

1 withdrew as his former counsel provided an erroneous last known address to the Court and the
2 parties when he withdrew, and therefore Zandian requests that the judgment be set aside.

3 III. FINDINGS AND CONCLUSIONS OF LAW

4 A party seeking to set aside a default judgment has the burden to prove mistake,
5 inadvertence, surprise, or excusable neglect by a preponderance of the evidence. *Kahn v.*
6 *Orme*, 108 Nev. 510, 513–14, 835 P.2d 790, 793 (1992). The Court finds that Zandian has not
7 met the burden to prove mistake, inadvertence, surprise, or excusable neglect by a
8 preponderance of the evidence.

9 Specifically, Zandian has not met the factors set forth in *Kahn* to compel the court to
10 set aside the judgment. *Id.* at 513, 835 P.2d at 792–93 (holding that the district court must
11 consider whether the party moving to set aside a judgment promptly applied to remove the
12 judgment, lacked intent to delay the proceedings, lacked knowledge of the procedural
13 requirements, and demonstrated good faith, in addition to considering the state's underlying
14 policy of resolving cases on the merits). Zandian failed to promptly apply for relief, has not
15 established a lack of intent to delay these proceedings or a lack of knowledge of the procedural
16 requirements, and did not provide a good-faith reason for the over five-and-a-half-month gap
17 between entry of default and the time he obtained new counsel and filed the Motion to Set
18 Aside Default Judgment.

19 a. Zandian Did Not Promptly Apply To Remove The Judgment

20 Even though a motion to set aside a judgment may be filed within the six month
21 deadline provided for in NRCP 60(b), a party can still fail to act promptly. *See Kahn* 108 Nev.
22 at 514, 835 P.2d at 793. Therefore, “want of diligence in seeking to set aside a judgment is
23 ground enough for denial of such a motion.” *Id.* (citing *Union Petrochemical Corp. v. Scott*,
24 96 Nev. 337, 339, 609 P.2d 323, 324 (1980) (citing *Lentz v. Boles*, 84 Nev. 197, 438 P.2d 254
25 (1968); *Hotel Last Frontier v. Frontier Prop.*, 79 Nev. 150, 380 P.2d 293 (1963)).

26 Despite his knowledge of the default judgment, Zandian did not move to have the
27 judgment set aside until nearly six months after its entry. Although Zandian argues he did not
28 receive notice of the various proceedings, notice was mailed to his address. Therefore, the

1 notice requirement of NRCP 55 was fulfilled as Plaintiff served written notice of the
2 application for default judgment. Moreover, NRCP 55 is likely not implicated since the
3 judgment ultimately resulted from sanctions arising from Zandian's failure to respond to
4 discovery. *See Durango Fire Protection, Inc. v. Troncoso*, 120 Nev. 658 (2004) (trial court's
5 entry of judgment for plaintiff, in action for breach of contract, after striking defendant's
6 answer was a sanction for defendant's failure to appear at several hearings and calendar calls
7 rather than a default judgment, and thus, civil procedure rule requiring written notice before
8 entry of default judgment was not applicable).

9 Further, First Judicial District Court Rule 22(3) expressly states that "[a]ny form of
10 order permitting withdrawal of an attorney submitted to the Court for signature shall contain
11 the address at which the party is to be served with notice of all further proceedings." Plaintiff
12 had a right to rely on the address given by Zandian's prior attorney.

13 No evidence supports Zandian's claims that he lacked knowledge of this matter. Even
14 if Zandian was living in France, for which no competent evidence has been provided to this
15 Court, Zandian was required to provide the Court and the parties with his new address.
16 However, Zandian never informed this Court or the parties of any address change. The record
17 demonstrates that the Plaintiff's discovery requests, motions, application for judgment, orders
18 and notice of judgment were all mailed to Zandian's address of record. Under NRCP 5(b),
19 service by mail is complete upon mailing. Thus, Zandian received notice of the proceedings
20 and his repeated failure to respond constituted inexcusable neglect.

21 **b. Zandian Has Failed To Show He Lacked Intent To Delay**

22 Zandian received all of the papers and pleadings in this matter. However, he failed to
23 respond to Plaintiff's discovery and willfully ignored the proceedings of this matter. In fact,
24 Zandian waited nearly six months to secure new counsel and file the motion to set aside.
25 Furthermore, Zandian failed to file an opposition to the application for judgment.
26 Accordingly, the Court finds that Zandian has failed to establish the absence of an intent to
27 delay.

28 **c. Whether Zandian Lacked Knowledge Of Procedural Requirements**