. Id. at 865. It further held that a party is “not the prevailing
9 party if his or her success is purely technical or de minimis.” Id. (emphasis added).
10 Prevailing on a motion for summary judgment that the case is premature is “de minimis”
11 at best.

12 **2. THE DEFENDANT HAS NOT “ENFORCED THE OBLIGATIONS**
13 **OF THIS AGREEMENT” IN THE COURT OF LAW OF RENO,**
14 **NEVADA, AND PREVAILED ON ANY FACT THAT WOULD**
MATERIALLY ALTER THE LEGAL RELATIONSHIP BETWEEN
THE PARTIES.

15 If this case actually goes to trial and the Plaintiff and the Defendant convinces
16 this court that there was a breach of contract or other tort, and if the Defendant obtains
17 a judgment on its theory, then, and only in that situation, could the Defendant apply for
18 “reasonable” fees and costs. Under the law set forth above, this is not occurred. Had
19 this Court stayed the underlying litigation and required the parties to mediate in Reno,
20 Nevada pursuant to the terms of the parties’ agreement, then neither party could be
21 “adjudged” as the prevailing party because the parties still remain in the same exact
22 situation they were in before the lawsuit was filed. It should be remembered that this
23 case was filed in good faith to obtain the cooperation of the Defendant to mediate the
24 case in Reno, Nevada. The Declaration of Miriano Ravazzolo and the Affidavit of
25 Michael E. Sullivan, attached hereto as Exhibits “1” and “2” respectively, that were also
26 attached to the Opposition to Defendant’s Motion for Summary Judgment, clearly
27 demonstrate that the Plaintiff indeed insisted upon mediation before any lawsuit could
28 be brought. The Defendant ignored that request and insisted that it was going to bring a

1 lawsuit. Because the parties' relationship has not been altered one iota, the Defendant
2 cannot be held to be the "prevailing party" and, accordingly, cannot recover any fees at
3 this time.

4 **3. THIS COURT SHOULD NOT AWARD ANY ATTORNEY'S FEES**
5 **PURSUANT TO NRS 18.010(2)(b).**

6 The Defendant alleges without any factual support that this case was brought
7 without reasonable grounds or to harass the prevailing party. The case was brought to
8 obtain mediation in Reno, Nevada. The Defendant argues in a circuitous manner that
9 the Plaintiff filed the complaint before attending mediation or waiting until 180 days after
10 submission of the matter to mediation before bringing the suit. Once again, we have a
11 chicken and an egg vicious circle argument. The lawsuit was brought to compel
12 mediation in Reno, Nevada, and for no other purpose. The only other claim brought
13 was for a declaration that there was not a breach by either side and that neither party
14 had an obligation to the other arising out of the contract which was attached as an
15 exhibit to the Complaint. Filing such a lawsuit was done after receiving both written and
16 verbal threats from the Defendant that the Plaintiff had somehow committed fraud.
17 Those letters are attached as exhibits, along with the affidavit of the undersigned and
18 the declaration of Mariano Ravazzolo, demonstrating the good faith nature of this case.
19 NRS 18.010 does not apply to this case.

20 Even while this case was pending, the Defendant attempted in vain to submit this
21 matter to AAA demanding mediation without the consent or permission of the Plaintiff.
22 When two parties are at an impasse, they often seek court intervention to resolve the
23 differences. The Plaintiff did not seek monetary compensation or injunctive relief, or
24 any other relief, other than declaratory relief and a request to refer this case to
25 mediation because the Defendant refused to do so in Reno, Nevada. Sending a
26 demand to a mediator would have been futile in light of the actions of the Defendant as
27 specifically laid out in the exhibits and declarations attached to the Defendant's Motion
28 for Summary Judgment. This Court is asked to carefully review and consider those

1 exhibits in making its determination as to whether Plaintiff brought this case with
2 reasonable grounds.

3 **4. THE ATTORNEY'S FEES SOUGHT IN THIS CASE BY THE**
4 **DEFENDANT ARE NOT ONLY UNREASONABLE BUT ARE**
5 **OUTRAGEOUS.**

6 The Defendant is seeking \$19,315.00 for reviewing a five-page complaint, a
7 three-page agreement, filing an answer in which it affirmatively seeks relief from this
8 Court that is a mere nine pages long, a motion for summary judgment that was ten
9 pages long, a seven-page reply brief, and an unnecessary motion to stay as the parties
10 stipulated to stay the proceedings. It should be noted that there was never a 16.1 early
11 case conference, a scheduling order from this Court, any discovery, or any other event,
12 yet the Defendant's counsel purportedly billed their client nearly \$20,000.00 in fees and
13 costs. The affidavit submitted by the Defendant's lead counsel is conclusory and does
14 not demonstrate what work was done or why it was necessary. Billing an associate
15 named Marilee Breternitz twenty-eight (28) hours of work at \$275 per hour is not
16 "reasonable" as is required under the statute or the contract at issue. There is no
17 support as to what Ms. Breternitz did or why it was necessary.

18 The total fees and costs incurred by the Plaintiff who had to do the lion's share of
19 work in this case was a mere \$5,350.00. See Affidavit of Michael E. Sullivan attached
20 hereto. This Court should not award any fees whatsoever for all of the reasons set forth
21 above. However, out of an abundance of caution, in the event that this Court were to
22 award any fees, those fees have to be reasonable and \$19,300.00 is not. The
23 Defendant's counsel did not submit an affidavit detailing their billing records so there is
24 absolutely no way for the Plaintiff to accurately be in a position to point out why
25 \$19,300.00 is not only unreasonable but outrageous in this very simple lawsuit.

26 **IV. CONCLUSION**

27 Because the Defendant is not the prevailing party, and because this case was
28 never resolved on the merits but simply dismissed without prejudice on procedural

1 grounds, the Defendant cannot receive any fees whatsoever in this case.

2 **AFFIRMATION:** The undersigned does hereby affirm that this document does not
3 contain the Social Security Number of any person.

4 DATED this 10th day of December, 2014.

5 ROBISON, BELAUSTEGUI, SHARP & LOW
6 A Professional Corporation
7 71 Washington Street
8 Reno, Nevada 89503

9 By: 

MICHAEL E. SULLIVAN, ESQ.
Attorneys for Plaintiff MB America, Inc.

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I, Michael E. Sullivan, swear, under the penalty of perjury, that the following assertions are true of my own personal knowledge:

2. I have personal knowledge of the facts and statements contained in this affidavit, and I am prepared to testify in accordance with the language set forth in the affidavit.

4. Attached to this Opposition as Exhibit “1” is a true and correct copy of my affidavit that was attached as Exhibit 4 to MB America, Inc.’s Opposition to Defendant’s Motion for Summary Judgment.

6. Attached to this Opposition as Exhibit “3” is a true and correct copy of the Agreement between Plaintiff MB America, Inc. and Defendant Alaska Pacific Leasing Company.

8. The Defendant will not agree to mediate this matter in Reno and continues to refuse to mediate in Reno.

9. The total fees and costs incurred by the Plaintiff was \$5,350.00. No discovery occurred.

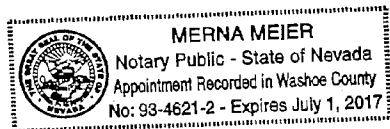
FURTHER AFFIANT SAYETH NAUGHT.

AUGHT.

MICHAEL E. SULLIVAN

SUBSCRIBED and SWORN to before
me this 10th day of December, 2014 by
Michael E. Sullivan.

Merna Meier
NOTARY PUBLIC



Robison, Belaustegui,
Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON,
3 BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true
4 copy of the attached **MB AMERICA, INC.'S OPPOSITION TO DEFENDANT ALASKA**
5 **PACIFIC LEASING COMPANY'S MOTION FOR ATTORNEYS' FEES (ORAL**
6 **ARGUMENT REQUESTED)** on all parties to this action by the method(s) indicated
7

8 below:

9 ☒ by placing an original or true copy thereof in a sealed envelope, with
10 sufficient postage affixed thereto, in the United States mail at Reno,
11 Nevada, addressed to:

12 Holly S. Parker, Esq.
13 Marilee Breternitz, Esq.
14 Laxalt & Nomura, Ltd.
15 9600 Gateway Drive
16 Reno, Nevada 89521
17 *Attorneys for Defendant Alaska Pacific Leasing Company*

18 ☒ by using the Court's CM/ECF Electronic Notification System
19 addressed to:

20 Holly S. Parker, Esq.
21 Marilee Breternitz, Esq.
22 *Attorneys for Defendant Alaska Pacific Leasing Company*

23 DATED this 10th day of December, 2014.

24 
25 MERNA MEIER
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INDEX OF EXHIBITS

1. Affidavit of Michael E. Sullivan, Esq. in Support of MB America's
Opposition to Defendant's Motion for Summary Judgment, dated
September 26, 2014.....3 pages
2. Declaration of Miriano Ravazzolo, dated September 22, 2014.....1 page
3. Agreement.....4 pages
4. Letter from Jason Ruedy to American Arbitration Association,
dated September 4, 2014.....4 pages

EXHIBIT 1

EXHIBIT 1

1 **AFFIDAVIT OF MICHAEL E. SULLIVAN, ESQ. IN SUPPORT OF MB AMERICA'S**
2 **OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

3 STATE OF NEVADA)
4 COUNTY OF WASHOE)

5 I, Michael E. Sullivan, swear, under the penalty of perjury, that the following
6 assertions are true of my own personal knowledge.

7 1. I am an individual currently residing in the County of Washoe, State of
8 Nevada, and I am over the age of 18.

9 2. I have personal knowledge of the facts and statements contained in this
10 affidavit, and am prepared to testify in accordance with the language set forth in the
11 affidavit.

12 3. I am a duly licensed attorney, authorized to practice in the State of
13 Nevada and am the attorney of record for MB America, Inc. a Nevada corporation.

14 4. Prior to filing the instant lawsuit for declaratory relief and an order directing
15 the parties to mediate in Reno, Nevada, I aver and state under penalty of perjury that I
16 attempted in good faith to obtain the consent of Defendant Alaska Pacific Leasing
17 Company to participate in mediation as set forth in EXHIBIT 5 (my letter dated February
18 27, 2014 sent certified mail to David Faulk, Vice President of Alaska Pacific Leasing
19 Company).

20 5. That letter specifically invited Mr. Faulk and his company to participate in a
21 mediation in Reno, Nevada. Additionally, after this letter was sent out I spoke with
22 representatives in Alaska for Pacific Leasing and advised them that Plaintiff would
23 participate in mediation but it would need to be in Reno, Nevada. Unfortunately, Alaska
24 Pacific Leasing Company and Mr. Faulk ignored those requests and instead sent
25 threatening letters indicating that the Defendant would be filing suit in Alaska.

26 6. Out of an abundance of caution and because the parties were at an
27 impasse, the instant lawsuit was filed. The instant lawsuit is not seeking monetary
28 damages but is rather attempting to confirm that there is no dispute between the parties

1 or alternatively that if such a dispute does exist then this Court needs to order the
2 parties to participate in mediation using the AAA mediation rules and the mediation
3 should take place in Reno, Nevada.

4 7. There are clearly material issues of fact set forth with the Plaintiff and
5 Defendant's position in this case. Plaintiff unequivocally requested mediation both
6 verbally and in writing from the Defendant as set forth above and the exhibits attached
7 to this Opposition. There is clearly a material issue of fact that the Defendant rejected
8 those offers to mediate in Reno and instead threatened a lawsuit. At no time since the
9 filing of this lawsuit has the Defendant ever agreed to participate in mediation in Reno,
10 Nevada even though the undersigned has requested both local Reno counsel Holly
11 Parker and the Defendant's Alaska counsel to participate in mediation in Reno.

12 8. The second and more important material issue of fact is that the Plaintiff
13 does not believe that any duties have been breached or that any money is owed to the
14 Defendant. If the Defendant believes that this is the case then they must state so which
15 would then create a material issue of fact which would thereby necessitate this Court to
16 order the parties to mediation in Reno, Nevada.

17 9. Attached as EXHIBIT 7 is a true and correct copy of the email received
18 from Cathe Stewart the Director of the Consumer ADR Operations at the American
19 Arbitration Association. Immediately upon receipt of the September 23, 2014
20 correspondence, the undersigned contacted Ms. Stewart and explained to her that the
21 parties had not stipulated to using AAA as the mediator. Ms. Stewart agreed that the
22 Agreement at issue does not require AAA to be the mediator but that AAA would be
23 willing to be the mediator if the parties stipulated to same. At no time has the Plaintiff
24 ever summarily rejected the use of AAA or any other mediator so long as the
25 mediation takes place in Reno, Nevada as required by the parties' Agreement. Ms.
26 Stewart did say that her office has actually received a request for mediation from the
27 Defendant but has not taken any action and likely would not take any action absent an
28 order from the Court or a written stipulation by the parties to use AAA as the mediator in

1 Reno, Nevada.

2 10. MB America is willing to stay the instant litigation until after this Court has
3 directed the parties to mediate using a qualified mediator in Reno, Nevada. If the
4 matter is not resolved through mediation, then the parties can litigate the remaining
5 issues in Reno, Nevada.

6 11. A request for exemption from the mandatory arbitration program was
7 served on the Defendant and this Court exempted this case from arbitration.

8 12. The Defendant filed an Answer and at no time ever filed a motion to
9 dismiss. Accordingly the Defendant has waived the right to dismiss this case.

10 DATED this 26th day of September, 2014.



Michael E. Sullivan, Esq.

13 SUBSCRIBED and SWORN to before
14 me this 26 day of September, 2014, by
15 Michael E. Sullivan, Esq.,


16 NOTARY PUBLIC

EXHIBIT 2

EXHIBIT 2

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EXHIBIT 3

EXHIBIT 3



THE CRUSHING EVOLUTION

MB America, Inc.
8730 Technology Way
Reno, NV 89521
Phone 775-853-1058 - Fax 775-682-4302

www.mbamerica.com

Agreement

This Agreement is made as of the 1 day of August in the year of 2012, by and between "MB America, Inc.", a corporation incorporated under the laws of the state of Nevada, represented by Miriano Ravazzolo who has the necessary powers ("MB"), and "Alaska Pacific Leasing" a corporation incorporated under the laws of the state of Alaska, represented by Mr. David Faulk who has the necessary powers ("Dealer"), and to be administered as follows:

1. **APPOINTMENT AND ACCEPTANCE.** MB appoints Dealer as its exclusive reseller to promote the sale of the Products and Services as defined in paragraph 2 herein, and Dealer accepts the appointment and agrees to promote the sale of MB's Products as defined by this Agreement.
2. **PRODUCTS AND AREA.** The products covered by this Agreement (Products) are "crushing attachments", "screening attachments" and any other product and service manufactured and/or sold by the company "MB SpA" of Breganze, Italy ("Manufacturer") under its own brand name at the date of this agreement. Any new standard or custom Product developed or added by Manufacturer during the lifetime of this Agreement is not automatically included in the Agreement, but has to be agreed upon each time. The Area covered in this agreement is as specified in the Annex A, part I, of this Agreement.
3. **PRICES.** Dealer will purchase the Products at the prices specified in the current Price List, minus the dealer discount, and with the payment terms, as specified in the Annex A, part III, of this Agreement. Unless specifically agreed time by time, the prices are for material picked up by Dealer at one of our warehouses in the US, and do not include any transport or any other accessory cost.

The Price List, discounts and terms can be changed by MB at any moment with an advanced notice of 30 days; however, existing orders and/or proposals will be carried over at the conditions existing at the moment of their acceptance.
4. **WARRANTY AND SERVICE.** The warranty and service terms will be as defined in the Annex C. In any case, Dealer will communicate to MB the date of sale and the name and address of the purchasing entity for every Product sold, within 30 days from the sale; as well as the date of first use for Products that are used for rentals or demonstrations. Failure to do so will void any warranty on the Product, constitute significant breach of the Agreement.
5. **SALES OUTSIDE TERRITORY.** We discourage you selling New Products outside the Territory. Should you do so, you will be assessed a "servicing fee" of twenty percent (20%) of the discounted price of such New Product. The servicing fee, less an administrative assessment of 3%, will be paid to the dealer in whose Territory you sold the New Product, to compensate that dealer for providing support and for any advertising and effort spent in promoting interest in the Product. New Product for the purpose of this paragraph is product in service less than one year, except if sold at auctions.

Bucket Crushers Worldwide

AA0225

6. RELATIONSHIP AND CONDUCT OF BUSINESS. Dealer shall use its best efforts to promote the sale of and solicit orders for the Products and services and will conduct all its business in its own name and in such a manner as it may see fit, pay all its own expenses including all commissions, salaries, bonuses, and expenses of its own employees and sales persons and any and all taxes properly and lawfully associated with doing business as an independent entity in the assigned territory.

MB shall furnish Dealer, at no expense to Dealer, with catalogs, literature, and any other material available for the proper promotion and solicitation of orders for the Products in the assigned territory. MB can contribute to the marketing activities of Dealer, as advertising, exhibitions and the like, on a time-by-time base or as result of separate agreements.

MB can participate, at its own expense and decision, to exhibitions, conventions or conferences in any area of the country, and Dealer is not obliged to participate or contribute to said events.

Dealer shall abide by MB's terms and conditions pertaining to the sale of the Products and services, their operations, and their warranty (if any), and shall communicate same to customers. Dealer shall hold MB harmless from and shall indemnify MB for all liability, loss, costs, expenses or damages, including court costs and reasonable attorneys' fees, caused by any misrepresentation made by Dealer or its employees concerning MB's products or services.

Dealer is directly initiating and maintaining the relationship with its customer and will cooperate with the MB to solve possible disputes arising in connection with the Product.

Dealer is an independent entity and shall have sole control of the means of performing under this Agreement. Nothing in this Agreement shall be construed to constitute Dealer as a partner or employee of MB nor shall either have any authority to bind the other in any respect.

7. BRAND PROTECTION. Every Product sold to a final user will have to carry all the original logos, branding, identification numbers and serials as supplied by Manufacturer. Dealer will not alter, modify or hide the brand name or logos in any way. Proposals, quotes and invoices to the final users will have to clearly specify the Manufacturer's brand name.

Dealer can produce its own promotional material and/or advertising about the Product. However every document or photo will have to clearly indicate Manufacturer brand and logo, and the drafts of said promotional material or advertising will have to be submitted to MB for approval before printing and/or producing. MB has the faculty to deny the approval within 5 days from the date of receiving the drafts, at its own discretion.

8. TERM OF AGREEMENT AND TERMINATION. This Agreement shall be effective on the date listed on page 1 and shall continue in force for an initial term of 1 year.

This Agreement may be terminated by either party:

- (a) By written agreement mutually agreed upon to be terminated at any time; or
- (b) (But not effective during the initial term of the Agreement), for no cause upon at least 90 days' prior written notice to the other party;
- (c) By both parties in case of breach of this agreement, with 30 days written notice.
- (d) After 30 days' written notice if either party has filed or has filed against it a petition in bankruptcy (which is not dismissed within 30 days after it is filed) or after 30 days' written notice if either party has other cause.

9. RIGHTS UPON TERMINATION. Upon termination of this Agreement any current order will be carried on as scheduled. MB will however have the option to request a different payment term for

Bucket Crushers Worldwide

any order placed by Dealer from the moment of the notice of termination.

10. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement contains the entire understanding of the parties, shall supersede any other oral or written agreements, and shall be binding upon successors and assigns. It may not be modified in any way without the written consent of an officer or owner of both parties.

11. **SURVIVABILITY OF AGREEMENT; HIERARCHY.** If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. In case that any provision or part thereof in Annex A or Annex C would be considered contrasting with any provision or part in this Agreement, the provisions in Annex A or Annex C will prevail.

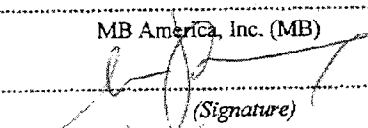
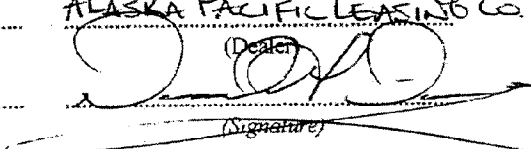
12. **APPLICABLE LAW - WAIVER.** This Agreement shall be construed according to the laws of the State of Nevada. The failure of either party to enforce, at any time or for any period of time, any provisions of this Agreement shall not be construed as a waiver of such provision or of the right of such party thereafter to enforce such provision.

13. **DISPUTES AND MEDIATION.** The parties agree that any disputes or questions arising hereunder, including the construction or application of this Agreement shall be submitted to mediation between MB and Dealer with the rules of the American Arbitration Association, of which any hearing or meeting should be conducted in Reno, NV. Any mediation settlement by the parties shall be documented in writing. If such mediation settlement modifies the language of this Agreement, the modification shall be put in writing, signed by both parties and added to this Agreement as an attachment.

If mediation between the parties does not result in a mutual satisfying settlement within 180 days after submission to mediation, then each party will have the right to enforce the obligations of this Agreement in the court of law of Reno, Nevada with all reasonable attorney fees, court costs and expenses incurred by the prevailing party in such litigation to be paid by the other party.

14. **NOTICES.** All notices, demands or other communications by either party to the other shall be in writing and shall be effective upon personal delivery, or 72 hours after deposited in the United States mail, first class certified postage prepaid, or by email.

IN WITNESS WHEREOF, the officers or owners of both parties hereto have executed this Agreement to be effective on the day and year listed on page one of this Agreement written in multiple counterparts, each of which shall be considered an original.

<p>MB America, Inc. (MB)</p> <p> (Signature)</p> <p>8/20/2012</p>	<p>ALASKA PACIFIC LEASING CO., INC.</p> <p> (Signature)</p> <p>AUGUST 17, 2012</p>
--	--

Bucket Crushers Worldwide

AA0227

MB America, Inc
Dealer Agreement with
Alaska Pacific Leasing
9191 Old Seward Highway Unit #15
Anchorage, Alaska, 99515

Annex A

Part I – Territory

The territory will be the States of **Alaska**.

Part II - Sales Objectives:

After 120 days from the execution of this Agreement, MB will submit to Dealer a Target Sales Objective for the remaining time of the agreement, which will consider the market situation and the potentials of the line.

Part III - Discount and Payments:

The discount reserved is 36% (thirty-six percent) on the current price list and its modifications. Dealer will pay the shipping costs from one of our warehouses to his premises.

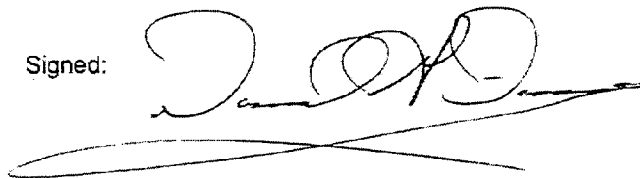
The payments will be by check or wire transfer as follows:

- 10% at the order
- final amount, including transport and any other costs, before shipping.

MB America will establish a maximum credit line with Dealer, which will not be exceeded at any moment.

Any delay in the payment will allow MB America to request and charge the payment of compounded interests of 1.5% monthly.

Signed:



Date: AUGUST 17, 2012

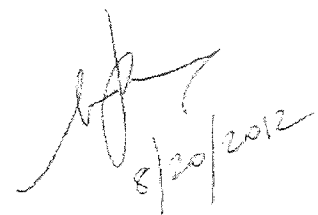


EXHIBIT 4

EXHIBIT 4

Law Offices of
Royce & Brain

1407 W. 31st Avenue, 7th Floor
Anchorage, Alaska 99503-3678

Telephone (907) 258-6792

Facsimile (907) 276-2919

VIA FACSIMILE: 855-433-3046

*Raymond H. Royce**

Michael A. Brain

Jason J. Ruedy

* ALSO ADMITTED IN MASSACHUSETTS

September 4, 2014

American Arbitration Association
AAA Case Management Center
6795 N. Palm Avenue, 2nd Floor
Fresno, CA 93704

Re: Request for Mediation
Our File No. 2356.03

To Whom It May Concern:

This office represents Alaska Pacific Leasing Company ("APL") in connection with a dispute involving a distributorship agreement ("Agreement") APL entered into with MB America, Inc. ("MB"). A copy of the Agreement is attached hereto as Exhibit 1. Pursuant to Article 13 of the Agreement, the parties are required to submit all disputes to mediation in accordance with the rules of the American Arbitration Association ("AAA"). APL is now submitting this dispute to AAA's regional office for Alaska pursuant to AAA Commercial Mediation Procedure M-2.

Parties/Legal Representatives

The names, regular mailing addresses, email addresses, and telephone numbers of the parties to the dispute and their respective legal representatives are as follows:

1. Alaska Pacific Leasing Company
9191 Old Seward Hwy, Unit 15
Anchorage, AK 99515
Phone: (907) 349-9899
Email: dfaulk@alaska.com

APL is identified as the dealer under the Agreement and is the party initiating the mediation pursuant to the applicable AAA rules.

2. Jason J. Ruedy
Law Offices of Royce & Brain
1407 W. 31st Ave., 7th Floor
Anchorage, AK 99503
Phone: (907) 258-6792
Email: jruedy@roycebrain.com

APL is represented in Alaska by Jason J. Ruedy of the Law Offices of Royce & Brain.

3. Holly S. Parker
Laxalt & Nomura, Ltd.
9600 Gateway Drive
Reno, NV 89521
Phone: (775) 322-1170
Email: hparker@laxalt-nomura.com

APL is represented in Nevada by Holly S. Parker of Laxalt & Nomura, Ltd.

4. MB America, Inc.
8730 Technology Way
Reno, NV 89521
Phone: (775) 853-1058
Email: max.ravazzolo@mbrusher.com

MB is identified as the distributor under the Agreement.

5. Michael E. Sullivan
Robison, Belaustegui, Sharp & Low, P.C.
71 Washington Street
Reno, NV 89503
Phone: (775) 329-3151
Email: msullivan@rbsllaw.com

MB is represented in Nevada by Michael E. Sullivan of Robison, Belaustegui, Sharp & Low, P.C.

Nature of the Dispute

APL and MB entered into the Agreement in August 2012. Pursuant to the Agreement, APL was to be the exclusive Alaska dealer of certain specialized construction equipment manufactured by MB ApS of Breganze, Italy. In January 2013, APL acquired approximately \$150,000 worth of inventory from MB pursuant to the Agreement. APL incurred additional costs shipping the inventory and retrofitting its own equipment in order that the inventory could be demonstrated for use in Alaska. Upon information and belief, MB authorized its own commissioned sales

American Arbitration Association
September 4, 2014
Page 3

person to contact certain of APL's identified Alaska customers directly in violation of the exclusivity provisions in the Agreement. In December 2013, MB notified APL that it was terminating the Agreement, effective March 18, 2014. After receiving the notice of termination, APL demanded that MB refund the money that APL paid for the inventory and take possession of same. MB refused APL's demand and instead filed a lawsuit against APL in Reno, NV to compel mediation. MB never made a demand for mediation on APL and failed to otherwise comply with the controlling AAA Commercial Mediation Procedures.

The dispute involves a distributorship agreement that expressly identifies Alaska as the subject territory. Accordingly, the Agreement and all disputes thereunder, are subject to the provisions of AS 45.45.700 *et seq.*, a copy of which is attached hereto as Exhibit 2. AS 45.45.750 precludes a distributor, such as MB, from requiring a dealer, such as APL, to apply the laws of any state other than Alaska to their distributorship agreement. Consequently, Alaska law controls this dispute irrespective of any choice of law provision in the Agreement that may indicate to the contrary.

Relief Requested

APL requests the relief to which it is legally entitled to under AS 45.45.760(b).

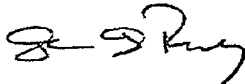
Mediator Qualifications

It is anticipated that MB will argue against application of Alaska law. Since the choice of law issue may bear a direct connection to the legal and equitable remedies available to the parties, an effective mediation will likely require that the mediator address this issue in advance of any mediation.

Should you have any questions regarding this request for mediation, please do not hesitate to contact me.

Sincerely,

ROYCE & BRAIN



Jason J. Ruedy

JJR/kek
Enclosure

cc: Alaska Pacific Leasing Company (*via electronic mail*)
Attn: David Faulk

AA0232

American Arbitration Association
September 4, 2014
Page 4

MB America, Inc. (*via electronic mail*)
c/o Michael E. Sullivan
Robison, Belaustegui, Sharp & Low, P.C.

Laxalt & Nomura, Ltd. (*via electronic mail*)
Attn: Holly S. Parker

3790

HOLLY S. PARKER, ESQ. (SBN 10181)
MARILEE BRETERNITZ, ESQ. (SBN 12563)
LAXALT & NOMURA, LTD.
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Telephone: (775) 322-1170
Facsimile: (775) 322-1865
Attorneys for Defendant Alaska
Pacific Leasing Company

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MB AMERICA, INC., a Nevada Corporation, Plaintiff vs. ALASKA PACIFIC LEASING COMPANY, a Alaska business corporation; and DOES 1-THROUGH X, inclusive, Defendants.	CASE NO: CV14-01229 DEPT. NO. 8 <u>DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES</u>
---	--

Defendant, ALASKA PACIFIC LEASING COMPANY ("Alaska Pacific"), through its undersigned counsel, hereby files this Reply in Support of Motion for Attorneys' Fees.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Alaska Pacific was the prevailing party in this action: the Court granted summary judgment in favor of Alaska Pacific on the basis that MB America, Inc. ("MB") failed to follow the mediation process provided for in the parties' Agreement prior to filing this lawsuit. As the prevailing party, Alaska Pacific is entitled to an attorneys' fees award under the parties' Agreement and pursuant to NRS 18.010(2)(b) because it was forced to defend against this unnecessary and premature litigation. The fees spent by Alaska Pacific are reasonable in light of the aggressive litigation strategy employed by MB, the quality of work performed by Alaska

1 Pacific's counsel, and the favorable results obtained for Alaska Pacific. The Court, therefore,
2 should grant Alaska Pacific's Motion and award it attorneys' fees in the amount of \$19,315.00.

3 **II. ARGUMENT**

4 **A. MB's Definition of "Prevailing Party" is Not Applicable to this Case.**

5 MB initially argues that Alaska Pacific was not the prevailing party in this matter and that
6 it cannot seek fees based on federal case law; the law cited is inapplicable to this case. MB cites
7 *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep't of Health & Human Res.* and its
8 progeny for the principal that the term "prevailing party" requires there to be a material alteration
9 of the legal relationship of the parties before attorneys' fees can be awarded. *See* 532 U.S. 598,
10 604 (2001); Opp'n, filed Dec. 10, 2014, pp. 5- 6. *Buckhannon* involves interpretation of federal
11 statutes and is inapplicable to the interpretation of a term in the parties' Agreement or under
12 Nevada statute. *See id.* at 601. Moreover, the issue before the *Buckhannon* Court involved a
13 plaintiff's right to recover attorneys' fees based on the "catalyst theory." *Id.* at 605-10. The
14 *Buckhannon* Court's analysis and holding was limited to the issue of whether a plaintiff could
15 obtain attorneys' fees when he/she failed to secure a judgment on the merits of the case or a
16 court-ordered consent decree, but nonetheless achieved the desired result because the lawsuit
17 brought about a voluntary change in the defendant's conduct. *Id.* at 600. Thus, the "prevailing
18 party" the *Buckhannon* definition is inapplicable to this case, where the Court granted summary
19 judgment on the merits of the issues raised in Alaska Pacific's Motion for Summary judgment.

20 The "prevailing party" definition adopted in *Buckhannon* and its progeny is also
21 inapplicable to this case because the definition was abrogated by Congress. Congress responded
22 to *Buckhannon* by passing the Open Government Act of 2007, which revived the "catalyst
23 theory" for recovery under applicable federal civil rights laws and gutted the *Buckhannon*
24 analysis. *See e.g. Cornucopia Inst. V. Unites States Dep't of Agric.*, 560 F.3d 673, 677 (7th Cir.
25 2009); *Oregon Natural Desert Ass'n v. Lock*, 572 F.3d 610, 615 (9th Cir. 2009) (citing to the
26 legislative history of the amendments, specifically 153 Cong. Rec. S15701-04 (daily ed. Dec. 14,
27 2007) (statement of Sen. Leahy, sponsor of the 2007 Amendments)).

1 Indeed, subsequent authorities from courts in the Ninth Circuit have adopted a lenient
2 standard for attorneys' fees, providing, "[s]ince 2007, plaintiffs can establish eligibility for
3 attorneys' fees even if they have not satisfied *Buckhannon* by obtaining a judicial order in their
4 favor." *See e.g. Mattson v. FBI*, 2010 U.S. Dist. Lexis 45350 *7 (N.D. Cal. 2010) (citing *Oregon*
5 *Natural Desert Ass'n v. Lock*, 572 F.3d at 616-17). Thus, MB's arguments relying on the
6 definition of "prevailing party" under the above cases are irrelevant to the Court's analysis of
7 whether Alaska Pacific should be awarded attorneys' fees in this case.

8 **B. Alaska Pacific is the "Prevailing Party" in this Case.**

9 As indicated in Alaska Pacific's Motion, an attorneys' fees award is supported in this
10 case by the parties' Agreement and NRS 18.010(2)(b). The Agreement between the parties does
11 not define "prevailing party." *See Mtn. S. J.*, filed Sep. 15, 2014, Ex. 1. Nor does NRS 18.010
12 define the term "prevailing party." Under rules of contract interpretation, contract terms are
13 given their plain and ordinary meaning. *Traffic Control Servs. V. United Rentals*, 120 Nev. 168,
14 174, 87 P.3d 1054, 1058 (2004). Black's Law Dictionary defines "prevailing party" as "a party
15 whose favor a judgment is rendered, regardless of the amount of damages awarded." Black's
16 Law Dictionary 1154 (Deluxe 8th ed. 2004). The Nevada Supreme Court interpreted "prevailing
17 party" under NRS 18.010 to require that the case "proceeded to judgment." *See Semenza v.*
18 *Caughlin Crafted Homes*, 111 Nev. 1089, 1096, 901 P.2d 684, 688 (1995) (citations omitted).

19 MB argues Alaska Pacific is only entitled to an attorneys' fee award as a prevailing party
20 if a substantive action for breach of contract or tort is filed and Alaska Pacific prevails in that
21 action. MB fails to recognize that the Court found that the parties were required to comply with
22 an administrative requirement included in the Agreement—mediation—and granted summary
23 judgment in Alaska Pacific's favor. This matter has proceeded to judgment.¹ If Alaska Pacific is

24
25 ¹ The Court's order granted Alaska Pacific's Motion for Summary Judgment, but also contained language
26 that the case is dismissed without prejudice. Order, filed Oct. 22, 2014, p. 3: 13-15. Based on the Court's findings
27 that there was a dispute among the parties and the administrative remedy must be complied with prior to bringing
28 their dispute to the Court (which was the basis of Alaska Pacific's Motion for Summary Judgment), Alaska Pacific
understands the without prejudice language in the Court's Order to refer to the parties' ability to file a complaint
related to the merits of the dispute (such as a breach of contract action) after mediation. *See id.* at l. 6-12.

1 not awarded fees, MB will be rewarded with a windfall for prematurely bringing the action and
2 failing to abide by the terms of the parties' Agreement. This is contrary to the terms of the
3 Agreement and notions of fundamental fairness. Any later action on the substantive dispute
4 between the parties could also lead to a fee award, but under both the Agreement and NRS
5 18.010(2)(b), Alaska Pacific has prevailed on the matter before the Court.

6 **C. MB Filed this Premature Lawsuit without Reasonable Grounds under NRS 18.010.**

7 The legislative intent for NRS 18.010(2)(b) is clear; "[t]he court shall *liberally construe*
8 the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations .
9 . . ." (emphasis added). This is an appropriate situation for an attorneys' fee award because MB
10 forced Alaska Pacific into litigation to enforce the mediation provision in the parties' Agreement,
11 when MB knowingly had not followed the terms of the provision. MB asserts it had reasonable
12 grounds to file the lawsuit because it needed to compel mediation in Reno. MB overlooks the
13 fact that it ignored the terms of the Agreement when it filed this lawsuit without making a proper
14 request for mediation first. *See* Mtn. S. J., at p. 4: 18-22; Reply, filed Oct. 3, 2014, p. 3: 10-23.
15 MB argues it was in a chicken and the egg situation because Alaska Pacific has not agreed to
16 mediate in Reno, but MB cannot rely on the current case circumstances to support its past
17 conduct.² NRS 18.010(2)(b) is satisfied because MB did not even attempt to comply with the
18 mediation provision before filing litigation and, thus, brought this action without reasonable
19 grounds. *See Semenza*, 111 Nev. at 1096, 901 P.2d at 688 (noting whether party disregarded
20 truth prior to asserting claim is a factor when awarding fees under NRS 18.010(2)(b)).³

21 **D. Alaska Pacific's Attorneys' Fees Were Reasonable and Necessary to Defend Against
22 MB's Aggressive and Premature Litigation Approach.**

23 Alaska Pacific was forced to incur attorneys' fees responding to MB's aggressive
24 litigation approach in this action to enforce a mediation provision. The time spent included, but
25

26 ² Alaska Pacific has not refused to participate in mediation in Reno; Alaska Pacific only indicated that it
believes AAA should determine the location of the mediation after Alaska Pacific made a request for mediation with
AAA. Ex. 1, Affidavit of Holly S. Parker at ¶ 12.

27 ³ Even if MB had reasonable grounds to file the action, which it did not, Alaska Pacific must still be awarded
attorneys' fees under the terms of the Agreement as the prevailing party in the litigation.

1 was not limited to, extensive communications with opposing counsel regarding initial efforts to
2 discuss potential alternative dispute resolution, drafting an answer and researching proper
3 defenses following a one-day extension granted to Nevada counsel after Nevada counsel was
4 retained, assessing complicated potential choice of law issues, preparation of three motions and
5 related briefing (including a motion for summary judgment and motions and a stipulation related
6 to a of stay the litigation following MB's aggressive efforts to pursue normal litigation activities
7 in an action to enforce mediation), and other activities responding to MB's litigation efforts. *See*
8 Ex. 1. Alaska Pacific's counsel wished to create a quality work product for Alaska Pacific, and
9 Alaska Pacific prevailed on all motions filed.⁴ *Id.*

10 Alaska Pacific followed the Nevada Rules of Civil Procedure to address MB's aggressive
11 litigation strategy. Alaska Pacific was forced to file an answer very shortly after retaining
12 Nevada counsel and shortly thereafter MB attempted to force discovery events and fast-track the
13 matter before the Court. *Id.* at ¶¶ 3-6. This aggressive approach set the tone for the litigation.
14 Alaska Pacific attempted to resolve issues with MB, such as a stay of the discovery events, prior
15 to filing its motions. *Id.* at ¶¶ 5-9. However, Alaska Pacific's attempts to reach an agreement
16 without involving the Court were unsuccessful or not responded to by MB. *Id.* Thus, Alaska
17 Pacific was forced to file motions to defend against this unnecessary and premature litigation.
18 Alaska Pacific's attorneys' fees are not unreasonable or outrageous in light of the nature of this
19 litigation, the efforts necessary to respond to MB's aggressive litigation strategy, the quality of
20 work performed by counsel, and the favorable results obtained.

21 **III. CONCLUSION**

22 Based on the foregoing, Alaska Pacific respectfully requests the Court grant its Motion
23 for Attorneys' Fees and award it reasonable attorneys' fees in the amount of \$19,315.00.
24

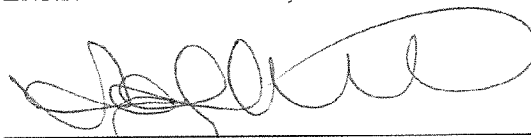
25 ⁴ MB questions the time spent by the associate and billing rate because "there was no support as to what Ms.
26 Breternitz did or why it was necessary." Opp'n at p. 8: 15-16. As indicated in its Motion, Alaska Pacific is willing
27 to provide the Court with invoices to review *in camera* if the Court deems that necessary. To the extent MB
28 challenges Ms. Breternitz's fee rate, Alaska Pacific's Motion and the undersigned's Affidavits address her
qualifications to support the rate. *See* Motion for Attorneys' Fees, filed Nov. 18, 2014, Ex. 1; *see also* Ex. 1 at ¶ 2.

AFFIRMATION PURSUANT TO NRS 239.B.030

The preceding document does not contain the social security number of any person.

DATED this 22nd day of December, 2014.

LAXALT & NOMURA, LTD.



HOLLY S. PARKER (SBN 10181)
MARILEE BRETERNITZ (SBN 12563)
LAXALT & NOMURA, LTD.
9600 Gateway Drive
Reno, Nevada 89521
hparker@laxalt-nomura.com
mbreternitz@laxalt-nomura.com
Telephone: (775) 322-1170
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Attorneys for Defendant Alaska
Pacific Leasing Company

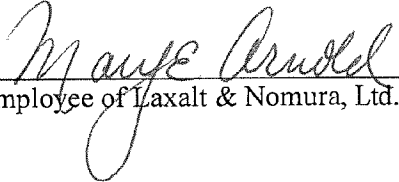
1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on the 22nd day of December, 2014, I caused to be served a true and
4 correct copy of the foregoing **DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR**
5 **ATTORNEYS' FEES** by:
6

- 7 ☐ Mail on the parties listed below in said action, by placing a true copy thereof enclosed in
8 a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At
9 the Law Offices of Laxalt & Nomura, mail placed in that designated area is given the
10 correct amount of postage and is deposited that same date in the ordinary course of
11 business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.
12 ☒ By electronic service under NEFCR 9, by filing the foregoing with the Clerk of Court
13 using the E-Flex system, which will electronically mail the filing to the following
14 individuals at the email addresses furnished by the registered users through the E-Flex
15 system.
16 ☐ Personal delivery by causing a true copy thereof to be hand delivered this date to the
17 address(es) at the address(es) set forth below.
18 ☐ Facsimile on the parties in said action by causing a true copy thereof to be telecopied to
19 the number indicated after the address(es) noted below.
20 ☐ Federal Express or other overnight delivery.
21 ☐ Reno/Carson Messenger Service

22 addressed as follows:

23 Michael E. Sullivan, Esq.
24 Robison Belaustegui, Sharp & Low
25 71 Washington Street
26 Reno, NV 89503
27 *Attorneys for Plaintiff MB America, Inc.*
28

29 
30 An Employee of Laxalt & Nomura, Ltd.

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INDEX OF EXHIBITS

Exhibit 1	Affidavit of Holly S. Parker in Support of Reply	4
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FILED
Electronically
2014-12-22 10:56:12 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 4745853 : melwood

EXHIBIT 1

EXHIBIT 1

AA0242

1 **AFFIDAVIT OF HOLLY S. PARKER IN SUPPORT OF ALASKA PACIFIC LEASING**
2 **COMPANY'S REPLY IN SUPPORT OF MOTION FOR ATTORNEYS' FEES**

3 STATE OF NEVADA)
4 COUNTY OF WASHOE) ss.

5 I, Holly S. Parker, hereby affirm, under penalty of perjury, that I have personal
6 knowledge as to the facts set forth below and the assertions contained herein are true and
7 correct to the best of my ability, recollection, and information:

8 1. I am an attorney licensed to practice law in the State of Nevada and an attorney
9 of record for Defendant Alaska Pacific Leasing Company in Case No. CV14-01229, entitled
10 *MB America, Inc. v. Alaska Pacific Leasing Company*.

11 2. In my Affidavit filed in support of Alaska Pacific Leasing Company's Motion
12 for Attorney Fees there was a clerical error that became apparent as we drafted the Reply brief.
13 Attorney Marilee Breternitz is a 2011 graduate of the University of the Pacific McGeorge
14 School of Law, not 2008 as indicated therein (she graduated college and began law school in
15 2008). All other information contained in the Affidavit filed in support of the Motion for
16 Attorneys' Fees is correct.

17 3. Within days after Laxalt & Nomura, Ltd. began representing Alaska Pacific
18 Leasing Company in this case, on or about the afternoon of Wednesday August 13, 2014, I
19 spoke with MB's counsel, and MB's counsel provided me an additional one-day extension (an
20 extension was apparently granted prior to our firm's involvement in the case) to file a
21 responsive pleading until Friday August 15, 2014.

22 4. On or about August 27, 2014, MB's counsel contacted me and left a message
23 regarding scheduling a mandatory 16.1 early case conference and/or possibly filing a motion to
24 refer the case to mediation.

25 5. On or about September 5, 2014, I indicated to MB's counsel that, among other
26 things, I was not sure about the appropriateness of setting the early case conference and other
27 litigation events.

1 6. On or about September 9, 2014, I received MB's notice of early case conference
2 and trial setting for September 25, 2014. I contacted MB's counsel to propose a stay of the
3 case conference and related events because Alaska Pacific Leasing Company had filed a
4 request for mediation with AAA. I indicated that, alternatively, I could consider filing a
5 motion to stay. I also indicated that I had a conflict with the early case conference time and
6 requested that if MB wished to pursue the early case conference it be held at a different time.
7 MB's counsel did not respond to my proposal to stay. MB's counsel simply indicated that he
8 would change the time of the early case conference.

9 7. On or about September 11, 2014, I again contacted MB's counsel to discuss a
10 possible stay of the early case conference, discovery, trial setting, and other case events. MB's
11 counsel called me to discuss the matter and during the discussion he indicated that he wished to
12 proceed with the early case conference and trial setting scheduled for September 25, 2014.

13 8. On or about September 12, 2014, I contacted MB's counsel to confirm my
14 understanding of his position regarding the early case conference and trial setting. I indicated
15 that we would be filing a motion to stay on a motion for order shortening time to hopefully get
16 the issue resolved before the events on September 25, 2014. I also indicated that we would be
17 filing a motion for summary judgment on the mediation issue.

18 9. On or about September 15, 2014, my office filed the Motion to Stay and related
19 Motion for Order Shortening Time. We also filed our Motion for Summary Judgment on the
20 same day.

21 10. On September 15, 2014, the Court issued an Order Shortening Time related to
22 the Motion to Stay. After the Order was entered, MB's counsel contacted me to set a time with
23 the Court to discuss his time to respond to the Motion to Stay.

24 11. On or about September 16, 2014, the Court conducted a telephonic hearing
25 regarding the Order Shortening Time. During the call, MB's counsel agreed to stay the case
26 events. We prepared the stipulation and provided it to MB's counsel the same day.

27 12. On or about September 19, 2014, I communicated Alaska Pacific's position
28

1 regarding a mediator and the location of mediation to MB's counsel. I indicated that Alaska
2 Pacific was strictly interpreting the AAA rules and the Agreement and believes that the
3 mediator and location would be considered and resolved by AAA.

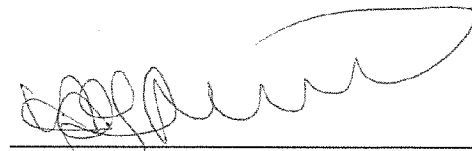
4 13. The work performed included, but was not limited to, extensive
5 communications with opposing counsel regarding potential alternative dispute resolution issues
6 and other case issues, a telephonic hearing with the court, drafting an answer and researching
7 proper defenses, assessing complicated choice of law issues, preparation of three motions (and
8 related briefing, affidavits, and proposed order(s)), and a stipulation. Alaska Pacific's counsel
9 took the time to research the issues involved in the case and wished to create a quality work
10 product for the client. All fees incurred were reasonable and necessary to defend against MB's
11 aggressive litigation strategy.

12 FURTHER YOUR AFFIANT SAYETH NAUGHT.

13 **AFFIRMATION PURSUANT TO NRS 239.B.030**

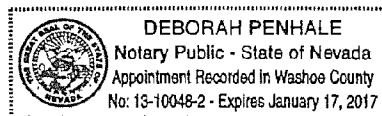
14 The preceding document does not contain the social security number of any person.

15 Dated: December 22, 2014.

16 
17 _____
18 HOLLY S. PARKER, ESQ.

18 SUBSCRIBED and SWORN to before me
19 this 22nd day of December, 2014.

20 
21 _____
22 NOTARY PUBLIC



3860
HOLLY S. PARKER, ESQ.
Nevada State Bar No: 10181
MARILEE BRETERNITZ, ESQ.
Nevada State Bar No. 12563
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Telephone: (775) 322-1170
Facsimile: (775) 322-1865
Attorneys for Defendant Alaska
Pacific Leasing Company

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MB AMERICA, INC., a Nevada Corporation	CASE NO: CV14-01229
Plaintiff	DEPT. NO. 8
vs.	<u>REQUEST FOR SUBMISSION</u>
ALASKA PACIFIC LEASING COMPANY, a Alaska business corporation; and DOES 1-THROUGH X, inclusive,	
Defendants.	

It is hereby requested that Defendant Alaska Pacific Leasing Company's *Motion for Attorneys' Fees* filed on November 18, 2014 be submitted to the Court for decision.

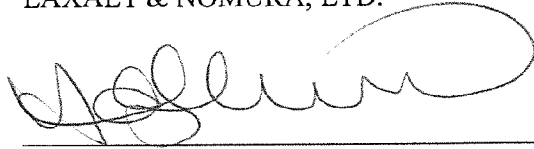
The undersigned attorney certifies that a copy of this request has been served to all counsel of record.

AFFIRMATION PURSUANT TO NRS 239.B.030

The preceding document does not contain the social security number of any person.

DATED this 22nd day of December, 2014.

LAXALT & NOMURA, LTD.



HOLLY S. PARKER, ESQ.

Nevada State Bar No: 10181

MARILEE BRETERNITZ, ESQ.

Nevada State Bar No. 12563

LAXALT & NOMURA, LTD.

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Telephone: (775) 322-1170

Facsimile: (775) 322-1865

Attorneys for Defendant Alaska

Pacific Leasing Company

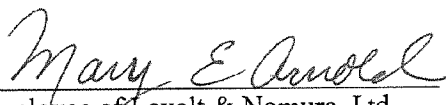
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT & NOMURA, LTD., and that on the 22nd day of December, 2014, I caused to be served a true and correct copy of the foregoing REQUEST FOR SUBMISSION by:

- ☐ Mail on the parties listed below in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of Laxalt & Nomura, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.
- ☒ By electronic service under NEFCR 9, by filing the foregoing with the Clerk of Court using the E-Flex system, which will electronically mail the filing to the following individuals at the email addresses furnished by the registered users through the E-Flex system.
- ☐ Personal delivery by causing a true copy thereof to be hand delivered this date to the address(es) at the address(es) set forth below.
- ☐ Facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.
- ☐ Federal Express or other overnight delivery.
- ☐ Reno/Carson Messenger Service

addressed as follows:

Michael E. Sullivan, Esq.
Robison Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503
Attorneys for Plaintiff MB America, Inc.


An Employee of Laxalt & Nomura, Ltd.

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5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8
9 MB AMERICA, INC., a Nevada
corporation,

Case No. CV14-01229

Dept. No. 8

10 Plaintiff,

11 vs.

12
13 ALASKA PACIFIC LEASING
COMPANY, a Alaska business
corporation; and DOES I-X, inclusive,

14 Defendant.
15 _____/

16
17 **ORDER**

18 On October 22, 2014, this court entered an *Order* granting summary
19 judgment, and dismissing this case without prejudice. Currently before the court is
20 Defendant Alaska Pacific Leasing Company's ("Alaska Pacific") *Motion for Attorney*
21 *Fees*. Plaintiff MB America, Inc., ("MB America") opposed the motion, and also filed
22 a *Motion to Retax Costs*. This order follows.

23 *Motion for Attorney Fees*

24 NRS 18.010(1) provides that the "compensation of an attorney and counselor
25 for his or her services is governed by agreement, express or implied, which is not
26 restrained by law." As a general rule, Nevada courts broadly enforce attorney's fees
27 provisions in written agreements. *See Semenza v. Caughlin Crafted Homes*, 111
28 Nev. 1089, 901 P.2d 684 (1995).

1 In this case, the agreement between the parties provided that

2 If mediation between the parties does not result in a mutual satisfying
3 settlement within 180 days after submission to mediation, then each
4 party will have the right to enforce the obligations of this Agreement in
5 the court of law of Reno, Nevada with all reasonable attorney fees,
court costs and expenses incurred by the prevailing party in such
litigation to be paid by the other party.

6 Alaska Pacific contends that an award of fees is appropriate pursuant this
7 contractual language, because it successfully litigated a summary judgment motion
8 against MB America, causing the complaint to be dismissed without prejudice.
9 Among other arguments, MB America submits that any award of attorney fees
10 would be premature, as the parties have not actually litigated any underlying
11 dispute. Rather, because this court dismissed MB America's complaint for the
12 purpose of allowing the parties to first submit their dispute to mediation, MB
13 America argues that there has been no actual change in legal relationship between
14 the parties, indicating that Alaska Pacific not "prevailing party" as contemplated by
15 the parties' agreement.

16 Despite MB America's argument that the dispute between the parties
17 remains ongoing, this particular legal action has ended. Further, because the court
18 has granted Alaska Pacific's motion to dismiss, they are clearly a prevailing party
19 at this juncture. *See Semenza*, 111 Nev. at 1096, 901 P.2d at 688. Accordingly, the
20 court concludes that pursuant to the agreement between the parties, Alaska Pacific
is entitled to an award of attorney fees.¹

21 Nonetheless, when determining the amount of any fee award, the court notes
22 that any award must be reasonable in light of the quality of the attorney, the
23 character of the case, the work actually performed, and the result achieved. *See*
24 *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 192 P.3d 730 (2008)
25 (citing *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969)).

26 Alaska Pacific asserts that its counsel have spent in excess of sixty attorney
27 hours defending this case, and has requested a fee award in the amount of
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1 \$19,315.00. This case consisted of a single motion for summary judgment, on the
2 basis that the parties had failed to exhaust their contractual administrative
3 remedies. The summary judgment motion was ten pages long, and does not contain
4 any extensive legal research. Accordingly, given the factors set forth in *Brunzell*,
5 the court cannot conclude that the requested fees are reasonable. While counsel in
6 this case are eminently qualified, in light of the character of this case, as well as the
7 work actually performed, the court finds an award of \$5,000.00 to be reasonable.
8 Therefore, the court awards Alaska Pacific attorney's fees in the amount of
9 \$5,000.00.

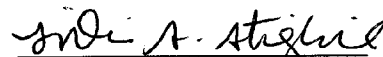
10 *Motion to Retax Costs*

11 In addition to an award of attorney fees, Alaska Pacific requests costs in the
12 amount of \$649.75. This includes \$72.35 in photocopying, and \$160.55 in legal
13 research fees. MB America contends that the fees for photocopying and legal
14 research are excessive. This court disagrees. Alaska Pacific has provided the
15 research invoices from Lexis Nexis, as well as documentation related to the dates
16 and numbers of photocopies made. The court does not find these charges to be
17 unreasonable. Accordingly, the court awards Alaska Pacific costs in the amount of
18 \$649.75. See NRS 18.020.

19 Therefore, for the reasons stated above, the court ORDERS Alaska Pacific's
20 *Motion for Attorneys' Fees* GRANTED. The court further ORDERS MB America's
21 *Motion to Retax Costs* DENIED. The court AWARDS Alaska Pacific attorney's fees
22 and costs in the amount of \$5,649.75.

23 **IT IS SO ORDERED.**

24 **DATED** this 13th day of January, 2015.

25
26 
27 LIDIA S. STIGLICH
28 District Judge

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 13th day of January, 2015, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Holly Parker, Esq.

Michael Sullivan, Esq.

Marilee Breternitz, Esq.

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


CHRISTINE KUHL
Judicial Assistant

1 **2540**
2 HOLLY S. PARKER, ESQ.
3 Nevada State Bar No: 10181
4 MARILEE BRETERNITZ, ESQ.
5 Nevada State Bar No. 12563
6 LAXALT & NOMURA, LTD.
7 9600 Gateway Drive
8 Reno, Nevada 89521
9 hparker@laxalt-nomura.com
10 mbreternitz@laxalt-nomura.com
11 Telephone: (775) 322-1170
12 Facsimile: (775) 322-1865
13 Attorneys for Defendant Alaska
14 Pacific Leasing Company

15 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

16 IN AND FOR THE COUNTY OF WASHOE

17 MB AMERICA, INC., a Nevada
18 Corporation

19 Plaintiff

20 vs.

21 ALASKA PACIFIC LEASING COMPANY,
22 a Alaska business corporation; and DOES
23 1-THROUGH X, inclusive,

24 Defendants.

CASE NO: CV14-01229

DEPT. NO. 8

NOTICE OF ENTRY OF ORDER

25 TO: All Parties and their counsel.

26 PLEASE TAKE NOTICE that an Order granting Defendant Alaska Pacific Leasing
27 Company's Motion for Attorneys' Fees was filed on January 13, 2015, a copy of which is
28 attached hereto.

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DATED this 21st day of January, 2015.

Shelton

Pacific Leasing Company

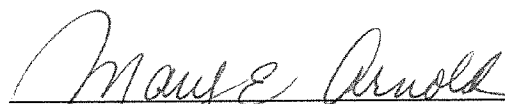
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT & NOMURA, LTD., and that on the 21st day of January, 2015, I caused to be served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER by:

- ☐ Mail on the parties listed below in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of Laxalt & Nomura, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.
- ☒ By electronic service under NEFCR 9, by filing the foregoing with the Clerk of Court using the E-Flex system, which will electronically mail the filing to the following individuals at the email addresses furnished by the registered users through the E-Flex system.
- ☐ Personal delivery by causing a true copy thereof to be hand delivered this date to the address(es) at the address(es) set forth below.
- ☐ Facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.
- ☐ Federal Express or other overnight delivery.
- ☐ Reno/Carson Messenger Service

addressed as follows:

Michael E. Sullivan, Esq.
Robison Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503
Attorneys for Plaintiff MB America, Inc.


An Employee of Laxalt & Nomura, Ltd.

1
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5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8
9 MB AMERICA, INC., a Nevada
corporation,

Case No. CV14-01229

Dept. No. 8

10 Plaintiff,

11 vs.

12
13 ALASKA PACIFIC LEASING
COMPANY, a Alaska business
corporation; and DOES I-X, inclusive,

14 Defendant.
15 _____/

16
17 ORDER

18 On October 22, 2014, this court entered an *Order* granting summary
19 judgment, and dismissing this case without prejudice. Currently before the court is
20 Defendant Alaska Pacific Leasing Company's ("Alaska Pacific") *Motion for Attorney*
21 *Fees*. Plaintiff MB America, Inc., ("MB America") opposed the motion, and also filed
22 a *Motion to Retax Costs*. This order follows.
23 *Motion for Attorney Fees*

24 NRS 18.010(1) provides that the "compensation of an attorney and counselor
25 for his or her services is governed by agreement, express or implied, which is not
26 restrained by law." As a general rule, Nevada courts broadly enforce attorney's fees
27 provisions in written agreements. See *Semenza v. Caughlin Crafted Homes*, 111
28 Nev. 1089, 901 P.2d 684 (1995).

1 In this case, the agreement between the parties provided that

2 If mediation between the parties does not result in a mutual satisfying
3 settlement within 180 days after submission to mediation, then each
4 party will have the right to enforce the obligations of this Agreement in
5 the court of law of Reno, Nevada with all reasonable attorney fees,
court costs and expenses incurred by the prevailing party in such
litigation to be paid by the other party.

6 Alaska Pacific contends that an award of fees is appropriate pursuant this
7 contractual language, because it successfully litigated a summary judgment motion
8 against MB America, causing the complaint to be dismissed without prejudice.
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11 dispute. Rather, because this court dismissed MB America's complaint for the
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13 America argues that there has been no actual change in legal relationship between
14 the parties, indicating that Alaska Pacific not "prevailing party" as contemplated by
15 the parties' agreement.

16 Despite MB America's argument that the dispute between the parties
17 remains ongoing, this particular legal action has ended. Further, because the court
18 has granted Alaska Pacific's motion to dismiss, they are clearly a prevailing party
19 at this juncture. *See Semenza*, 111 Nev. at 1096, 901 P.2d at 688. Accordingly, the
20 court concludes that pursuant to the agreement between the parties, Alaska Pacific
is entitled to an award of attorney fees.¹

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22 that any award must be reasonable in light of the quality of the attorney, the
23 character of the case, the work actually performed, and the result achieved. *See*
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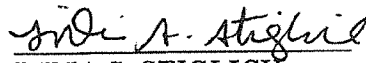
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13 research are excessive. This court disagrees. Alaska Pacific has provided the
14 research invoices from Lexis Nexis, as well as documentation related to the dates
15 and numbers of photocopies made. The court does not find these charges to be
16 unreasonable. Accordingly, the court awards Alaska Pacific costs in the amount of
17 \$649.75. *See* NRS 18.020.

18 Therefore, for the reasons stated above, the court ORDERS Alaska Pacific's
19 *Motion for Attorneys' Fees* GRANTED. The court further ORDERS MB America's
20 *Motion to Retax Costs* DENIED. The court AWARDS Alaska Pacific attorney's fees
21 and costs in the amount of \$5,649.75.

22 IT IS SO ORDERED.

23 DATED this 13th day of January, 2015.

24
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27 LIDIA S. STIGLICH
28 District Judge

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CHRISTINE KUHL
Judicial Assistant

2175

HOLLY S. PARKER, ESQ. (SBN 10181)
MARILEE BRETERNITZ, ESQ. (SBN 12563)
LAXALT & NOMURA, LTD.
9600 Gateway Drive
Reno, Nevada 89521
hparker@laxalt-nomura.com
mbreternitz@laxalt-nomura.com
Telephone: (775) 322-1170
Facsimile: (775) 322-1865
Attorneys for Defendant Alaska
Pacific Leasing Company

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MB AMERICA, INC., a Nevada
Corporation,

Plaintiff

vs.

ALASKA PACIFIC LEASING COMPANY,
a Alaska business corporation; and DOES
1-THROUGH X, inclusive,

Defendants.

CASE NO: CV14-01229

DEPT. NO. 8

**DEFENDANT'S MOTION FOR
LIMITED RECONSIDERATION OF
THE COURT'S JANUARY 13, 2015
ORDER**

Defendant, ALASKA PACIFIC LEASING COMPANY ("Alaska Pacific"), by and
through its undersigned counsel, hereby files this Motion for Limited Reconsideration of the
Court's January 13, 2015 Order.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After the Court issued its October 22, 2014 Order Granting Summary Judgment in favor
of Alaska Pacific, Alaska Pacific filed a Motion for Attorneys' Fees seeking \$19,315.00 in fees it
incurred successfully defending against MB AMERICA, INC.'s ("MB") claims. On January 13,
2015, the Court entered an Order Granting Alaska Pacific's Motion for Attorneys' Fees on the
basis that Alaska Pacific was a prevailing party under the parties' Agreement. The Court
awarded Alaska Pacific \$5,000.00 in attorneys' fees related to its motion for summary judgment.

1 Alaska Pacific respectfully requests limited reconsideration of the award on the basis
2 that, to be made whole as a prevailing party under the terms of the parties' Agreement and
3 Nevada law, Alaska Pacific be awarded attorneys' fees for all work actually performed, not only
4 for fees related to its dispositive motion.

5 **II. LEGAL STANDARD**

6 Motions for reconsideration are governed by WDCR 12(8) and DRC 13(7). WDCR
7 12(8) provides, in relevant part, "[a] party seeking reconsideration of a ruling of the court... must
8 file a motion for such relief within 10 days after service of written notice of entry of the order or
9 judgment, unless the time is shortened or enlarged by order." WDCR 12(8) further requires the
10 rehearing of motions to be done in conformity with DCR 13(7). DCR 13(7) provides, "[n]o
11 motion once heard and disposed of shall be renewed in the same cause, nor shall the same
12 matters therein embraced be reheard, unless by leave of the court granted upon motion therefore,
13 after notice of such motion to the adverse parties."

14 **III. ARGUMENT**

15 Alaska Pacific seeks limited reconsideration of the Court's January 13, 2015 Order
16 because the award addresses only the work performed in connection with Alaska Pacific's single
17 motion for summary judgment. Ex. 1 at pp. 2:26-3:5. Alaska Pacific respectfully submits that
18 parties' Agreement provides for a much broader attorneys' fees award, and it will not be made
19 whole for fees incurred for all work actually performed unless all defense activities culminating
20 in its status as a prevailing party are considered and reflected in the award. Ex. 2 at ¶ 13.

21 In Nevada, a district court has the authority to award attorneys' fees if such fees are
22 provided for under a statute, rule, or contract. *State, Dep't of Human Resources v. Fowler*, 109
23 Nev. 782, 784, 858 P.2d 375, 376 (1993). The parties' Agreement in this case provides that
24 Alaska Pacific, as the prevailing party, is entitled to "all reasonable attorney fees, court costs and
25 expenses incurred" in litigation related to the Agreement. Ex. 2 at ¶ 13 (emphasis supplied).

26 An award of all of Alaska Pacific's requested fees is also consistent with the purpose of
27 such a contractual provision under Nevada law. In *Musso v. Binick*, the Nevada Supreme Court
28

1 considered whether attorneys' fees provisions in contracts include fees for successfully bringing
2 or defending an appeal. 104 Nev. 613, 614-15, 764 P.2d 477, 477-78 (1988). The Court
3 ultimately answered the question in the affirmative and found that contractual provisions for fees
4 do allow for awards based on successfully bringing or defending an appeal. *Id.* The Court
5 reasoned, "[t]he purpose of such contractual provisions, **to indemnify the prevailing party of**
6 **the full amount of the obligation, is defeated and a party's contract rights are diminished if**
7 **the party is forced to defend its rights on appeal at its own expense."** *Id.* at 614, 477
8 (emphasis supplied). *See also Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821,
9 192 P.3d 730 (2008) (discussing that one of the factors for determining whether an award of
10 attorney's fees is appropriate should include the work performed, including the skill, time, and
11 attention given to the work). Collectively, these authorities contemplate that a prevailing party
12 should be made whole for fees incurred for all work performed, not merely for fees incurred
13 related to a single motion.

14 The Court, in its January 13, 2015 Order, focused its analysis on Alaska Pacific's single
15 motion for summary judgment to determine the reasonableness of the fees requested. Ex. 1 at
16 pp. 2:26-3:5. However, as discussed in more detail in Alaska Pacific's Motion for Attorneys'
17 Fees and Reply, the work actually performed included the following:

- 18 • extensive communications with opposing counsel regarding initial efforts to
19 discuss potential alternative dispute resolution;
- 20 • evaluating the case, drafting an answer, and researching proper defenses
21 following a one-day extension granted to Nevada counsel after Nevada counsel
22 was retained;
- 23 • researching and assessing complicated potential choice of law issues based on
24 Alaska law that may impact the case;
- 25 • preparation of three motions, related briefing (e.g. reply), affidavits, and proposed
26 orders;

- communications with opposing counsel regarding MB's efforts to pursue a trial setting, early case conference, and other litigation activities;
- investigating and assessing appropriate procedural responses to address the rapidly changing/evolving litigation activities pursued in an action to enforce a mediation provision; and
- attending a telephonic court hearing, preparation of a stipulation and proposed order related to a stay of the litigation, and related follow-up communications.

To protect confidentiality, the work described does not include whatever attorney-client privileged communications were necessary to further the defense of this case. Under the parties' Agreement and Nevada law, Alaska Pacific respectfully requests that the Court include **all** reasonable fees it incurred in defending this action, not merely fees incurred related to the motion for summary judgment.

As Alaska Pacific indicated in its Motion, it does not seek fees for preparing the Verified Memorandum of Costs or its Motion for Attorneys' Fees. Alaska Pacific is only seeking the fees it incurred to defend the litigation. When all the work performed by Alaska Pacific's counsel is considered, Alaska Pacific humbly requests that the Court award it attorneys' fees in the amount of \$19,315.00 on the basis that these fees are reasonable in light of the nature of this litigation, the efforts necessary to respond to MB's litigation activities, the quality of work performed by counsel, and the favorable results obtained. *See Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969); Mtn. for Attorneys' Fees, filed Nov. 18, 2014, Ex. 1; Reply, filed Dec. 22, 2014, Ex. 1. Thus, pursuant to the terms of the parties' Agreement, Alaska Pacific requests that it be made whole and that the Court award it reasonable attorneys' fees in the amount of \$19,315.00.

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AFFIRMATION PURSUANT TO NRS 239.B.030

DATED this 22nd day of January, 2015.

LAXALI & NOMURA, LTD.

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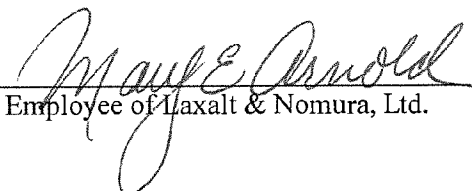
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on the 22nd day of January, 2015, I caused to be served a true and
4 correct copy of the foregoing ***DEFENDANT'S MOTION FOR LIMITED***
5 ***RECONSIDERATION OF THE COURT'S JANUARY 13, 2015 ORDER*** by:
6

- 7 ☐ Mail on the parties listed below in said action, by placing a true copy thereof enclosed in
8 a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At
9 the Law Offices of Laxalt & Nomura, mail placed in that designated area is given the
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22 addressed as follows:

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24 Robison Belaustegui, Sharp & Low
25 71 Washington Street
26 Reno, NV 89503
27 ***Attorneys for Plaintiff MB America, Inc.***
28

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26 An Employee of Laxalt & Nomura, Ltd.

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INDEX OF EXHIBITS

Exhibit 1	The Court's January 13, 2015 Order	4
Exhibit 2	The Agreement between MB and Alaska Pacific	5

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2015-01-22 03:07:30 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4784624 : ylloyd

EXHIBIT 1

EXHIBIT 1

AA0267

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MB AMERICA, INC., a Nevada
corporation,

Case No. CV14-01229

Dept. No. 8

Plaintiff,

vs.

ALASKA PACIFIC LEASING
COMPANY, a Alaska business
corporation; and DOES I-X, inclusive,

Defendant.

ORDER

On October 22, 2014, this court entered an *Order* granting summary judgment, and dismissing this case without prejudice. Currently before the court is Defendant Alaska Pacific Leasing Company's ("Alaska Pacific") *Motion for Attorney Fees*. Plaintiff MB America, Inc., ("MB America") opposed the motion, and also filed a *Motion to Retax Costs*. This order follows.

Motion for Attorney Fees

NRS 18.010(1) provides that the "compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law." As a general rule, Nevada courts broadly enforce attorney's fees provisions in written agreements. See *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 901 P.2d 684 (1995).

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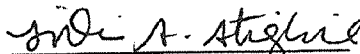
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17 unreasonable. Accordingly, the court awards Alaska Pacific costs in the amount of
18 \$649.75. See NRS 18.020.

19 Therefore, for the reasons stated above, the court ORDERS Alaska Pacific's
20 *Motion for Attorneys' Fees* GRANTED. The court further ORDERS MB America's
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23 IT IS SO ORDERED.

24 DATED this 13th day of January, 2015.

25
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28 District Judge

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Judicial Assistant

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2015-01-22 03:07:30 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 4784624 : ylloyd

EXHIBIT 2

EXHIBIT 2

AA0272



THE CRUSHING EVOLUTION

MB America, Inc.
8780 Technology Way
Reno, NV 89521
Phone 775-853-1058 - Fax 775-682-4382
www.mbamerica.com

Agreement

This Agreement is made as of the 1 day of August in the year of 2012, by and between "MB America, Inc.", a corporation incorporated under the laws of the state of Nevada, represented by Miriano Ravazzolo who has the necessary powers ("MB"), and "Alaska Pacific Leasing" a corporation incorporated under the laws of the state of Alaska, represented by Mr. David Faulk who has the necessary powers ("Dealer"), and to be administered as follows:

1. **APPOINTMENT AND ACCEPTANCE.** MB appoints Dealer as its exclusive reseller to promote the sale of the Products and Services as defined in paragraph 2 herein, and Dealer accepts the appointment and agrees to promote the sale of MB's Products as defined by this Agreement.
2. **PRODUCTS AND AREA.** The products covered by this Agreement (Products) are "crushing attachments", "screening attachments" and any other product and service manufactured and/or sold by the company "MB SpA" of Breganze, Italy ("Manufacturer") under its own brand name at the date of this agreement. Any new standard or custom Product developed or added by Manufacturer during the lifetime of this Agreement is not automatically included in the Agreement, but has to be agreed upon each time. The Area covered in this agreement is as specified in the Annex A, part I, of this Agreement.
3. **PRICES.** Dealer will purchase the Products at the prices specified in the current Price List, minus the dealer discount, and with the payment terms, as specified in the Annex A, part III, of this Agreement. Unless specifically agreed time by time, the prices are for material picked up by Dealer at one of our warehouses in the US, and do not include any transport or any other accessory cost.
The Price List, discounts and terms can be changed by MB at any moment with an advanced notice of 30 days; however, existing orders and/or proposals will be carried over at the conditions existing at the moment of their acceptance.
4. **WARRANTY AND SERVICE.** The warranty and service terms will be as defined in the Annex C. In any case, Dealer will communicate to MB the date of sale and the name and address of the purchasing entity for every Product sold, within 30 days from the sale; as well as the date of first use for Products that are used for rentals or demonstrations. Failure to do so will void any warranty on the Product, constitute significant breach of the Agreement.
5. **SALES OUTSIDE TERRITORY.** We discourage you selling New Products outside the Territory. Should you do so, you will be assessed a "servicing fee" of twenty percent (20%) of the discounted price of such New Product. The servicing fee, less an administrative assessment of 3%, will be paid to the dealer in whose Territory you sold the New Product, to compensate that dealer for providing support and for any advertising and effort spent in promoting interest in the Product. New Product for the purpose of this paragraph is product in service less than one year, except if sold at auctions.

Bucket Crushers Worldwide

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6. **RELATIONSHIP AND CONDUCT OF BUSINESS.** Dealer shall use its best efforts to promote the sale of and solicit orders for the Products and services and will conduct all its business in its own name and in such a manner as it may see fit, pay all its own expenses including all commissions, salaries, bonuses, and expenses of its own employees and sales persons and any and all taxes properly and lawfully associated with doing business as an independent entity in the assigned territory.

MB shall furnish Dealer, at no expense to Dealer, with catalogs, literature, and any other material available for the proper promotion and solicitation of orders for the Products in the assigned territory. MB can contribute to the marketing activities of Dealer, as advertising, exhibitions and the like, on a time-by-time base or as result of separate agreements.

MB can participate, at its own expense and decision, to exhibitions, conventions or conferences in any area of the country, and Dealer is not obliged to participate or contribute to said events.

Dealer shall abide by MB's terms and conditions pertaining to the sale of the Products and services, their operations, and their warranty (if any), and shall communicate same to customers. Dealer shall hold MB harmless from and shall indemnify MB for all liability, loss, costs, expenses or damages, including court costs and reasonable attorneys' fees, caused by any misrepresentation made by Dealer or its employees concerning MB's products or services.

Dealer is directly initiating and maintaining the relationship with its customer and will cooperate with the MB to solve possible disputes arising in connection with the Product.

Dealer is an independent entity and shall have sole control of the means of performing under this Agreement. Nothing in this Agreement shall be construed to constitute Dealer as a partner or employee of MB nor shall either have any authority to bind the other in any respect.

7. **BRAND PROTECTION.** Every Product sold to a final user will have to carry all the original logos, branding, identification numbers and serials as supplied by Manufacturer. Dealer will not alter, modify or hide the brand name or logos in any way. Proposals, quotes and invoices to the final users will have to clearly specify the Manufacturer's brand name.

Dealer can produce its own promotional material and/or advertising about the Product. However every document or photo will have to clearly indicate Manufacturer brand and logo, and the drafts of said promotional material or advertising will have to be submitted to MB for approval before printing and/or producing. MB has the faculty to deny the approval within 5 days from the date of receiving the drafts, at its own discretion.

8. **TERM OF AGREEMENT AND TERMINATION.** This Agreement shall be effective on the date listed on page 1 and shall continue in force for an initial term of 1 year.

This Agreement may be terminated by either party:

- (a) By written agreement mutually agreed upon to be terminated at any time; or
- (b) (But not effective during the initial term of the Agreement), for no cause upon at least 90 days' prior written notice to the other party;
- (c) By both parties in case of breach of this agreement, with 30 days written notice.
- (d) After 30 days' written notice if either party has filed or has filed against it a petition in bankruptcy (which is not dismissed within 30 days after it is filed) or after 30 days' written notice if either party has other cause.

9. **RIGHTS UPON TERMINATION.** Upon termination of this Agreement any current order will be carried on as scheduled. MB will however have the option to request a different payment term for

Bucket Crushers Worldwide



any order placed by Dealer from the moment of the notice of termination.

10. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement contains the entire understanding of the parties, shall supersede any other oral or written agreements, and shall be binding upon successors and assigns. It may not be modified in any way without the written consent of an officer or owner of both parties.

11. **SURVIVABILITY OF AGREEMENT; HIERARCHY.** If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. In case that any provision or part thereof in Annex A or Annex C would be considered contrasting with any provision or part in this Agreement, the provisions in Annex A or Annex C will prevail.

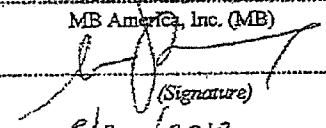
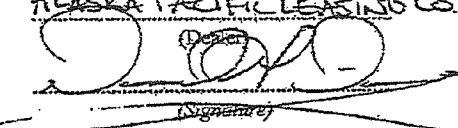
12. **APPLICABLE LAW - WAIVER.** This Agreement shall be construed according to the laws of the State of Nevada. The failure of either party to enforce, at any time or for any period of time, any provisions of this Agreement shall not be construed as a waiver of such provision or of the right of such party thereafter to enforce such provision.

13. **DISPUTES AND MEDIATION.** The parties agree that any disputes or questions arising hereunder, including the construction or application of this Agreement, shall be submitted to mediation between MB and Dealer with the rules of the American Arbitration Association, of which any hearing or meeting should be conducted in Reno, NV. Any mediation settlement by the parties shall be documented in writing. If such mediation settlement modifies the language of this Agreement, the modification shall be put in writing, signed by both parties and added to this Agreement as an attachment.

If mediation between the parties does not result in a mutual satisfying settlement within 180 days after submission to mediation, then each party will have the right to enforce the obligations of this Agreement in the court of law of Reno, Nevada with all reasonable attorney fees, court costs and expenses incurred by the prevailing party in such litigation to be paid by the other party.

14. **NOTICES.** All notices, demands or other communications by either party to the other shall be in writing and shall be effective upon personal delivery, or 72 hours after deposited in the United States mail, first class certified postage prepaid, or by email.

IN WITNESS WHEREOF, the officers or owners of both parties hereto have executed this Agreement to be effective on the day and year listed on page one of this Agreement written in multiple counterparts, each of which shall be considered an original.

<p>MB America, Inc. (MB)</p> <p> (Signature)</p> <p>8/20/2012</p>	<p>ALASKA PACIFIC LEASING CO., INC.</p> <p> (Signature)</p> <p>AUGUST 17, 2012</p>
--	--

Bucket Crushers Worldwide

MB America, Inc
Dealer Agreement with
Alaska Pacific Leasing
9191 Old Seward Highway Unit #15
Anchorage, Alaska, 99515

Annex A

Part I - Territory

The territory will be the States of Alaska.

Part II - Sales Objectives:

After 120 days from the execution of this Agreement, MB will submit to Dealer a Target Sales Objective for the remaining time of the agreement, which will consider the market situation and the potentials of the line.

Part III - Discount and Payments:

The discount reserved is 36% (thirty-six percent) on the current price list and its modifications. Dealer will pay the shipping costs from one of our warehouses to his premises.


The payments will be by check or wire transfer as follows:

- 10% at the order
- final amount, including transport and any other costs, before shipping.

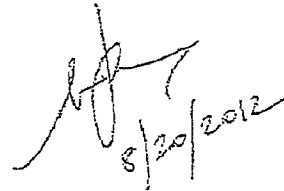
MB America will establish a maximum credit line with Dealer, which will not be exceeded at any moment.

Any delay in the payment will allow MB America to request and charge the payment of compounded interests of 1.5% monthly.

Signed:



Date: AUGUST 17, 2012



2645
Michael E. Sullivan, Esq. (SBN 5142)
ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Attorneys for Plaintiff MB America, Inc.

IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MB AMERICA, INC., a Nevada
corporation,

Case No.: CV14-01229

Plaintiff,

Dept. No.: 8

v.

ALASKA PACIFIC LEASING COMPANY,
a Alaska business corporation; and DOES
I through X, inclusive,

**MB AMERICA, INC.'S OPPOSITION
TO DEFENDANT'S MOTION FOR
LIMITED RECONSIDERATION OF
THE COURT'S JANUARY 13, 2015
ORDER**

Defendants.

Plaintiff MB America, Inc. by and through its counsel of record Robison,
Belaustegui, Sharp & Low, hereby opposes Defendant's Motion for Limited
Reconsideration of The Court's January 13, 2015 Order.

DATED this 30th day of January, 2015.

ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, NV 89503

By: 

MICHAEL E. SULLIVAN, ESQ.
Attorneys for Plaintiff MB America, Inc.

1 **I. INTRODUCTION**

2 Defendant, Alaska Pacific Leasing Company (an Alaska corporation), takes issue
3 with this Court's Order dated January 13, 2015 which awarded \$5,000.00 to Alaska
4 Pacific for attorney's fees and \$649.75 in costs. Alaska Pacific argues that the Order
5 was imprudently entered because this Court failed to take into account other work that
6 Alaska Pacific ostensibly did in this simple case. Additionally, Alaska Pacific is critical of
7 this Court's analysis because Alaska Pacific contends that the Court "focused its
8 analysis on Alaska Pacific's single motion for summary judgment to determine the
9 reasonableness of the fees requested." See Defendant's Motion for Limited
10 Reconsideration, p. 3, lns. 14-15. Alaska Pacific suggests, incorrectly, that this Court
11 should reconsider its Order because Alaska Pacific did not get all of its attorney's fees
12 and it wants a second "bite at the apple."

13 Alaska Pacific's motion is meritless. First, Alaska Pacific correctly cites the rule
14 that one must first seek leave of court to file a motion for reconsideration and then
15 simultaneously ignores the rule and fails to obtain leave of court to file such motion.
16 Secondly, this Court properly analyzed all of the *Brunzell* factors, and the controlling
17 case of *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 192 P.3d 730
18 (2008) before arriving at its decision. Importantly, this Court noted that Alaska Pacific
19 claimed to have spent in excess of 60 attorney hours defending this case, and has
20 requested a fee award in the amount of \$19,315.00. See Court Order, dated January
21 13, 2015, p. 2, ln. 26 – p.3, ln. 1. For the reasons set forth below, reconsideration is not
22 warranted and must be denied as a matter of law.

23 **II. ARGUMENT**

24 **A. Leave of Court Must be Obtained Prior to Seeking Reconsideration of**
25 **a Final Order.**

26 The irony of Alaska Pacific's latest filing is that it first acknowledges that one
27 must first obtain leave of court and have the court grant leave before filing a motion, and
28 then Alaska Pacific fails to do so. See WDCR 13(7). This Court's Order, dated January

1 13, 2015, cannot be reconsidered without leave of the court “upon motion therefore.”
2 Thus, this motion is a fugitive paper and should be stricken as a matter of law.

3 **B. Reconsideration is not Warranted.**

4 Notwithstanding Alaska Pacific’s failure to comply with the district court rules in
5 bringing its motion, no reconsideration is warranted. First, reconsideration of a final
6 order is only appropriate where the movant can show (1) mistake, inadvertence,
7 surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud (whether
8 heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of
9 an adverse party; (4) the judgment is void; or, (5) the judgment has been satisfied,
10 released, or discharged, or a prior judgment upon which it is based has been reversed
11 or otherwise vacated, or it is no longer equitable that an injunction should have
12 prospective application. NRCP 60(b). Here, Alaska Pacific has not argued any of the
13 applicable considerations for amending a final order.

14 This Court had all of the information it needed before arriving at its decision after
15 it reviewed Alaska Pacific’s motion for fees. This Court was fully aware of the fact that
16 Alaska Pacific somehow utilized 60 attorney hours defending this case and that the
17 summary judgment motion was a mere 10 pages long and did not contain any extensive
18 legal research. This Court also took judicial notice and common sense of the fact that
19 there had been no discovery conducted in the case, no NRCP 16.1 early case
20 conference, and no other substantive work performed. This Court generously awarded
21 \$5,000.00 to Alaska Pacific after considering all of the *Brunzell* factors and the factual
22 documentation supplied by Alaska Pacific.

23 Alaska Pacific’s argument that *State, Dep’t of Human Resources v. Fowler*, 109
24 Nev. 782, 784, 858 P.2d 375, 376 (1993) mandates that a court award all reasonable
25 attorney’s fees incurred in litigation is misplaced. Alaska Pacific fails to recognize the
26 meaning of the word “reasonable” when citing this case. This Court, thoroughly and
27 accurately analyzed the reasonableness of the work performed and concluded that
28 \$5,000.00 was an appropriate award of fees. Alaska Pacific’s motive in filing the instant

1 motion is simply to drive up the costs of litigation in light of the fact that an appeal has
2 been filed with the Nevada Supreme Court in this important matter.

3 The purpose of a motion for reconsideration is not to give a party a second bite at
4 the apple. Rather, the purpose of the rule is to point out a mistake of law – Alaska
5 Pacific fails to comply with this requirement.

6 **III. CONCLUSION**

7 Clearly, this Court's Order was thoroughly analyzed in both law and fact when
8 the Court arrived at its decision regarding attorney's fees and costs. Because Alaska
9 Pacific did not obtain leave of court to file the instant motion, and because Alaska
10 Pacific has not provided this Court evidence which it did not properly have at the time it
11 properly filed its motion, reconsideration is not warranted as a matter of law. Alaska
12 Pacific should not be allowed to use a motion for reconsideration as a substitute for an
13 appeal on the merits of this case.

14 For the reasons set forth herein, it is respectfully requested that this Court deny
15 Alaska Pacific's motion in its entirety.

16 **AFFIRMATION:** The undersigned does hereby affirm that this document does not
17 contain the Social Security Number of any person.

18 DATED this 30th day of January, 2015.

19
20 ROBISON, BELAUSTEGUI, SHARP & LOW
21 A Professional Corporation
22 71 Washington Street
23 Reno, Nevada 89503

24 By: 

25 MICHAEL E. SULLIVAN, ESQ.
26 Attorneys for Plaintiff MB America, Inc.
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON,
3 BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true
4 copy of the attached **MB AMERICA, INC.'S OPPOSITION TO DEFENDANT'S**
5 **MOTION FOR LIMITED RECONSIDERATION OF THE COURT'S JANUARY 13, 2015**
6

7 **ORDER** on all parties to this action by the method(s) indicated below:

8 ✓ by placing an original or true copy thereof in a sealed envelope, with
9 sufficient postage affixed thereto, in the United States mail at Reno,
Nevada, addressed to:

10 Holly S. Parker, Esq.
11 Marilee Breternitz, Esq.
12 Laxalt & Nomura, Ltd.
13 9600 Gateway Drive
Reno, Nevada 89521
Attorneys for Defendant Alaska Pacific Leasing Company

14 ✓
15 by using the Court's CM/ECF Electronic Notification System
addressed to:

16 Holly S. Parker, Esq.
17 Marilee Breternitz, Esq.
Attorneys for Defendant Alaska Pacific Leasing Company

18
19 by facsimile addressed to:

20 Holly S. Parker, Esq./Marilee Breternitz, Esq. – Fax # 322-1865
Attorneys for Defendant Alaska Pacific Leasing Company

21
22 by hand-delivery addressed to:

23 Holly S. Parker, Esq.
24 Marilee Breternitz, Esq.
25 Laxalt & Nomura, Ltd.
9600 Gateway Drive
Reno, Nevada 89521
Attorneys for Defendant Alaska Pacific Leasing Company

26
27 DATED this 30th day of January, 2015.

28

MERNA MEIER

3790

HOLLY S. PARKER, ESQ. (SBN 10181)
LAXALT & NOMURA, LTD.
9600 Gateway Drive
Reno, Nevada 89521
hparker@laxalt-nomura.com
Telephone: (775) 322-1170
Facsimile: (775) 322-1865
Attorneys for Defendant Alaska
Pacific Leasing Company

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

MB AMERICA, INC., a Nevada Corporation, Plaintiff vs. ALASKA PACIFIC LEASING COMPANY, a Alaska business corporation; and DOES 1-THROUGH X, inclusive, Defendants.	CASE NO: CV14-01229 DEPT. NO. 8 <u>REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR LIMITED RECONSIDERATION OF THE COURT'S JANUARY 13, 2015 ORDER</u>
---	--

Defendant, ALASKA PACIFIC LEASING COMPANY ("Alaska Pacific"), by and through its undersigned counsel, hereby submits this Reply in Support of Defendant's Motion for Limited Reconsideration of the Court's January 13, 2015 Order.

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

A. Alaska Pacific properly filed its Motion for Limited Reconsideration under DCR 13(7) and WDCR 12(8); implicit in the timely filing of the Motion is a request that the Court grant leave to consider the merits of the Motion.

A request for leave of the Court to consider the merits of Alaska Pacific's Motion for Limited Reconsideration is implicit in its timely filing of the Motion. MB America Inc.'s ("MB") argument that Alaska Pacific should have filed a separate motion for leave of Court to

1 consider the actual Motion for Reconsideration exalts form over substance. The argument is also
2 contrary to the plain meaning of District Court Rule (“DCR”) 13(7) and the timing requirements
3 for a motion for reconsideration under Washoe District Court Rule (“WDCR”) 12(8).

4 DCR 13(7), states, “No motion once heard and disposed of shall be renewed in the same
5 cause, nor shall the same matters therein embraced be reheard, unless by leave of the court
6 granted upon motion therefor, after notice of such motion to the adverse parties.” The plain
7 meaning of the terms “upon motion therefor” refers to the filing of a motion for an issue to be
8 renewed and/or reheard, but not an additional motion for leave to file a motion for rehearing.
9 Otherwise, a party would be required to file 2 motions (and related oppositions and replies)
10 related to a single request for reconsideration. The filing of multiple motions would involve
11 inefficient overlap of issues and expend more of the Court’s valuable time to consider all the
12 briefing.
13

14 Moreover, if a party seeking reconsideration was required to file an additional motion for
15 leave before requesting reconsideration, the party would not have sufficient time to file a motion
16 for leave, allow for full briefing and a decision on that motion, and then meet the 10 day deadline
17 after notice of entry of order of the underlying decision for the filing of the actual motion for
18 reconsideration. WDCR 12 provides in pertinent part:
19

- 20 8. The rehearing of motions must be done in conformity with D.C.R. 13, Section 7. A
21 party seeking reconsideration of a ruling of the court, other than an order which may be
22 addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for
23 such relief within 10 days after service of written notice of entry of the order or
24 judgment, unless the time is shortened or enlarged by order. A motion for rehearing or
25 reconsideration must be served, noticed, filed, and heard as is any other motion. A motion
26 for rehearing does not toll the 30-day period for filing a notice of appeal from a final
27 order or judgment.
28 9. If a motion for rehearing is granted, the court may make a final disposition of the
cause without reargument, or may restore it to the calendar for reargument or
resubmission, or may make such other orders as are deemed appropriate under the
circumstances of the particular case.

1 Even if the title of Alaska Pacific's Motion for Limited Reconsideration did not specifically
2 reference leave of Court, implicit in the timely filing of Alaska Pacific's Motion under WDCR
3 12(8) is a request that the Court grant leave to consider the merits of the Motion.

4 **B. Limited reconsideration of the award of attorneys' fees to reflect all work**
5 **performed is warranted under the standard for reconsideration.**

6 Alaska Pacific has humbly requested reconsideration of the partial award of fees on the
7 limited basis the parties' Agreement and Nevada law supports an award of **all** reasonable fees
8 incurred or Alaska Pacific is not made whole and its contract rights are diminished.¹ Alaska
9 Pacific, therefore, has provided a legal and/or factual basis for the Court to amend (on a limited
10 basis) its prior Order under the standard for reconsideration, which allows the Court broad
11 discretion to amend or reconsider its prior orders. *See e.g. Trail v. Faretto*, 91 Nev. 401, 403,
12 536 P.2d 1026, 1027 (1975) ("Furthermore, a court may, for sufficient cause shown, amend,
13 correct, resettle, modify, or vacate, as the case may be, an order previously made and entered on
14 motion in the progress of the cause or proceeding.") (internal citations omitted); *Harvey's Wagon*
15 *Wheel v. MacSween*, 96 Nev. 215, 217-18, 606 P.2d 1095, 1097 (1980) (reconsideration of
16 previously denied motion for summary judgment granted where judge was more familiar with
17 the case by the time the second motion was heard and the judge was more persuaded by the
18 rationale of the newly cited authority).

19 MB asserts that Alaska Pacific fails to recognize the meaning of the word "reasonable"
20 when citing *State, Dep't of Human Resources v. Fowler*, 109 Nev. 782, 784, 858 P.2d 375, 376
21 (1993). Alaska Pacific cited this case in its Motion merely for the proposition that a district court
22 in Nevada has authority to award fees if they are permitted under a statute, rule, or contract, so it
23 is not clear what meaning of the word "reasonable" MB is referencing.

24
25
26
27 ¹ MB cites potential bases for reconsideration under Nevada Rule of Civil Procedure 60(b). Alaska Pacific,
28 however, brought its Motion for Limited Reconsideration under WDCR 12(8).

1 In its Motion, Alaska Pacific also cites the parties' Agreement, which entitles the
2 prevailing party to "all reasonable attorney fees . . ." (Emphasis supplied). See Ex. 2 to Motion.
3 Accordingly, under the parties' Agreement, Alaska Pacific is entitled to attorneys' fees for all
4 work performed, not only for the work done related to the motion for summary judgment. MB
5 does not address this language in the parties Agreement in its Opposition.

6 If Alaska Pacific is not compensated for all efforts it made to become a prevailing party
7 under the Agreement, it is not made whole under Nevada law and its contract rights will be
8 diminished. See *Musso v. Binick*, 104 Nev. 613, 614, 764 P.2d 477 (1988) (discussing that a
9 prevailing party should be indemnified for the **full amount** of the obligation, or its contract
10 rights are diminished if the party must defend at its own expense).² Therefore, Alaska Pacific
11 submits that limited reconsideration is appropriate so that Alaska Pacific is awarded attorneys'
12 fees for all work that was required for it to become a prevailing party in this case, not merely the
13 work related to the single 10 page motion for summary judgment.
14

15 Compensating Alaska Pacific for all of the attorneys' fees it has incurred is also
16 consistent with the *Brunzell* factors. The Court's Order awarding partial fees states:
17

18 This case consisted of a single motion for summary judgment, on the basis that the parties
19 had failed to exhaust their contractual administrative remedies. The summary judgment
20 motion was ten pages long, and does not contain any extensive legal research.
21 Accordingly, given the factors set forth in *Brunzell*, the court cannot conclude that the
22 requested fees are reasonable.

23 See Ex. 1 to Motion for Limited Reconsideration. From this language, it is apparent the Court
24 considered only the 10 page motion for summary judgment under the *Brunzell* factors. Alaska
25 Pacific described the other work that was unfortunately necessary to defend this litigation in its
26 Motion; under the factor relating to the "work actually performed by the lawyer," Alaska Pacific
27 requests that all work be considered. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455

28 ² MB does not address *Musso v. Binick* in its Opposition.

1 P.2d 31, 33 (1969) (discussing that one of the factors that should be considered includes "*the*
2 *work actually performed by the lawyer*: the skill, time and attention given to the work.") In light
3 of the clear language of the parties Agreement and the Nevada authorities cited above and in the
4 Motion, Alaska Pacific humbly requests that **all** of the work necessary to defend this case be
5 considered under the *Brunzell* factors and reflected in the award of fees.

6 **II. CONCLUSION**

7 Based on the foregoing, Alaska Pacific respectfully requests the Court grant its Motion
8 for Limited Reconsideration of the Court's January 13, 2015 Order and award Alaska Pacific
9 reasonable attorneys' fees in the amount of \$19,315.00.
10

11 **AFFIRMATION PURSUANT TO NRS 239.B.030**

12 The preceding document does not contain the social security number of any person.

13 DATED this 5th day of February, 2015.
14

15 LAXALT & NOMURA, LTD.

16 

17 HOLLY S. PARKER (SBN 10181)

18 LAXALT & NOMURA, LTD.

19 9600 Gateway Drive

20 Reno, Nevada 89521

21 hparker@laxalt-nomura.com

22 Telephone: (775) 322-1170

23 Facsimile: (775) 322-1865

24 Attorneys for Defendant Alaska

25 Pacific Leasing Company
26
27
28

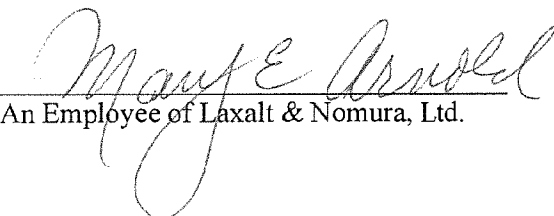
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LAXALT &
3 NOMURA, LTD., and that on the 5TH day of February, 2015, I caused to be served a true and
4 correct copy of the foregoing ***DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR***
5 ***LIMITED RECONSIDERATION OF THE COURT'S JANUARY 13, 2015 ORDER*** by:
6

- 7 ☐ Mail on the parties listed below in said action, by placing a true copy thereof enclosed in
8 a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At
9 the Law Offices of Laxalt & Nomura, mail placed in that designated area is given the
10 correct amount of postage and is deposited that same date in the ordinary course of
11 business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.
12 ☒ By electronic service under NEFCR 9, by filing the foregoing with the Clerk of Court
13 using the E-Flex system, which will electronically mail the filing to the following
14 individuals at the email addresses furnished by the registered users through the E-Flex
15 system.
16 ☐ Personal delivery by causing a true copy thereof to be hand delivered this date to the
17 address(es) at the address(es) set forth below.
18 ☐ Facsimile on the parties in said action by causing a true copy thereof to be telecopied to
19 the number indicated after the address(es) noted below.
20 ☐ Federal Express or other overnight delivery.
21 ☐ Reno/Carson Messenger Service

22 addressed as follows:

23 Michael E. Sullivan, Esq.
24 Robison Belaustegui, Sharp & Low
25 71 Washington Street
26 Reno, NV 89503
27 ***Attorneys for Plaintiff MB America, Inc.***
28


An Employee of Laxalt & Nomura, Ltd.

3860
HOLLY S. PARKER, ESQ.
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Attorneys for Defendant Alaska
Pacific Leasing Company

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

MB AMERICA, INC., a Nevada Corporation	CASE NO: CV14-01229
Plaintiff	DEPT. NO. 8
vs.	<u>REQUEST FOR SUBMISSION</u>
ALASKA PACIFIC LEASING COMPANY, a Alaska business corporation; and DOES 1-THROUGH X, inclusive,	
Defendants.	

It is hereby requested that Defendant Alaska Pacific Leasing Company's *Motion for Limited Reconsideration of the Court's January 13, 2015 Order* filed on January 22, 2015 be submitted to the Court for decision.

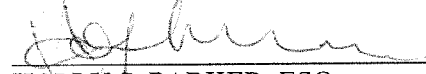
The undersigned attorney certifies that a copy of this request has been served to all counsel of record.

AFFIRMATION PURSUANT TO NRS 239.B.030

The preceding document does not contain the social security number of any person.

DATED this 5th day of February, 2015.

LAXALT & NOMURA, LTD.



HOLLY S. PARKER, ESQ.

Nevada State Bar No: 10181

LAXALT & NOMURA, LTD.

9600 Gateway Drive

Reno, Nevada 89521

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Telephone: (775) 322-1170

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Attorneys for Defendant Alaska

Pacific Leasing Company

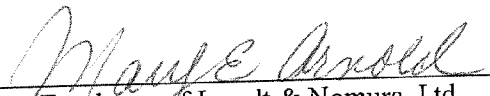
CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I hereby certify that I am an employee of LAXALT & NOMURA, LTD., and that on the 5th day of February, 2015, I caused to be served a true and correct copy of the foregoing REQUEST FOR SUBMISSION by:

- ☐ Mail on the parties listed below in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of Laxalt & Nomura, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.
- ☒ By electronic service under NEFCR 9, by filing the foregoing with the Clerk of Court using the E-Flex system, which will electronically mail the filing to the following individuals at the email addresses furnished by the registered users through the E-Flex system.
- ☐ Personal delivery by causing a true copy thereof to be hand delivered this date to the address(es) at the address(es) set forth below.
- ☐ Facsimile on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.
- ☐ Federal Express or other overnight delivery.
- ☐ Reno/Carson Messenger Service

addressed as follows:

Michael E. Sullivan, Esq.
Robison Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503
Attorneys for Plaintiff MB America, Inc.


An Employee of Laxalt & Nomura, Ltd.

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

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9 MB AMERICA, INC., a Nevada
corporation,

Case No. CV14-01229

Dept. No. 8

10 Plaintiff,

11 vs.

12
13 ALASKA PACIFIC LEASING
COMPANY, a Alaska business
14 corporation; and DOES I-X, inclusive,

15 Defendant.
16 _____/

17 **ORDER DENYING RECONSIDERATION**

18 On October 22, 2014, this court entered an *Order* granting Defendant Alaska
19 Pacific Leasing Company's ("Alaska Pacific") *Motion for Attorney Fees*, awarding
20 attorneys' fees in the amount of \$5,000.00. Alaska Pacific filed the instant *Motion*
21 *for Reconsideration* on January 22, 2015. Plaintiff MB America, Inc. opposed the
22 motion, and Alaska Pacific filed a reply. This order follows.

23 Generally, a district court may only "reconsider a previously decided issue if
24 substantially different evidence is subsequently introduced or the decision is clearly
25 erroneous." *Masonry and Tile v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d
26 486, 489 (1997). "Only in very rare instances in which new issues of fact or law are
27 raised supporting a ruling contrary to the ruling already reached should a motion
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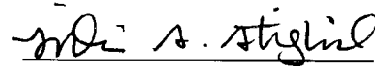
1 for rehearing be granted." *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d
2 244, 246 (1976).

3 In its motion, Alaska Pacific requests the court to reconsider its decision to
4 award \$5,000.00 of attorney fees in this case, and asks the court to award the full
5 \$19,315.00 of fees requested. Having reviewed the pleadings of the parties, the
6 court concludes that Alaska Pacific has not demonstrated that the prior decision of
7 this court was clearly erroneous, or that this court has overlooked a material
8 question of fact or law. While the quality of legal representation provided was
9 excellent, in light of the character of the case, the work actually performed, and the
10 result achieved, the court concludes that a fee award of \$5,000.00 was reasonable in
11 this case. *See Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 192
12 P.3d 730 (2008) (citing *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455
P.2d 31 (1969)).

13 Accordingly, the court ORDERS Alaska Pacific's *Motion for Reconsideration*
14 DENIED.

15 **IT IS SO ORDERED.**

16 **DATED** this 12th day of March, 2015.

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20 **LIDIA S. STIGLICH**
21 District Judge
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 12th day of March, 2015, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Holly Parker, Esq.

Michael Sullivan, Esq.

Marilee Breternitz, Esq.

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


CHRISTINE KUHL
Judicial Assistant