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Attorneys for Defendant

Reza Zandian aka Goamreza Zandian

aka Gholamreza ZandianJazi

aka Reza Jazi aka J. Reza Jazi

aka G. Reza Jazi aka Ghononreza

Zandian Jazi

In The First Judicial District Court Of The State Of Nevada

In and For Carson City

JED MARGOLIN, an individual.

Plaintiff,

vs.

OPTIMA TECHNOLOGY CORPORATION,
a California corporation, OPTIMA
TECHNOLOGY CORPORATION, a Nevada
corporation, REZA ZANDIAN aka
GOLAMREZA ZANDIANJAZI aka
GHOLAM REZA ZANDIAN aka REZA
JAZI aka J. REZA JAZI aka G. REZA JAZI
aka GHONONREZA ZANDIAN JAZI, an
individual, DOE Companies 1-10, DOE
Corporations 11-20, and DOE Individuals 21-
30,

Defendants.

CASE NO. 090C00579 1B

DEPT. NO. 1

**DEFENDANT ZANDIAN'S REPLY IN
SUPPORT OF MOTION TO SET ASIDE
DEFAULT JUDGMENT**

Defendant REZA ZANDIAN ("Zandian") by and through his attorney Geoffrey W.

Hawkins, Esq., of the law firm HAWKINS MELENDREZ P.C., and pursuant to NRCP 55 and 60,

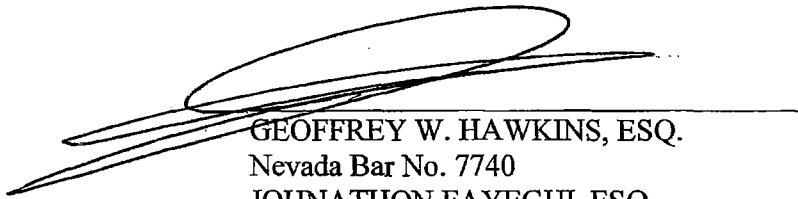
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1 hereby submits DEFENDANT ZANDIAN'S REPLY IN SUPPORT OF MOTION TO SET ASIDE
2 DEFAULT JUDGMENT.

3 This Reply is made and based upon the papers and pleadings on file herein, the
4 Memorandum of Points and Authorities, the Affidavit of Reza Zandian attached hereto as **Exhibit**
5 **A**, and any oral argument this Honorable Court permits at the hearing.

6 DATED this 21st day of January, 2014.

7
8 **HAWKINS MELENDREZ, P.C.**

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10 

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18 *Attorneys for Defendant*
19 *Reza Zandian*

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1 POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 The crux of Plaintiff's Opposition is that Defendant REZA ZANDIAN ("Zandian")
5 maintained his San Diego address, knew about the instant matter after his prior counsel withdrew,
6 and continued to receive notice of the instant matter after his prior counsel withdrew. Plaintiff
7 attached eleven exhibits to his Opposition in an attempt to demonstrate that Defendant Zandian
8 maintained the San Diego address provided to the Court by John Peter Lee, Esq., and continued to
9 live in the United States rather than France. However, said exhibits fail to prove anything with
10 regard to Defendant Zandian's residency. Furthermore, said exhibits fail to prove that Defendant
11 Zandian continued to receive notice of the papers, pleadings and motions in the instant matter.

12 The simple truth is that Defendant Zandian has resided in Paris, France since August 2011
13 and due to the fact that his prior counsel provided the Court with an incorrect address upon
14 withdrawal, Defendant Zandian did not receive any pleadings or written discovery related to the
15 instant matter since April 26, 2012. See Affidavit of Reza Zandian in Support of Motion to Set
16 Aside Default Judgment, attached hereto as **Exhibit A**. As such, Defendant Zandian's failure to
17 respond to Plaintiff's written discovery and failure to oppose Plaintiff's Motion for Sanctions and
18 Application for Entry of Default Judgment were clearly due to circumstances that constitute
19 excusable neglect under NRCPC 60(b)(1).

20 In addition, as Defendant Zandian had already appeared in this action, Plaintiff was required
21 to provide Defendant Zandian with a three day notice of Plaintiff's Application for Entry of Default
22 Judgment. However, Plaintiff failed to provide Defendant Zandian with the required three day
23 notice. In fact, Plaintiff's Opposition does not dispute the fact that Plaintiff failed to provide a three
24 day notice of Plaintiff's Application for Entry of Default Judgment. Pursuant to the holding in
25 *Christy v. Carlisle* 94 Nev. 651, 584 P.2d 687 (1987), Plaintiff's failure to serve Defendant Zandian
26 with a three day notice of Plaintiff's Application for Entry of Default Judgment voids the Default
27 Judgment against Defendant Zandian.

28 ///

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II.

LEGAL ARGUMENT

A. Plaintiff Failed To Provide Defendant Zandian With Written Notice Of Application For Default Judgment.

As this Court is aware, if a defendant enters an appearance or if the plaintiff knows of the identity of the defendant's counsel, the plaintiff has an obligation to notify the defendant of his intent to take a default. *Christy v. Carlisle*, 94 Nev. 651, 584 P.2d 687 (1987); *Rowland v. Lepire*, 95 Nev. 639, 600 P.2d 237 (1979); *Gazin v. Hoy*, 102 Nev. at 438; Nev. Sup. CT.R. 1752. A failure to provide said notice requires a default to be set aside. *Id.*

As asserted in Defendant Zandian's Motion, Plaintiff failed to provide Defendant Zandian with the required three-day notice prior to filing his April 17, 2013 Application for Entry of Default Judgment. Plaintiff, through his counsel, had knowledge of Defendant Zandian's French address as early as March 2013. Said knowledge came from Watson & Rounds' (Plaintiff's counsel's firm) representation of Fred Sadri in the Nevada Supreme Court Case No. 62839. (*See* Notice of Appeal in Nevada Supreme Court Case No. 62839, attached hereto as **Exhibit B**. Said Notice of Appeal contains the French address of Defendant Zandian and was mailed to Watson & Rounds as counsel for Fred Sadri in March 2013.) Pursuant to the holdings in *Christy* and *Rowland*, Plaintiff's failure to provide written notice of his Application for Default Judgment requires this Court set aside the June 24, 2013 Default Judgment against Defendant Zandian.

Moreover, Plaintiff's Opposition completely fails to oppose and/or discuss the absence of the required three-day notice of intent to take default. Said failure to oppose on the part of Plaintiff should constitute an admission that Plaintiff failed to provide Defendant Zandian with the required notice and consent to the granting of Defendant Zandian's Motion to Set Aside Default Judgment in line with the mandates of this Court's rules. *See King v. Carlidge*, 121 Nev. 926, 927, 124 P.3d 1161, 1162 (2005) (stating that an unopposed motion may be considered as an admission of merit and consent to grant the motion) (*citing* DCR 13(3)); *See also* First Judicial District Court Rule 15(5) (failure of an opposing party to file a memorandum of points and authorities in opposition to any motion within the time permitted shall constitute a consent to the granting of the motion).

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1 **B. Defendant Zandian Has Demonstrated Excusable Neglect Under NRCP 60(b)**

2 In his Opposition, Plaintiff states “the evidence overwhelmingly demonstrates Zandian
3 maintained the same address John Peter Lee provided to the Court, even after Zandian allegedly
4 moved to France in August 2011, and the evidence similarly demonstrates Zandian continued to live
5 in the United States, not France.” The evidence Plaintiff is referring to consists of the following:
6 checks made payable to “Reza Zandian & Niloofar Foughani JT Ten, 8775 Costa Verde Blvd Apt
7 217, San Diego, CA 92122”; a Wells Fargo withdrawal slip dated February 20, 2013; various Wells
8 Fargo checks signed by Defendant Zandian with the 8775 Costa Verde Blvd, San Diego, CA
9 address printed on the checks; Defendant Zandian’s Wells Fargo bank statements with the San
10 Diego address printed on the bank statements; and Visa statements showing purchases made in
11 California in September of 2011 and March of 2013.

12 Contrary to the assertions made in Plaintiff’s Opposition, the aforementioned evidence
13 completely fails to prove that Zandian maintained the 8775 Costa Verde Blvd, San Diego, CA
14 address after he moved to France in August 2011. As represented in Defendant Zandian’s
15 Affidavit, attached hereto as **Exhibit A** and incorporated herein, Defendant Zandian has resided in
16 Paris, France since August 2011 and has not resided at 8775 Costa Verde Blvd., San Diego, CA
17 92122 since August 2011. The fact that the San Diego address appears on checks made payable to
18 Defendant Zandian and/or issued by Defendant Zandian does not indicate that he continued to
19 reside at said address after August 2011. In fact, it is quite common for a business to have an
20 outdated address on file for a particular individual or for said individual to maintain checks with an
21 outdated address printed on the checks. Moreover, none of the evidence provided by Plaintiff
22 demonstrates that the checks found in Plaintiff’s Exhibits 2,3,5,6, and 12 were sent from or received
23 by Defendant Zandian in the United States.

24 Due to the fact that Defendant Zandian’s prior counsel, John Peter Lee Esq., provided the
25 Court with an incorrect address upon withdrawing as counsel, Defendant Zandian never received
26 any pleadings or discovery in this matter after April 26, 2012. Plaintiff’s Opposition fails to
27 provide any evidence demonstrating that Defendant Zandian did in fact receive pleadings or
28 discovery in this matter subsequent to April 26, 2012.

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1 As was the case in the Supreme Court case of *Stoecklein v. Johnson Elec., Inc.*, Defendant
2 Zandian's failure to respond to Plaintiff's written discovery and failure to oppose Plaintiff's Motion
3 for Sanctions and Application for Entry of Default Judgment were due to circumstances that
4 constitute excusable neglect under NRC P 60(b)(1). As such, Defendant Zandian's Motion to Set
5 Aside Default Judgment should be granted.

6 **III.**

7 **CONCLUSION**

8 Based on the foregoing, Defendant Reza Zandian respectfully requests that the default
9 judgment be set aside to allow him to respond as intended.

10 **AFFIRMATION PURSUANT TO NRS 239B.030**

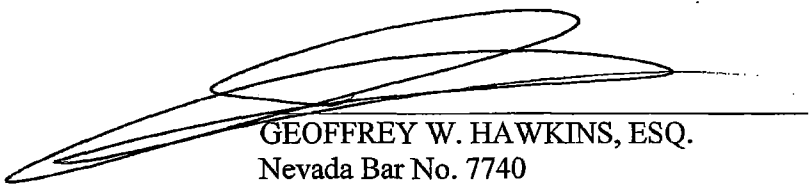
11 The undersigned does hereby affirm that the preceding document does not contain the social
12 security number of any person.

13 **DECLARATION**

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

16 Dated this 21st day of January, 2014.

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18 **HAWKINS MELENDREZ, P.C.**

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21 

22 GEOFFREY W. HAWKINS, ESQ.
Nevada Bar No. 7740
23 JOHNATHON FAYEGHI, ESQ.
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25 Phone: (702) 318-8800
Attorneys for Defendant
26 *Reza Zandian*

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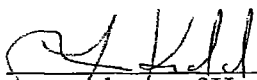
CERTIFICATE OF SERVICE

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Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 21st day of January, 2014, service of **DEFENDANT ZANDIAN'S REPLY IN SUPPORT OF MOTION TO SET ASIDE DEFAULT JUDGMENT** 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

HAWKINS MELENDRIZ, P.C.
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An employee of Hawkins Melendrez, P.C.

INDEX OF EXHIBITS

Exhibit No.	TITLE	NUMBER OF PAGES
A	Affidavit of Reza Zandian in Support of Motion to Set Aside Default Judgment	2
B	Notice of Appeal in Nevada Supreme Court Case No. 62839/Eighth Judicial District Court Case No. A635430	2

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Exhibit A

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AFFIDAVIT OF REZA ZANDIAN IN SUPPORT OF MOTION TO SET ASIDE DEFAULT JUDGMENT

COUNTRY OF FRANCE)
) ss
CITY OF PARIS)

I, Reza Zandian, have personal knowledge of the matters set forth herein and being first duly sworn hereby depose and state as follows:

1. I am a named Defendant in the matter of *Jed Margolin vs. Optima Technology Corporation, et al.*, Case No. 090C00579 1B.

2. That I am currently a resident of Paris, France and have been living full-time at 6 Rue Edouard Fournier, 75116 Paris, France since August 2011.

3. That I have not resided in the United States since August 2011. Specifically, I have not resided at 8775 Costa Verde Blvd, San Diego, CA 92122 since August 2011.

4. Since the withdrawal of my previous counsel, John Peter Lee, Esq., on April 26, 2012 I have never received any pleadings or written discovery related to Case No. 090C00579 1B.

5. I learned of the Default Judgment in late November 2013 while visiting the United States of America on business. I was advised of the Default Judgment by a business associate by the name of Fred Sadri.

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CAROLINE AL TAWIL
Conseillère de Clientèle
Agence Paris Passy

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I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 17 day of January, 2014.


REZA ZANDIAN

Subscribed and Sworn to before me this 17 day of January, 2014.

CAROLINE AL TAWIL
Conseillère de Clientèle
~~Agence Paris Passy~~

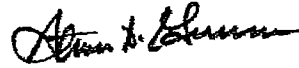
Notary Public in and for Said State and County

(SEAL)

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Exhibit B

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CLERK OF THE COURT

1 NOAS
2 REZA ZANDIAN
3 6, rue Edouard Fournier
4 75116 Paris, France
5 Pro Per Appellant

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 GHOLAMREZA ZANDIAN JAZI, also
9 known as REZA ZANDIAN, individually,

CASE NO.: A-11-635430-C
DEPT. NO.: IV

10 Plaintiff,

11 v.

12 FIRST AMERICAN TITLE COMPANY, a
13 Nevada business entity; JOHNSON SPRING
14 WATER COMPANY, LLC, formerly known
15 as BIG SPRING RANCH, LLC, a Nevada
16 Limited Liability Company, FRED SADRI,
17 Trustees of the Star Living Trust, RAY
18 KOROGHLI, individually, and ELIAS
19 ABRISHAMI, individually,

20 Defendants.

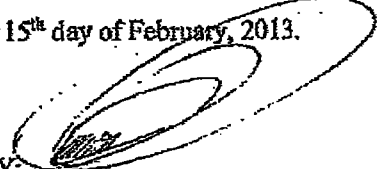
21 AND ALL RELATED COUNTERCLAIMS
22 AND THIRD-PARTY CLAIMS

23 1334.024072-td

24 NOTICE OF APPEAL

25 Notice is hereby given that REZA ZANDIAN a member of the above named company,
26 hereby appeals to the Supreme Court of Nevada from the Order to Distribute Attorney Fee and Costs
27 Awards to Defendants entered in this action on the 15th day of February, 2013.

28 DATED this 15th day of March, 2013.

BY: 
REZA ZANDIAN
6, rue Edouard Fournier
75116 Paris, France
Pro Per Appellant