

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

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

4 Appellant,

5 vs.

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

8 Respondent.

Case No. 70056

District Ct Case No. CV 15-017

Electronically Filed
Jun 01 2016 03:12 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

9 **RESPONSE TO ORDER TO**
10 **SHOW CAUSE**

11 Promitu MMI LLC (“Proimtu”) requests that the this Court not
12 dismiss the appeal until the district court rules on whether Proimtu MMI,
13 LLC’s Motion To Amend Judgment or, Alternatively, Motion For
14 Reconsideration (“Motion”) was filed timely. The Motion is set for hearing
15 for June 21, 2016. At that time, the district court will also determine the
16 date on which the Motion was filed for the reasons discussed herein.

17 The timeliness of the Motion is an issue because the clerk refused to
18 file the Motion on the date it was submitted for filing, despite the provisions
19 of NRCP 5(e). The clerk refused to file the Motion because Judge Elliott
 was out of the country and could not set a hearing date to complete the notice
 of motion. See Declaration of Christopher H. Byrd (“Byrd Declaration”) ¶6.

1 Proimtu's tolling motion was presented timely. The Judgment was
2 entered on February 16, 2016, but written notice of entry was delayed. On
3 February 16, 2016, TRP filed a Notice of Entry of the Judgment in the
4 district court with the Judgment attached, but did not serve it. Byrd
5 Declaration ¶3. There is no service page attached to this first Notice of
6 Entry. Id. Subsequently, Proimtu received a Certificate of Service
7 ("Certificate") by mail that indicated that Written Notice of the Judgment
8 was served on February 26, 2016. Byrd Declaration ¶4. This Certificate
9 had no date or service page either, so Proimtu used the date service was
10 allegedly accomplished according to the Certificate. Exhibit "1D" to the
11 Docketing Statement. Id.

12 Proimtu submitted the Motion to the clerk of the Fifth Judicial District
13 Court for filing on March 11, 2016, which was within 10 judicial days from
14 February 26, 2016. Byrd Declaration ¶5. A copy of the Motion with a
15 receipt stamp from the clerk is attached as Exhibit "1E" to the Docketing
16 Statement. The clerk refused to file the Motion to Amend until Judge Elliot
17 set a hearing date. Byrd Declaration ¶6. No hearing was set because Judge
18 Elliott was out of the country. Id. The clerk finally allowed the motion to be
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1 filed without a hearing date on March 15, 2016. Exhibit “1F” to the
2 Docketing Statement. Id.

3 Proimtu requested the clerk indicate the correct filing date of the
4 Motion. Byrd Declaration ¶7. The clerk advised that the filing date should
5 be addressed with Judge Elliott in open court at the hearing on the Motion
6 and that Proimtu could use the receipt stamp on the Motion as proof of a
7 timely filing. Id.

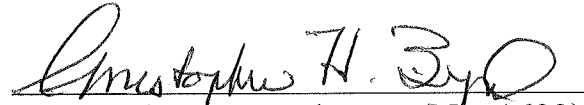
8 Judge Elliot refuses to rule on the issue of timely filing without a
9 hearing. Byrd Declaration ¶8. Judge Elliott held a conference call with all
10 counsel on May 16, 2016. Id. During that call, Proimtu’s counsel advised
11 him of the Order to Show Cause. Id. Counsel explained the filing issue and
12 requested a ruling on the timeliness of the motion. Id. Judge Elliott set the
13 matter for hearing on June 21, 2016. Id.

14 This court should not dismiss the appeal until Judge Elliot rules on
15 whether the Motion was timely filed. If the Motion was timely filed Judge
16 Elliott still has jurisdiction to deny the Motion. *Foster v. Dingwall*, 126
17 Nev. 49, 52, 228 P.3d 453, 455 (2010). If Judge Elliot is inclined to grant
18 the Motion then he may certify its intent to do so to this Court. Id. at 53, 228
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1 P.3d at 455. At that time, Proimtu could move to have this Court return
2 jurisdiction to the district court on a limited basis.

3 DATED this 1st day of June, 2016.

4 **FENNEMORE CRAIG, P.C.**

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