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GEOFFREY W. HAWKINS, ESQ.
Nevada Bar No. 7740
JOHNATHON FAYEGHI, ESQ.
Nevada Bar No. 12736
HAWKINS MELENDREZ, P.C.
9555 Hillwood Drive, Suite 150
Las Vegas, Nevada 89134
Phone: (702) 318-8800
Fax: (702) 318-8801
ghawkins@hawkinsmelendrez.com
Attorneys for Defendant
Reza Zandian

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 REZA ZANDIAN'S REPLY IN SUPPORT OF MOTION FOR STAY OF PROCEEDINGS TO ENFORCE JUDGMENT PURSUANT TO NRCP 62(B)

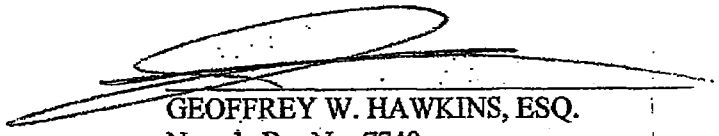
Defendant REZA ZANDIAN ("Zandian") by and through his attorney Geoffrey W. Hawkins, Esq., of the law firm HAWKINS MELENDREZ P.C., and hereby submits his Reply in Support of Motion for Stay of Proceedings to Enforce Judgment Pursuant to NRCP 62(b).

HAWKINS MELENDREZ, P.C.
9555 Hillwood Drive, Suite 150
Las Vegas, Nevada 89134
Telephone (702) 318-8800 • Facsimile (702) 318-8801

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

DATED this 11th day of January, 2014.

HAWKINS MELENDREZ, P.C.



GEOFFREY W. HAWKINS, ESQ.
Nevada Bar No. 7740
JOHNATHON FAYEGHI, ESQ.
Nevada Bar No. 12736
9555 Hillwood Drive, Suite 150
Las Vegas, NV 89134
Phone: (702) 318-8800
Attorneys for Defendant
Reza Zandian

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POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff's Opposition asserts that there is no basis to set aside the default judgment against Defendant Zandian and therefore the requested stay should be denied. Plaintiff cites to his Opposition to Set Aside Default Judgment in support of the aforementioned assertion. However, contrary to Plaintiff's assertions Defendant Zandian has clearly demonstrated good cause for the Default Judgment entered on June 24, 2013 to be set aside pursuant to NRCP 55 and 60. Furthermore, as Defendant Zandian's Motion to Set Aside Default Judgment is currently pending before this Court it is anticipated that this Court will render its decision on Defendant Zandian's Motion to Set Aside Default Judgment promptly.

Based on the foregoing and pursuant to NRCP 62, this Court should stay any proceedings to enforce the June 24, 2013 Default Judgment against Defendant Zandian without requiring security.

II.

LEGAL ARGUMENT

A. Defendant Zandian Has Demonstrated Good Cause For The June 24, 2013 Default Judgment To Be Set Aside.

Pursuant to NRCP 62(b), this Court is authorized, in its discretion, to stay execution of, or any proceedings to enforce a judgment pending the disposition of post-trial motions brought under NRCP 60. On or about December 20, 2013, Defendant Zandian filed a Motion to Set Aside Default Judgment pursuant to NRCP 55 and 60. Promptly following the submission of Defendant Zandian's Motion to Set Aside Default Judgment, Defendant Zandian filed the instant Motion for Stay of Proceedings to Enforce Judgment Pursuant to NRCP 62(b).

Plaintiff's sole argument in opposition to Defendant Zandian's Motion for Stay is that "there is no basis to set aside the default judgment." However, Defendant Zandian's Motion to Set Aside Default Judgment is currently pending before this Court and it is this Court that possesses the authority to determine whether there is a basis for granting said motion, not Plaintiff. Furthermore, Defendant Zandian has demonstrated, via the Motion to Set Aside Default Judgment and the Reply

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in Support of Motion to Set Aside Default Judgment, that the setting aside of the June 24, 2013 Default Judgment is warranted.

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.*

Furthermore, NRCP 60(b) provides that, in the court's discretion, a default judgment may be set aside if the judgment was a result of mistake, inadvertence, surprise, or excusable neglect. *Gutenberger v. Continental Thrift and Loan Company*, 94 Nev. 173, 175, 576 P.2d 745 (1978).

Defendant Zandian is entitled to the setting aside of the June 24, 2013 Default Judgment for the following reasons:

- 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. *See* Defendant Zandian's Reply in Support of Motion to Set Aside Default Judgment Section II, Paragraph A;
- Defendant Zandian's failure to respond to Plaintiff's written discovery and failure to oppose Plaintiff's Motion for Sanctions and Application for Entry of Default Judgment were due to circumstances that constitute excusable neglect under NRCP 60(b)(1). Specifically Defendant Zandian's prior counsel, John Peter Lee Esq., provided the Court with an incorrect address upon withdrawing as counsel, which resulted in Defendant Zandian never receiving any pleadings or discovery in this matter after April 26, 2012. *See* Defendant Zandian's Reply in Support of Motion to Set Aside Default Judgment Section II, Paragraph B.

Again, NRCP 62(b) authorizes this Court, in its discretion, to stay execution of, or any proceedings to enforce a judgment pending the disposition of post-judgment motions brought under NRCP 60. Defendant Zandian's Motion to Set Aside Default Judgment is a post-judgment motion brought pursuant to NRCP 60. Furthermore, despite Plaintiff's assertions to the contrary Defendant

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Zandian has provided not one but two grounds for setting aside the default judgment. As such, Defendant Zandian's Motion for Stay should be granted.

B. Security In The Form Of A Bond Or Other Collateral Is Unnecessary

Although NRCP 62(b) does allow the district court to require security pending a determination on the post trial motion, it is the common practice in Nevada to stay judgments pending resolution of post-judgment motions pursuant to NRCP 62(b) without requiring a bond. *See David N. Frederick, Post Trial Motions*, NEVADA CIVIL PRACTICE MANUAL 25-30 (5th ed. 2005) ("security in the form of a bond or other collateral is usually not required"). Since the ruling on a post trial motion usually will not consume a significant amount of time, security is usually not required. *Id.*

Plaintiff's Opposition asserts that Defendant Zandian has proved to be purposely evasive in the instant matter and therefore, if a stay is granted Defendant Zandian should be required to post a bond. Plaintiff's assertion that Defendant Zandian has been purposely evasive is completely disingenuous. As demonstrated in Defendant Zandian's Motion to Set Aside Default Judgment and Reply in support of the same, Defendant Zandian's failure to respond to Plaintiff's written discovery and failure to oppose Plaintiff's Motion for Sanctions and Application for Entry of Default Judgment were due to circumstances out of Defendant Zandian's control.

Finally, Defendant Zandian's Motion to Set Aside Default Judgment has been fully briefed by both parties and is currently pending before this Court. Furthermore, on January 23, 2014, Defendant Zandian filed a Request for Submission. It is anticipated that this Court will make a determination on Defendant Zandian's Motion to Set Aside Default Judgment in the immediate future. Therefore, Defendant Zandian should not be required to provide security in the event this Court grants a stay.

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9555 Hillwood Drive, Suite 150
Las Vegas, Nevada 89134
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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.

Dated this 29th day of January, 2014.

HAWKINS MELENDREZ, P.C.

GEOFFREY W. HAWKINS, ESQ.
Nevada Bar No. 7740
JOHNATHON FAYEGHI, ESQ.
Nevada Bar No. 12736
9555 Hillwood Drive, Suite 150
Las Vegas, NV 89134
Phone: (702) 318-8800
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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 29th day of January, 2014, service of **DEFENDANT REZA ZANDIAN'S REPLY IN SUPPORT OF 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.

HAWKINS MELENDREZ, P.C.
9555 Hillwood Drive, Suite 150
Las Vegas, Nevada 89134
Telephone (702) 318-8800 • Facsimile (702) 318-8801