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11 **In The First Judicial District Court Of The State Of Nevada**
12 **In and For Carson City**

14 **JED MARGOLIN, an individual.**
15 **Plaintiff,**
16 **vs.**

CASE NO. 090C00579 1B
DEPT. NO. 1

17 **OPTIMA TECHNOLOGY CORPORATION,**
18 **a California corporation, OPTIMA**
19 **TECHNOLOGY CORPORATION, a Nevada**
20 **corporation, REZA ZANDIAN aka**
21 **GOLAMREZA ZANDIANJAZI aka**
22 **GHOLAM REZA ZANDIAN aka REZA**
23 **JAZI aka J. REZA JAZI aka G. REZA JAZI**
24 **aka GHONONREZA ZANDIAN JAZI, an**
25 **individual, DOE Companies 1-10, DOE**
26 **Corporations 11-20, and DOE Individuals 21-**
27 **30,**
28 **Defendants.**

DEFENDANT REZA ZANDIAN AKA
GOLAMREZA ZANDIANJAZI AKA
GHOLAM REZA ZANDIAN AKA REZA
JAZI AKA J. REZA JAZI AKA G. REZA
JAZI AKA GHONONREZA ZANDIAN
JAZI'S MOTION FOR STAY OF
PROCEEDINGS TO ENFORCE
JUDGMENT PURSUANT TO NRCP
62(B)

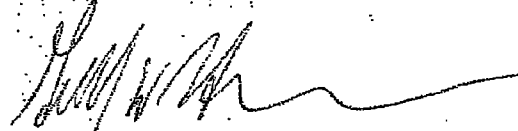
26 Defendant REZA ZANDIAN ("Zandian") by and through his attorney Geoffrey W.
27 Hawkins, Esq., of the law firm HAWKINS MELENDREZ P.C., and hereby submits this Motion for
28 Stay of Proceedings to Enforce Judgment Pursuant to NRCP 62(b).

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1 This motion is made and based upon the provisions of NRCP 62 and the following
2 Memorandum of Points and Authorities, the pleadings and papers on file herein, and any oral
3 argument this Honorable Court may allow.

4 DATED this 21st day of December, 2013.

5
6 **HAWKINS MELENDREZ, P.C.**

7 

8
9 **GEOFFREY W. HAWKINS, ESQ.**

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Attorneys for Defendant

Reza Zandian

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POINTS AND AUTHORITIES

I.

INTRODUCTION

On June 24, 2013 this Court entered a Default Judgment against Zandian. On June 27, 2013, Plaintiff filed a Notice of Entry of Default Judgment against Zandian. On or about December 11, 2013, Plaintiff filed his Motion for Judgment Debtor Examination and to Produce Documents. On December 20, 2013, Zandian timely filed his Motion to Set Aside Default Judgment which is now pending before this Court. Pursuant to NRCPC 62 (b), execution of or any proceeding to enforce the default judgment against Zandian should be stayed pending the outcome of Zandian's Motion to Set Aside Default Judgment. Furthermore, this Court should stay the execution of or any proceeding to enforce the default judgment against Zandian without a requirement that Zandian provide security at this time.

II.

STATEMENT OF LAW

A. Rule 62(b) Allows Stays Without Security Pending Post-Judgment Motions

There is a special rule in Nevada that applies to stays pending post-trial motions. NRCPC Rule 62(b) provides:

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

Rule 62(b) gives the court extremely broad discretion to enter a stay without security during the pendency of post-judgment motions. Indeed, unlike Rule 62(d)'s provision for stays upon appeal, Rule 62(b) does not even refer to a supersedeas bond.

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1 **B. It Is Common And Customary In Nevada To Allow Stays Without Security On Post-**
2 **Judgment Motions**

3 It is the common practice in Nevada to stay judgments pending resolution of post-judgment
4 motions pursuant to NRCP 62(b) without requiring a bond. *See David N. Frederick, Post Trial*
5 *Motions*, NEVADA CIVIL PRACTICE MANUAL 25-30 (5th ed. 2005) (“security in the form of a
6 bond or other collateral is usually not required”). There are many reasons to allow a stay on such
7 motions. First, post-trial review by the trial court typically takes less time than review by the
8 appellate court. In addition, all of the post-judgment proceedings will be within this court’s control.
9 And supersedeas bonds are expensive.

10 The Nevada Supreme Court has recognized the need for courts, under appropriate
11 circumstances, to grant a stay without requiring either a bond or any other additional security. In
12 *McCulloch v. Jeakins*, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983) the court held that the district
13 court “may provide for a bond in a lesser amount, or may permit security other than a bond when
14 unusual circumstances exist and so warrant.” (*Citing Fed. Prescription Servs., Inc. v. Am. Pharm.*
15 *Ass’n.*, 636 F.2d 755 (D.C. Cir. 1980) and 11 Wright & Miller, FEDERAL PRACTICE AND
16 PROCEDURE § 2905, at 328 (1973) (emphasis omitted)). Moreover, in the recent case of *Nelson v.*
17 *Heer*, the Court further liberalized the standards regarding stays with alternative security. *See*
18 *Nelson v. Heer*, 121 Nev. 832, 122 P.3d 1252, 1254 (2005). The court agreed that “the phrase
19 ‘unusual circumstances’ in *McCulloch* [99 Nev. at 123, 659 P.2d at 303] is too restrictive.” *Nelson*,
20 122 P.3d at 1254. “[T]his language is outdated and few, if any courts still use such a rigid standard.”
21 *Id.* The court concluded that “a more flexible and modern approach will better serve Nevada
22 litigants and courts.” *Id.*

23 Even Rule 62(d) does not require a bond in all cases for a stay pending appeal. *See id.* at
24 1253; *Olympia Equip. Leasing Co. v. Western Union Telegraph*, 786 F.2d 794, 796 (7th Cir. 1986).
25 Such a requirement would conflict with NRAP 8(b), which implicitly recognizes the discretion of
26 courts to issue stays not conditioned on bonds. “[I]f the appellate court has the power to issue an
27 unsecured stay, as Rule 8(b) clearly implies, then the district court must have the power also, if Rule
28 8(b) is to make any sense.” *Fed. Prescription Servs., Inc. v. Am. Pharm. Ass’n*, 636 F.2d 755, 760

1 (D.C. Cir. 1980); see also *Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc.*, 600
2 F.2d 1189 (5th Cir. 1979); *Int'l Telemeter Corp. v. Hamlin int'l Corp.*, 754 F.2d 1492, 1495 (9th
3 Cir. 1985).

4 **C. The Cost Of A Bond Is An Unnecessary Expense That Is Potentially Taxable To**
5 **Plaintiff**

6 Bonding is expensive, and the costs of bonding should be avoided except where the
7 defendant's ability to pay a judgment is open to serious question. Such caution is especially
8 warranted because the costs of bonding may ultimately be borne by plaintiffs rather than
9 defendants. Under NRAP 39(e), the costs of a supersedeas bond are taxable to plaintiffs if the
10 judgment is reversed on appeal.

11 **III.**

12 **LEGAL ARGUMENT**

13 On or about June 24, 2013, this Court entered a Default Judgment against Zandian. Then,
14 on or about December 11, 2013, Plaintiff filed his Motion for Judgment Debtor Examination and to
15 Produce Documents. Upon learning of the Default Judgment, Zandian retained counsel to file a
16 motion to set aside the default judgment. On December 20, 2013, Zandian timely filed his Motion
17 to Set Aside Default Judgment which is now pending before this Court. Zandian's Motion to Set
18 Aside Default Judgment was made pursuant to NRCP 55 and 60.

19 Pursuant to NRCP 62(b), this Court is authorized, in its discretion, to stay execution of, or
20 any proceedings to enforce a judgment pending the disposition of post-trial motions brought under
21 NRCP 60. In the instant case, Zandian's Motion to Set Aside Default Judgment must be resolved
22 before any proceedings to enforce the Default Judgment can proceed. Allowing Plaintiff to proceed
23 with enforcement of the Default Judgment in the face of the pending Motion to Set Aside Default
24 Judgment could obviously cause the parties to incur unnecessary expenses, and would be unfair and
25 prejudicial to Zandian in the event that the Default Judgment is set aside by this Court. Indeed,
26 NRCP 62(b) is obviously intended to avoid such untoward consequences.
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IV.

CONCLUSION

Based on the foregoing points and authorities, Defendant Reza Zandian respectfully requests that this Court grant a stay of any proceedings to enforce the Default Judgment, including proceedings such as a debtor's examination, until after the resolution of Zandian's Motion to Set Aside Default Judgment.

AFFIRMATION PURSUANT TO NRS 239B.030

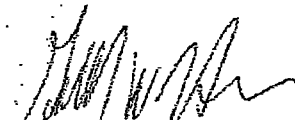
The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DECLARATION

The undersigned also declares under penalty of perjury that the foregoing is true and accurate to the best of my knowledge.

Dated this 20th day of December, 2013.

HAWKINS MELENDREZ, P.C.




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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 30th day of December, 2013, service of **DEFENDANT REZA ZANDIAN AKA GOLAMREZA ZANDIANJAZI AKA GHOLAM REZA ZANDIAN AKA REZA JAZI AKA J. REZA JAZI AKA G. REZA JAZI AKA GHONONREZA ZANDIAN JAZI'S MOTION FOR STAY OF PROCEEDINGS TO ENFORCE JUDGMENT PURSUANT TO NRCP 62(B)** was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed follows:

Matthew D. Francis
Adam P. McMillen
WATSON ROUNDS
5371 Kietzke Lane
Reno, Nevada 89511
Attorneys for Plaintiff
Jed Margolin


An employee of Hawkins Melendrez, P.C.

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