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DISTRICT COURT

CLARK COUNTY, NEVADA

14 THOMAS C. MICHAELIDES, an
15 individual, THOMAS C. MICHAELIDES
16 dba TCM LAW GROUP,

CASE NO. A-18-779028-C
DEPT. NO. XXIV

Plaintiffs,

v.

18 DARREN DAVID CHAKER aka DARREN
19 CHAKER-DELNERO, an individual;
20 DOES I-X, inclusive; and ROE
CORPORATIONS XI through XX,

Defendants.

23 **DEFENDANT'S REPLY IN SUPPORT OF**
24 **HIS MOTION TO SET ASIDE DEFAULT**

25 COMES NOW, Defendant DARREN DAVID CHAKER aka DARREN CHAKER-
26 DELNERO, by and through his counsel, OLSON CANNON GORMLEY & STOBERSKI,
27 and hereby submits his Reply in Support of his Motion to Set Aside Default.
28

1 POINTS AND AUTHORITIES

2 I.

3 ARGUMENT

4 Plaintiff's opposition fails to demonstrate that he undertook reasonable efforts
5 to notify Defendant of the lawsuit, and nothing in Plaintiff's argument suffices to
6 overcome the Nevada Supreme Court's preferences for hearing cases on their merits.
7 To wit, Plaintiff claims that he had no reasonable means of locating Defendant in order
8 to advise him of the instant suit, but this is belied by his continuing contact with
9 Defendant over e-mail in 2018 – without any mention of the pending lawsuit.¹
10 Plaintiff, in fact, sought default on November 15, 2018 while receiving e-mail from
11 Defendant on **the same day**.² Plaintiff's opposition is also silent as to what attempts
12 were made to simply call Defendant. In short, good cause exists to set aside the default
13 because Plaintiff failed to pursue every reasonable means of notifying Defendant of
14 this suit and because Defendant has been deprived of his due process through no fault
15 of his own.
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19 Adding to the deficiency of Plaintiff's response in his opposition, the opposition
20 is rife with irrelevant arguments and inaccurate authority. To wit, Plaintiff focuses on
21 Defendant's "excusable neglect," but excusable neglect is but one consideration under
22 the standard of good cause. Further, Plaintiff muddles authority regarding setting
23 aside a **judgment** under NRCP 60 with setting aside a **default**; in this matter, no
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25
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28 ¹ Exhibit A, e-mail correspondence from Defendant to Plaintiff, November 15, 2018.

² *Id.*

1 entry of judgment is reflected on the docket³, and Defendant’s motion is directed
2 towards setting aside the default under NRCP 55. Worse, Plaintiff’s opposition cites no
3 authority for his position and only includes “Id.” citations with no original case
4 citation. It is impossible to discern what authority Plaintiff believes supports his
5 position.
6

7 Above all, however, the Nevada Supreme Court has made clear that entry of
8 default may be set aside for good cause, which is a “a liberal and mutable standard.”⁴
9 Accordingly, Courts have wide discretion in granting motions to set aside a default⁵ to
10 uphold “the policy of this state that cases be heard on the merits, whenever possible.”⁶
11 To this end, the Nevada Supreme Court requires that plaintiffs pursue every
12 reasonable method of notifying defendants of a pending suit, because even “technical
13 compliance with NRCP 4(e)(1)(i)” may still not suffice if the plaintiff’s “actual efforts,
14 as a matter of law, fall short of the due diligence requirement to the extent of depriving
15 [the defendant] of his fundamental right to due process.”⁷ “Where other reasonable
16 methods exist for locating the whereabouts of a defendant, plaintiff should exercise
17 those methods.”⁸ In its liberal view of the good cause required to set aside default, the
18 Nevada Supreme Court finds that courts may set aside default for, *inter alia*, excusable
19
20

21
22 ³ Although, as addressed further in Defendant’s Supplement to its Motion to Set Aside, an errant Default
23 Judgment has been circulated by unknown persons.

24 ⁴ Nev. R. Civ. P. 55(c); *Intermountain Lumber & Builders Supply, Inc. v. Glens Falls Ins. Co.*, 83 Nev.
25 126, 129, 424 P.2d 884, 886 (1967); *McMillen v. J.C. Penney Co.*, 205 F.R.D. 557, 558 (D. Nev.
26 2002)(analyzing ‘good cause’ under FRCP 55, the federal equivalent).

27 ⁵ See *Fagin v. Fagin*, 91 Nev. 794, 544 P.2d 415 (1975); *Bryant v. Gibbs*, 69 Nev. 167, 243 P.2d 1050
28 (1952).

⁶ *Schulman v. Bonberg-Whitney Electric, Inc.*, 98 Nev. 226, 228, 645 P.2d 434 (1982) (citing *Hotel Last
Frontier v. Frontier Properties*, 79 Nev. 150, 380 P.2d 293 (1963)).

⁷ *Browning*, 114 Nev. at 218, 954 P.2d at 744, citing *Price*, 106 Nev. at 103, 787 P.2d at 786-87.

⁸ *Browning*, 114 Nev. at 218, 954 P.2d at 744, citing *Price*, 106 Nev. at 103, 787 P.2d at 786-87; *Gassett v.
Snappy Car Rental*, 111 Nev. 1416, 906 P.2d 258 (1995); *McNair v. Rivera*, 110 Nev. 463, 874 P.2d 1240
(1994).

1 neglect, mistake, inadvertence, prompt efforts to remove the default, the absence of
2 any intent to delay proceedings, the lack of knowledge of the party or counsel as
3 to procedural requirements, or that a meritorious defense exists.⁹

4
5 In this matter, good cause exists for setting aside the default because Plaintiff
6 made insufficient efforts to locate and serve Defendant. Reasonable methods of
7 contacting Defendant remained, including simply calling or e-mailing Defendant, but
8 Plaintiff's opposition fails to explain what efforts were made to those ends. In fact,
9 Plaintiff continued to correspond with Defendant on other matters, but failed to make
10 any mention of the pending lawsuit.

11
12 Even presuming Plaintiff's efforts were reasonable, a default is an inequitable
13 result which violates Defendant's due process rights. Defendant had no reason to
14 believe a lawsuit had been filed against him in another state where he is not subject to
15 personal jurisdiction. In a comparison between a plaintiff who possessed contact
16 information for the defendant (and, in fact, continued to contact the defendant) and
17 the defendant who had no indication that he had been sued, clearly the equitable
18 result favored by the Nevada Supreme Court is to set aside the default. This is
19 particularly true where setting aside the default assures a trial on the merits, whereas
20 upholding the default forever forecloses such an examination of the merits.¹⁰

21
22 Lastly, Plaintiff asks this Court to award fees and costs for his efforts to default
23 Defendant. In other words, Plaintiff is seeking compensation for a problem of his own
24 creation, namely that he proceeded with default in spite of failing to pursue reasonable
25

26
27 ⁹ *Schulman*, 98 Nev. at 228, 645 P.2d 434(citing *Hotel Last Frontier*, 79 Nev. 150, 380 P.2d 293); *Ogle v.*
Miller, 87 Nev. 573, 576, 491 P.2d 40, 42 (1971).

28 ¹⁰ *Hotel Last Frontier*, 79 Nev. at 155-56, 380 P.2d at 295 (emphasis in original); *Yochum v. Davis*, 98
Nev. 484, 487, 653 P.2d 1215, 1217 (1982).

1 avenues to notify Defendant of the instant suit. A simple e-mail to Defendant advising
2 of the suit would have cost nothing. Instead, Plaintiff attempted to 'sneak' a default
3 past Defendant and this Court. Clearly, such actions should not be rewarded with fees
4 and costs.

6 **II.**

7 **CONCLUSION**

8 Based on the foregoing, and particularly because Plaintiff possessed contact
9 information for the defendant which he used to contact Defendant without any
10 mention of the lawsuit, the default in this matter should be set aside.

11 DATED this 27th day of March, 2020.

12 OLSON CANNON GORMLEY
13 & STOBERSKI

14
15 _____
16 JAMES R. OLSON, ESQ.
17 Nevada Bar No. 000116
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on this 27th day of March, 2020, I sent via e-mail a
3 true and correct copy of the above and foregoing **DEFENDANT'S REPLY TO**
4 **PLAINTIFF'S OPPOSITION TO MOTION TO SET ASIDE DEFAULT** on the
5 Clark County E-File Electronic Service List (or, if necessary, by U.S. Mail, first class,
6 postage pre-paid), upon the following:
7

8 Thomas C. Michaelides, Esq.
9 TCM Law Group
10 2620 Regatta Drive, Suite 219
11 Las Vegas, NV 89128
12 702-462-6161
13 702-413-6255 fax
14 tcm@tcmlawgroup.com
15 Attorney for Plaintiff

16 */s/Jane Hollingsworth*

17 _____
18 An Employee of OLSON CANNON GORMLEY
19 & STOBERSKI
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EXHIBIT A



Darren Chaker <[REDACTED]>

Request for Original File

Darren Chaker <[REDACTED]> Thu, Nov 15, 2018 at 10:22 AM
To: Tom Michaelides <[REDACTED]>, "Thomas C. Michaelides, Esq." <[REDACTED]>
Cc: [REDACTED]@tcmlawgroup.com, [REDACTED]@tcmlawgroup.com, [REDACTED]@tcmlawgroup.com

Attorney Michaelides,

As you know I have made numerous attempts to obtain my original file. You are also aware I believe your office committed malpractice in several respects, however am unable to have counsel assess your conduct absent my file. Your offer to provide a copy of the file is not what I requested. I specifically requested for my original file, all documents, and computer files with meta-data intact. You have failed to provide the records.

You are aware you allowed your former paralegal who was jailed for the unauthorized practice of law^[1], practice law in my case. I notified you of his conduct via email and a certified letter explaining such. You filed a paternity action and failed to file proof of service allowing it to be dismissed. You then filed a second paternity action, however when default was sought, the court rejected the complaint since it did not have statutorily required information in it. Might I mention I had to retain counsel to file for default since you were suspended at the time. I would also mention your office did not file the case properly as it was not filed under seal when uploaded since your staff failed to check the box (per the clerk) designating it as a paternity action. You are also aware your office filed papers attesting to documents under "penalty of perjury" with my signature on it, but do not believe I ever signed any document for the second case you filed – e-filing documents with a client's signature amounts to fraud on the court where the client never signed the document^[2].

Your last correspondence with me several months ago stated you would contact the attorney who operates a law school out of a small office who has yet to have a single graduate in twelve years^[3] is actively suing me in California federal and state court. You have a duty to maintain all correspondence and records confidential. Nonetheless, the plaintiff in that case has failed in every respect. His appeal from the dismissal of his federal action has been met with the appellate chair^[4] of a major firm, and as of today a former federal judge^[5] who has also sat on several appeals through designation has taken over the appeal in the Ninth Circuit. Nonetheless, if you want to align yourself with a cyclical loser, while violating your fiduciary duties, then legal recourse will be taken.

Again, I am requesting my original file. Since this is the same request I have made for well over a year, do not believe it would take much time to get my file. I will be by your office tomorrow to get my original file and all records I have requested.

Nothing in this or any prior communication should be deemed to waive any rights, defenses or claims unless done so in writing. Please reply in writing if a response is needed by your office.

^[1] An attorney is liable, in malpractice or as an ethical violation, for his paralegal's acts. In re Discipline of Laub, 2002 Nev. LEXIS 113, *1.

^[2] "When [a] petition [is] received, the court [is] presented with a document which stated on its face that [a] debtor had signed it, under penalty of perjury, when it was not true. This amounts to fraud." In re Wenk, 296 B.R. at 725.

[3] "Since opening, only three students have ever completed MAOL's first-year curriculum and were able to take the First Year Law Students' Examination; two of the students eventually passed the examination but each then left MAOL and transferred to other law schools. Since MAOL has had no students nor has held any classes in almost five years, its program of legal education has now been dormant for more than four years. As a result, and as confirmed by the inspection, MAOL is noncompliant as to three material requirements: Its law library is noncompliant since its hardcopy legal authorities have not been updated since 2013; without any tuition income, the law school's current and future financial viability appears questionable; and its website and written materials offer outdated and misleading information to both the general public and potential applicants."

<http://apps.calbar.ca.gov/cbe/docs/agendaitem/Public/agendaitem1000002149.pdf>

[4] <https://www.hansonbridgett.com/Our-Attorneys/gary-a-watt>

[5] <https://larsonobrienlaw.com/attorneys/>

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