

EXHIBIT "5"

EXHIBIT "5"

FILED

FIFTH JUDICIAL DISTRICT

NOV 12 2015

Nye County Clerk

Deputy

Becky A. Pinta, Esq.
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Attorneys for Plaintiff
 TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT
 NYE COUNTY, NEVADA**

TRP INTERNATIONAL, INC., a foreign
 corporation,

Case No.: CV-36431
 Dept.: I

Petitioner,

**NOTICE OF ENTRY ORDER GRANTING
 MOTION FOR ATTORNEY FEES**

v.

PROIMTU MMI LLC, a Nevada limited liability
 company,

Respondent.

PLEASE TAKE NOTICE that on November 12, 2015, an Order granting Motion for
 Attorney Fees was entered in the above-referenced matter. A true and correct copy is attached
 hereto.

DATED: November 12, 2015 PINTAR ALBISTON LLP

By: Becky A. Pinta

Becky A. Pinta, Esq.
 Nevada State Bar # 7867
 Bryan L. Albiston, Esq.
 Nevada State Bar #12679
 6053 S. Fort Apache Rd., Ste. 120
 Las Vegas, Nevada 89148
 Attorneys for Plaintiff TRP INTERNATIONAL, INC.

PINTAR ALBISTON LLP

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**FIFTH DISTRICT COURT
 NYE COUNTY, NEVADA**

TRP INTERNATIONAL, INC., a foreign
 corporation,

Petitioner,

v.

PROIMTU MMI LLC, a Nevada limited liability
 company,

Respondent.

Case No.: CV-36431
 Dept.: I

**ORDER GRANTING MOTION FOR
 ATTORNEY FEES**

The Court having considered Petitioner's TRP INTERNATIONAL, INC. ("TRP") Motion for Attorney Fees, as against Respondent PROIMTU MMI LLC ("Proimtu") and all pleadings on file, and after hearing oral argument, the Court makes the following findings and order:

1. NRS 108.2275 provides the provisions for the release of frivolous or excessive liens.
2. The Court previously found that the lien recorded by Proimtu was not valid and ordered it expunged in an order filed on July 6, 2015.
3. The Court also found that TRP was also entitled to its costs and reasonable attorney's fees for bringing the Petition the amount to be determined upon briefing with the Court.
4. TRP submitted documentation of fees incurred in the amount of \$16,240.00.
5. Proimtu argued certain fees were not reasonable, including those incurred for travel.
6. However, the Court found that all fees incurred by TRP were valid and reasonable and the *Brunzell* factors were satisfied.

IT IS THEREFORE ORDERED that the Motion for Attorney Fees is granted.

1 IT IS FURTHER ORDERED that the \$16,240.00 in attorney fees is awarded to TRP and the
2 amount is hereby reduced to judgment.

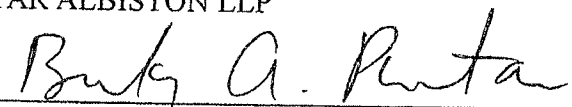
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4 IT IS SO ORDERED.

5 Dated: Nov 12, 2015

6 
7 JUDGE OF THE DISTRICT COURT

8 Respectfully submitted by:
9 PINTAR ALBISTON LLP

10 By:



11 Becky A. Pintar, Esq., NSB # 7867
12 Attorney for Petitioner TRP INTERNATIONAL, INC.

13 Reviewed by:
14 FENNEMORE CRAIG, P.C.

15 By:

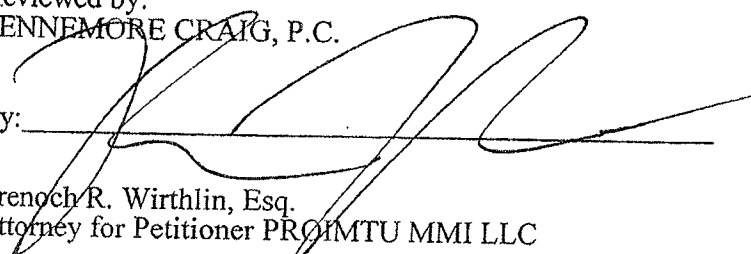
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17 Brenoch R. Wirthlin, Esq.
18 Attorney for Petitioner PROIMTU MMI LLC
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EXHIBIT "4"

EXHIBIT "4"

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Attorneys for Plaintiff
 TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT
 NYE COUNTY, NEVADA**

TRP INTERNATIONAL, INC., a foreign
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Petitioner,

v.

PROIMTU MMI LLC, a Nevada limited liability
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Respondent.

Case No.: CV-36431
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FILED
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DMO Nye County Clerk
 Deputy

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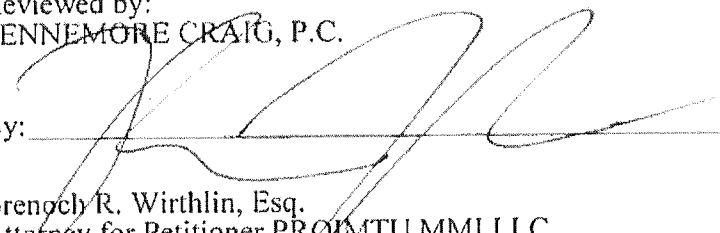
5 Dated: Nov 12, 2015

6 
7 JUDGE OF THE DISTRICT COURT

8 Respectfully submitted by:
9 PINTAR ALBISTON LLP

10 By: Becky A. Pinta
11 Becky A. Pinta, Esq., NSB # 7867
12 Attorney for Petitioner TRP INTERNATIONAL, INC.

13 Reviewed by:
14 FENNEMORE CRAIG, P.C.

15 By: 
16 Brenock R. Wirthlin, Esq.
17 Attorney for Petitioner PROIMTU MMI LLC

PINTAR ALBISTON LLP

EXHIBIT "3"

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1 Becky A. Pintar, Esq.
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6 Attorneys for Plaintiff
 7 TRP INTERNATIONAL, INC.

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

11 TRP INTERNATIONAL, INC., a foreign
 corporation,

Case No.: CV-36431
 Dept.: I

12 Petitioner,

13 v.

**REPLY TO OPPOSITION TO MOTION
 FOR ATTORNEY FEES**

14 PROIMTU MMI LLC, a Nevada limited liability
 company,

15 Respondent.

17 COMES NOW, Plaintiff TRP INTERNATIONAL, INC. ("TRP"), by and through their
 18 attorneys of record, the law firm of PINTAR ALBISTON LLP and brings this Reply to Opposition
 19 to Motion for Attorney Fees. This reply substantiates that TRP has fully complied with all statutory
 20 and procedural requirements, and that its fees are reasonable and necessarily incurred.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **A. TRP has Complied with All Requirements to be Awarded it Attorney Fees**

23 The Court, pursuant to NRS 108.2275(6) has already found that TRP is entitled to its
 24 reasonable fees. This matter required extensive briefing and two hearings, each at least an hour long.
 25 TRP has complied with all requirements to be awarded the fees incurred, all reasonable and
 26 necessarily incurred in the amount of \$12,880.00.

27 PROIMTU MMI LLC ("Proimtu") makes two arguments against TRP being awarded it fees,
 28

1 or its fees with a substantial reduction. First, Proimtu argues that the fees should be denied in their
2 entirety because counsel failed to include an affidavit stating that the fees were actually and
3 necessarily incurred, pursuant to NRCP 54(d)(2)(b). Second, Promitu argues that TRP is not entitled
4 to fees incurred for travel time from Las Vegas to Tonopah for the hearings. Neither argument is
5 valid.

6 **B. NRCP 54 is not Applicable**

7 The first argument utilized by Proimtu is that counsel has failed to include an affidavit stating
8 that the fees were actually and necessarily incurred, pursuant to NRCP 54(d)(2)(b). NRCP
9 54(d)(2)(b) is not applicable in this case. NRCP 54(d)(2)(b) is applicable to fees being sought after
10 final judgment. There is not final judgment in this case but an order expunging a lien. The fees being
11 applied for are pursuant to NRS 108.2275(6).

12 Even if an affidavit is not required, counsel has nonetheless attached a declaration, pursuant
13 to NRS 53.045, to support the incurred fees as **Exhibit 1**. Therefore, regardless if NRCP 54(d)(2)(b)
14 is applicable or not, it has been complied with and is not a valid basis to deny fees from being
15 awarded.

16 **C. Travel Time is Expressly Allowed**

17 Promitu next argues that travel time is not allowed from Las Vegas to Tonopah for the two
18 hearings and the fees should be reduced by 18 hours or \$6,300. However, the billing was block for
19 both travel, meeting with the client and attendance at the hearing.

20 Counsel for Proimtu argues that *Comcast of Ill. X, LLC v. Kwak*, 2010 U.S. Dist. LEXIS 105809,
21 2010 WL 3781768 (D. Nev. Sept. 20, 2010) supports the argument that fees incurred for travel are
22 expressly disallowed. Counsel for Proimtu should be admonished for misrepresenting the TRP's
23 billing as well as the case law. Promitu counsel takes the ruling from *Comcast* out of context and
24 misapplies the facts to this case. The ruling in *Comcast* was unique to the set of facts and travel time
25 was not allowed in that specific instance. However, the facts in *Comcast* are readily extinguished
26 from those in this case.

27 *Comcast* never made any ruling that travel time in general is not allowed. In fact, *Comcast* stated
28 specifically that, "[t]he Ninth Circuit has established that **travel time and clerical tasks are**

1 reasonably compensated at normal hourly rates if such is the custom in the relevant legal
2 market.” *Id.* at 17 (emphasis added). Proimtu counsel not only fails to provide the entire relevant
3 ruling but also fails to distinguish the facts in *Comcast* from the current case. *Comcast* had local
4 counsel but billed for counsel to travel in from out of state to perform work that local counsel could
5 have handled. The court then disallowed the travel time. The court went on further, and stated that
6 local counsel does not have to be utilized if they are, “unable to perform because they lack the
7 degree of experience, expertise, or specialization required to handle properly the case.” It is highly
8 unlikely that Tonopah had local counsel with the necessary expertise to handle this case nor was any
9 local counsel as familiar with the project and work as TRP’s counsel from Las Vegas. Even Proimtu
10 used Las Vegas counsel and I am sure if they had prevailed, they would be seeking fees for travel
11 time! Proimtu’s counsel’s argument is very disingenuous.

12 Moreover, *Comcast* is not the most applicable case to support that a party is entitled to be
13 awarded attorney fees for travel. The better case to cite for expressly allowing travel costs is *Ilick v.*
14 *Miller*, 68 F. Supp. 2d 1169 (D. Nev. 1999). In that case, the court specifically states:

15 The court believes that it is appropriate to allow compensation for travel time,
16 because the attorney traveling on a case during business hours loses the opportunity
17 to work productively on other matters. Hence, an attorney is entitled to bill for “lost
18 productivity” time while traveling, irrespective of whether work is actually completed
19 during the travel time.

20 *Id.* at 1178 (emphasis added)

21 In that case, counsel was traveling from Las Vegas to rural Nevada, specifically Ely State Prison.
22 The court found that the rationale to award travel time as valid attorney fees was “to compensate
23 attorneys for hours which they would otherwise apply to other tasks.” However, the court did limit
24 travel time to six hours in a 24 hour period.

25 TRP is not seeking more than six hours of travel time as that is the time it takes to drive from Las
26 Vegas to Tonopah. The block billing of nine hours was for both travel time, meeting with the client
27 to review for the hearing and the attendance at the hearing. Therefore the hours billed are both
28 reasonable and expressly allowable. TRP has attached a Declaration and amended Statement for
attorney fees in the amount of \$12,880, including additional fees for this reply, as **Exhibit 1**.

1 **D. Conclusion**

2 As the foregoing reply, as well as the initial motion for fees demonstrates, TRP's attorney's fees
3 are reasonable, according to the four part test enumerated in the case of *Brunzell*, including fees for
4 travel time, pursuant to *Ilick v. Miller*, 68 F. Supp. 2d 1169 (D. Nev. 1999), and complies with
5 NRC 54(d)(2)(b). Therefore it is respectfully requested that fees be awarded in the amount of
6 \$12,880.00.

7
8 DATED: July 23, 2015

PINTAR ALBISTON LLP

9 By: Becky A. Pinta

Becky A. Pinta, Esq., NSB # 7867

Attorney for Petitioner TRP INTERNATIONAL, INC.

EXHIBIT 1

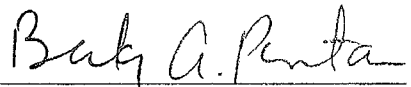
DECLARATION IN SUPPORT OF ATTORNEY FEES

I, BECKY A. PINTAR, being duly sworn, states: that affiant is the attorney for TRP INTERANTIONAL, INC. and has personal knowledge of the above costs and disbursements expended; that the items contained in the attached Statement are true and correct to the best of this Declarant's knowledge and belief; and that the said fees have been necessarily incurred in this action.

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 23rd day of July, 2015

By:


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Nevada State Bar # 7867
6053 S. Fort Apache Rd. #120
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(702) 685-5255

Pintar Albiston LLP
6053 S. Fort Apache Road, #120
Las Vegas, NV 89148 USA

Ph:702-685-5255

Fax:702-202-6329

TRP International, Inc.

July 23, 2015

'Neftali Munoz Herrera' <nmunoz@stsolar.eu>

Attention: Neftali Munoz

File #: 318

Inv #: 5106

RE: Expunge Proimtu lien

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Dec-01-14	Review response from counsel for Proimtu re: lien; telephone conference with client re: same	0.50	175.00	BAP
Dec-03-14	Draft petition to expunge lien	4.00	1,400.00	BAP
Jan-05-15	Telephone conference with Pahrump court and Tonopah court re: petition to expunge lien	0.30	105.00	BAP
Jan-20-15	Draft certificate of service for petition to expunge lien	0.30	105.00	BAP
Jan-26-15	Telephone conference with Tonopah court re: lien actions	0.60	210.00	BAP
Jan-27-15	Review email chain from lien attorneys; draft update to client; telephone conference with Cobra attorney	0.50	175.00	BAP
Feb-03-15	Review opposition to expunge lien; draft reply	3.00	1,050.00	BAP
Feb-10-15	Review invoices; meeting with Neftali to review facts	2.00	700.00	BAP
Feb-12-15	Travel to and from Tonopah	6.00	2,100.00	BAP
	Meeting with client to review for hearing; attend hearing and present oral argument	3.00	1,050.00	BAP

Mar-10-15	Review order; draft update to client	0.30	105.00	BAP
Mar-26-15	Draft request for ruling	0.50	175.00	BAP
Jun-12-15	Review and confirm communication from court re: hearing; draft update to client	0.30	105.00	BAP
Jun-18-15	Travel to and from Tonopah	6.00	2,100.00	BAP
	Meeting with client to review for hearing; attend hearing and present oral argument	2.00	700.00	BAP
Jun-22-15	Draft proposed findings of fact and conclusions of law	2.00	700.00	BAP
Jul-02-15	Review proposed revisions to order; draft memorandum of costs and motion for attorney fees	2.50	875.00	BAP
Jul-23-15	Review opposition to attorney fees; conduct legal research; draft reply	3.00	1,050.00	BAP
	Totals	36.80	<u>\$12,880.00</u>	

DISBURSEMENTS

	Lexis/Westlaw	77.47
	Photocopies	42.80
	Postage	7.17
Dec-09-14	Postage for motion to expunge lien	24.15
	Filing Fee for motion to expunge lien	245.00
Feb-11-15	Photocopies for hearing	11.40
Jun-18-15	Travel to Tonopah (mileage)	232.10
	Travel to Tonopah (motel)	108.44
Jul-02-15	Court clerk fee to certify order	3.00
	Totals	<u>\$751.53</u>

Total Fee & Disbursements**\$13,631.53****Balance Now Due****\$13,631.53**

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EXHIBIT “2”

EXHIBIT “2”

FENNEMORE CRAIG, P.C.
Christopher H. Byrd, Esq. (No. 1633)
Brenoch Wirthlin, Esq. (No. 10282)
Mary Bacon, Esq. (No. 12686)
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Telephone: (602) 916-5000
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bwirthlin@fclaw.com

Attorneys for Plaintiff Proimtu MMI LLC

FIFTH JUDICIAL DISTRICT COURT
NYE COUNTY, NEVADA

TRP INTERNATIONAL, INC., a foreign
corporation,

Petitioner,

v.

PROIMTU MMI LLC, a Nevada limited
liability company,

Respondent.

Case No.: CV-36431

Dept. No.: 1

OPPOSITION TO PETITIONER'S

MOTION FOR ATTORNEY'S FEES

Plaintiff, *Proimtu MMI LLC*, ("Proimtu") by and through its counsel of record, Fennemore Craig, hereby submits its Opposition ("Opposition") to Petitioner TRP International ("Petitioner") Motion For Attorney's Fees ("Motion").

As set forth in this Opposition, Petitioner has failed to comply with the strict, and strictly construed, requirements of NRCP 54(d). Further, Petitioner's Motion contains time for travel entries for which it is not entitled to recover. This Opposition is based upon the attached Memorandum of Points and Authorities, all exhibits thereto, any oral argument the Court chooses to entertain at a hearing on this matter, and all papers and pleadings on file herein.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

First and foremost, Petitioner has failed to comply with the strict requirements of Nevada Rules of Civil Procedure 54(d)(2)(b) detailing that an affidavit of counsel is required in a motion for attorney's fees. On that basis alone, Petitioner's Motion must be denied in its entirety. Second, even assuming Petitioner had properly complied with the requirements of the Nevada Rules of Civil Procedure – which it has not – Petitioner has failed to attached the so-called "Client Fees Listing" which would enable counsel to determine the reasonableness of the fees sought. Despite this, Petitioner states in its Motion that it is billing for two trips of (9) hours. Accordingly, while Proimtu reserves the right to further object to any fees sought, it is clear that Petitioner has wrongly sought reimbursement for non-compensable travel time.

Given Petitioner's clear failure to comply with the requirements of the applicable rules, Petitioner's Motion must be denied in its entirety, or cut by 18 hours.

II. LAW AND ARGUMENT

A. Petitioner has failed to comply with Nevada Rule of Civil Procedure 54(d) in failing to include an affidavit of counsel in its Motion. Accordingly, on this ground alone Petitioner's Motion must be denied.

NRCP 54(d)(2)(b) provides in relevant part as follows:

(B) Timing and Contents of the Motion. Unless a statute provides otherwise, the motion must be filed no later than 20 days after notice of entry of judgment is served; specify the judgment and the statute, rule, or other grounds entitling the movant to the award; state the amount sought or provide a fair estimate of it; **and be supported by counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable, documentation concerning the amount of fees claimed,** and points and authorities addressing appropriate factors to be considered by the court in deciding the motion. The time for filing the motion may not be extended by the court after it has expired. (Emphasis added).

Accordingly, where – as here – no statute excuses the requirement of an affidavit of counsel swearing that the fees sought were actually and necessarily incurred and were reasonable, this affidavit is required of counsel, along with documentation of the fees claimed. Petitioner has failed to comply with this Rule in at least two (2) crucial respects. First, the Petitioner failed to attach an affidavit of counsel swearing that the fees were actually and necessarily incurred and were reasonable. *See* Petitioner's Motion for Attorney's Fees on file herein. Additionally, even if

1 Petitioner's attorney were to execute the required affidavit under NRCP 54(d)(2)(b), the Petitioner
2 has still failed to adequate "...documentation concerning the amount of fees claimed." NRCP
3 54(d)(2)(b). Petitioner purportedly attached a "Client Fees Listing" to the Motion, and will likely
4 argue this suffices as the required documentation. However, no such document was attached to the
5 Motion received by Proimtu, and unless it includes more than simply a listing of the fees sought,
6 would not meet the requirements of the rule.

7 Accordingly, Petitioner has failed to comply with NRCP 54(d)(2). This ground alone
8 requires that the Petitioner's Motion be denied in its entirety.

9 B. Even if Petitioner's failure to comply with NRCP 54(d)(2)(b) was not fatally
10 defective, Petitioner wrongly included approximately 18 hours of non-billable
11 time in its calculations.

12 In *Comcast of Ill. X, LLC v. Kwak*,¹ the Nevada District Court held that travel time for an
13 attorney outside of the forum is not compensable where the party seeking reimbursement has not
14 shown that local counsel could have been used. There the court held as follows:

15 Additionally, while evidence of local custom would shed some light on the
16 appropriateness of the travel time billed by Mr. Platt for conducting Defendant's
17 deposition, **here, if local counsel was used, there would be no charges for travel**
18 **time charged for travel to and from court hearings.** Further, Mr. Platt has billed
19 his full hourly rate for travel time. The Court finds that on the current record, there
20 is no evidence supporting recovery of Mr. Platt's travel time to attend court
21 hearings in Las Vegas, Nevada, the local forum. Plaintiff has failed to show that it
22 was necessary to use Mr. Platt, a Chicago attorney, rather than local counsel, and
23 therefore the Court will not award travel costs.²

24 See also, *Hart v. Bourque*, 798 F.2d 519, 523 (1st Cir. Mass. 1986) (Court upheld district
25 court's elimination of time spent traveling as "unnecessary" time). Petitioner's Motion seeks fees
26 for two 9-hour trips to Tonopah to attend hearings. Neither of these are compensable. See
27 Motion at p. 3. While the billings of counsel are not detailed or provided, the Motion represented
28 a total of 35 hours on this matter at a billable rate of \$350 an hour, including 18 hours of travel
time. This 18 hours represents a necessary deduction of \$6,300 in Petitioner's fees, bringing
Petitioner's total requested fees from \$12,180 to \$5,880.

///

¹ 2010 U.S. Dist. LEXIS 105809, *17-21, 2010 WL 3781768 (D. Nev. Sept. 20, 2010).


² *Id.*

1 As Petitioner has failed to comply with the strict provisions of NRCP 54(d)(2)(b), its
2 Motion must be denied in its entirety. Alternatively, the amount Petitioner has requested should
3 be discounted by at least 18 hours (\$6,300), while reserving the right to object to any other
4 excessive fees sought in this matter.

5 **III. CONCLUSION**

6 For all these reasons, Plaintiff respectfully requests that this Court deny Petitioner's Motion
7 for Attorney's Fees in its entirety, and grant such other and further relief as the Court deems
8 necessary and proper.

9 DATED this 17th day of July, 2015.

10
11 
12 FENNEMORE CRAIG, P.C.
13 Christopher H. Byrd, Esq. (No. 1633)
14 Brenoch Wirthlin, Esq. (No. 10282)
15 Mary Bacon, Esq. (No. 12686)
16 300 South Fourth Street, Suite 1400
17 Las Vegas, Nevada 89101
18 Telephone: (602) 916-5000
19 Email: cbyrd@fclaw.com
20 bwirthlin@fclaw.com
21
22
23
24
25
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27
28

CERTIFICATE OF SERVICE

The undersigned, an employee of the law firm of FENNEMORE CRAIG, P.C., hereby certifies that on July 17, 2015, I served a copy of the foregoing **OPPOSITION TO PETITIONER'S MOTION FOR ATTORNEY'S FEES** by placing a copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Becky A. Pintar, Esq.
Bryan L. Albiston, Esq.
PINTAR ALBISTON LLP
6053 S. Fort Apache Road, Suite 120
Las Vegas, Nevada 89148
Attorneys for TRP International, Inc.

By: 
An employee of FENNEMORE CRAIG

FENNEMORE CRAIG
SUITE 1400
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101

TROTTER, LUCY

From: trackingupdates@fedex.com
Sent: Monday, July 20, 2015 11:56 AM
To: TROTTER, LUCY
Subject: FedEx Shipment 774082699389 Delivered

Your package has been delivered

Tracking # 774082699389

Ship date:
Fri, 7/17/15

Lucy Trotter
Fennemore Craig
Las Vegas, NV 89101
US

Delivery date:
Mon, 7/20/15 11:51 am

Clerk's Office
Fifth Judicial District Court
1520 E. Basin Ave. Suite 108
PAHRUMP, NV 89060
US



Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number: 774082699389

Status: Delivered: 07/20/2015 11:51
AM Signed for By:
V.AGUARLIA

Reference: 034514.0013

Signed for by: V.AGUARLIA

Delivery location: PAHRUMP, NV

Delivered to: Receptionist/Front Desk

Service type: FedEx Priority Overnight

Packaging type: FedEx Envelope

Number of pieces: 1

Weight: 0.50 lb.

Special handling/Services: Deliver Weekday

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Lucy Trotter

FedEx Tracking

774082699389Ship date:
Fri 7/17/2015Fennemore Craig
Fennemore Craig
Suite 1400
300 S. Fourth St.
Las Vegas, NV US 89101
702 692-8031**Delivered**

Signed for by: V. AGUILAR

Actual delivery:
Mon 7/20/2015 11:51 amFifth Judicial District Court
Clerk's Office
Suite 108
1520 E. Basin Ave.
PAHRUMP, NV US 89060
775 751-7057

Travel History

Date/Time	Activity	Location
7/20/2015 - Monday		
11:51 am	Delivered	PAHRUMP, NV
8:22 am	On FedEx vehicle for delivery	LAS VEGAS, NV
7/18/2015 - Saturday		
7:57 am	At local FedEx facility	LAS VEGAS, NV
7:57 am	At local FedEx facility Package not due for delivery	LAS VEGAS, NV
7/17/2015 - Friday		
6:37 pm	At destination sort facility	LAS VEGAS, NV
6:00 pm	Left FedEx origin facility	NORTH LAS VEGAS, NV
4:58 pm	Shipment information sent to FedEx	
4:19 pm	Picked up	NORTH LAS VEGAS, NV

Shipment Facts

Tracking number	774082699389	Service	FedEx Priority Overnight
Weight	0.5 lbs / 0.23 kgs	Delivery attempts	1
Delivered To	Receptionist/Front Desk	Total pieces	1
Total shipment weight	0.5 lbs / 0.23 kgs	Terms	Not Available
Shipper reference	034514.0013	Packaging	FedEx Envelope
Special handling section	Deliver Weekday		

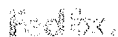
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EXHIBIT "1"

EXHIBIT "1"

1 Becky A. Pinter, Esq.
Nevada State Bar # 7867
2 Bryan L. Albiston, Esq.
Nevada State Bar # 12679
3 PINTAR ALBISTON LLP
6053 S. Fort Apache Road, Suite 120
4 Las Vegas, Nevada 89148
(702) 685-5255
5 (702) 202-6329 fax
Becky@PinterAlbiston.com

6 Attorneys for Plaintiff
7 TRP INTERNATIONAL, INC.

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

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

Case No.: CV-36431
Dept.: I

12 Petitioner,

13 v.

MOTION FOR ATTORNEY FEES

14 PROIMTU MMI LLC, a Nevada limited liability
company,

15 Respondent.
16

17 COMES NOW, Plaintiff TRP INTERNATIONAL, INC. ("TRP"), by and through their
18 attorneys of record, the law firm of PINTAR ALBISTON LLP and brings this Motion for Attorney
19 Fees. This Motion is based upon NRS 108.2275(6) that provides that Petitioner is entitled to its
20 attorney fees once the Court ordered the lien expunged.

21 This Motion is based upon the following Memorandum of Points and Authorities, exhibit,
22 and pleadings on file herein, and any oral argument the Court may require.

23 DATED this 2nd day of July, 2015.

24 PINTAR ALBISTON LLP

25
26 By: Becky A. Pinter
27 Becky A. Pinter, Esq.
28

NOTICE OF MOTION

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on the _____ day of _____, 2015 at _____, m.,
TRP International, Inc.'s Motion for Attorneys' Fees will be heard in Department I.

Dated: July 2, 2015

PINTAR ALBISTON LLP

By: Becky A. Pinta
Becky A. Pinta, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

A. TRP is Seeking a Reasonable Amount of Fees

TRP is seeking \$12,180 in fees, for a total of almost 35 hours at \$350/hour. *See Client Fees Listing, attached hereto.* All fees incurred were necessary and reasonable given the complexity of the matter. Moreover, the Petition required two hearings which were held in Tonopah, Nevada, a round trip from Las Vegas of 450 miles. This which required a full day of travel.

B. Procedural Background

During a hearing on TRP's Petition to Expunge the Lien, held on June 18, 2015, the Court found that the lien was not valid and ordered it expunged. The Court also awarded TRP its attorney fees upon application, pursuant to NRS 108.2275(6).

TRP tried to resolve this issue with PROIMTU MMI LLC ("Proimtu") to remove its lien prior to initiating legal action. Thereafter, TRP initiated legal action. The following procedural summary provides support that the fees sought are reasonable considering the amount of work done.

November 21, 2014: TRP drafts letter to Proimtu requesting it to remove its invalid lien from the project which is rejected by Proimtu.

December 12, 2014: Petition to Expunge Lien is filed; hearing set for February 12, 2015.

January 30, 2015: Respondent files an Opposition that included nine exhibits.

1 **February 9, 2015:** TRP files a Reply.

2 **February 12, 2015:** TRP completes a supplemental disclosure and presents oral argument to
3 Judge Wanker; the hearing, along with travel to and from Las Vegas is nine hours.

4 **March 3, 2015:** Judge Wanker declines to issue a ruling resulting in a second hearing.

5 **April 16, 2015:** TRP files a Request to Place Petition on for Rehearing.

6 **June 18, 2015:** Judge Elliott hears oral argument and rules in TRP's favor. This is a second trip
7 to Tonopah, resulting in another nine hour round trip.

8 **June 22, 2015:** TRP presents its proposed findings of fact and conclusions of law to opposing
9 counsel.

10 **July 2, 2015:** Proposed findings of fact and conclusions of law are finalized between counsel.

11 TRP made every effort to resolve the lien issue without the Court's intervention but said attempts
12 were unsuccessful and resulted in TRP commencing the instant action. TRP's attorney's fees and
13 costs are reasonable and necessary and therefore this Court should award said fees to TRP.

14 **II. ARGUMENT**

15 **A. Court has Awarded Attorney's Fees Pursuant to the Express Provisions of** 16 **NRS 108.2275(6)**

17 NRS 108.2275(6) provides:

18 If, after a hearing on the matter, the court determines that:

19 (a) The notice of lien is frivolous and was made without reasonable cause, the court
20 shall make an order releasing the lien and awarding costs and reasonable attorney's
21 fees to the applicant for bringing the Petition.

21 **B. Plaintiff's Attorney's Fees are Reasonable and Justified**

22 The reasonableness of TRP's request for an award of attorney's fees is measured and
23 determined by the holding in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969).
24 In *Brunzell*, the court focused on four (4) general factors which include: (1) the qualities of the
25 advocate: his or her ability, training, education, experience, professional standing and skill; (2) the
26 character of the work to be done: its difficulty, its intricacy, its importance, time and skill required,
27 the responsibility imposed and the prominence and character for the parties where they affect the
28 importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and

1 attention given to the work; and (4) the result: whether the attorney was successful and what benefits
2 were derived.

3 The analysis which follows, coupled with the facts and procedural posture of this case,
4 including that the Court ruled in TRP's favor, finding the lien was invalidly recorded, clearly
5 demonstrate that TRP is entitled to reasonable attorney's fees incurred as a result of filing the instant
6 action.

7 1. Qualities of the Advocate

8 Becky A. Pintar, has been a licensed attorney in the state of Nevada for almost 14 years and
9 her qualities are well known in the community. She has conducted numerous trials at both the Justice
10 Court and District Court levels, as well as appellate work, and has produced successful results for
11 many of her clients throughout the last 14 years. From 2001 through 2012, almost 80 percent of the
12 legal work she performed was related to construction. She has considerable amount of training and
13 education and is in good professional standing with the State Bar of Nevada. Ms. Pintar's qualities
14 and training as TRP's attorney are what ultimately led to the lien being expunged.

15 2. Character of Work

16 The character of work performed by Becky A. Pintar for TRP, including analysis, research of
17 the applicable law, drafting of all pleadings, and all argument and preparation the hearings
18 demonstrate that the second factor enumerated in *Brunzell* has been satisfied.

19 3. Work Performed

20 The work actually performed by counsel for TRP is evidenced by the pleadings filed and the
21 oral argument provided at the hearing, all resulting in the Court ruling in TRP's favor.

22 4. Result

23 The end result of the work performed on behalf of TRP is self-evident: TRP was successful
24 in its argument that the lien was filed without Proimtu satisfying the statutory requirements.

26 III. CONCLUSION

27 As the foregoing analysis demonstrates, TRP's attorney's fees are reasonable according to the
28 four part test enumerated in the case of *Brunzell* and therefore Plaintiff Patterson respectfully

1 requests this Court award attorney's fees to him in the amount of \$12,180 for almost 35 hours of
2 work performed at the reasonable rate of \$350/hour.

3
4
5 DATED: July 2, 2015

PINTAR ALBISTON LLP

6
7 By: Becky A. Pinta

8 Becky A. Pinta, Esq., NSB # 7867

9 Bryan L. Albiston, Esq., NSB # 12679

10 6053 S. Fort Apache Rd. #120

11 Las Vegas, Nevada 89148

12 Attorney for Petitioner TRP INTERNATIONAL, INC.

CERTIFICATE OF SERVICE

The undersigned, an employee of the law firm of PINTAR ALBISTON LLP, hereby certifies that on July 2, 2015, she served a copy of the foregoing **Motion for Attorney Fees** by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

Brenoch R. Wirthlin, Esq.
FENNEMORE CRAIG PC
300 S. Fourth St., Suite 1400
Bank of America Plaza
Las Vegas, NV 89101

/s/ Fallon Bunton

An employee of
PINTAR ALBISTON LLP

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

2 PROIMTU MMI LLC, a Nevada
3 limited liability company,

4 Appellant,

5 vs.
6

7 TRP INTERNATIONAL, INC., a
8 foreign corporation,

9 Respondent.
10

Case No. 69336

District Court Case No. CV-36431

Electronically Filed
Dec 24 2015 12:16 p.m.

Tracie K. Lindeman

DOCKETING STATEMENT
Clerk of Supreme Court

11 **1.** Fifth Judicial District Court, Department I, Nye County, Sr. Judge Elliott,
12 District Court Case No. CV-36431.

13 **2. Attorney Filing this Docket Statement:**

14 Christopher H. Byrd, Esq., Nevada Bar # 1633

15 Brenoch R. Wirthlin, Esq., Nevada Bar # 10282

16 Fennemore Craig, P.C.

17 300 South 4th Street, Suite 1400

18 Las Vegas, Nevada 89101

19 Telephone: (702) 692-8000

20 Facsimile: (702) 692-8099

21 Email: cbyrd@fclaw.com

22 bwirthlin@fclaw.com

23 *Attorneys for Appellant*

24 *PROIMTU MMI LLC, a Nevada limited liability company*

25 **3. Attorney(s) Representing Respondent:**

26 Becky A. Pinter, Esq.

27 Bryan L. Albiston, Esq.

28 Pinter Albiston LLP

6053 S. Fort Apache Road, Suite 120

Las Vegas, NV 89148

Attorneys for Respondent

TRP INTERNATIONAL, INC.

1 **4. Nature of Disposition (check all that apply):**

- 2 ☐ Judgment after bench trial ☐ Dismissal:
3 ☐ Judgment after jury verdict ☐ Lack of jurisdiction
4 ☐ Summary judgment ☐ Failure to state a claim
5 ☐ Default judgment ☐ Failure to prosecute
6 ☐ Grant/Denial of NRCP 60(b) relief ☒ Other (specify): Motion
7 for Fees following Grant of
8 Motion to Expunge Lien
9 Pursuant to NRS
10 108.2275(1)
11 ☐ Grant/Denial of injunction ☐ Divorce Decree:
12 ☐ Grant/Denial of declaratory relief ☐ Original ☐ Modification
13 ☐ Review of Agency determination ☐ Other disposition (specify)

14 **5. Does this appeal raise issues concerning any of the following? No.**

- 15 ☐ Child Custody
16 ☐ Venue
17 ☐ Termination of parental rights

18 **6. Pending and prior proceedings in this court.** List the case name and docket
19 number of all appeals or original proceedings presently or previously pending
20 before this court which are related to this appeal:

21 **7.** *Case No. 68942. Proimtu MMI LLC, Appellant v. TRP International, Inc.,*
22 *Respondent.*

23 **8. Pending and prior proceedings in other courts:** List the case name, number
24 and court of all pending and prior proceedings in other courts which are
25 related to this appeal (e.g., bankruptcy, consolidated or bifurcated
26 proceedings) and their dates of disposition:

Name	Number	Court	Disposition
<i>Proimtu MMI LLC v. TRP International, Inc.; Tonopah Solar Energy, LLC; Cobra Thermosolar Plants, Inc.; State of Nevada ex rel. the Nevada State Contractors Board; The Insurance Company of the State of Pennsylvania</i>	CV-36747	Fifth District Court, Nye County	Defendants moved to dismiss and for summary judgment. At hearing scheduled on November 12, 2015, before Sr. Judge Elliott, both motions granted. No orders entered yet.

27 ///

28 ///

1 **9. Nature of the action.** Briefly describe the nature of the action and the result
2 below:

3 This case arises from the construction of a billion dollar solar plant in
4 Tonopah Nevada. Respondent, TRP, hired appellant, Proimtu, to assemble
5 and install the mirrors for the plant. TRP refused to pay Proimtu for the work,
6 so Proimtu recorded a lien against the property for \$2,357,977.00. Despite the
7 owner's actual knowledge of Proimtu's work, the district court expunged the
8 lien because Proimtu did not give the owner a notice of right to lien. The
9 district court then granted the motion for fees in the amount of \$16,240.

10 **10. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach
11 separate sheets as necessary):

- 12 a. Did the district court err by awarding fees after expunging Proimtu's
13 lien and exonerating the posted surety bond because Proimtu did not
14 serve the owner with a notice of right to lien as required by NRS
15 108.245, when the owner had actual notice of Proimtu's work and
16 presence on the project from the beginning?
- 17 b. Did TRP provide sufficient evidence to recover fees when it failed to
18 provide a detailed description of the work performed and the time
19 spent?

20 **11. Pending proceedings in this court raising the same or similar issues.** If
21 you are aware of any proceeding presently pending before this court which
22 raises the same or similar issues raised in this appeal, list the case name and
23 docket number and identify the same or similar issues raised:

24 Appellant is unaware of any such pending proceedings.

25 **12. Constitutional issues:** If this appeal challenges the constitutionality of a
26 statute, and the state, any state agency, or any officer or employee thereof is
27 not a party to this appeal, have you notified the clerk of this court and the
28 attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

13. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first-impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain
uniformity of this court's decisions

☐ A ballot question

If so, explain:

☒ N/A

14. Trial. If this action proceeded to trial, how many days did the trial last?

N/A

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from

November 12, 2015.

Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which appeal is taken.

See Exhibit 4.

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

17. Date written notice of entry of judgment or order was served

It is not clear whether proper written notice of entry of the order granting fees was served and when it was served. On November 12, 2015, TRP filed a Notice of Entry of Order in the district court with the order granting fees attached. There is no service page attached indicating service on Proimtu, however. Sometime after November 12, 2015, TRP sent a Certificate of Service to Proimtu indicating that on November 17, 2015, TRP served the Notice of Entry of the Motion for Fees on Proimtu. Proimtu received this Certificate on November 25, 2015, but the Certificate did not have the Notice of Entry of Order attached and it had no service page. TRP filed the Certificate of Service on December 7, 2015, with the district court; but, that Certificate also had nothing attached and no service page.

See Exhibit 5.

Was service by:

☐ Delivery

☒ Unknown

///

///

1 **18. If the time for filing the notice of appeal was tolled by a post-judgment**
2 **motion (NRCp 50(b), 52(b), or 59)**

3 N/A

4 **19. Date notice of appeal was filed**

5 (a) If more than one party has appealed from the judgment or order, list date
6 each notice of appeal was filed and identify by name the party filing the
7 notice of appeal:

8 December 4, 2015.

9 **20. Specify statute or rule governing the time limit for filing the notice of**
10 **appeal, e.g., NRAP 4(a) or other**

11 NRAP 4(a)(1)

12 SUBSTANTIVE APPEALABILITY

13 **21. Specify the statute or other authority granting this court jurisdiction to**
14 **review the judgment or order appealed from:**

15 NRS 108.2275(8) and Winston Products Co., Inc. v. DeBoer, 122 Nev. 517,
16 525, 134 P.3d 726, 732 (2006)

17 **Explain how each authority provides a basis for appeal from the**
18 **judgment or order:**

19 NRS 108.2275(8) permits an appeal from an order expunging a lien as
20 frivolous and DeBoer holds that an award of fees and costs is substantively
21 appealable because the award affects rights of parties growing out of the final
22 judgment.

23 **22. List all parties involved in the action or consolidated actions in the district**
24 **court:**

25 CASE NO.: CV-36431

26 Plaintiff: TRP International, Inc., a foreign corporation.

27 Defendant: Proimtu MMI LLC, a Nevada limited liability company.

28 (a) If all parties in the district court are not parties to this appeal, explain in
detail why those parties are not involved in this appeal, e.g., formally
dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims,
counterclaims, cross-claims or third-party claims, and the date of formal
disposition of each claim.

TRP claimed it was entitled to fees because Proimtu's mechanics' lien was
expunged. Order awarding fees entered November 12, 2015.

1 **24. Attach copies of the last-filed version of all complaints, counterclaims,**
2 **and/or cross claims filed in the district court.**

3 *See Exhibit 1, 2 and 3.*

4 **25. Did the judgment or order appealed from adjudicate ALL the claims**
5 **alleged below and the rights and liabilities of ALL the parties to the**
6 **action or consolidated actions below?**

7 ☒ Yes

8 ☐ No

9 **26. If you answered “No” to question 23, complete the following:**

10 (a) Specify the claims remaining pending below:

11 N/A

12 (b) Specify the parties remaining below:

13 N/A

14 (c) Did the district court certify the judgment or order appealed from as a
15 final judgment pursuant to NRCP 54(b)?

16 ☐ Yes

17 ☐ No

18 (d) Did the district court make an express determination, pursuant to NRCP
19 54(b), that there is no just reason for delay and an express direction for
20 the entry of judgment?

21 ☐ Yes

22 ☐ No

23 **27. If you answered “No” to any part of question 24, explain the basis for**
24 **seeking appellate review (e.g., order is independently appealable under**
25 **NRAP 3A(b)):**

26 N/A

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VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Name of Appellant:

Proimtu MMI, LLC

Name of counsel of record:

Christopher H. Byrd, Esq., NV Bar # 1633
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Dated this 24th day of December, 2015.



Signature of counsel of record

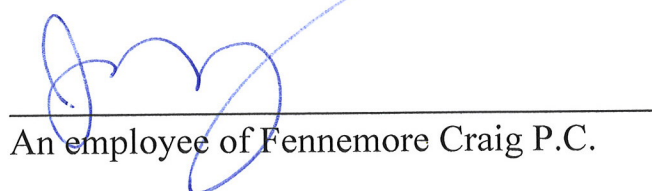
State and county where signed:

Clark County, Nevada

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 24th day of December, 2015 and was served electronically in accordance with the Master Service List and via the United States Mail, first class, postage prepaid, addressed as follows:

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An employee of Fennemore Craig P.C.

**TABLE OF CONTENTS OF EXHIBITS
TO DOCKETING STATEMENT**

Exhibit	Description
1	Motion for Attorney Fees dated July 2, 2015
2	Opposition to Petitioner's Motion for Attorney's Fees dated July 17, 2015
3	Reply to Opposition to Motion for Attorney Fees dated July 23, 2015
4	Order Granting Motion for Attorney Fees dated November 12, 2015
5	Notice of Entry of Order Granting Motion for Attorney Fees dated November 12, 2015