

1 aware, Zandian has not lived in the US for over three years. Zandian has resided at 6 Rue Edouard  
2 Fournier, 75116 Paris, France since August 2011. In fact, Plaintiff's counsel's firm had knowledge  
3 of Zandian's French address as early as March 2013 due to its representation of Fred Sadri in the  
4 Nevada Supreme Court Case No. 62839/Eighth Judicial District Court Case No. A635430. (See  
5 Notice of Appeal in Case No. A635430, attached hereto as **Exhibit A**).

6 On or about July 16, 2012, Plaintiff allegedly served Zandian with written discovery.  
7 However, Zandian never received any written discovery due to the fact that said written discovery  
8 was mailed to the address mistakenly provided in John Peter Lee Esq.'s Motion to Withdraw. Due  
9 to the fact that Zandian never received Plaintiff's written discovery, responses to the same were  
10 never provided. On or about, December 14, 2012, Plaintiff filed a Motion for Sanctions Pursuant to  
11 NRC 37. In Plaintiff's Motion for Sanctions, Plaintiff requested the Court to strike Zandian's  
12 General Denial and award Plaintiff his fees and costs incurred in bringing the motion. Again,  
13 Zandian never received said Motion for Sanctions and as a result no opposition was filed. On or  
14 about, January 15, 2013, this Court issued an order striking the General Denial of Zandian and  
15 awarded Plaintiff his fees and costs incurred in bringing the Motion for Sanctions.

16 On or about March 28, 2013 the Clerk of this Court entered default against Zandian. On or  
17 about April 5, 2013, Plaintiff filed an Amended Notice of Entry of Default against Zandian. A copy  
18 of said Amended Notice of Entry of Default was again mailed to the incorrect address provided in  
19 Zandian's prior counsel's Motion to Withdraw. Plaintiff failed to mail a copy of the Amended  
20 Notice of Entry of Default to Zandian's French address, despite having knowledge of said address  
21 back in March of 2013. See **Exhibit A**.

22 On or about April 17, 2013, Plaintiff filed an Application for Entry of Default Judgment  
23 against Zandian. A copy of Plaintiff's Application was again mailed to the incorrect address  
24 provided in John Peter Lee's Motion to Withdraw, despite Plaintiff's knowledge of Zandian's  
25 correct address in France. See **Exhibit A**. Furthermore, Plaintiff filed his Application for Entry of  
26 Default Judgment without providing any notice to Zandian of the impending filing despite  
27 Plaintiff's previous and extensive dealings with Zandian. On June 24, 2013 this Court entered a  
28 Default Judgment against Zandian. On June 27, 2013, Plaintiff filed a Notice of Entry of Default

1 Judgment against Zandian. Both the June 24, 2013 Default Judgment and the June 27, 2013 Notice  
2 of Entry of Default Judgment were mailed to the incorrect mailing address by Plaintiff, despite  
3 Plaintiff's knowledge of Zandian's correct address in France.

4 Plaintiff's failure to provide notice to Zandian of the Application for Default Judgment  
5 violates the Rules of Civil Procedure. Defendant clearly has good cause for the instant Default  
6 Judgment to be set aside based upon NRCPC 55(b)(2) and NRCPC 55(c)'s incorporation of NRCPC  
7 60(b)(1)'s allowance for inadvertence, surprise and excusable neglect as evidence of good cause.  
8 *Intermountain Lumber and Builders Supply, Inc. v. Glen Falls Insurance Co.*, 83 Nev. 126,129, 424  
9 P.2d 884, 886 (1967). As such, Defendant should be allowed the opportunity to Set Aside the  
10 Default Judgment and be provided the opportunity to file a responsive pleading of its choice in this  
11 matter.

12 **II.**

13 **STATEMENT OF LAW**

14 NRCPC 55(c) provides that, in the court's discretion, a default judgment may be set aside in  
15 accordance with NRCPC 60. NRCPC 60 provides the moving party relief, in part, through rules 60(b)  
16 and 60(c). NRCPC 60(b) states in pertinent part:

17 On motion and upon such terms as are just, the court may relieve a  
18 party or a party's legal representative from a final judgment, order,  
19 or proceeding for the following reasons:

20 (1) mistake, inadvertence, surprise, or excusable neglect;

21 (3) fraud (whether heretofore denominated intrinsic or  
22 extrinsic), misrepresentation or other misconduct of an  
23 adverse party;

24 The motion shall be made within a reasonable time, and for  
25 reasons (1), (2), and (3) not more than 6 months after the  
26 proceeding was taken or the date that written notice of entry of the  
27 judgment or order was served.

28 If mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation, misconduct of an  
adverse party, or discharged judgment is shown, an order or judgment should be withdrawn and the

1 Judgment, Plaintiff, through his counsel, had knowledge of Zandian's personal residence in France.  
2 See **Exhibit A**. However, Plaintiff failed to provide Zandian with the required three-day notice,  
3 despite knowing that Zandian intended to defend himself against Plaintiff's suit, as evidenced by  
4 Zandian's February 17, 2012 Motion to Dismiss and March 5, 2012 General Denial. Furthermore,  
5 Plaintiff failed to mail a copy of the April 5, 2013 Amended Notice of Entry of Default and the  
6 April 17, 2013 Application for Entry of Default Judgment to Zandian's French address despite  
7 knowledge of said address. Due to Plaintiff's failure to provide the required three day notice,  
8 failure to mail a copy of the April 5, 2013 Amended Notice of Entry of Default to Zandian's correct  
9 address in France, and subsequent failures to mail a copy of the April 17, 2013 Application for  
10 Entry of Default Judgment, the June 24, 2013 Default Judgment and the June 27, 2013 Notice of  
11 Entry of Default Judgment to Zandian's French address, Zandian was unaware of the impending  
12 default. Therefore, pursuant to NRCP 55(b)(2) and the holding in *Christy*, Zandian is entitled to a  
13 set aside of Plaintiff's Default Judgment.

14 **B. Mistake, Inadvertence, Surprise, or Excusable Neglect is Present**

15 For a party to seek relief from judgment or order under NRCP 60(b)(1), he must  
16 demonstrate that the judgment was a result of mistake, inadvertence, surprise, or excusable neglect,  
17 and a meritorious defense must be tendered within a timely manner. *Gutenberger*, 94 Nev. at 175.  
18 In addition to the reasons set forth in Paragraph A, Zandian seeks relief from the Default Judgment  
19 based on excusable neglect.

20 In *Stoecklein v. Johnson Elec., Inc.*, the Nevada Supreme Court considered a similar set of  
21 facts as found in the instant matter. In *Stoecklein* the plaintiff filed a complaint against Stoecklein  
22 and five other defendants. An answer was filed by the defendants and subsequently a scheduling  
23 order for the trial was sent to counsel for the parties stating that the parties should be ready for trial  
24 on September 30, 1991. The scheduling order stated that the court would notify the attorneys for  
25 each party of the date of trial and any pretrial deadlines. See *Stoecklein v. Johnson Elec., Inc.*, 109  
26 Nev. 268, 849 P.2d 305 (1991). However, on August 19, 1991 Stoecklein's counsel withdrew due  
27 to nonpayment of legal fees. See *Id.* The order of withdrawal filed with the district court provided  
28 an incorrect address for future pleadings to be served on Stoecklein. See *Id.* As such, Stoecklein

1 never received notice from the court of the trial date. A bench trial was held, however Stoecklein  
2 failed to appear. Judgment was then entered against Stoecklein and the other defendants.

3       Following the bench trial, Plaintiff's counsel sent the notice of the judgment to Stoecklein's  
4 correct address. *See Id.* Upon receipt of the notice of judgment, Stoecklein immediately obtained  
5 counsel and filed a motion for relief from judgment under NRCP 60(b)(1). *See Id.* The motion was  
6 based on Stoecklein's assertion that he had received no notice of the trial date. The district court  
7 denied Stoecklein's motion. *See Id.*

8       On appeal, the Nevada Supreme Court held that there was no evidence in the record that  
9 showed notice of the trial date was sent to or received by Stoecklein. Therefore, Stoecklein's  
10 failure to appear for trial was due to circumstances that constitute excusable neglect under NRCP  
11 60(b)(1). *See Id.*

12       In the instant matter, Zandian's prior counsel, John Peter Lee Esq., withdrew as counsel on  
13 or about March 7, 2012, due to a break down in communications among other things. In his Motion  
14 to Withdraw, John Peter Lee Esq., provided an incorrect address for future pleadings and discovery  
15 to be served on Zandian. As such, Zandian never received any pleadings or discovery in this matter  
16 after April 26, 2012 (the date the Court granted John Peter Lee Esq.'s Motion to Withdraw).  
17 Specifically, Zandian did not receive the following: (1) Plaintiff's written discovery which was  
18 allegedly served on July 16, 2012; (2) Plaintiff's December 14, 2012 Motion for Sanctions Pursuant  
19 to NRCP 37; (3) the January 15, 2013 Order striking the General Denial of Zandian and awarding  
20 Plaintiff his fees and costs incurred in bringing the Motion for Sanctions; (4) the April 5, 2013,  
21 Amended Notice of Entry of Default against Zandian; (5) Plaintiff's April 17, 2013, Application for  
22 Entry of Default Judgment against Zandian; (6) the June 24, 2013 Default Judgment; and (7) the  
23 June 27, 2013 Notice of Entry of Default Judgment. Zandian only learned of the Default Judgment  
24 while visiting the US on business in late November of 2013. Upon learning of the Default  
25 Judgment, Zandian retained the law firm of Hawkins Melendrez P.C. to file the instant motion.

26       As was the case in *Stoecklein*, Zandian's failure to respond to Plaintiff's written discovery  
27 and failure to oppose Plaintiff's Motion for Sanctions and Application for Entry of Default  
28 Judgment were due to circumstances that constitute excusable neglect under NRCP 60(b)(1).

1 Furthermore, there are several factors the Court should use to determine whether the  
2 conditions of 60(b)(1) have been met: (1) prompt application to remove the judgment; (2) a lack of  
3 intent to delay the proceedings; (3) ignorance on the part of counsel or party as to procedure; and  
4 (4) good faith. *Ogle v. Miller*, 87 Nev. 573, 576, 491 P.2d 40, 42 (1971).

5 **1. Zandian Promptly Files This Motion**

6 Rule 60(b)(1) states that a motion under subsection (b)(1) must be brought “not more than  
7 six months after judgment, order, or proceeding was entered or taken.” NRCP 60(b)(1); *see also*  
8 *Deal v. Baines*, 110 Nev. 509, 512, 874 P.2d 775 (1994). This Court has found prompt application  
9 to remove the judgment is a persuasive factor. *See Hotel Last Frontier Corporation v. Frontier*  
10 *Properties, Inc.*, 79 Nev. 150, 154, 380 P.2d 283 (1963). In this case, the Default Judgment was  
11 entered on or about June 24, 2013 and the Notice of Entry of Default Judgment was filed on or  
12 about June 27, 2013. Zandian learned of the Default Judgment in late November of 2013 while  
13 visiting the US on business. Upon learning of the Default Judgment, Zandian retained Hawkins  
14 Melendrez, P.C. to represent him in this matter. Zandian’s current motion comes less than six  
15 months after the entry of the Default Judgment. Therefore, Zandian has promptly applied for the  
16 removal of the Default Judgment.

17 **2. There Is No Intent To Delay The Proceedings**

18 This Court has also found the absence of intent to delay proceedings a persuasive factor. *Id.*  
19 As previously stated, Zandian’s prior counsel, John Peter Lee, Esq., withdrew as counsel on or  
20 about March 7, 2012. Furthermore, the last known address provided by Mr. Lee in his Motion to  
21 Withdraw was inaccurate. From April 26, 2012 Zandian did not receive any of the pleadings or  
22 discovery filed in this case. In late November 2013, Zandian learned of the Default Judgment while  
23 visiting the US for business purposes. Upon learning of the Default Judgment, Zandian  
24 immediately retained the services of Hawkins Melendrez P.C. Now, having retained counsel,  
25 Zandian files this Motion in order to state his meritorious defenses and proceed to have the trier of  
26 fact make a determination.

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1           **3.       Zandian Lacks Knowledge of Procedural Requirements**

2           Lack of knowledge of the party or counsel as to procedural requirements has been given  
3 weight by this Court. *See Hotel*, 79 Nev. at 154. In this case, Zandian was without counsel as of  
4 March 7, 2012. As such, Zandian was unaware of the procedural requirements. Now, having  
5 retained counsel, Zandian files this Motion.

6           **4.       Zandian Files This Motion In Good Faith.**

7           Of the multiple elements, this Court has found good faith to be the most significant. *Id.* In  
8 *Stocklein v. Johnson Electric*, 109 Nev. 268, 849 P.2d 305 (1993), the Nevada Supreme Court stated  
9 that “good faith is an intangible and abstract quality with no technical meaning or definition and  
10 encompasses, among other things, an honest belief, the absence of malice, and the absence of design  
11 to defraud.” (*quoting Doyle v. Gordan*, 158 N.Y.S.2d 248, 259060 (Sup. Ct. 1954)). There is no  
12 question that Zandian is acting in good faith by seeking to have this Court set aside the Default  
13 Judgment. The last known address provided by Zandian’s prior counsel in his Motion to Withdraw  
14 was inaccurate. As such, from April 26, 2012 on Zandian did not receive any of the pleadings or  
15 discovery filed in this case. Zandian did not receive Plaintiff’s written discovery, Plaintiff’s Motion  
16 for Sanctions, or Plaintiff’s Application for Entry of Default Judgment. Zandian only learned of the  
17 Default Judgment in November of 2013. Immediately upon learning of the Default Judgment,  
18 Zandian retained the law firm of Hawkins Melendrez P.C. The instant Motion comes less than six  
19 months after the entry of the Default Judgment.

20           **C.       Although A Meritorious Defense Is No Longer Required, Zandian Has Clearly**  
21 **Demonstrated A Meritorious Defense**

22           Prior to 1990, this Court had consistently held that a party moving to set aside a default  
23 judgment must show a meritorious defense to the claim. *See Sealed Unit Parts v. Alpha Gamma*  
24 *Ch.*, 99 Nev. 641, 643, 668 P.2d 288, 289 (1983). However, in *Price v. Dunn*, 106 Nev. 100, 787  
25 P.2d 785 (1990), this Court ruled that the meritorious defense requirement must be set aside  
26 pursuant to the United States Supreme Court holding in *Peralta v. Heights Medical Center, Inc.*,  
27 485 U.S. 80, 108 S.Ct. 896, 99 L. Ed. 2d 75 (1988). Most recently, in *Epstein v. Epstein*, 113 Nev.

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