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ALAN GLOVER
By Alegria CLERK
DEPUTY

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 **MOTION TO STRIKE, IN PART, REPLY IN SUPPORT OF MOTION FOR**
WRIT OF EXECUTION

21 COMES NOW, Defendant REZA ZANDIAN ("ZANDIAN"), by and through his
22 attorneys, Kaempfer Crowell, and hereby moves this Honorable Court to strike, in part,
23 the *Reply in Support of Motion for Writ of Execution* ("Reply") served¹ on July 17, 2014.
24

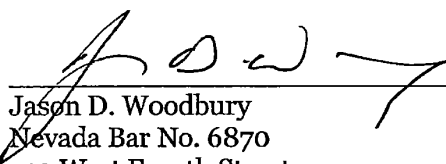
¹ Presumably, the *Reply* has been filed with this Court as well.

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1 This *Motion* is made pursuant to D.C.R. 13 and FJDCR 15, and is based on the attached
2 memorandum of points and authorities, all papers and pleadings on file in this matter
3 and any evidence received and arguments entertained by the Court at any hearing on the
4 *Motion*.

5 DATED this 18th day of July, 2014.

6 **KAEMPFER CROWELL**

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. Procedural Background

3 On June 18, 2014, Plaintiff served a *Motion for Writ of Execution*. Attached to
4 the *Motion for Writ of Execution* were two exhibits, one of which was a series of 12
5 documents each entitled “*Writ of Execution*” which purport to relate to real property in
6 Washoe County and Clark County.²

7 In accordance with the procedural rules of this Court, on July 7, 2014, ZANDIAN
8 filed an *Opposition to Motion for Writ of Execution* (“*Opposition*”). In part, the
9 *Opposition* challenged the monetary figures in the originally proposed *Writs* on various
10 grounds.³

11 In response, Plaintiff has modified the originally proposed *Writs*, and requested
12 that this Court direct the issuance of the “modified *Writs*” instead of the originally
13 proposed *Writs* included with the *Motion for Writ of Execution*.⁴

14 \\\

15 _____
16 ² See *Exhibit 2 to Motion for Writ of Execution* [hereinafter referred to as the “originally proposed
Writs.”]

17 ³ See *Opposition* at §II.A, 4:1 – 6:4 (July 7, 2014).

18 ⁴ At least that is one interpretation of the revised request in the *Reply*. Another interpretation is that
19 Plaintiff is requesting issuance of *Writs* which are modified to correct the discrepancy between the
20 originally proposed *Writs* and the *Default Judgment*, but not to correct the erroneous interest
21 calculations. See *Reply* at §I – II, 1:25 – 2:24 (“Plaintiff agrees this [the discrepancy between the
22 originally proposed *Writs* and the *Default Judgment*] is an inadvertent error.... Contrary to Defendants’
23 arguments, *Mr. Margolin is not asking the Court to award him interest upon interest*. As such, *without*
24 *waiving any rights*, Plaintiff has changed the writs of execution to calculate any post-judgment interest
on the original *Default Judgment* from April 19, 2014 forward, without including the \$63,684.40 in
interest that accrued from June 27, 2013 to April 18, 2014, and without including interest on the post-
judgment fees and costs.... Therefore, Defendant’s arguments of “double dipping” and/or “retroactive
calculation” of interest are moot and the Plaintiff’s *Motion* should be granted.” (emphasis added)), *id.* at
2 n.1 (“Plaintiff is not abandoning his rights or interest in the Order on motion for Order Allowing Costs
and Necessary Disbursements, dated May 19, 2014, as that is a valid and binding order of this Court.”)
And another interpretation is that Plaintiff is requesting issuance of the originally proposed *Writs*—even
though they are, *by Plaintiff’s admission*, wrong. See *Reply* at §IV, 5:2-6 (“Plaintiff hereby requests that
the Court direct the Court Clerk to issue *Writs of Execution*, copies of which are attached hereto as Exhibit
1, so that the Washoe County Sheriff and the Clark County Constable/Sheriff may assist Plaintiff in
executing the *Default Judgment* against Defendants. *The original Writs of Execution are being*
submitted concurrently.” (emphasis added))

1 **II. Argument**

2 **A. This Court should strike Sections I and II and Exhibit 1 of the**
3 **Reply because they are procedurally barred.**

4 The procedural rules of this Court allow a movant to file a reply after a non-
5 movant opposes the initial motion.⁵ But a reply is restricted to the scope of the
6 opposition which, in turn, is restricted to the scope of the original motion.⁶ The purpose
7 of these restrictions is self-evident. An adversarial system of justice requires that each
8 party have an opportunity to address each contention of an adverse party. Without the
9 scope restriction on pleading practice, there is a danger—particularly with replies which
10 constitute the “last word”—that courts will rule on arguments which an adverse party
11 has not had an opportunity to address.

12 And that is precisely the situation here. ZANDIAN opposed the *Motion for Writ*
13 *of Execution*, in part, because the the originally proposed *Writs* themselves were
14 incorrect. Plaintiff now—for the first time—proposes new modified *Writs* which were
15 not included with the original *Motion for Writ of Execution*. This is a material change
16 to which ZANDIAN is entitled to present a response. But by presenting the material
17 change in his *Reply*, Plaintiff seeks to preempt ZANDIAN’s opportunity to do so. This
18 Court should not allow this to occur.

19 Further, the offending portions of Plaintiff’s *Reply* substantially obscure the relief
20 which Plaintiff requests. At times, Plaintiff seems to indicate that he wishes the
21 “modified *Writs*” to be issued. At others, that he is amenable to correcting the
22 discrepancy between the *Default Judgment* and the originally proposed *Writs*, but not
23 the erroneous interest calculations. But in the conclusion of the *Reply*, Plaintiff notes

24 ⁵ See D.C.R. 13(4); FJDCR 15(4).

⁶ Cf. *Holcomb v. Georgia Pacific*, 128 Nev. Adv. Rep. 56, 289 P.3d 188, 200 n.12 (2012) (party may not raise new issue in reply) (citing *City of Elko v. Zillich*, 100 Nev. 366, 371, 683 P.2d 5, 8 (1984)).

1 that he has elected to “submit concurrently” the originally proposed *Writs*, suggesting
2 that he is requesting that those be issued—despite the admitted error they contain. Of
3 course, compliance with prescribed procedures would eliminate this confusion. Plaintiff
4 may file a new motion to expressly identify the relief which he requests.

5 And, finally, Plaintiff’s *Reply* itself establishes another sound basis to deny his
6 effort to take advantage of the self-imposed procedural irregularities. At several points,
7 Plaintiff’s *Reply* clearly indicates that the “modified *Writs*” do not reflect his
8 interpretation of the relief to which he is entitled.⁷ Indeed, the language practically
9 predicts further efforts by Plaintiff to present his interpretation of those disputed
10 subjects to this Court.⁸ The purpose of this Court’s procedural rules is to allow for
11 comprehensive resolution of an issue—as opposed to inviting piecemeal adjudication of
12 questions. That may serve the interests of one litigant or another, but it does not serve
13 the interest of a process which is supposed to promote the “just, speedy and
14 inexpensive” adjudication of disputes.⁹

15 **B. Alternatively, this Court should exercise its discretion to**
16 **authorize a “sur-reply” by ZANDIAN to address the new issues**
raised in the Reply.

17 The procedural rules of this Court authorize only a motion, opposition, and
18 reply.¹⁰ Within those rules, there is no such thing as a “sur-reply.” Nonetheless, this
19 Court has the authority to permit a “sur-reply” in a circumstance such as this.¹¹ While

20 ⁷ See *Reply* at 2:17 – 2:22, 2 n.1.

21 ⁸ See *Reply* at 2:17-22, (“Contrary to Defendants’ arguments, *Mr. Margolin* is not asking the Court to
22 *award him interest upon interest. As such, without waiving any rights, Plaintiff has changed the writs of*
execution....” (emphasis added)), 2 n.1 (*Plaintiff is not abandoning his rights or interest in the Order on*
23 *motion for Order Allowing Costs and Necessary Disbursements, dated May 19, 2014, as that is a valid and*
binding order of this Court.” (emphasis added)).

24 ⁹ See NRCP 1.

¹⁰ See D.C.R. 13; FJDCR 15.

¹¹ See D.C.R. 5 (“These rules shall be liberally construed to secure the proper and efficient administration
of the business and affairs of the court and to promote and facilitate the administration of justice by the

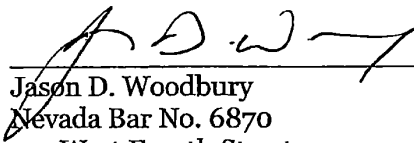
1 ZANDIAN maintains that the *Reply* presents a material change which should be
2 resolved through an entirely independent motion process, if this Court determines that
3 a new motion will not be required, it is respectfully requested that ZANDIAN should at
4 least be given an opportunity to respond to the material change in a sur-reply to the
5 *Reply*. Otherwise, this Court will be adjudicating an argument from the Plaintiff which
6 ZANDIAN has not had an opportunity to address. No interpretation of this Court's
7 procedural rules should allow that.

8 **III. Conclusion**

9 For all these reasons explained herein, it is respectfully requested that this Court
10 grant this *Motion*.

11 DATED this 18th day of July, 2014.

12 **KAEMPFER CROWELL**

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24 court."); FJDCR 1(4) ("Whenever it appears to the Court that a particular situation does not fall within
any of these rules, or that the literal application of a rule would work hardship or injustice in any case, the
Court shall make such order as the interests of justice require.")

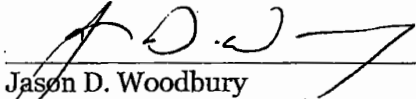
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AFFIRMATION pursuant to NRS 239B.030

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

DATED this 18th July, 2014.

KAEMPFER CROWELL



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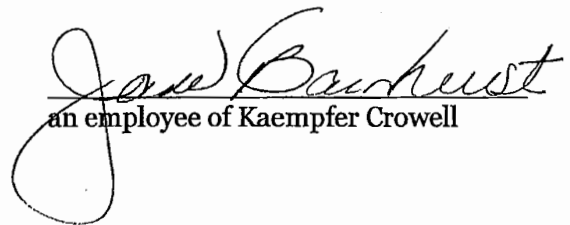
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that service of the foregoing
3 **MOTION TO STRIKE, IN PART, REPLY IN SUPPORT OF MOTION FOR**
4 **WRIT OF EXECUTION** was made this date by depositing a true copy of the same for
5 mailing at Carson City, Nevada, addressed to each 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 18th day of July, 2014.

12 
13 an employee of Kaempfer Crowell

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