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ALAN GLOVER
G. GRIBBLE
DEPUTY CLERK

6 IN THE FIRST JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA IN AND FOR
8 CARSON CITY

9 JED MARGOLIN, an individual,
10 Plaintiff,

11 vs.

12 OPTIMA TECHNOLOGY CORPORATION,
a California corporation, OPTIMA
13 TECHNOLOGY CORPORATION, a Nevada
corporation, REZA ZANDIAN aka
14 GOLAMREZA ZANDIANJAZI aka
GHOLAM REZA ZANDIAN aka REZA
15 JAZI aka J. REZA JAZI aka G. REZA JAZI
aka GHONOREZA ZANDIAN JAZI, an
16 individual, DOE Companies 1-10, DOE
Corporations 11-20, and DOE Individuals
17 21-30,
18 Defendants.

Case No. 09OC00579 1B
Dept. No. I

19
20 **OPPOSITION TO MOTION FOR WRIT OF EXECUTION**

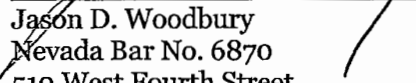
21 COMES NOW, Defendant REZA ZANDIAN ("ZANDIAN"), by and through his
22 attorneys, Kaempfer Crowell, and hereby opposes the *Motion for Writ of Execution*
23 ("*Motion*") served by mail on June 18, 2014. This *Opposition* is made pursuant to
24 FJDCR 15(3) and is based on the attached memorandum of points and authorities, all

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1 papers and pleadings on file in this matter and any evidence received and arguments
2 entertained by the Court at any hearing on the *Motion*.

3 DATED this 7th day of July, 2014.

4 **KAEMPFER CROWELL**

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. Procedural Background

3 On June 24, 2013, this Court entered default judgment in the amount of
4 \$1,495,775.74 in this case.¹ On June 18, 2014, Plaintiff served the instant *Motion*.
5 Attached to the *Motion* are two exhibits. The first, Exhibit 1, is a document entitled
6 "*Second Memorandum of Post-Judgment Costs and Fees*." The second, Exhibit 2, is a
7 series of 12 documents each entitled "*Writ of Execution*" which purport to relate to real
8 property in Washoe County and Clark County.

9 Each of the proposed *Writs* identifies the "total amount" of the initial *Default*
10 *Judgment* as "1,497,329.10."² Additionally, each of the proposed *Writs* identifies
11 "\$1,593,616.17 actually due on the date of the issuance of this writ."³ The proposed
12 *Writs* further state, "\$1,593.616.17 bears interest at 5.25% percent [sic] per annum, in
13 the amount of \$229.22 per day from the date of judgment to the date of levy...."⁴ The
14 proposed *Writs* state that the "date of judgment" was June 24, 2013.⁵

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21 ¹ See *Default J.* at 2:19 – 3:3 (June 24, 2013). This Court's *Default Judgment* reflects that the judgment
22 includes "damages, along with pre-judgment interest, attorney's fees and costs." *Id.* at 2:21-22. However,
23 the *Default Judgment* does not itemize the amount of each category and only reflects a lump sum of
24 \$1,495,775.74. Plaintiff's proposed *Writ of Execution* does itemize these categories and sums as follows:
"\$900,000.00 principal," "\$83,761.25 attorney's fees", "\$488,545.89 interest, and" "\$25,021.96 costs,
making a total amount of \$1,497,329.10 the judgment as entered". *Exhibit 2 to Motion for Writ of*
Execution at 2:1-5 (hereinafter referred to as "proposed *Writs*").

² See each proposed *Writ* at 2:4-5.

³ See each proposed *Writ* at 2:17-18.

⁴ See each proposed *Writ* at 2:18-20 (emphasis added).

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510 West Flamingo Avenue
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1 **II. Argument**

2 **A. This Court should deny Plaintiff's *Motion* to issue the proposed**
3 ***Writs* because they do not correlate with the judgment granted**
4 **by this Court.**

4 For obvious reasons, Nevada law demands precision in regard to a writ of
5 execution.⁶ An officer performing an execution cannot be left to wonder as to the
6 amount necessary to satisfy a judgment. Uncertainty and turmoil resulting from
7 ambiguous writs of execution repudiates the entire process which adjudicated the
8 dispute of the parties in the first place. Additionally, Nevada law provides with
9 particularity the allocation of proceeds which is required following execution of a writ.⁷
10 Thus, exactitude in a writ of execution is necessary to ensure compliance with the law.

11 Here, the proposed *Writs* are anything but precise. In fact, they are so riddled
12 with error that this Court must decline their issuance.

13 **1. The judgment balance reflected in the proposed *Writs***
14 **exceeds the amount ordered by this Court.**

14 There is no dispute that the *Default Judgment* of this Court awarded Plaintiff the
15 total sum of "\$1,495,775.74 plus interest at the legal rate."⁸ However, the proposed
16 *Writs* state that "the judgment as entered" is "\$1,497,329.10."⁹ Thus, the proposed
17 *Writs* are incorrect as they would authorize execution on a sum which exceeds by
18 \$1,553.36 the amount decreed by this Court. There is no explanation for the
19 discrepancy and no basis in law to issue an erroneous writ of execution. Therefore, this
20 Court should deny the *Motion*.

21
22 ⁵ See each proposed *Writ* at 1:26.

23 ⁶ See NRS 21.020 ("The writ of execution ... must intelligibly refer to the judgment, stating the court, the
24 county where the judgment roll is filed, the names of the parties, the judgment, and if it is for money, the
amount thereof, and the amount actually due thereon....")

⁷ See NRS 21.110; 248.275.

⁸ See *Default J.* at 2:22.

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2. The proposed Writs call for an inflated calculation of post-judgment interest.

The proposed *Writs* also compel an invalid calculation of post-judgment interest on the *Default Judgment*. The proposed *Writs* state the judgment was entered on June 24, 2013. They also provide that interest accrues in an amount of \$229.22 per day “from the date of judgment to the date of levy.” These directions for calculation of interest are erroneous for two reasons.

First, Plaintiff’s total figure of \$1,593,616.17¹⁰ in the proposed *Writs* already includes interest which accrued from June 27, 2013 to April 18, 2014.¹¹ This interest, which totals \$63,684.40, has already been awarded by the Court.¹² The request in the proposed *Writs* to calculate interest “from the date of judgment” captures—for a second time—interest which is already reflected in the total sum. This double dip is not allowed under the law.

Second, the daily interest accrual is calculated based on a figure that includes costs, interest and fees which were incurred *after* the *Default Judgment*. If the proposed *Writs* calculate interest on the amount due as of the date of the judgment, it is erroneous to base the daily interest figure on amounts incurred after the judgment. By including the post-judgment figures and then calling for a retroactive calculation of

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⁹ See each proposed *Writ* at 2:5.

¹⁰ See each proposed *Writ* at 2:17-19.

¹¹ See each proposed *Writ* at 2:9-10; see also *Order on Mot. for Order Allowing Costs and Necessary Disbursements and Mem. of Points and Authorities in Support Thereof* at §III, 7:16 – 8:13 (May 19, 2014); *Second Mem. of Post-J. Costs and Fees* (including as “POST-JUDGMENT INTEREST” the sum of \$63,684.40 accrued from June 27, 2013 to April 18, 2014)).

¹² See *Order on Mot. for Order Allowing Costs and Necessary Disbursements and Mem. of Points and Authorities in Support Thereof* at §III, 7:16 – 8:13 (May 19, 2014) (“It is 296 days from June 27, 2013 to April 18, 2014. Multiplying 296 days by \$215.15 equals \$63,684.40 in accrued interest, which is the amount of interest currently due and owing.”); *Second Mem. of Post-J. Costs and Fees* (including as “POST-JUDGMENT INTEREST” the sum of \$63,684.40 accrued from June 27, 2013 to April 18, 2014)).

1 interest to the date of judgment, Plaintiff has inappropriately inflated the daily interest
2 accrual in the proposed *Writ*s.

3 For these reasons, the proposed *Writ*s are incorrect and this Court should decline
4 their issuance.

5 **B. This Court lack jurisdiction to grant Plaintiff's *Motion*.**

6 In any event, this Court should decline to consider Plaintiff's *Motion* as it has
7 been divested of jurisdiction on this issue. On March 12, 2014, ZANDIAN appealed this
8 Court's denial of his motion to set aside the *Default Judgment*.¹³ And on June 23, 2014,
9 ZANDIAN appealed this Court's order granting post-judgment fees, costs and interest to
10 Plaintiff.¹⁴ As such, all aspects of this case are now pending before the Nevada Supreme
11 Court.¹⁵ Consequently, this Court has been divested of jurisdiction to grant Plaintiff's
12 *Motion*.¹⁶ For this reason, the *Motion* should be denied.

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22 ¹³ See *Notice of Appeal* (Mar. 12, 2014); *Case Appeal Statement* (Mar. 12, 2014).

23 ¹⁴ See *Notice of Appeal* (June 23, 2014); *Case Appeal Statement* (June 23, 2014).

24 ¹⁵ See *Zandian v. Margolin* (Nevada Supreme Court case number 65205); *Zandian v. Margolin* (Nevada Supreme Court case number 65960).

¹⁶ See *Foster v. Dingwall*, 126 Nev. Adv. 5, 228 P.3d 453, 454-55 (2010) ("This court has repeatedly held that the timely filing of a notice of appeal "divests the district court of jurisdiction to act and vests jurisdiction in this court." (quoting *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006) (quoting *Rust v. Clark Cty. School District*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987))).

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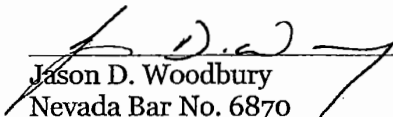
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III. Conclusion

For all these reasons explained herein, it is respectfully requested that this Court deny the *Motion*.

DATED this 7th day of July, 2014.

KAEMPFER CROWELL



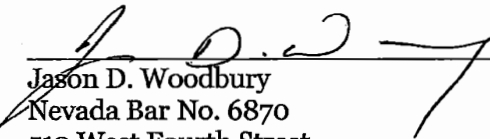
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Attorneys for Reza Zandian

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 7th July, 2014.

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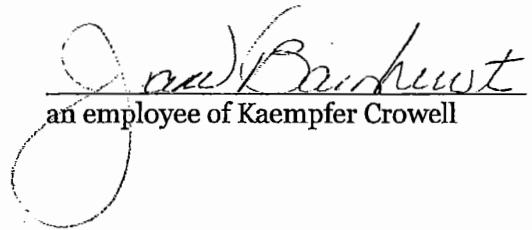
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that service of the foregoing
3 **OPPOSITION TO MOTION FOR WRIT OF EXECUTION** was made this date by
4 depositing a true copy of the same for mailing at Carson City, Nevada, addressed to each
5 of the following:

6 Matthew D. Francis
7 Adam P. McMillen
8 WATSON ROUNDS
9 5371 Kietzke Lane
10 Reno, NV 89511

11 DATED this 7th day of July, 2014.

12 
13 an employee of Kaempfer Crowell

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