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Case No.: 09 OC 00579 1B

Dept. No.: 1

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ALAN GLOVER
BY  CLERK
DEPUTY

**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.

**ORDER DENYING 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 TO SET ASIDE DEFAULT
JUDGMENT**

This matter comes before the Court on 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 ("Zandian") Motion to Set Aside Default Judgment, dated December 19, 2013. Plaintiff Jed Margolin filed an Opposition to Set Aside Default Judgment on January 19, 2014. Zandian served a reply in support of the Motion to Set Aside on January 23, 2014. Based upon the following facts and conclusions of law, Zandian's Motion to Set Aside is DENIED.

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I. FACTUAL BACKGROUND

Plaintiff Jed Margolin is the named inventor on United States Patent No. 5,566,073 (“the ‘073 Patent”), United States Patent No. 5,904,724 (“the ‘724 Patent”), United States Patent No. 5,978,488 (“the ‘488 Patent”) and United States Patent No. 6,377,436 (“the ‘436 Patent”) (collectively “the Patents”). See Amended Complaint, filed 8/11/11, ¶¶ 9-10. In 2004, Mr. Margolin granted to Robert Adams, then CEO of Optima Technology, Inc. (later renamed Optima Technology Group (hereinafter “OTG”), a Cayman Islands Corporation specializing in aerospace technology) a Power of Attorney regarding the Patents. *Id.* at ¶ 11. Subsequently, Mr. Margolin assigned the ‘073 and ‘724 Patents to OTG and revoked the Power of Attorney. *Id.* at ¶ 13.

In May 2006, OTG and Mr. Margolin licensed the ‘073 and ‘724 Patents to Geneva Aerospace, Inc., and Mr. Margolin received a royalty payment pursuant to a royalty agreement between Mr. Margolin and OTG. *Id.* at ¶ 12. On or about October 2007, OTG licensed the ‘073 Patent to Honeywell International, Inc., and Mr. Margolin received a royalty payment pursuant to a royalty agreement between Mr. Margolin and OTG. *Id.* at ¶ 14.

On or about December 5, 2007, Zandian filed with the U.S. Patent and Trademark Office (“USPTO”) assignment documents allegedly assigning all four of the Patents to Optima Technology Corporation (“OTC”), a company apparently owned by Zandian at the time. *Id.* at ¶ 15. Shortly thereafter, on November 9, 2007, Mr. Margolin, Robert Adams, and OTG were named as defendants in the case titled *Universal Avionics Systems Corporation v. Optima Technology Group, Inc.*, No. CV 07-588-TUC-RCC (the “Arizona action”). *Id.* at ¶ 17. Zandian was not a party in the Arizona action. Nevertheless, the plaintiff in the Arizona action asserted that Mr. Margolin and OTG were not the owners of the ‘073 and ‘724 Patents, and OTG filed a cross-claim for declaratory relief against Optima Technology Corporation (“OTC”) in order to obtain legal title to the respective patents. *Id.*

On August 18, 2008, the United States District Court for the District of Arizona entered a default judgment against OTC and found that OTC had no interest in the ‘073 or ‘724 Patents, and that the assignment documents filed with the USPTO were “forged, invalid,

1 void, of no force and effect.” *Id.* at ¶ 18; *see also* Exhibit B to Zandian’s Motion to Dismiss,
2 dated 11/16/11, on file herein.

3 Due to Zandian’s acts, title to the Patents was clouded and interfered with Plaintiff’s
4 and OTG’s ability to license the Patents. *Id.* at ¶ 19. In addition, during the period of time Mr.
5 Margolin worked to correct record title of the Patents in the Arizona action and with the
6 USPTO, he incurred significant litigation and other costs associated with those efforts. *Id.* at ¶
7 20.

8 II. PROCEDURAL BACKGROUND

9 Plaintiff filed his Complaint on December 11, 2009, and the Complaint was personally
10 served on Zandian on February 2, 2010, and on Defendants Optima Technology Corporation, a
11 Nevada corporation, and Optima Technology Corporation, a California corporation on March
12 21, 2010. Zandian’s answer to Plaintiff’s Complaint was due on February 22, 2010, but
13 Zandian did not answer the Complaint or respond in any way. Default was entered against
14 Zandian on December 2, 2010, and Plaintiff filed and served a Notice of Entry of Default on
15 Zandian on December 7, 2010 and on his last known attorney on December 16, 2010.

16 The answers of Defendants Optima Technology Corporation, a Nevada corporation,
17 and Optima Technology Corporation, a California corporation, were due on March 8, 2010,
18 but Defendants did not answer the Complaint or respond in any way. Default was entered
19 against Defendants Optima Technology Corporation, a Nevada corporation, and Optima
20 Technology Corporation, a California corporation on December 2, 2010. Plaintiff filed and
21 served a Notice of Entry of Default on the corporate entities on December 7, 2010 and on their
22 last known attorney on December 16, 2010.

23 The defaults were set aside and Zandian’s motion to dismiss was denied on August 3,
24 2011. On September 27, 2011, this Court ordered that service of process against all
25 Defendants may be made by publication. As manifested by the affidavits of service, filed
26 herein on November 7, 2011, all Defendants were duly served by publication by November
27 2011.

1 On February 21, 2012, the Court denied Zandian's motion to dismiss the Amended
2 Complaint. On March 5, 2012, Zandian served a General Denial to the Amended Complaint.
3 On March 13, 2012, the corporate Defendants served a General Denial to the Amended
4 Complaint.

5 On June 28, 2012, this Court issued an order requiring the corporate Defendants to
6 retain counsel and that counsel enter an appearance on behalf of the corporate Defendants by
7 July 15, 2012. The June 28, 2012 order further provided that if no such appearance was
8 entered, the corporate Defendants' General Denial would be stricken. Since no appearance
9 was their behalf of the corporate Defendants, a default was entered against them on September
10 24, 2012. A notice of entry of default judgment was filed and served on November 6, 2012.

11 On July 16, 2012, Mr. Margolin served Zandian with Mr. Margolin's First Set of
12 Requests for Admission, First Set of Interrogatories, and First Set of Requests for Production
13 of Documents, but Zandian never responded to these discovery requests. As such, on
14 December 14, 2012, Mr. Margolin filed and served a Motion for Sanctions pursuant to NRC
15 37. In this Motion, Mr. Margolin requested this Court strike the General Denial of Zandian,
16 and award Mr. Margolin his fees and costs incurred in bringing the Motion.

17 On January 15, 2013, this Court issued an order striking the General Denial of Zandian
18 and awarding his fees and costs incurred in bringing the NRC 37 Motion. A default was
19 entered against Zandian on March 28, 2013, and a notice of entry of default judgment was
20 filed and served on April 5, 2013.

21 On April 17, 2013, Mr. Margolin filed an Application for Default Judgment, which was
22 served on Zandian and the corporate Defendants. Since Zandian did not respond to the
23 Application for Default Judgment, a Default Judgment was entered on June 24, 2013. Notice
24 of entry of the Default Judgment was served on Zandian on June 26, 2013 and filed on June
25 27, 2013.

26 Over five and a half months later, on December 19, 2013, Zandian served his Motion
27 to Set Aside on Plaintiff. Zandian's Motion to Set Aside claims that he never received any
28 written discovery or notice of the pleadings and papers filed in this matter after his counsel

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**

1 Zandian unquestionably had notice of the written discovery, motions and orders filed in
2 this matter, and yet he ignored all of these documents. All that was required of Zandian was to
3 either personally respond to the discovery and motions or obtain counsel to appear on his
4 behalf. Zandian knew discovery had been served but deliberately chose to ignore it. Zandian
5 knew a motion for sanctions and an application for judgment had been filed, which led to the
6 judgment, but Zandian chose to ignore those items as well. Zandian's failure to obtain new
7 counsel or otherwise act on his own behalf is inexcusable. *See Kahn* 108 Nev. at 514-15, 835
8 P.2d at 793-4. As the Nevada Supreme Court stated in *Kahn*:

9 we are not confronted here with some subtle or technical aspect of
10 procedure, ignorance of which could readily be excused. The requirements
11 of the rule are simple and direct. *To condone the actions of a party who has*
12 *sat on its rights only to make a last-minute rush to set aside judgment would*
be to turn NRCP 60(b) into a device for delay rather than the means for
relief from an oppressive judgment that it was intended to be.

13 *Id.* (citing *Union*, 96 Nev. at 339, 609 P.2d at 324 (citing *Franklin v. Bartsas Realty, Inc.*, 95
14 Nev. 559, 598 P.2d 1147 (1979); *Central Operating Co. v. Utility Workers of America*, 491
15 F.2d 245 (4th Cir.1974)) (emphasis added in original)).

16 Zandian had sufficient knowledge to act responsibly. He had previously retained
17 counsel to defend this action and retained new counsel to set aside the judgment. Therefore,
18 this Court cannot conclude that Zandian failed to respond to set aside the default judgment
19 because he was ignorant of procedural requirements.

21 **d. Whether Zandian Acted In Good Faith**

22 Zandian has not provided any valid reason for failing to respond to the requested
23 discovery, the motion for sanctions or the application for judgment. Furthermore, he has not
24 provided a reasonable explanation for waiting over five months to obtain other counsel despite
25 having knowledge of the judgment entered against him.

26 Based upon the fact that Zandian knew about this case and continued to receive the
27 papers and pleadings from this matter, it was inexcusable for Zandian not to respond to the
28

1 earlier discovery requests and motions. Zandian has not demonstrated good faith. In fact,
2 Zandian has only demonstrated inexcusable neglect by his willful failure to respond to, and
3 participate in, this action. Accordingly, the Court determines that Zandian lacked good faith in
4 contesting this action.

5 **e. Whether This Case Should Be Tried On The Merits For Policy Reasons**

6 The Nevada Supreme Court has held that “good public policy dictates that cases be
7 adjudicated on their merits.” *See Kahn* 108 Nev. at 516, 835 P.2d at 794 (citing *Hotel Last*
8 *Frontier v. Frontier Prop.*, 79 Nev. 150, 155–56, 380 P.2d 293, 295 (1963) (original
9 emphasis). However, this policy has its limits:
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11 We wish not to be understood, however, that this judicial tendency to grant
12 relief from a default judgment implies that the trial court should always
13 grant relief from a default judgment. Litigants and their counsel may not
14 properly be allowed to disregard process or procedural rules with impunity.
15 Lack of good faith or diligence, or lack of merit in the proposed defense,
16 may very well warrant a denial of the motion for relief from the judgment.

17 *Id.* (citing *Lentz v. Boles*, 84 Nev. 197, 200, 438 P.2d at 256 (1968)).

18 Zandian has disregarded the process and procedural rules of this matter with impunity.
19 He has repeatedly ignored this matter and failed to respond to the written discovery and
20 motions in this matter since his former attorney John Peter Lee withdrew from representation.
21 Zandian’s lack of good faith or diligence warrants a denial of the motion to set aside.

22 Zandian’s complete failure to respond to the discovery requests and subsequent
23 motions evidences his willful and recalcitrant disregard of the judicial process, which
24 prejudiced Plaintiff. *Foster v. Dingwall*, 227 P.3d 1042, 1049 (Nev. 2010) (citing *Hamlett v.*
25 *Reynolds*, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998) (upholding the district court’s strike
26 order where the defaulting party’s “constant failure to follow [the court’s] orders was
27 unexplained and unwarranted”); *In re Phenylpropanolamine (PPA) Products*, 460 F.3d 1217,
28 1236 (9th Cir.2006) (holding that, with respect to discovery abuses, “[p]rejudice from
unreasonable delay is presumed” and failure to comply with court orders mandating discovery
“is sufficient prejudice”)).

1 In light of Zandian's repeated and continued abuses, the policy of adjudicating cases on
2 the merits would not be furthered in this case, and the ultimate sanctions are necessary to
3 demonstrate to Zandian and future litigants that they are not free to act with wayward
4 disregard of a court's orders. *Foster*, 227 P.3d at 1049. Moreover, Zandian's failure to oppose
5 Plaintiff's motion to strike the General Denial or the application for judgment constitutes an
6 admission that the motion and application were meritorious. *Id.* (citing *King v. Carlidge*, 121
7 Nev. 926, 927, 124 P.3d 1161, 1162 (2005) (stating that an unopposed motion may be
8 considered as an admission of merit and consent to grant the motion) (citing DCR 13(3)).

9 **IV. CONCLUSION**

10 The record provides substantial evidence to support this denial of Zandian's motion to
11 set aside. Further, the policy of resolving cases on the merits does not allow litigants "to
12 disregard process or procedural rules with impunity." *Kahn*, 108 Nev. at 516, 835 P.2d at 794
13 (quoting *Lentz v. Boles*, 84 Nev. 197, 200, 438 P.2d 254, 256-57 (1968)).

14 Zandian has failed to show mistake, inadvertence, surprise or excusable neglect
15 pursuant to NRCPC 60(b). Zandian had every opportunity to properly defend this action and
16 instead made a voluntary choice not to. Therefore, Zandian's motion to set aside is hereby
17 DENIED.

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19 DATED: This 6th day of February, 2014. IT IS SO ORDERED:

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22 JAMES T. RUSSELL
23 DISTRICT COURT JUDGE
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1 CERTIFICATE OF MAILING

2 I hereby certify that on the 6 day of February, 2014, I placed a copy of the
3 foregoing in the United States Mail, postage prepaid, addressed as follows:

4
5 Matthew D. Francis
6 Adam P. McMillen
7 Watson Rounds
8 5371 Kietzke Lane
9 Reno, NV 89511

10 Geoffrey W. Hawkins
11 Johnathon Fayeghi
12 Hawkins Melendrez, P.C.
13 9555 Hillwood Drive, Suite 150
14 Las Vegas, NV 89134

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Samantha Valerius
Law Clerk, Department I