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6 Attorneys for Defendant  
7 TRP INTERNATIONAL, INC.

8 **FIFTH JUDICIAL DISTRICT COURT**

9 **NYE COUNTY, NEVADA**

10 PROIMTU MMI LLC, a Nevada limited liability  
11 company

12 Plaintiff,

13 v.

14 TRP INTERNATIONAL, INC., a Delaware  
corporation; TONOPAH SOLAR ENERGY, LLC,  
15 a Delaware limited liability company; COBRA  
THERMOSOLAR PLANTS, INC., a Nevada  
16 Corporation; STATE OF NEVADA ex rel. the  
NEVADA STATE CONTRACTORS BOARD,  
17 THE INSURANCE COMPANY OF THE STATE  
OF PENNSYLVANIA, a Pennsylvania corporation,  
DOES I-X, ROE COMPANIES I-X;

18 Defendants.  
19

**CASE NO. CV36747**  
**DEPT. NO.: 1**

**NOTICE OF APPEAL**

20 Notice is hereby given that Defendant TRP INTERNATIONAL, INC. ("TRP") appeals to the  
21 Supreme Court of Nevada from the Order granting Proimtu MMI, LLC's Motion to Amend  
22 Judgment or, Alternatively, Motion for Reconsideration entered in this action on the 14<sup>th</sup> day of  
23 September, 2016.

24  
25 DATED: September 20, 2016

PINTAR ALBISTON LLP

26 By: Becky A. Pinter

27 Becky A. Pinter, Esq.  
6053 S. Fort Apache Road, #120  
Las Vegas, Nevada 89148  
28 Attorneys for Defendant TRP INTERNATIONAL, INC.

FILED

2016 SEP 26 P 2:02

Electronically Filed  
Sep 30 2016 02:04 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

PINTAR ALBISTON LLP

PINTAR ALBISTON LLP

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 20, 2016, she served a copy of the foregoing **Notice of Appeal**: via USPS:

Christopher H. Byrd, Esq.  
Brenoch R. Wirthlin, Esq.  
FENNEMORE CRAIG, P.C.  
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[bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)  
Counsel for Plaintiff

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Counsel for Tonopah Solar Energy, LLC , Cobra Thermosolar Plants, Inc.  
and The Insurance Company of the State of Pennsylvania

  
PINTAR ALBISTON LLP

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 Nevada State Bar # 7867  
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 Bryan@PintarAlbiston.com

Attorneys for Defendant  
 TRP INTERNATIONAL, INC.

FILED

2016 SEP 26 P 2:02

*AMP*

NYE COUNTY CLERK  
 BY DEPUTY

**FIFTH JUDICIAL DISTRICT COURT**

**NYE COUNTY, NEVADA**

PROIMTU MMI LLC, a Nevada limited liability  
 company

Plaintiff,

v.

TRP INTERNATIONAL, INC., a Delaware  
 corporation; TONOPAH SOLAR ENERGY, LLC,  
 a Delaware limited liability company; COBRA  
 THERMOSOLAR PLANTS, INC., a Nevada  
 Corporation; STATE OF NEVADA ex rel. the  
 NEVADA STATE CONTRACTORS BOARD,  
 THE INSURANCE COMPANY OF THE STATE  
 OF PENNSYLVANIA, a Pennsylvania  
 corporation, DOES I-X, ROE COMPANIES I-X;

Defendants.

**CASE NO. CV36747**

**DEPT. NO.: 1**

**CASE APPEAL STATEMENT**

Appellant TRP INTERNATIONAL, INC. ("TRP"), Defendant named above, pursuant to  
 NRAP 3(f), hereby submits its Case Appeal Statement:

**1. Name of appellant filing this case appeal statement:**

TRP INTERNATIONAL, INC.

**2. Identify the judge issuing the decision, judgment, or order appealed from:**

Judge Steven Elliott

///

///

///

1 **3. Identify each appellant and the name and address of counsel for each appellant:**

2 TRP INTERNATIONAL, INC.  
3 Becky A. Pintar, Esq.  
4 Nevada State Bar # 7867  
5 PINTAR ALBISTON LLP  
6 6053 S. Fort Apache Road, #120  
7 Las Vegas, Nevada 89148  
8 T: (702) 685-5255  
9 F: (702) 202-6329  
10 Becky@PintarAlbiston.com

11 **4. Identify each respondent and the name and address of appellate counsel, if known, for**  
12 **each respondent:**

13 Proimtu MMI, LLC  
14 Christopher H. Byrd, Esq.(No.1633)  
15 Brenoch R. Wirthlin, Esq.(No.10282)  
16 FENNEMORE CRAIG, P.C.  
17 300 S. Fourth Street, Suite 1400  
18 Las Vegas, Nevada 89101  
19 Telephone: (702) 692-8000  
20 Facsimile: (702) 692-8099  
21 cbvrd@fclaw.com  
22 bwirthlin@fclaw.com

23 **5. Indicate whether any attorney identified above in response to question 3 or 4 is not**  
24 **licensed to practice law in Nevada and, if so, whether the district court granted that attorney**  
25 **permission to appear under SCR 42: All attorneys are licensed to practice in Nevada.**

26 **6. Indicate whether appellant was represented by appointed or retained counsel in the**  
27 **district court:**

28 Appellant was represented by counsel in district court: Becky A. Pintar, PINTAR  
ALBISTON LLP.

**7. Indicate whether appellant is represented by appointed or retained counsel on appeal:**

Appellant is represented by counsel in APPEAL: Becky A. Pintar, PINTAR ALBISTON LLP

1 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date**  
2 **of entry of the district court order granting such leave:**

3 Not applicable.  
4

5 **9. Indicate the date the proceedings commenced in the district court:**

6 Complaint filed July 10, 2015.  
7

8 **10. Provide a brief description of the nature of the action and result in the district court,**  
9 **including the type of judgment or order being appealed and the relief granted by the district**  
10 **court:**

11 TRP is a foreign corporation in Nevada based in Spain that constructs solar projects. It entered  
12 into a contract with the prime contractor, Cobra Thermosolar Plants, Inc. ("Cobra"), to fabricate and  
13 erect heliostats on a solar project in Tonopah, Nevada, known as the Crescent Dunes Thermosolar  
14 Plant (the "Project"). In turn, TRP and Respondent PROIMTU MMI LLC ("Proimtu") entered into a  
15 contract for heliostat assembly and field erection ("Contract"). Ultimately, a dispute arose between  
16 TRP and Proimtu regarding the payments each side alleged were due under the Contract.

17 Proimtu filed its First Amended Complaint alleging eight (8) causes of action against TRP.  
18 TRP sought to dismiss the complaint based on a forum selection clause wherein the parties expressly  
19 agreed to be bound by the jurisdiction of the Courts of Madrid, Spain.

20 The court dismissed the amended complaint. Proimtu's then brought a motion for  
21 reconsideration, whereby the court reversed its prior ruling.  
22

23 **11. Indicate whether the case has previously been the subject of an appeal to or original writ**  
24 **proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of**  
25 **the prior proceeding:**

26 Supreme Court Docket 68942

27 Supreme Court Docket 70056

28 Supreme Court Docket 70922

1 12. Indicate whether this appeal involves child custody or visitation: not applicable

2  
3 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

4 Settlement is not possible.

5  
6 DATED: September 20, 2016

PINTAR ALBISTON LLP

7 By: Becky A. Pinta

8 Becky A. Pinta, Esq.

6053 S. Fort Apache Road, #120

9 Las Vegas, Nevada 89148

Attorneys for Defendant TRP INTERNATIONAL, INC.

PINTAR ALBISTON LLP

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 21, 2016, she served a copy of the foregoing **Case Appeal Statement** via USPS:

Christopher H. Byrd, Esq.  
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[bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)  
Counsel for Plaintiff

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Counsel for Tonopah Solar Energy, LLC , Cobra Thermosolar Plants, Inc.  
and The Insurance Company of the State of Pennsylvania

  
PINTAR ALBISTON LLP

Case #: CV-0036747

Judge: STEVEN P ELLIOT

Date Filed: 05/07/15 Department: 09

Case Type: PP OTH PERSONAL PROPERTY OTHER

Title/Caption: PROIMTU MMI LLC

vs

TRP INTERNATIONAL, INC., a Delaware corporation; TONOPAH SOLAR ENERGY, LLC, a Delaware limited-liability company; COBRA THERMOSOLAR PLANTS, INC., a Nevada corporation; STATE OF NEVADA ex rel. the NEVADA STATE CONTRACTORS BOARD, DOES I-X ROW COMPANIES I-X

Comments: FILE IN TONOPAH \*\*\*JUDGE WANKER RECUSED\*\*\*

Defendant(s)	Attorney(s)
TRP INTERNATIONAL, INC	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
TONOPAH SOLAR ENERGY, LLC	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
COBRA THERMOSOLAR PLANTS, INC	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
STATE OF NEVADA	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
NEVADA STATE CONTRACTORS BOARD	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
INSURANCE COMPANY OF PENN...	No "Attorney 1" Listed
Plaintiff(s)	Attorney(s)
PROIMTU MMI LLC	WIRTHLIN, BRENOCH

Filings:

Date	Pty	Filing	Fees
5/07/15	P	COMPLAINT	
5/07/15	P	INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)	
5/07/15	C	SUMMONS (ISSUED - COBRA THERMOSOLAR PLANTS, INC.)	
5/07/15	C	SUMMONS (ISSUED - TONOPAH SOLAR ENERGY, LLC)	
5/07/15	C	SUMMONS (ISSUED - TRP INTERNATIONAL, INC.)	
5/07/15	C	SUMMONS (ISSUED- STATE OF NEVADA EXREL STATE CONTRACT BOARD)	
5/07/15	P	NOTICE OF PENDENCY OF ACTION AFFECTING REAL PROPERTY	
6/25/15	P	NOTICE OF FORECLOSURE OF LIEN	
7/10/15	P	FIRST AMENDED COMPLAINT	
7/10/15	P	RELEASE OF LIS PENDENS	
7/10/15	C	SUMMONS(ISSUED - INSURANCE CO. OF THE STATE OF PENNSYLVANIA)	
7/10/15	C	AMENDED SUMMONS (ISSUED - TONOPAH SOLAR ENERGY LLC)	
7/10/15	C	AMENDED SUMMONS (ISSUED - TRP INTERNATIONAL INC)	
7/10/15	C	AMENDED SUMMONS (ISSUED - COBRA THERMOSOLAR PLANTS INC)	



7/10/15	C	AMENDED SUMMONS (ISSUED - STATE OF NEVADA EX REL. THE NEVADA STATE CONTRACTOR BOARD)	
7/27/15	P	AFFIDAVIT OF SERVICE (TONOPAH SOLAR ENERGY LLC)	
7/27/15	P	AFFIDAVIT OF SERVICE (TRP INTERNATIONAL, INC)	
7/27/15	P	AFFIDAVIT OF SERVICE (STATE OF NEVADA/CONTRACTOR'S BOARD)	
7/27/15	P	AFFIDAVIT OF SERVICE (NEVADA CONTRACTOR'S BOARD)	
8/07/15	P	AFFIDAVIT OF SERVICE (THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA)	
8/12/15	P	NOTICE OF PUBLISHING FORCLOSURE OF LIEN	
8/12/15	P	AFFIDAVIT OF SERVICE	
8/13/15	D	DEFENDANT THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA ANSWER TO PLAINTIFF PROIMTU MMI LLC'S COMPLAINT	
8/18/15	D	DEFENDANTS TONOPAH SOLAR ENERGY, LLC AND COBRA THERMOSOLAR PLANTS, INC.'S ANSWER TO PLAINTIFF PROIMTU MMI LLC'S FIRST AMENDED COMPLAINT AND CROSSCLAIM AGAINST TRP INTERNATIONAL, INC.	228.00
8/20/15	D	MOTION TO DISMISS PROIMTU'S COMPLAINT	
8/20/15	D	OPPOSITION TO RESPONDENT PROIMTU'S EMERGENCY MOTION TO STAY	
8/24/15	C	ORDER OF RECUSAL AND REQUEST FOR SENIOR JUDGE	
8/27/15	D	CERTIFICATE OF SERVICE FOR MOTION TO DISMISS PROIMTU'S COMPLAINT	
8/27/15	D	CERTIFICATE OF SERVICE FOR MOTION FOR ATTORNEY FEES	
9/08/15	P	OPPOSITION TO MOTION TO DISMISS COMPLAINT	
10/12/15	D	DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S MOTION FOR SUMMARY JUDGMENT	220.00
10/16/15	D	REPLY TO PROIMTU'S OPPOSITION TO MOTION TO DISMISS COMPLAINT *****END OF FILE #1*****	
10/28/15	P	PROIMTU MMI, LLC'S OPPOSITION TO DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S MOTION FOR SUMMARY JUDGMENT	
11/09/15	P	DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	
12/07/15	D	CERTIFICATE OF SERVICE FOR NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR ATTORNEY FEES AND NOTICE OF ENTRY OF ORDER DENYING MOTION FOR EMERGENCY STAY	
2/16/16	D	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S MOTION FOR SUMMARY JUDGMENT	
2/16/16	D	FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER ON MOTION TO DISMISS COMPLAINT AND FINAL JUDGMENT PURSUANT TO NRCP 54 (B)	
2/16/16	D	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSION OF LAW AND ON MOTION TO DISMISS COMPLAINT AND FINAL JUDGMENT PURSUANT TO NRCP 54 (B)	
2/18/16	D	FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER GRANTING DEFENDANTS TONOPAH SOLAR ENERGY, LLC, COBRA THERMOSOLAR PLANTS, INC. AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA'S MOTION FOR SUMMARY JUDGMENT AND FINAL JUDGEMENT PURSUANT TO NRCP 54(B) ****RESCINDED 6/24/16****	
3/01/16	D	CERTIFICATE OF SERVICE FOR NOTICE OF ENTRY OF ORDER GRANTING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER TO DISMISS COMPLAINT	
3/15/16	P	PROIMTU MMI, LLC'S MOTION TO AMEND JUDGMENT OR,	

ALTERNATIVELY, MOTION FOR RECONSIDERATION

3/25/16	P	NOTICE OF APPEAL	500.00
3/25/16	P	CASE APPEAL STATEMENT	
4/04/16	S	RECEIPT FOR DOCUMENTS	
4/25/16	D	OPPOSITION TO PROIMTU MMI, LLC'S MOTION TO AMEND JUDGMENT OR ALTERNATIVELY, MOTION FOR RECONSIDERATION	
5/02/16	P	PROIMTU MMI, LLC'S REPLY IN SUPPORT OF ITS MOTION TO AMEND JUDGMENT OR ALTERNATIVELY, MOTION FOR RECONSIDERATION	
6/24/16	C	ORDER (RESCINDING FINDINGS OF FACT, CONCLUSIONS OF LAW, ETC. FILED 2/18/16)	
6/29/16	D	NOTICE OF ENTRY OF ORDER (FINDINGS OF FACT CONCLUSIONS OF LAW, ETC. FILED 2/18/16 RESCINDED BY COURT 6/24/16)	
7/22/16	S	ORDER (GRANTING AN EXTENSION OF TIME FOR APPELLANT TO FILE A RESPONSE TO ORDER TO SHOW CAUSE)	
7/28/16	P	NOTICE OF APPEAL	24.00
7/28/16	P	CASE APPEAL STATEMENT	
7/28/16	C	ORDER CERTIFYING INTENT TO GRANT PROIMTU MMI, LLC'S MOTION TO AMEND JUDGEMENT OR, ALTERNATIVELY, MOTION FOR RECONSIDERATION	
7/29/16	P	NOTICE OF ENTRY OF ORDER	
8/05/16	S	RECEIPT FOR DOCUMENTS	
8/08/16	P	NOTICE OF ENTRY OF ORDER GRANTING PROIMTU MMI, LLC'S MOTION TO AMEND JUDGMENT OR, ALTERNATIVELY, MOTION FOR RECONSIDERATION	
9/12/16	C	ORDER GRANTING PROIMTU MMI, LLC'S MOTION TO AMEND JUDGMENT OR, ALTERNATIVELY, MOTION FOR RECONSIDERATION	
9/14/16	P	NOTICE OF ENTRY OF ORDER GRANTING PROIMTU MMI, LLC'S MOTION TO AMEND JUDGMENT OR, ALTERNATIVELY MOTION FOR RECONSIDERATION	
9/26/16	D	NOTICE OF APPEAL	24.00
9/26/16	D	CASE APPEAL STATEMENT	

Case #: CV-0036747

Judge: STEVEN P ELLIOT

Date Filed: 05/07/15 Department: 09

Case Type: PP OTH PERSONAL PROPERTY OTHER

Title/Caption: PROIMTU MMI LLC

vs

TRP INTERNATIONAL, INC., a Delaware corporation; TONOPAH SOLAR ENERGY, LLC, a Delaware limited-liability company; COBRA THERMOSOLAR PLANTS, INC., a Nevada corporation; STATE OF NEVADA ex rel. the NEVADA STATE CONTRACTORS BOARD, DOES I-X ROW COMPANIES I-X

Comments: FILE IN TONOPAH \*\*\*JUDGE WANKER RECUSED\*\*\*

Defendant(s)	Attorney(s)
TRP INTERNATIONAL, INC	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
TONOPAH SOLAR ENERGY, LLC	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
COBRA THERMOSOLAR PLANTS, INC	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
STATE OF NEVADA	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
NEVADA STATE CONTRACTORS BOARD	No "Attorney 1" Listed
Defendant(s)	Attorney(s)
INSURANCE COMPANY OF PENN...	No "Attorney 1" Listed
Plaintiff(s)	Attorney(s)
PROIMTU MMI LLC	WIRTHLIN, BRENOCH

Hearings:

Date	Time	Hearing	Reference
9/09/15	9:00	MOTION TO DISMISS	
JUDGE: STEVEN P ELLIOT			
CLERK: AMY DOWERS			
APP: BECKY PINTAR; BRENOCK WIRTHLIN; DONNA DI MAGGIO			
HEARING CONTINUED TO NOVEMBER 12, 2015 @ 9:00 AM			

11/12/15 9:00 MOTION TO DISMISS  
11/12/15 9:00 MOTION FOR SUMMARY JUDGMENT  
5/16/16 1:30 STATUS CHECK

SENIOR JUDGE: STEVEN ELLIOT; CLERK: AMY DOWERS; APPEARANCES: DONNA DIMAGIO, ESQ. FOR COBRA THERMOSOLAR PLANTS, INC., TONOPAH SOLAR ENERGY, LLC AND THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA BECKY PINTAR, ESQ. FOR TRP INTERNATIONAL INC. BRENOCH R. WIRTHLIN, ESQ. AND CHRISTOPHER BYRD FOR PROIMTU MMI LLC; THE COURT CALLS THE CASE. MS. PINTAR IS NOT ON THE

CALL. MR. BYRD ADVISES THE COURT THAT THEY ARE TRYING TO CONTACT MS. PINTAR'S OFFICE BUT HAVE BEEN UNABLE TO REACH ANYONE. THE COURT GIVES A HISTORY OF THE CORRESPONDENCES THAT INITIATE TODAY'S HEARING. MS. DIMAGIO STATES SHE IS HAVING A PROBLEM HEARING THE COURT. THE COURT STATED A MOTION WAS FILED WITH NO REPLY AND PROIMTU'S POSITION IS THAT THE MOTION SHOULD BE GRANTED. THE COURT STATES HE WANTED TO GIVE TRP THE OPPORTUNITY TO EXPLAIN WHY THEY DID NOT RESPOND TO THE MOTION. THE COURT STATES A NEED FOR TIME TO READ THE BRIEFS AND RESEARCH THE MATTER. THE COURT STATES THE MATTER CALLS FOR A HEARING IN TONOPAH. MR. BYRD ADDRESSES THE COURT. MR. BYRD GIVES A HISTORY OF HIS MOTION TO DISMISS STATING THEY FILED THE MOTION, MS. PINTAR FILED AN OPPOSITION, AND THEN THEY FILED A REPLY. MR. BYRD STATES HE GOT AN ORDER TO SHOW CAUSE FROM THE SUPREME COURT ON THE NOTICE OF APPEAL THAT HE FILED WITH RESPECT TO THE RULING ON THE MOTION TO DISMISS. MR. BYRD STATES HE LODGED HIS MOTION FOR FILING WITH THE CLERK BUT THE CLERK DID NOT FILE IT FOR SEVERAL DAYS AND AS A RESULT THERE IS SOME LACK OF CLARITY AS TO WHETHER THE TIME TO APPEAL WAS ACTUALLY CLOSED. MR. BYRD STATES HE HAD TO FILE HIS APPEAL WITHIN 30 DAYS WRITTEN NOTICE OF ENTRY OF JUDGMENT. MR. BYRD STATES HE WENT AHEAD AND DID THAT NOT KNOWING HOW THE COURT WOULD RULE AS TO WHETHER THE FILING COULD BE CONSIDERED BACK DATED OR TIMELY BECAUSE IT WAS NOT FILED WHEN IT WAS PRESENTED. MR. BYRD STATES HE HAS TO FILE A RESPONSE TO THE SUPREME COURT BY JUNE 2, 2016. MR. BYRD ASKS THE COURT IF HE WOULD CONSIDER HEARING THE ISSUE TODAY AS TO WHETHER THE COURT DEEMS THE DOCUMENT FILED ON THE DAY ACTUALLY FILED BY THE CLERK. THE COURT STATES HE HAS NOT HAD TIME TO RESEARCH THE ISSUE OR GIVEN IT A LOT OF THOUGHT. MR. BYRD ASKS THE COURT FOR A HEARING DATE. THE COURT ASKS MR. BYRD FOR A TIME LINE FOR THE HEARING. MR. BYRD ASKS FOR A MORE CONVENIENT FORUM THAN TONOPAH, SUGGESTING RENO. MS. PINTAR JOINS THE CALL. THE COURT STATES A NEED TO HAVE ORAL ARGUMENTS TO WORK THROUGH ALL OF THE ISSUES. MS. PINTAR IS GOING TO TRY AND FACILITATE A HEARING IN LAS VEGAS. MS. PINTAR WILL ENQUIRE ABOUT A COURT ROOM AND THEN EMAIL EVERYONE WITH THE AVAILABILITY. THE COURT WOULD LIKE THE HEARING TO BE HELD BEFORE JUNE 27, 2016. DONNA DIMAGGIO STATES SHE WILL NOT BE ATTENDING ORAL ARGUMENT. MS. DIMAGGIO STATES AN ISSUE WITH THE ORDER DISMISSING COBRA AND ITS SURETY, AND ASKS FOR THE STATUS ON THE ORDERS. THE COURT STATES HE THOUGHT HE HAD THE ISSUE WORKED OUT BEFORE HE WENT ON VACATION. THE PARTIES STATE THEY HAVE NOT SEEN THE ORDER THAT IS IN QUESTION. THE COURT STATES THAT IF A HEARING CANNOT BE SET UP IN LAS VEGAS HE CAN COME TO PAHRUMP. THE COURT ADJOURNS.

6/21/16 11:00 MOTION FOR RECONSIDERATION

JUDGE: JUDGE ELLIOT

CLERK: TANNER DAVIS

APP: BRENOCH WIRTHLIN PRESENT FOR PROIMTU, LLC; BECKY PINTAR PRESENT FOR TRP INTERNATIONAL; DONNA DIMAGIO PRESENT FOR COBRA THERMOSOLAR PLANTS, INC., AND TONOPAH SOLAR ENERGY, LLC.

COURT CALLS THE MATTER AND OUTLINES THE CASE HISTORY. MR. WIRTHLIN ARGUES IN SUPPORT OF GRANTING HIS MOTION FOR THE OPPOSITION NOT BEING TIMELY FILED. MS. PINTAR OPPOSES GRANTING PROIMTU'S MOTION AND ARGUES THE REASON THE OPPOSITION WAS NOT FILED UNTIL IT WAS. COURT FINDS THE OPPOSITION WAS NOT TIMELY FILED AND GRANTS PROIMTU'S MOTION.

FILED

2016 SEP 14 P 1:47

*Keely K. Hedman*

NYE COUNTY CLERK  
BY DEPUTY

NEOJ

Christopher H. Byrd, Esq. (No. 1633)  
Brenoch R. Wirthlin, Esq. (No. 10282)  
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[bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)  
*Attorneys for Proimtu MMI LLC*

FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

PROIMTU MMI LLC, a Nevada limited liability company,

Plaintiff,

v.

TRP INTERNATIONAL, INC., a Delaware corporation; TONOPAH SOLAR ENERGY, LLC, a Delaware limited liability company; COBRA THERMOSOLAR PLANTS, INC., a Nevada corporation; STATE OF NEVADA ex rel. the NEVADA STATE CONTRACTORS BOARD; THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a Pennsylvania corporation; DOES I-X; and ROE COMPANIES I-X,

Defendants.

COBRA THERMOSOLAR PLANTS, INC. a Nevada corporation; and TONOPAH SOLAR ENERGY, LLC, a Nevada limited liability company,

Crossclaimants,

v.

TRP INTERNATIONAL, INC., a foreign corporation; DOES 1 through 50, inclusive, and ROE CORPORATIONS 51 through 101, inclusive,

Crossdefendants

CASE NO.: CV36747

DEPT. NO.: 1

**NOTICE OF ENTRY OF ORDER  
GRANTING PROIMTU MMI, LLC'S  
MOTION TO AMEND JUDGMENT  
OR, ALTERNATIVELY, MOTION  
FOR RECONSIDERATION**

Date of Hearing: June 21, 2016

Time of Hearing: 11:00 a.m.

\\

1                   **NOTICE OF ENTRY OF ORDER GRANTING PROIMTU MMI, LLC'S**  
2                   **MOTION TO AMEND JUDGMENT OR, ALTERNATIVELY,**  
3                   **MOTION FOR RECONSIDERATION**

4                   TO:   ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

5                   PLEASE TAKE NOTICE that an Order Granting Proimtu MMI, LLC's Motion to Amend  
6                   Judgment or, Alternatively, Motion for Reconsideration, was entered on the 12<sup>th</sup> day of  
7                   September, 2016, copy of which is attached hereto.

8                   DATED this 12<sup>th</sup> day of September, 2016.

9                   FENNEMORE CRAIG, P.C.

10                  By: 

11                   Christopher H. Byrd, Esq. (No. 1633)

12                   Brenoch Wirthlin (No. 10282)

13                   300 S. Fourth Street, Suite 1400

14                   Las Vegas, Nevada 89101

15                   Telephone: (702) 692-8000

16                   Facsimile: (702) 692-8099

17                   Attorneys for Proimtu MMI LLC

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RECEIPT OF COPY

RECEIPT OF COPY of the Notice of Entry of Order Granting Proimtu MMI, LLC's Motion to Amend Judgment or, Alternatively, Motion for Reconsideration, is hereby acknowledged on the 12<sup>th</sup> day of September, 2016.

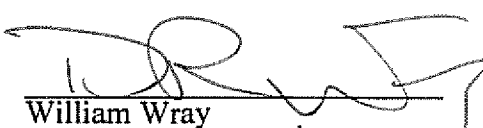
PINTAR ALBISTON LLP

HOLLEY DRIGGS WALCH

By:

  
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Bryan L. Albiston  
6053 S. Fort Apache Rd., Suite 120  
Las Vegas, NV 89148

By:

  
William Wray  
400 S. Fourth St., 3<sup>rd</sup> Floor  
Las Vegas, NV 89101

*Attorneys for Defendant  
TRP International, Inc.*

*Attorneys for Tonopah Solar  
Energy, LLC; Cobra  
Thermosolar Plants, Inc.; and  
The Insurance Company of the  
State of Pennsylvania*

12050125

1 **ORDG**

2 Christopher H. Byrd, Esq. (No. 1633)  
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11 Attorneys for Proimtu MMI LLC

FILED

2016 SEP 12 A 9:51

AMY DOWERS

CLERK  
DEPUTY

7 **FIFTH JUDICIAL DISTRICT COURT**

8 **NYE COUNTY, NEVADA**

9 PROIMTU MMI LLC, a Nevada limited liability  
10 company,

11 Plaintiff,

12 v.

13 TRP INTERNATIONAL, INC., a Delaware  
14 corporation; TONOPAH SOLAR ENERGY,  
15 LLC, a Delaware limited liability company;  
16 COBRA THERMOSOLAR PLANTS, INC., a  
17 Nevada corporation; STATE OF NEVADA ex  
18 rel. the NEVADA STATE CONTRACTORS  
19 BOARD; THE INSURANCE COMPANY OF  
20 THE STATE OF PENNSYLVANIA, a  
21 Pennsylvania corporation; DOES 1-X; and  
22 ROE COMPANIES I-X,

23 Defendants.

24 COBRA THERMOSOLAR PLANTS, INC. a  
25 Nevada corporation; and TONOPAH SOLAR  
26 ENERGY, LLC, a Nevada limited liability  
27 company,

28 Crossclaimants,

29 v.

30 TRP INTERNATIONAL, INC., a foreign  
31 corporation; DOES 1 through 50, inclusive, and  
32 ROE CORPORATIONS 51 through 101,  
33 inclusive,

34 Crossdefendants

CASE NO.: CV36747

DEPT. NO.: 1

**ORDER GRANTING PROIMTU MMI,  
LLC'S MOTION TO AMEND  
JUDGMENT OR, ALTERNATIVELY,  
MOTION FOR RECONSIDERATION**

Date of Hearing: June 21, 2016

Time of Hearing: 11:00 a.m.

35 This matter came before the Court on Proimtu MMI, LLC's ("Proimtu") Motion to Amend  
36 Judgment or, Alternatively, Motion for Reconsideration ("Motion"); the Court having heard oral  
37 argument on the Motion on June 21, 2016; Brenoch R. Wirthlin, Esq., having appeared at the  
38 hearing on behalf of Proimtu; Becky Pintar, Esq., having appeared at the hearing on behalf of TRP

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1 International, Inc. ("TRP") ; Donna Dimaggio, Esq., having appeared at the hearing on behalf of  
2 Cobra Thermosolar Plants, Inc., whom did not file a response to the Motion or present oral  
3 argument regarding the Motion at the hearing; the Court having reviewed all pleadings on file with  
4 respect to the Motion; good cause appearing, the Court hereby makes the following findings of fact  
5 and conclusions of law<sup>1</sup>:

6 **I. FINDINGS OF FACT**

7 1. TRP filed its Motion to Dismiss Proimtu's Complaint ("Motion to Dismiss"). The  
8 Court granted the Motion to Dismiss and entered Findings of Fact, Conclusions of Law and Order  
9 on Motion to Dismiss Complaint and Final Judgment Pursuant to NRCP 54(b) ("Judgment") on  
10 February 16, 2016. Proimtu filed its Motion to amend the Judgment or in the alternative for  
11 reconsideration.

12 2. This Court previously found that the Motion was timely filed. An Order  
13 Certifying Intent to Grant Proimtu MMI LLC's Motion to Amend Judgment or Alternatively,  
14 Motion for Reconsideration was entered on July 28, 2016.

15 3. Proimtu served its Motion on TRP on March 11, 2016. TRP received the Motion,  
16 but did not file its Opposition to the Motion ("Opposition") until April 21, 2016, only after  
17 Proimtu advised the Court in writing that the Motion was unopposed and requested the Court to  
18 grant the Motion.

19 4. Proimtu argues that the Opposition is untimely under DCR 13(3). *See* DCR 13(3)  
20 ("Within 10 days after the service of the motion, the opposing party shall serve and file his written  
21 opposition thereto, together with a memorandum of points and authorities and supporting  
22 affidavits, if any, stating facts showing why the motion should be denied.").

23 5. TRP argues that the Opposition is timely under NRCP 6(d). *See* NRCP 6(d) ("A  
24 written motion . . . and notice of hearing shall be served not later than five days before the time  
25 specified for the hearing . . . ." (emphasis added)). NRCP 6(d) does not extend the time for filing  
26 an opposition and no extension was granted by Proimtu.

27  
28  

---

<sup>1</sup> If a finding of fact is more appropriately deemed a conclusion of law or vice versa, it is so deemed.

1           6.       Proimtu further argues that TRP's "delay alone [is] sufficient grounds" for this  
2 Court to deem Proimtu's Motion "unopposed and thus meritorious." *King v. Cartilage*, 121 Nev.  
3 926, 928, 124 P.3d 1161, 1162 (2005).

4           7.       The Court takes judicial notice of the Supreme Court's Order, entered July 20,  
5 2016, which indicates that this Court may grant the Motion without a remand of jurisdiction  
6 because it found the Motion was timely filed.

7           **II.       CONCLUSIONS OF LAW**

8           1.       Proimtu was not required to serve a notice of hearing with the Motion in order for  
9 the applicable deadlines under DCR 13 to begin running. *See Grouse Creek Ranches v. Budget*  
10 *Fin. Corp.*, 87 Nev. 419, 426, 488 P.2d 917, 922 (1971) ("NRCP 52(b) refers only to service of the  
11 motion to amend and requires service within ten days of service of notice of entry of judgment.  
12 NRCP 6(d) simply adds the requirement that such a motion, as well as the notice of hearing of  
13 such motion, be served at least five days before the hearing. There is not such an overlapping as  
14 would require service of both the motion and notice of hearing thereof within ten days of service  
15 of notice of entry of judgment.").

16           2.       Based upon the Motion, Opposition and Reply, and oral argument heard by the  
17 Court from counsel for the parties, as well as the Nevada Supreme Court's decision in *Grouse*  
18 *Creek Ranches, supra*, the Court finds that TRP's Opposition to the Motion is untimely under  
19 DCR 13(3).

20           3.       Because TRP's Opposition was untimely the Court further finds that Proimtu's  
21 Motion shall be deemed "unopposed and thus meritorious." *King v. Cartilage*, 121 Nev. 926, 928,  
22 124 P.3d 1161, 1162 (2005).

23           4.       The Judgment is vacated and TRP's Motion to Dismiss is hereby denied because  
24 TRP invoked the jurisdiction of this court and obtained a judgment on the merits on Proimtu's  
25 Second and Seventh Claims for Relief, which conduct is inconsistent with assertion of the forum  
26 selection clause and is a waiver of the forum selection clause.

27       ///

28       ///

1 NOW THEREFORE, based on the foregoing, good cause appearing.

2 IT IS ORDERED, ADJUDGED AND DECREED that the Motion is granted. TRP's  
3 Motion to Dismiss is denied on the basis that TRP waived the forum selection clause and the  
4 Judgment is vacated as to all claims and the case shall proceed on the merits. TRP shall have 20  
5 days from written notice of entry of this Order to answer the First Amended Complaint.

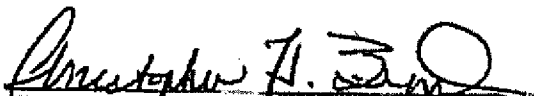
6 DATED this 13 day of September, 2016.

7  
8 

9 District Court Judge

10 Submitted by:

11 FENNEMORE CRAIG, P.C.

12 

13 Christopher H. Byrd, Esq. (No. 1633)

14 Brenoch Wirthlin (No. 10282)

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20 Approved as to Form and Content by:

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23 Becky Pintar, Esq.

24 Nevada Bar No. 7867

25 6053 S. Fort Apache Road, #120

26 Las Vegas, NV

27 Attorneys for TRP International, Inc.

1 **ORDG**

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11 Attorneys for Proimtu MMI LLC

**FILED**

2016 SEP 12 A 9:51

*Amo*  
NYE COUNTY CLERK  
BY DEPUTY

7 **FIFTH JUDICIAL DISTRICT COURT**

8 **NYE COUNTY, NEVADA**

9 PROIMTU MMI LLC, a Nevada limited liability  
10 company,

11 Plaintiff,

12 v.

13 TRP INTERNATIONAL, INC., a Delaware  
14 corporation; TONOPAH SOLAR ENERGY,  
15 LLC, a Delaware limited liability company;  
16 COBRA THERMOSOLAR PLANTS, INC., a  
17 Nevada corporation; STATE OF NEVADA ex  
18 rel. the NEVADA STATE CONTRACTORS  
19 BOARD; THE INSURANCE COMPANY OF  
20 THE STATE OF PENNSYLVANIA, a  
21 Pennsylvania corporation; DOES I-X; and  
22 ROE COMPANIES I-X,

23 Defendants.

24 COBRA THERMOSOLAR PLANTS, INC. a  
25 Nevada corporation; and TONOPAH SOLAR  
26 ENERGY, LLC, a Nevada limited liability  
27 company,

28 Crossclaimants,

29 v.

30 TRP INTERNATIONAL, INC., a foreign  
31 corporation; DOES 1 through 50, inclusive, and  
32 ROE CORPORATIONS 51 through 101,  
33 inclusive,

34 Crossdefendants

CASE NO.: CV36747

DEPT. NO.: 1

**ORDER GRANTING PROIMTU MMI,  
LLC'S MOTION TO AMEND  
JUDGMENT OR, ALTERNATIVELY,  
MOTION FOR RECONSIDERATION**

Date of Hearing: June 21, 2016

Time of Hearing: 11:00 a.m.

35 This matter came before the Court on Proimtu MMI, LLC's ("Proimtu") Motion to Amend  
36 Judgment or, Alternatively, Motion for Reconsideration ("Motion"); the Court having heard oral  
37 argument on the Motion on June 21, 2016; Brenoch R. Wirthlin, Esq., having appeared at the  
38 hearing on behalf of Proimtu; Becky Pintar, Esq., having appeared at the hearing on behalf of TRP

1 International, Inc. ("TRP") ; Donna Dimaggio, Esq., having appeared at the hearing on behalf of  
2 Cobra Thermosolar Plants, Inc., whom did not file a response to the Motion or present oral  
3 argument regarding the Motion at the hearing; the Court having reviewed all pleadings on file with  
4 respect to the Motion; good cause appearing, the Court hereby makes the following findings of fact  
5 and conclusions of law<sup>1</sup>:

6 **I. FINDINGS OF FACT**

7 1. TRP filed its Motion to Dismiss Proimtu's Complaint ("Motion to Dismiss"). The  
8 Court granted the Motion to Dismiss and entered Findings of Fact, Conclusions of Law and Order  
9 on Motion to Dismiss Complaint and Final Judgment Pursuant to NRCP 54(b) ("Judgment") on  
10 February 16, 2016. Proimtu filed its Motion to amend the Judgment or in the alternative for  
11 reconsideration.

12 2. This Court previously found that the Motion was timely filed. An Order  
13 Certifying Intent to Grant Proimtu MMI LLC's Motion to Amend Judgment or Alternatively,  
14 Motion for Reconsideration was entered on July 28, 2016.

15 3. Proimtu served its Motion on TRP on March 11, 2016. TRP received the Motion,  
16 but did not file its Opposition to the Motion ("Opposition") until April 21, 2016, only after  
17 Proimtu advised the Court in writing that the Motion was unopposed and requested the Court to  
18 grant the Motion.

19 4. Proimtu argues that the Opposition is untimely under DCR 13(3). *See* DCR 13(3)  
20 ("Within 10 days after the service of the motion, the opposing party shall serve and file his written  
21 opposition thereto, together with a memorandum of points and authorities and supporting  
22 affidavits, if any, stating facts showing why the motion should be denied.").

23 5. TRP argues that the Opposition is timely under NRCP 6(d). *See* NRCP 6(d) ("A  
24 written motion . . . and notice of hearing shall be served **not later than** five days before the time  
25 specified for the hearing . . . ." (emphasis added)). NRCP 6(d) does not extend the time for filing  
26 an opposition and no extension was granted by Proimtu.

27  
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<sup>1</sup> If a finding of fact is more appropriately deemed a conclusion of law or vice versa, it is so deemed.  
TDAY/11874114 2/034514 0013

6. Proimtu further argues that TRP's "delay alone [is] sufficient grounds" for this Court to deem Proimtu's Motion "unopposed and thus meritorious." *King v. Cartilage*, 121 Nev. 926, 928, 124 P.3d 1161, 1162 (2005).

7. The Court takes judicial notice of the Supreme Court's Order, entered July 20, 2016, which indicates that this Court may grant the Motion without a remand of jurisdiction because it found the Motion was timely filed.

## II. CONCLUSIONS OF LAW

1. Proimtu was not required to serve a notice of hearing with the Motion in order for the applicable deadlines under DCR 13 to begin running. *See Grouse Creek Ranches v. Budget Fin. Corp.*, 87 Nev. 419, 426, 488 P.2d 917, 922 (1971) ("NRCF 52(b) refers only to service of the motion to amend and requires service within ten days of service of notice of entry of judgment. NRCF 6(d) simply adds the requirement that such a motion, as well as the notice of hearing of such motion, be served at least five days before the hearing. There is not such an overlapping as would require service of both the motion and notice of hearing thereof within ten days of service of notice of entry of judgment.").

2. Based upon the Motion, Opposition and Reply, and oral argument heard by the Court from counsel for the parties, as well as the Nevada Supreme Court's decision in *Grouse Creek Ranches, supra*, the Court finds that TRP's Opposition to the Motion is untimely under DCR 13(3).

3. Because TRP's Opposition was untimely the Court further finds that Proimtu's Motion shall be deemed "unopposed and thus meritorious." *King v. Cartilage*, 121 Nev. 926, 928, 124 P.3d 1161, 1162 (2005).

4. The Judgment is vacated and TRP's Motion to Dismiss is hereby denied because TRP invoked the jurisdiction of this court and obtained a judgment on the merits on Proimtu's Second and Seventh Claims for Relief, which conduct is inconsistent with assertion of the forum selection clause and is a waiver of the forum selection clause.

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1 NOW THEREFORE, based on the foregoing, good cause appearing.

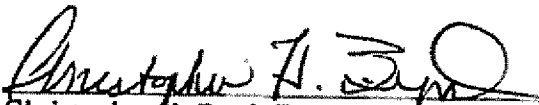
2 IT IS ORDERED, ADJUDGED AND DECREED that the Motion is granted. TRP's  
3 Motion to Dismiss is denied on the basis that TRP waived the forum selection clause and the  
4 Judgment is vacated as to all claims and the case shall proceed on the merits. TRP shall have 20  
5 days from written notice of entry of this Order to answer the First Amended Complaint.

6 DATED this 13 day of September, 2016.

7   
8 Steven Elliott  
9 District Court Judge


10 Submitted by:

11 FENNEMORE CRAIG, P.C.

12   
13 Christopher H. Byrd, Esq. (No. 1633)  
14 Brenoch Wirthlin (No. 10282)  
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19 Attorneys for Proimtu M&H LLC

20 Approved as to Form and Content by:

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23 Becky Pintar, Esq.  
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25 6053 S. Fort Apache Road, #120  
26 Las Vegas, NV  
27 Attorneys for TRP International, Inc.  
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*Attorneys for Proimtu MMI LLC*

FIFTH JUDICIAL DISTRICT COURT

NYE COUNTY, NEVADA

PROIMTU MMI LLC, a Nevada limited liability company,

Plaintiff,

v.

TRP INTERNATIONAL, INC., a Delaware corporation; TONOPAH SOLAR ENERGY, LLC, a Delaware limited liability company; COBRA THERMOSOLAR PLANTS, INC., a Nevada corporation; STATE OF NEVADA ex rel. the NEVADA STATE CONTRACTORS BOARD; THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a Pennsylvania corporation; DOES I-X; and ROE COMPANIES I-X,

Defendants.

COBRA THERMOSOLAR PLANTS, INC. a Nevada corporation; and TONOPAH SOLAR ENERGY, LLC, a Nevada limited liability company,

Crossclaimants,

v.

TRP INTERNATIONAL, INC., a foreign corporation; DOES 1 through 50, inclusive, and ROE CORPORATIONS 51 through 101, inclusive,

Crossdefendants

CASE NO.: CV36747

DEPT. NO.: 1

**ORDER GRANTING PROIMTU MMI, LLC'S MOTION TO AMEND JUDGMENT OR, ALTERNATIVELY, MOTION FOR RECONSIDERATION**

Date of Hearing: June 21, 2016

Time of Hearing: 11:00 a.m.

This matter came before the Court on Proimtu MMI, LLC's ("Proimtu") Motion to Amend Judgment or, Alternatively, Motion for Reconsideration ("Motion"); the Court having heard oral argument on the Motion on June 21, 2016; Brenoch R. Wirthlin, Esq., having appeared at the hearing on behalf of Proimtu; Becky Pintar, Esq., having appeared at the hearing on behalf of TRP



1 International, Inc. ("TRP") ; Donna Dimaggio, Esq., having appeared at the hearing on behalf of  
2 Cobra Thermosolar Plants, Inc., whom did not file a response to the Motion or present oral  
3 argument regarding the Motion at the hearing; the Court having reviewed all pleadings on file with  
4 respect to the Motion; good cause appearing, the Court hereby makes the following findings of fact  
5 and conclusions of law<sup>1</sup>:

6 **I. FINDINGS OF FACT**

7 1. TRP filed its Motion to Dismiss Proimtu's Complaint ("Motion to Dismiss"). The  
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10 February 16, 2016. Proimtu filed its Motion to amend the Judgment or in the alternative for  
11 reconsideration.

12 2. This Court previously found that the Motion was timely filed. An Order  
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14 Motion for Reconsideration was entered on July 28, 2016.

15 3. Proimtu served its Motion on TRP on March 11, 2016. TRP received the Motion,  
16 but did not file its Opposition to the Motion ("Opposition") until April 21, 2016, only after  
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18 grant the Motion.

19 4. Proimtu argues that the Opposition is untimely under DCR 13(3). *See* DCR 13(3)  
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21 opposition thereto, together with a memorandum of points and authorities and supporting  
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23 5. TRP argues that the Opposition is timely under NRCP 6(d). *See* NRCP 6(d) ("A  
24 written motion . . . and notice of hearing shall be served **not later than** five days before the time  
25 specified for the hearing . . . ." (emphasis added)). NRCP 6(d) does not extend the time for filing  
26 an opposition and no extension was granted by Proimtu.

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<sup>1</sup> If a finding of fact is more appropriately deemed a conclusion of law or vice versa, it is so deemed.  
TDAY/11874114.2/034514.0013

1           6.       Proimtu further argues that TRP's "delay alone [is] sufficient grounds" for this  
2 Court to deem Proimtu's Motion "unopposed and thus meritorious." *King v. Cartilage*, 121 Nev.  
3 926, 928, 124 P.3d 1161, 1162 (2005).

4           7.       The Court takes judicial notice of the Supreme Court's Order, entered July 20,  
5 2016, which indicates that this Court may grant the Motion without a remand of jurisdiction  
6 because it found the Motion was timely filed.

7           **II.       CONCLUSIONS OF LAW**

8           1.       Proimtu was not required to serve a notice of hearing with the Motion in order for  
9 the applicable deadlines under DCR 13 to begin running. *See Grouse Creek Ranches v. Budget*  
10 *Fin. Corp.*, 87 Nev. 419, 426, 488 P.2d 917, 922 (1971) ("NRCP 52(b) refers only to service of the  
11 motion to amend and requires service within ten days of service of notice of entry of judgment.  
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14 would require service of both the motion and notice of hearing thereof within ten days of service  
15 of notice of entry of judgment.").

16          2.       Based upon the Motion, Opposition and Reply, and oral argument heard by the  
17 Court from counsel for the parties, as well as the Nevada Supreme Court's decision in *Grouse*  
18 *Creek Ranches, supra*, the Court finds that TRP's Opposition to the Motion is untimely under  
19 DCR 13(3).

20          3.       Because TRP's Opposition was untimely the Court further finds that Proimtu's  
21 Motion shall be deemed "unopposed and thus meritorious." *King v. Cartilage*, 121 Nev. 926, 928,  
22 124 P.3d 1161, 1162 (2005).

23          4.       The Judgment is vacated and TRP's Motion to Dismiss is hereby denied because  
24 TRP invoked the jurisdiction of this court and obtained a judgment on the merits on Proimtu's  
25 Second and Seventh Claims for Relief, which conduct is inconsistent with assertion of the forum  
26 selection clause and is a waiver of the forum selection clause.

27       ///

28       ///

1 NOW THEREFORE, based on the foregoing, good cause appearing,

2 IT IS ORDERED, ADJUDGED AND DECREED that the Motion is granted, TRP's  
3 Motion to Dismiss is denied on the basis that TRP waived the forum selection clause and the  
4 Judgment is vacated as to all claims and the case shall proceed on the merits. TRP shall have 20  
5 days from written notice of entry of this Order to answer the First Amended Complaint.

6 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

7

8

\_\_\_\_\_  
District Court Judge

9

Submitted by:

10

**FENNEMORE CRAIG, P.C.**

11

12

13

  
Christopher H. Byrd, Esq. (No. 1633)

14

Brenoch Wirthlin (No. 10282)

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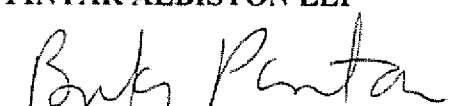
*Attorneys for Proimtu MMI LLC*

20

Approved as to Form and Content by:

**PINTAR ALBISTON LLP**

21



22

Becky Pintar, Esq.

23

Nevada Bar No. 7867

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6053 S. Fort Apache Road, #120

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Las Vegas, NV

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*Attorneys for TRP International, Inc.*

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28

**OFFICE OF THE NYE COUNTY CLERK  
SANDRA L. MERLINO**

**Tonopah Office**  
Nye County Courthouse  
P.O. Box 1031  
101 Radar Road  
Tonopah, Nevada 89049  
Phone (775) 482-8127  
Fax (775) 482-8133



**Pahrump Office**  
Government Complex  
1520 East Basin Avenue  
Pahrump, Nevada 89060  
Phone (775) 751-7040  
Fax (775) 751-7047

September 26, 2016

NOTICE OF  
DEFICIENCY:

VIA E-FILE

Supreme Court Clerk  
201 S. Carson Street, #201  
Carson City, NV 89701-4702

Re: CV 36747

PROIMTU MMI LLC  
VS

TRP INTERNATIONAL, INC; TONOPHA SOLAR ENERGY, LLC; COBRA THERMOSOLAR  
PLANTS, INC.; NEVADA STATE CONTRACTORS BOARD; THE INSURANCE COMPANY  
OF THE STATE OF PENNSYLVANIA

Dear Ms. Lindeman:

I am enclosing the documentation required to submit the above referenced matter on appeal.

This is a CIVIL matter. The Appellant paid the \$500 bond and the \$24 District Court filing fee. I am sending the check for the Supreme Court fee in the amount of \$250 via mail.

If I can be of any assistance, please feel free to contact me at our Tonopah office.

Sincerely,

SANDRA L. MERLINO  
NYE COUNTY CLERK

By: \_\_\_\_\_  
AMY DOWERS, Deputy Clerk / Tonopah