

# EXHIBIT 1

# EXHIBIT 1

# PROIMTU MMI LLC

Business Entity Information			
Status:	Active	File Date:	7/17/2013
Type:	Domestic Limited-Liability Company	Entity Number:	E0349142013-5
Qualifying State:	NV	List of Officers Due:	7/31/2016
Managed By:	Managers	Expiration Date:	
NV Business ID:	NV20131428081	Business License Exp:	7/31/2016

Additional Information	
Central Index Key:	

Registered Agent Information			
Name:	FENNEMORE CRAIG, P.C. (LAS VEGAS)	Address 1:	300 S FOURTH ST STE 1400
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89101
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

Financial Information			
No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

<input checked="" type="checkbox"/> Officers <span style="float: right;"><input type="checkbox"/> Include Inactive Officers</span>			
Manager - GABRIEL GONZALEZ GARCIA			
Address 1:	2951 SIENA HEIGHTS DR. #3312	Address 2:	
City:	HENDERSON	State:	NV
Zip Code:	89052	Country:	USA
Status:	Active	Email:	
Manager - JUAN ANTONIO MARTINEZ			
Address 1:	C/ECONOMIA 2 PI VEINTIOCHO DE FEBRERO APDO. DE CORREOS 101	Address 2:	
City:	LA RINCONADA, SEVILLA	State:	
Zip Code:	41309	Country:	ESP

Status:	Active	Email:	
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<b>Actions\Amendments</b>			
Action Type:	Articles of Organization		
Document Number:	20130470286-83	# of Pages:	1
File Date:	7/17/2013	Effective Date:	
(No notes for this action)			
Action Type:	Merge In		
Document Number:	20130520130-87	# of Pages:	12
File Date:	8/6/2013	Effective Date:	
(No notes for this action)			
Action Type:	Initial List		
Document Number:	20130536272-21	# of Pages:	1
File Date:	8/15/2013	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20140496465-11	# of Pages:	1
File Date:	7/9/2014	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20150237203-95	# of Pages:	1
File Date:	5/27/2015	Effective Date:	
(No notes for this action)			

# EXHIBIT 2

# EXHIBIT 2

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GRUPO MARA is a business group with INTERNATIONAL PRESENCE that provides construction services for all kinds of industrial facilities for large national and multi-national companies.

Grupo Mara was founded in 2006 in relation to the Almería solar power platform (Spanish Ministry of Education and Science Centre) in order to develop technologies for renewable energies.

Since its origins, the company has been committed to security, quality and environmental respect and believes reliability, commitment and a high service level are the keys to achieving success.

Its diversification policy and the support offered by the various companies in the group allow it to provide comprehensive services in the following lines of business:

- Detailed and control engineering
- Supervision, control and planning of industrial works
- Electricity systems, instrumentation and control
- The manufacture and installation of equipment, structures, tanks and pipes
- Prevention and correction maintenance services and scheduled shutdowns

In the following sectors:

- Oil and Gas

- Energy Generation
- Metal and Mining
- Chemicals and Petrochemicals

GRUPO MARA CONTACT

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EXHIBIT 3

EXHIBIT 3

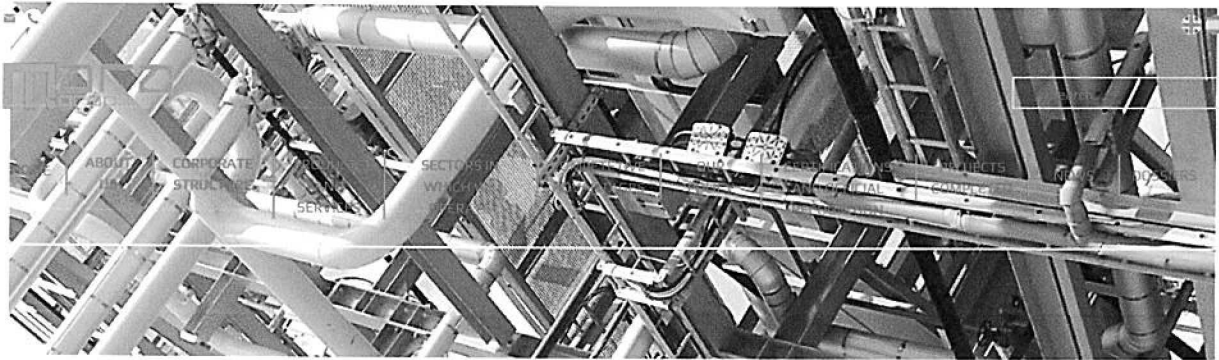
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**proimtu**  
montaje y mantenimiento industrial

#### PIPE DESIGN AND INSTALLATION

A company that specializes in the execution of mechanical system manufacturing, assembly and maintenance projects in the Oil and Gas, Energy Generation, Metal and Mining, and Chemicals and Petrochemicals sectors.

#### References



Customer: **ABENGOA SOLAR**

- The manufacture and assembly of Avanza-2 test benches



Customer: **ACCIONA**

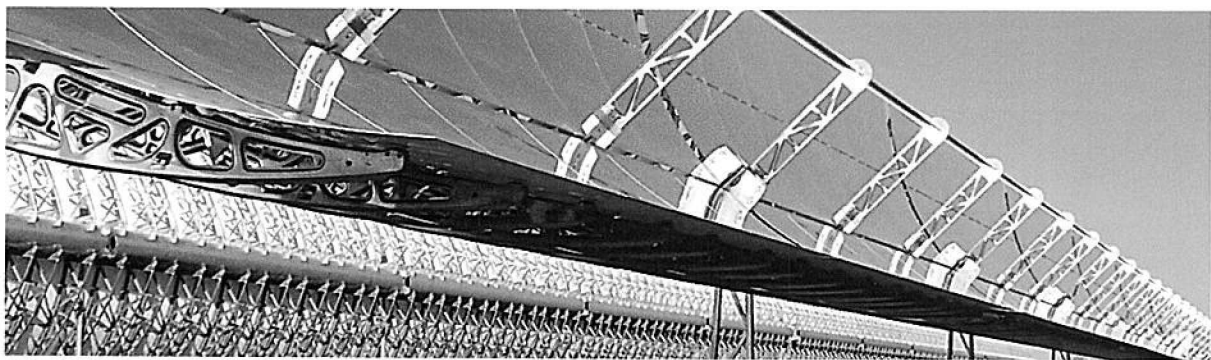
- The installation of a new field of experimental parabolic solar collectors on a Solar Platform in Almería.

Customer: **PSA**

- The supply and replacement of mirror facets and heliostat edging for the CESA-1 solar field and CRS.

Customer: **GRUPO COBRA**

- Engineering: **GRUPO SOIL**
- The manufacture and assembly of Avanza-2 test benches



Caquemada Photovoltaic Plant with two-axle trackers - Seville - Spain



Engineering: **INABENSA**

Customer: **ABENGOA SOLAR**

- Power: **1,9MW**
- Work: **Mechanical assembly, panel connections**

Linares Photovoltaic Plant (Jaén) with two-axle trackers - Spain Engineering:

Engineering: **INABENSA**

Customer: **ABENGOA SOLAR**

- Power: **1,9MW**
- Work: **Mechanical assembly, panel connections**

STEAM GENERATION PLANTS  
Solnoval I and IV in Sanlúcar la Mayor,  
Helioenergy I and II in Écija, Seville - Spain

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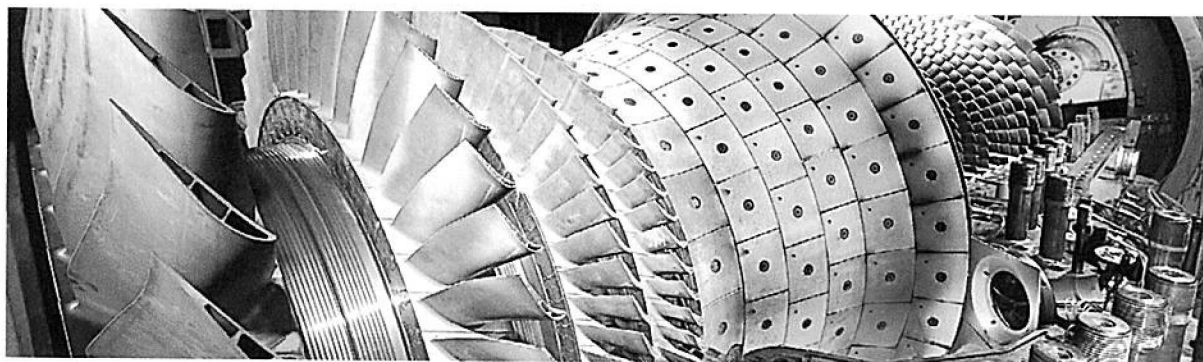
NEWS

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RECOGNITION  
Engineering: **BK ALLBORG**

Customer: **ABENGOA**

- Production: **20.000"**
- Works: **The manufacture and assembly of pipes, Equipment Assembly, Electrical and control supply and installation**



SOLAR THERMAL POWER PLANT  
Helioenergy I y II, Écija, Sevilla - España

SOLAR THERMAL POWER PLANT  
Solacor I y II, El Carpio, Córdoba - España

SOLAR THERMAL POWER PLANT  
Helioenergy I y II, Écija, Sevilla - España

For: **INABENSA INSTALACIONES**

Developer: **ABENGOA**

- Production: **60.000"**
- Completion Term / Initial Weight: **45.000 kg supports, 7 months**
- Trabajo: **The manufacture, assembly and commissioning of the Power Island**

For: **UTE ABENER-TEYMA**

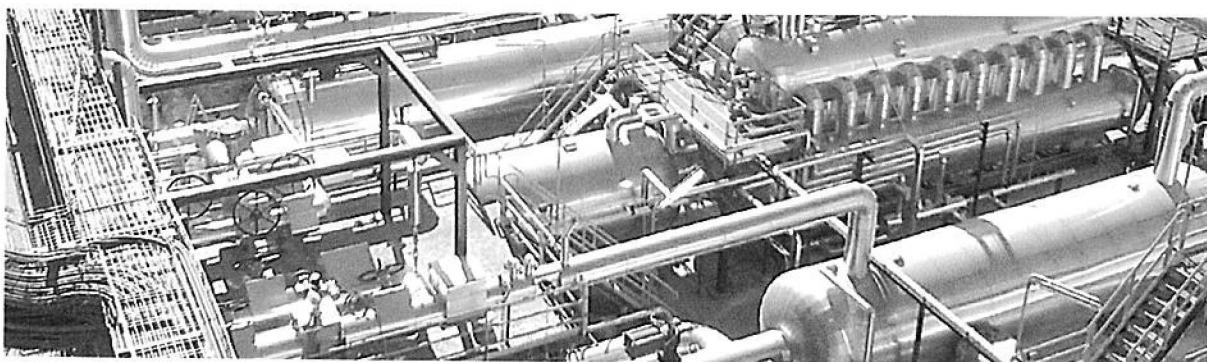
Developer: **ABENGOA**

- Production: **110.000"**
- Completion Term / Initial Weight: **200.000 kg supports, 6 months**
- Works: **The manufacture, assembly and commissioning of a power island**

For: **INABENSA INSTALACIONES**

Developer: **ABENGOA**

- Production: **9.000 CCP modules**
- Completion Term / Initial Weight: **7 months**
- Work: **CCP assembly**



SOLAR THERMAL POWER PLANTS  
Solaben III, Cáceres - España

REPSOL REFINERY  
Cartagena - España

SUPPLY AND MANUFACTURE  
Repsol Refinery, Cartagena - España

For: **INABENSA INSTALACIONES**

Developer: **ABENGOA**

- Production: **9.000 CCP modules**
- Completion Term / Initial Weight: **7 months**

Customer: **TÉCNICAS REUNIDAS**

- Work: **The repair of a hydrocracking unit oven and Repsol hydrogen reformer**

Customer: **TÉCNICAS REUNIDAS**

- Production: **20.000"**
- Completion Term / Initial Weight: **3 months**
- Work: **Spools for hydrogen reformers**

York: CCP assembly




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ASSEMBLY OF CRS HELIOSTAT FIELDS  
CRS I & II, Eureka y P20 en Sevilla - España

POWER ISLAND  
Solaben I, Cáceres - España

MANUFACTURE OF CCP MODULES  
Arenales, Sevilla -España

Engineering: **ABENER - TEYMA**

Developer: **ABENGOA**

- Production: **165 units**
- Repair: **150 mirror facets**
- Completion Term / Initial Weight: **2,5 months**

Customer: **ABENGOA**

- Production: **55.000"**
- Completion Term / Initial Weight: **100.000 kg supports, 3 months**

Customer: **SIEMENS**

- Production: **7488 PARABOLIC TROUGHS**
- Completion Term / Initial Weight: **8 months**



REPLACEMENT OF P5-10 RECEIVER in  
Sevilla - España

Agua Prieta Solar Thermal Power Plant,  
Agua Prieta - Mexico

Solana Solar Thermal Power Plant,  
Phoenix - USA

Customer: **BK ALLBORG**

- Engineering: **BK ALLBORG**
- Completion Term / Initial Weight: **2 months**

Engineering: **ABECOSN**

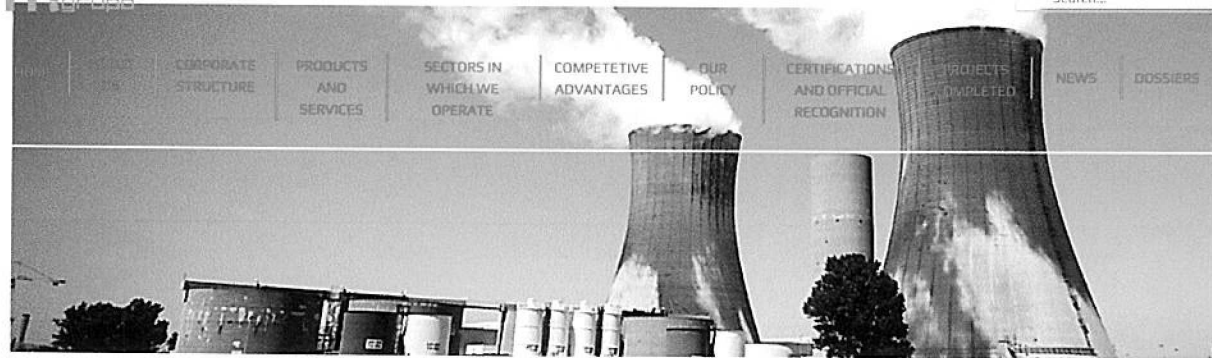
Customer: **CFE MEXICO**

- The assembly of CCP modules in the solar field

Customer: **ABEINSA**

- Solar field circuit water tightness tests using hot oil





#### Lithium Processing Plant - Chile

Customer: **ROCKWOOD LITHIUM**

- The supply and assembly of structures, electrical wiring and instrumentation for the Lithium Processing Plant

#### CRESCENT DUNES SOLAR Concentrating Solar Power Plant - TONOPAH - USA

Customer: **TRP Internacional**

- The erection and assembly of 10,370 heliostats at the Crescent Dunes Plant in Tonopah

#### ALMERIA SOLAR PLATFORM - Spain

Customer: **CIEMAT**

- The mechanical assembly of an experimental plant to produce energy with thermal oil.
- The replacement and edging of heliostat facets.



#### KHI SOLAR ONE Concentration Solar Thermal Power Plant - South Africa

Customer: **ABEINSA EPC KHI**

- The installation of the instrumentation and electrical box wiring for the power island.

#### COMPOSOL PROJECT IN CONSORTIUM WITH ABENGOA - Spain

- The development of the new parabolic cylinder.

#### SHAMS I SOLAR THERMAL POWER PLANT - United Arab Emirates

Customer: **ABEINSA**

- The assembly of the power island and solar field.




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KAXU SOLAR ONE Parabolic Cylinder Solar  
Thermal Power Plant - South Africa

BOKPOORT Parabolic Cylinder Solar  
Thermal Power Plant - South Africa

BOKPOORT Parabolic Cylinder Solar  
Thermal Power Plant - South Africa

Customer: **ABEINSA EPC KAXU**

- The assembly of the SPX air cooled condenser.

Customer: **BOKPOORT EPC CONSORTIUM (TSK-  
SENER-ACCIONA)**

- Detailed engineering, the supply and installation of buried pipe pumping equipment.
- The electrical and raw water capture control system for the plant.

Customer: **BOKPOORT EPC CONSORTIUM (TSK-  
SENER-ACCIONA)**

- The manufacture, assembly and installation of collector pipes for the Headers Solar Field.

GRUPO MARA CONTACT

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EXHIBIT 4

EXHIBIT 4

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In recent years, Grupo Mara has developed various large-scale projects all around the world.



These include the assembly of heliostats at the 'Crescent Dunes' solar thermal power plant,, in the Tonopah Desert in the state of Nevada, the 'Kaxu Solar One' and 'Khi Solar One' solar fields in South Africa, the installation of the power island pipes at the 'Shams' solar power plant in Abu Dhabi. It is currently involved in two important R+D+i projects: : the 'Camposol Project' focusing on the development of new components for the parabolic cylinder solar technology for very high

EXHIBIT 5

EXHIBIT 5

1 Becky A. Pintar, Esq.  
 Nevada State Bar # 7867  
 2 PINTAR ALBISTON LLP  
 6053 S. Fort Apache Road, Suite 120  
 3 Las Vegas, Nevada 89148  
 (702) 685-5255  
 4 (702) 202-6329 fax  
 Becky@PintarAlbiston.com

5 Attorneys for Plaintiff  
 6 TRP INTERNATIONAL, INC.

7  
 8 **FIFTH DISTRICT COURT**  
**NYE COUNTY, NEVADA**

9 TRP INTERNATIONAL, INC., a foreign  
 10 corporation,

Case No.: CV-36431  
 Dept.: I

11 Petitioner,

12 v.

**[PROPOSED] ORDER DENYING  
 MOTION FOR EMERGENCY STAY**

13 PROIMTU MMI LLC, a Nevada limited liability  
 company,

14 Respondent.

15  
 16  
 17 The Court having considered Respondent's PROIMTU MMI LLC ("Proimtu") Motion for  
 18 Emergency Stay, and all pleadings on file, and after hearing oral argument, the Court makes the  
 19 following findings and order:

20 1. The Court previously ordered the lien recorded by Proimtu released and the bond  
 21 exonerated, having filed Findings of Fact and Conclusions of Law on July 6, 2015.

22 2. Proimtu challenges the Court's factual findings regarding the expungement of the  
 23 lien/bond in its Emergency Motion for Stay pending appeal.

24 3. Pursuant to NRCPP 8(c), Nevada requires consideration of the following four factors  
 25 in deciding to grant a stay: (1) whether the object of the appeal or writ petition will be defeated if the  
 26 stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury  
 27 if the stay or injunction is denied; (3) whether real party in interest will suffer irreparable or serious  
 28 injury if the stay or injunction is granted; and (4) whether appellant petitioner is likely to prevail on

1 the merits in the appeal or writ petition.

2 4. After considering all pleadings and oral argument, the Court finds that Proimtu failed  
3 to satisfy any of the factors required to grant a stay.

4 IT IS THEREFORE ORDERED that the Emergency Motion for Stay is denied.

5  
6 **IT IS SO ORDERED.**

7 Dated: \_\_\_\_\_, 2015

8  
9 \_\_\_\_\_  
JUDGE OF THE DISTRICT COURT

10 Respectfully submitted by:  
11 PINTAR ALBISTON LLP

12 By: \_\_\_\_\_  
13 Becky A. Pinta, Esq., NSB # 7867  
14 Attorney for Petitioner TRP INTERNATIONAL, INC.

15 Reviewed by:  
16 FENNEMORE CRAIG, P.C.

17 By: \_\_\_\_\_  
18 Brenoch R. Wirthlin, Esq.  
19 Attorney for Petitioner PROIMTU MMI LLC  
20  
21  
22  
23  
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26  
27  
28

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

PROIMTU MMI LLC, a Nevada limited  
liability company,

Petitioner,

v.

TRP INTERNATIONAL, INC., a foreign  
corporation;

Respondent.

**SUPREME COURT CASE NO.**

**68942**

**DISTRICT COURT CASE NO.**

**CV-36431**

Electronically Filed  
Oct 15 2015 03:37 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**RESPONDENT TRP INTERNATIONAL, INC.'S  
OPPOSITION TO MOTION TO STAY UNDER NRAP 8(c)**

**PINTAR ALBISTON LLP**

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Bryan L. Albiston, Esq. (No. 12679)

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*Attorneys for Plaintiff and Respondent*

*TRP INTERNATIONAL, INC.*

## **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1 (a) and must be disclosed.

Solar Technology Systems, AB

Madrid, Spain

These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

### **PINTAR ALBISTON LLP**

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*Attorneys for Plaintiff and Respondent*

*TRP INTERNATIONAL, INC.*

## **I. INTRODUCTION**

### **A. Proimtu has been less than Candid with this Court**

Appellant, PROIMTU MMI LLC (“Proimtu”) has been less than candid with this Court in its Motion for Stay (“Motion”) under NRAP 8(c). On that basis alone the Court should deny the stay. Specifically, Proimtu makes the following misrepresentations or omissions:

1. In its NRAP 26.1 disclosure, Proimtu states that there are no entities to disclose. This is blatantly false and attempts to mislead this Court that Proimtu is nothing more than a Nevada LLC formed on July 17, 2013. **See Entity Details, attached hereto as Exhibit 1.** The truth is that Proimtu is a division of a large business group, *Grupo Mara*, (**Exhibit 2**) from Spain. (**Exhibit 3**). In fact, on the projects completed tab, the Crescent Dunes solar thermal plant in Tonopah tab is specifically listed as a project completed by *Grupo Mara*. (**Exhibit 4**)
2. In its argument that it would be irreparable harm to Proimtu if it was forced to litigate this matter in Spain, Proimtu again fails to disclose to this Court that the parent company of Proimtu is *Grupo Mara*, a business group with international presence (**Exhibit 2**) that is based in Spain, as is TRP INTERNATIONAL, INC. (“TRP”).
3. Proimtu fails to fully disclose the forum selection clause in the contract between Proimtu and TRP that requires Proimtu to resolve disputes in Spain, is mandatory not permissive, as it states that the parties *expressly waive* any other forum.
4. In its argument that NRS 108.2453(2)(d), which prohibits a contract from being subject to any other forum other than Nevada, applies to Proimtu to prevent the application of the forum section clause, Proimtu fails to fully disclose that there is substantial legal authority that substantiates that

NRS 108.2453(2)(d) is only applicable to lien claimants. The district court has ruled that Proimtu is an invalid lien claimant, so NRS 108.2453(2)(d) is not applicable to prevent the application of the forum section clause of Spain.

5. Proimtu failed to attach the relevant record from the district court whereby its previous attempt to obtain a stay was denied. Specifically, Promise failed to obtain the district court transcript whereby the district court found that Proimtu failed to meet any of the factors required in NRAP 8(c) for a stay.

On these factors alone, the stay should be denied.

#### **B. The District Court previously denied a Stay to Proimtu**

This is the second attempt for Proimtu to seek a stay in this matter. Proimtu had previously sought a stay in district court. The district court denied the request for a stay on September 9, 2015, finding in an oral ruling, that Proimtu failed to meet any of the factors contained in NRAP 8(c) required to grant a stay.

##### **1. Proimtu failed to comply with NRAP 8(a) in its Motion.**

NRAP 8(a)(2)(A)(ii) states that a motion for stay shall, “state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.” While Proimtu makes a token effort to comply with this directive, it fails to state the reasons for the district court’s decision. While Proimtu is correct that no order has yet been entered by the district court, the district court did make, after having reviewed all the briefings and having heard oral argument, an oral ruling finding that Proimtu failed to satisfy any of the factors required in NRAP 8(c) for a stay. TRP has submitted an order on the district court’s denial of the request for a stay to counsel for Proimtu which has never been approved or returned by Proimtu. *See Proposed Order, attached hereto as Exhibit 5.*

Moreover, NRAP 8(a)(2)(B)(iii) requires Proimtu to attach relevant parts of the record to the motion. Not only does Proimtu fail to attach any of the pleadings related to the motion for stay that was denied in district court, but it fails to include the district court transcript from the hearing on September 9, 2015, whereby the district court denied the stay. Proimtu has had a month to obtain the transcript but failed to do so. TRP does not have enough time prior to filing the opposition to obtain the transcript.

This Court cannot make an informed decision as to the instant motion for stay without considering, along with the current briefing, the record from the district court relevant to denying the stay. The district court is the one that has heard all the evidence first hand and arguably was in the better position to determine if Proimtu met the factors required in NRAP 8(c) to warrant a stay.

One has to wonder what Proimtu is seeking to hide from this Court by failing to fully comply with NRAP 8(a)(2)(A)(ii) and outright having failed to comply with NRAP 8(a)(2)(B)(iii). On that basis alone, the instant motion for stay should be denied by this Court. At the very least, Proimtu should be required to provide this Court with the relevant parts of the record, including the transcript to determine the basis whereby the district court has already denied a stay based on the same arguments provided in the instant motion for stay.

### **C. Facts of the Case**

TRP is a company based in Spain that constructs solar projects. It entered into a contract with the prime contractor, Cobra Thermosolar Plants, Inc. (“Cobra”), to fabricate and erect heliostats on a solar project in Tonopah, Nevada, known as the Crescent Dunes Thermosolar Plant (the “Project”). In turn, TRP and Proimtu entered into a contract for heliostat assembly and field erection (“Contract”). Ultimately, a dispute arose between TRP and Proimtu regarding the payments each side alleged were due under the Contract.

**1. Proimtu recorded a mechanic's lien on the project on which a bond was posted.**

Due to the dispute for payment, Proimtu subsequently recorded a mechanics lien pursuant to NRS 108.222 in the amount of \$2,357,977 against the real property in Nye County on November 12, 2014. On January 2, 2015, Cobra posted a bond in the amount of \$3,536,965.50, pursuant to NRS 108.413 to 108.2425, to release the lien from the Real Property.

**2. TRP successfully argued that the lien/bond was invalid.**

On June 18, 2015, the district court considered the validity of the mechanic's lien in front of Senior Judge Elliott who also heard extensive oral argument. TRP successfully argued that the lien was invalid and should be expunged, pursuant to 108.2275, as Proimtu had failed to comply with mandatory statutory requirements for a valid lien by failing to serve a notice of right to lien pursuant to NRS 108.245.

Proimtu argued that NRS 108.245(1) provides an exception to the requirements of NRS 108.245 to provide a notice of intent to lien if the lien claimant only provides labor to the construction project, which Proimtu alleged only labor was provided. In the alternative, Proimtu argued that if the district court found that it did not provide only labor to the Project, thereby exempting it from compliance with NRS 108.245, then "a lien claimant substantially complies with NRS 108.245's pre-lien requirement when the property owner has actual knowledge of the potential lien claim and is not prejudiced."

Ultimately, the district court concluded that Proimtu was acting as a contractor in its scope of work with TRP pursuant to NRS 624.020, and therefore was required to serve a notice of right to lien to the owner pursuant to NRS 108.245, which it failed to do. The district court also found that even if Cobra, the general contractor, had actual notice of Proimtu being on the Project, that

knowledge could not be imputed to the owner and was not sufficient to put the owner on actual notice of the scope of work being performed by Proimtu. The district court ordered the lien expunged, the bond thereby exonerated and released, and awarded TRP its costs and reasonable attorney's fees.

Now, Proimtu challenges the district court's factual findings for a second time regarding the expungement of the lien/bond and attempts to support its Motion pending appeal by rehashing the same arguments already rejected by the district court. Proimtu has failed to meet its burden of establishing that the circumstances justify the granting of a stay. Therefore the motion should be denied.

#### **D. Summary of Proimtu's Argument**

NRAP 8(c) requires a party to meet the following factors to warrant a stay:

(1) whether the object of the appeal will be defeated if the stay is denied; (2) whether Proimtu will suffer irreparable or serious injury if the stay is denied; (3) whether TRP will suffer irreparable or serious injury if the stay is granted; and (4) whether Proimtu is likely to prevail on the merits in the appeal.

Proimtu, in attempting to establish that a stay is warranted, makes the following arguments:

- a. That Proimtu will suffer irreparable harm because TRP would not have assets to satisfy a judgment if the bond is released.
- b. TRP is trying to force Proimtu to litigate its claims in Spain pursuant to a forum selection clause in the contract.
- c. TRP will not suffer irreparable harm by retaining the \$3.5 million bond because it owes \$2.3 million to Proimtu.
- d. Proimtu is likely to prevail on the merits arguing that the owner had actual knowledge of Proimtu's work.

Proimtu failed to satisfy any of the four factors in district court and equally

fails to satisfy those factors in the current motion for stay. Therefore, the Motion for Stay should be denied.

## **II. LEGAL ARGUMENT**

### **A. Proimtu has Failed to Meet the Standard to be Entitled to an Emergency Stay**

As the party seeking a stay, Proimtu bears the burden of showing it is entitled to a stay. *See generally Nken v. Holder*, 556 U.S. 418, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009). Nevada requires consideration of the following four factors in deciding to grant a stay: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant petitioner is likely to prevail on the merits in the appeal or writ petition. NRAP 8(c).

#### **1. Whether the subject of the appeal will be defeated if the stay is denied.**

Proimtu fails to address this factor. If the stay is denied the bond will be released. However, if Proimtu is successful on its appeal, then this Court will order the lien reinstated on the Project. The Project is a large solar plant located on real property in Tonopah. The real property is not going to be sold and will still be available to secure a lien should this Court find the lien was valid after ruling on the appeal.

Moreover, if the bond is released, TRP will receive the funds. Therefore, TRP would clearly have assets to pay Proimtu if the bond is released and Proimtu obtains a judgment. Proimtu argues that TRP could transfer the funds to Spain. However, both of these companies have parent companies in Spain, the contract

was negotiated and executed in Spain, and all payments for the contract have been paid in Spain and deposited in Spanish banks. TRP has provided compelling evidence to this Court that Proimtu is a division of *Grupo Mara*, a large company based in Spain. *See supra*, Section I.A. 1.

**2. Proimtu has failed to substantiate that TRP could not satisfy a judgment.**

Proimtu also fails on the second factor to warrant a stay, that is it would be irreparably harmed absent a stay. Proimtu argues that absent a stay of the order granting expungement of the mechanic's lien, the chances of them collecting on a judgment is limited. However, other than vague statements, such as TRP could transfer the Cobra payment to Spain and it would have no assets in the United States to satisfy a judgment that Proimtu has not even obtained yet, Proimtu provides **no evidence** to substantiate its statements.

Proimtu correctly identifies several cases, of which none are in the Ninth Circuit or Nevada,<sup>1</sup> that rule that the inability to satisfy a judgment *can* be irreparable harm. In fact, Nevada has clearly established that irreparable harm is an injury "for which compensatory damage is an inadequate remedy." *Excellence Cmty. Mgmt., LLC v. Gilmore*, 131 Nev. Adv. Rep. 38, 351 P.3d 720 (2015). Compensatory damages are exactly what Proimtu is seeking. According to established Nevada law, Proimtu's possible inability to collect a judgment is not considered irreparable harm.

However, the cases cited by Proimtu supporting that irreparable harm can be demonstrated by the inability to collect a judgment, are not relevant law for the specific facts in the instant case. Proimtu fails to provide the full rulings in those cases to this Court to support its argument that it may suffer irreparable harm. Again,

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<sup>1</sup> Appellants cite *Just Film, Inc. v. Merch. Servs.*, 2011 U.S. Dist. LEXIS 96613, 2011 WL 3809908 (N.D. Cal. Aug. 29, 2011) *aff'd* 474 F. App'x 493 (9<sup>th</sup> Cir. 2012) but TRP could find no ruling relevant to irreparable harm in that case.

like failing to provide this Court with the relevant transcript from the district court denying a stay, Proimtu leaves out evidence and argument that is not in its favor.

In the cases cited by Proimtu that establish that inability to collect a judgment can result in irreparable harm, the cases go on to rule that the plaintiff must provide substantial evidence to the court that the defendant is either insolvent or likely to be insolvent. It is the burden of the plaintiff to provide the court with proof of the insolvency of the defendant. In one of the cases cited by Appellant, *Hughes Network Sys. v. Interdigital Communications Corp.*, 17 F.3d 691, 694 (4th Cir. Md. 1994), the court stated that, “[t]hese situations are quite narrow, reflecting instances where the harm suffered by the plaintiff from denying the injunction is especially high in comparison to the harm suffered by the defendant from granting it.” In that same case, the court went on to rule that an injunction would be appropriate “where the principal defendant was ‘insolvent’ and its assets were ‘in danger of dissolution and depletion.’” *Id.* at 1330 (*quoting Deckert v. Independence Shares Corp.*, 311 U.S. 282, 285, 85 L. Ed. 189, 61 S. Ct. 229 (1940)).

In this case, Proimtu has provided no proof or evidence to this Court to support its claim that TRP could not satisfy a judgment. There is no evidence to support that TRP is insolvent or likely to be insolvent. In fact, given that Proimtu entered into a multi-million contract with TRP, it is assumed that Proimtu was somewhat satisfied that TRP could pay the amount owed to it.

Finally, the argument that TRP could transfer funds to Spain is equally invalid. Both companies are based in Spain, TRP has made all payments to Proimtu in Spain, and all financial transactions between these parties have occurred through Spanish banks. In fact, in another case cited by Proimtu, *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186 (3d Cir. Pa. 1990), the court stated that:

We know of no authority for the proposition that a plaintiff is irreparably harmed by having to obtain a merits judgment in one forum and then to execute on that judgment in a different forum. Indeed, the

demise of quasi in rem jurisdiction predicated solely upon the presence of a defendant's assets within a jurisdiction strongly suggests otherwise.

*Id.* at 206-207.

**3. Proimtu would not suffer irreparable harm by litigating in Spain.**

Proimtu argues that it would not only be irreparably harmed by litigating in Spain, but that it would be contrary to NRS 108.2453. Both arguments fail.

First, Proimtu expressly agreed to a mandatory forum selection clause. Section 35 of the Contract titled “Legislation and Courts” expressly states: “The CONTRACT throughout its scope of application shall be governed by Spanish law and be interpreted in accordance therewith...the CONTRACTOR and SUBCONTRACTOR **expressly agree to be bound** by the jurisdiction of the Courts of Madrid, **expressly waiving** any other legal forum or domicile to which they might have been entitled.” That is the exact language required for a forum selection clause to be enforced.

“A forum-selection clause is presumptively valid” (*Doe I v. AOL LLC*, 552 F.3d 1077, 1083 (9th Cir.2009) (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 17 (1972))). Proimtu has failed to meet its ‘heavy burden’ of establishing one of the following grounds upon which a court will conclude the clause is unenforceable: “(1) its incorporation into the contract was the result of fraud, undue influence, or overweening bargaining power; (2) the selected forum is so inconvenient that the complaining party will be practically deprived of its day in court; or (3) enforcement of the clause would contravene a strong public policy of the forum in which the suit is brought. *Id.*; see also *Murphy v. Schneider Nat’l, Inc.*, 362 F.3d 1133, 1140 (9th Cir.2004).

The forum-selection clause in the Contract unambiguously mandates the Courts of Madrid, and unambiguously states that Spain is the exclusive forum for jurisdiction over any dispute between TRP and Proimtu arising out of the Contract. In *Am. First Fed. Credit Union v. Soro*, 131 Nev. Adv. Op. 73 (2015), the Nevada

Court was faced with an issue of first impression regarding “whether a forum-selection clause may be mandatory or permissive.” *Id.* The Court stated that a Contract clause “result[ing] in a mandatory forum selection clause requir[es] dismissal of the Nevada action.” *Id.*

Therefore, the forum selection clause is valid and the enforcement would not result in any irreparable harm to Proimtu. Therefore, it is not a valid factor in favor of a stay.

#### **4. NRS 108.2453 that prohibits a lien claimant**

Secondly, Proimtu argues that NRS 108.2453(2)(d), which provides that a contract cannot, “[r]equire any litigation, arbitration or other process for dispute resolution on disputes arising out of the contract or other agreement to occur in a state other than this State” is applicable to Proimtu and prevents the case from being moved to Spain. However, 108.2453(2)(d) is not applicable to Proimtu as the district court has found that it is not a valid lien claimant, which is now the law of the case.

The Legislature amended Nevada's mechanic's lien laws again in 2005, with the adoption of Senate Bill 343 (S.B. 343). 2005 Nev. Stat., ch. 428, § 25, at 1913–14. Again, “the legislative record... includes a statement reaffirming that the purpose of the 2003 amendment was to assist **lien claimants**: ... [o]ur Nevada Supreme Court has consistently held that our lien law should be liberally construed in favor of lien claimants.” *Hardy Companies, Inc.*, 245 P.3d at 1156 (2010) (quoting Hearing on S.B. 343 Before the Assembly Comm. on Judiciary, 73d Leg. (Nev., May 13, 2005) (emphasis added)). The legislative history of NRS 108.2453 clearly shows the legislature’s intent was to “assist” and “facilitate payment to **lien claimants**.”

Proimtu’s argument that NRS 108.2453 is applicable to prevent this application of the forum selection clause is unavailing. “The Legislature's intent is the primary consideration when interpreting an ambiguous statute[.]” (*Cleghorn v.*

*Hess*, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993)) and the legislature clearly intended NRS 108.2453 apply to lien claimants. The district has already declared Proimtu's lien expunged and rendering its claim to a lien invalid. Therefore, NRS 108.2453 is inapplicable.

**5. Ordering a stay would result in an extreme hardship to TRP as Cobra is holding \$2.3 million that is owed to TRP.**

Proimtu also fails on the third factor, whether issuance of the stay will not substantially injure the other parties interested in the proceeding.” The Nevada Supreme Court has found that a stay may be appropriate “when a stay will do the judgment creditor ‘no material damage’ or no likelihood of harm from a stay has been shown.” *Nelson v. Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1253 (2005).

In this case, TRP is being substantially harmed as Cobra, the general contractor is withholding \$3.5 million which is owed to TRP from the Project causing TRP severe financial hardship. \$3.5 million is a substantial burden to TRP. Therefore, this factor also weighs in favor of not granting the stay.

**6. Proimtu cannot establish that the district court's findings were clearly erroneous.**

Proimtu fails to meet the final factor to warrant a stay. Proimtu must show that it is likely to succeed on the merits. On appeal, Proimtu's likelihood of success on the merits is highly unlikely. On June 18, 2015, the district court granted TRP's Petition to Expunge Lien as against Proimtu after considering all the pleadings on file and hearing extensive oral argument from the parties. The district court ordered the lien was not valid, the bond be exonerated and released. As a result of the district court's factual findings, it concluded that Proimtu failed to comply with NRS 108.245 by failing to serve a notice of right to lien on the owner; additionally, the district court concluded it was irrelevant whether Cobra, the general contractor,

had actual notice of Proimtu being on the Project because that knowledge cannot be imputed to the owner and was insufficient to put the owner on actual notice of the scope of work being performed by Proimtu.

Proimtu's argument that the district court essentially erred in applying its factual findings to the applicable law must overcome the "clearly erroneous" standard on appeal. An appellate court must give substantial deference to a trial judge's rulings on questions of fact and "[a]s long as the fact findings are plausible, they will not be set aside, even if the appellate court would have reached a different result if sitting as the finder of fact." *Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985). Essentially, Proimtu supports its likelihood of success on the merits argument by asserting its disagreement with the district court's factual findings regarding the scope of work performed by Proimtu and the Owner's actual or imputed knowledge of Proimtu's work.

Proimtu asserts that a stay is warranted in the instant case *not* as a result of the district court's application of NRS Chapter 108, but rather that questions of fact exist as to whether the owner had actual or imputed knowledge of the work Proimtu performed. However, the district court heard evidence and oral argument and found that the facts do not support Proimtu's arguments.

### **B. A Stay is not Warranted in this Case**

Proimtu argues that absent a stay, its ability to appeal as a matter of right becomes meaningless because it would retain no viable source for recovery on a judgment in its favor. However, Proimtu fails to establish that it will be irreparably harmed absent a stay.

Moreover, the Supreme Court has declared that a stay is an "intrusion into the ordinary processes of administration and judicial review," and accordingly, "is not a matter of right, even if irreparable injury might otherwise result," *Virginian R. Co.*, 272 U.S., at 672, 47 S.Ct. 222. It is instead "an exercise of judicial discretion," and

“[t]he propriety of its issue is dependent upon the circumstances of the particular case.” *Id.* at 672-673, 47 S.Ct. 222. The circumstances of this particular case not only reveal Proimtu’s unlikelihood of success on the merits, but also that Proimtu’s ‘possibility’ of irreparable injury cannot justify an exercise of judicial discretion in granting a stay.

“The party requesting a stay bears the burden of showing that the circumstances justify an exercise of judicial discretion.” See, e.g., *Clinton v. Jones*, 520 U.S. 681, 708, 117 S.Ct. 1636, 137 L.Ed.2d 945 (1997); *Landis v. North American Co.*, 299 U.S. 248, 255, 57 S.Ct. 163, 81 L.Ed. 153 (1936). The mere ‘possibility’ that Proimtu would be unable to recover a judgment in its favor under the “jurisdiction of American Courts” is not a valid basis for an exercise of judicial discretion in granting a stay; “the ‘possibility’ standard is too lenient.” *Nken v. Holder*, 556 U.S. 418, 434-35, 129 S. Ct. 1749, 1761, 173 L. Ed. 2d 550 (2009).

Accordingly, Proimtu has failed to meet its burden of establishing a critical factor to this Court granting a stay as it cannot establish that Proimtu would suffer irreparable injury absent a stay.

Finally, a court should consider the public interest in the decision to issue a stay. Judicial consistency, finality, and protection of the court’s integrity are all important elements of public interest. The parties and the public, while entitled to both careful review and a meaningful decision, are also generally entitled to the prompt execution of orders that the legislature has made final. See *Nken v. Holder*, 556 U.S. 418, 427, 129 S. Ct. 1749, 1757, 173 L. Ed. 2d 550 (2009).

The district court has already heard the matter on its merits and ordered the mechanic’s lien invalid, and the bond exonerated and released. Proimtu has failed to meet its burden of showing that the circumstances justify this Court’s exercise of judicial discretion in granting a stay. Proimtu is not a valid lien claimant and has no statutory lien rights. Proimtu has not provided any evidence nor

established that the district court's ruling was clearly erroneous. Therefore, the stay should be denied.

### III. CONCLUSION

In summary, Proimtu has failed to establish any factor that would warrant a stay. First, Proimtu failed to comply with NRAP 8(a)(2)(A)(ii) and NRAP 8(a)(2)(B)(iii) by failing to provide the reasons for the district court's previous denial of a stay and failing to provide the record from the district court including a copy of the transcript. Next, Proimtu fails to disclose material facts to this Court as required by NRAP 26.1 by failing to disclose that it is a division of *Grupo Mara*, a large international company based in Spain. Proimtu fails to provide this Court with any evidence that TRP would not be able to satisfy a judgment, that TRP is insolvent or likely to be insolvent. It further omits that the forum selection clause of the Contract is mandatory and not permissive and should be enforced.

Finally, Proimtu has utterly and completely failed to satisfy the factors required for a stay under NRAP 8(c). Specifically:

- (1) Proimtu fails to establish that it is likely to succeed on the merits
- (2) Proimtu fails to establish that it will suffer irreparable harm absent a stay
- (3) TRP has established that it will be substantially harmed by the issuance of a stay; and
- (4) It is not in the public interest to issue a stay.

Proimtu has failed to meet a single factor that would warrant a stay. Therefore, TRP respectfully request that the Motion for Emergency Stay be denied.

DATED: October 15, 2015   PINTAR ALBISTON LLP

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## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Time New Roman 14 point font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 4.444 words.

3. Finally, I hereby certify that I have read this opposition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: October 15, 2015

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 15, 2015, she served a copy of the foregoing **Opposition to Appellant Proimtu MMI, LLC's Motion to Stay Under NRAP 8(c)** via electronic service:

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