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3/24/2020 5:03 PM
CLERK OF THE COURT

ESQ.
Nevada Bar No. 000116
ESQ.
Nevada Bar No. 3176
ESQ.
Nevada Bar No. 10443
STOBERSKI
Attorneys for Defendant
aka

Law Offices of
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129

DISTRICT COURT

NEVADA

an individual, aka TCM LAW GROUP, Plaintiffs, v. aka an individual; DOES I-X, inclusive; and CORPORATIONS XI through XX, Defendants.	CASE NO. A-18-779028-C DEPT. NO. XXIV **HEARING REQUESTED**

SUPPLEMENT TO MOTION TO SET ASIDE

COMES NOW, Defendant aka by and through his counsel, and hereby files a Supplement to his Motion to Set Aside Default.

. . .

Case Number: A-18-779028-C

POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendant filed a motion to set aside entry of default on January 28, 2020. On Thursday, February 27, 2020, at 12:46 a.m., Defendant received an e-mail from an address identified as ' purporting to serve a file-stamped document titled "Default Judgment". No Default Judgment nor any entry of default judgment is reflected on this matter's docket, and both the file stamp and the Court's signature on the purported default judgment appear to be cut and pasted from other pleadings.

This odd circumstance before the Court does not seem to fit cleanly under a specific rule or defined procedure of seeking relief. To wit, Defendant is aware of the oddity of seeking to strike a pleading not reflected on the docket, but he is left with no other choice but to respond to a purported file stamped pleading – a default judgment, no less – that suddenly appears nine months after it allegedly had been filed.

As such, and out of an abundance of caution, Defendant herein supplements his Motion to Set Aside Default with a request to set aside any default judgment for the reasons set forth in the initial motion, in particular, that this Court lacks personal jurisdiction over Defendant.

II.

STATEMENT OF FACTS

1. On Thursday, February 27, 2020, at 12:46 a.m., Defendant received an e-mail from an unknown e-mail address which identified the sender as "pete ";

2. The body of the e-mail simply read, "Please Find Attached The Court Order for Case A-18-779028-C Kindest Regards;"[2]

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[1] Exhibit A, 02/27/2020 e-mail from .

3. The e-mail included an attached PDF file titled "Default Judgment";[3]

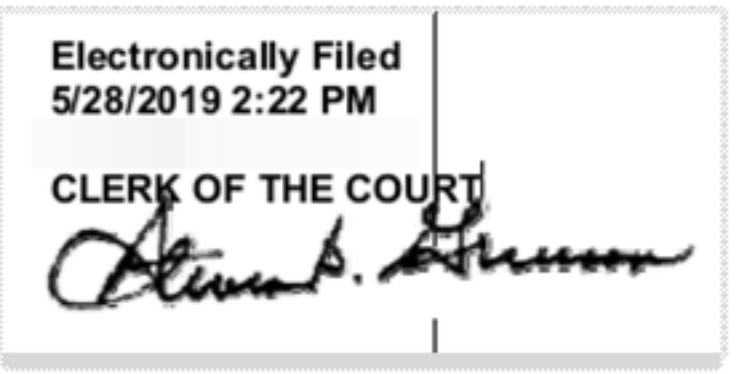
4. As of the date of filing of the instant motion, no 'Default Judgment' is reflected on the docket for this matter;

5. The file stamp on the purported 'Default Judgment' is precisely the same as Plaintiff's Application for Default Judgment – "5/28/2019 2:22 PM";[4]

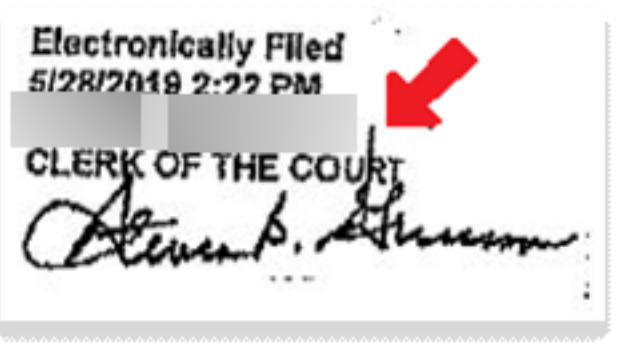
6. This file stamp makes little sense because the Court's purported execution of the document is entered as two days later - "May 30, 2019";[5]

7. The file stamp appears to have been copied and pasted onto the 'Default Judgment' from the Application for Default Judgment because of the errant artifact of pleading paper on the 'Default Judgment' in the exact location as Plaintiff's Application:

a. From Plaintiff's Application for Default Judgment[6]:



b. From the purported 'Default Judgment':



8. The Court's signature also appears to have been copy and pasted from another document and does not appear to be a 'stamp signature' used by the Court:

---

[2] *Id.*
[3] Exhibit B, Attachment to 02/27/2020 e-mail.
[4] *Id.*
[5] *Id.* [2].
[6] Exhibit D, Plaintiff's Application for Default Judgment.

Law Offices of TOBERSKI
A Professional Corporation
(702) 384-4012 Fax

a. From the Order Granting Plaintiffs' Ex Parte Motion for Publication of Summons for Defendant[6]:

IT IS SO ORDERED.

DATED this 17 day of September, 2018.

Honorable

Submitted By:
TCM LAW GROUP

b. From the purported 'Default Judgment'[7], where the signature is not only exactly the same but the signature line also appears crooked:

IT IS SO ORDERED

Honorable

9. Defense counsel phoned Plaintiff to inquire as to whether he drafted or filed a default judgment, but Plaintiff could not recall and requested time to look through his file. As of the filing the instant supplement, defense counsel has heard nothing further.

III.

ARGUMENT

Rule 60(b)(4) allows for relief from a "final judgment, order, or proceeding" when the "judgment is void."[8] Defective service of process deprives a court of personal jurisdiction, and

[6] Exhibit C, Order Granting Plaintiffs' Ex Parte Motion for Publication of Summons for Defendant.
[7] Exhibit B.
[8] Nev. R. Civ. P. 60(b)(4).

The Offices of
TRIMLE
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Fax

a default judgment entered by a court lacking jurisdiction is void.[9] Defendant in this matter recognizes that, according to the docket, no default judgment has been filed or entered, but out of abundance of caution, Defendant herein supplements his Motion to Set Aside to also seek an order setting aside any default judgment.

As set forth in Defendant's initial motion to set aside, Plaintiff made insufficient efforts to locate and serve Defendant. Plaintiff failed to pursue other "reasonable methods . . . for locating the whereabouts"[10] of Defendant, including Defendant's phone number and e-mail address. Even "technical compliance with NRCP 4(e)(1)(i)" may still not suffice if the plaintiff's "actual efforts, as a matter of law, fall short of the due diligence requirement to the extent of depriving [the defendant] of his fundamental right to due process."[11] Above all, the Nevada Supreme Court has made clear that "it is the policy of this state that cases be heard on the merits, whenever possible."[12] The Court noted that:

> appellate court is more likely to affirm a lower court ruling *setting aside* a default judgment than it is to affirm a *refusal* to do so. In the former case a trial upon the merits is assured, whereas in the latter it is denied forever.[13]

As such, to the extent that this Court recognizes the purported Default Judgment, Defendant requests an order that the judgment is void for lack of personal jurisdiction over Defendant.

IV.

CONCLUSION

Defendant received an e-mail from an unknown address purporting to serve a file-stamped copy of a Default Judgment. No default judgment is reflected on the Court's docket,

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[9] *In re Estate of Black*, 132 Nev. 73, 75–76, 367 P.3d 416, 418 (2016); [redacted] *v. Snappy Car Rental*, 111 Nev. 1416, 1420, 906 P.2d 258, 261 (1995), *superseded on other grounds by rule, as stated in In Re Estate of Black*, 132 Nev. 73, 367 P.3d 416 (2016).

[10] *Se*[redacted] 114 Nev. 213, 218, 954 P.2d 741, 744 (1998), *citing Price* [redacted] 106 Nev. 100, 102, 787 P.2d 785, 786-87 (1990).

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

[12] [redacted] *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)).

[13] *Hotel Last Frontier*, 79 Nev. at 155-56, 380 P.2d at 295 (emphasis in original); [redacted] 98 Nev. 484, 487, 653 P.2d 1215, 1217 (1982).

Law Offices of
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Fax

and aspects of the purported Default Judgment are clearly copied and pasted from other documents. Although no default judgment appears to have been entered in this case, Defendant herein supplements his Motion to Set Aside Default to include this purported default judgment and to alert the Court to the existence of this fabricated document.

DATED this 24 day of March, 2020.

ESQ.
Nevada Bar No. 000116

ESQ.

No. 010443

Attorney for Defendant

Law Offices of
A Professional Corporation
9450 West Cheyenne Avenue
Las Vegas, Nevada 89129
Fax (702) 384-6691

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of March, 2020, I sent via e-mail a true and correct copy of the above and foregoing **SUPPLEMENT TO MOTION TO SET ASIDE** on the E-File Electronic Service List (or, if necessary, by U.S. Mail, first class, postage pre-paid), upon the following:

Esq.
TCM Law Group

ax

Attorney for Plaintiff

/s/

An Employee of
& STOBERSKI

Law Offices of
STOBERSKI
A Professional Corporation
eyenue Avenue
Las Vegas, Nevada 89129
Fax

EXHIBIT A

---------- Forwarded message ---------
From:
Date: Thu, Feb 27, 2020 at 12:46 AM
Subject: Court Order
To

Please Find Attached The Court Order for Case A-18-779028-C
Kindest Regards.

--

Confidentiality Notice: This message, along with any attachments and/or replies thereto, are covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521, and are may be legally privileged. The information contained in this electronic e-mail and any accompanying attachment(s) is intended only for the use of the intended recipient and may be confidential and/or privileged. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or retransmission of this message is in violation of 18 U.S.C. 2511(1) of the ECPA and is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail, and delete the original message and all copies from your system. Thank you.

EXHIBIT B

Electronically Filed
5/28/2019 2:22 PM

CLERK OF THE COURT

MOT
TCM LAW GROUP
[redacted] ESQ.
Nevada Bar No. 2425
[redacted]
Telephone:
Facsimile:
[redacted]
Attorney for Plaintiff

DISTRICT COURT

[redacted]

[redacted] in individual
dba TCM LAW GROUP.

Plaintiff,

vs.

[redacted] an individual;
DOES I-X, inclusive; and
CORPORATIONS XI through XX

Defendant.

CASE NO. A-18-779028-C

DEPARTMENT: XXIV

DEFAULT JUDMENT

Upon the application of Default Judgment filed by [redacted] ESQ., of the TCM LAW GROUP, based upon the Default of Defendant filed with this Court on November 15, 2018. The Court having reviewed the papers and pleading on file, now therefore:

THE COURT FINDS: that the TCM LAW GROUP and [redacted] Esq. has been defamed and held in a false light by Defendant's false statements which consisted of causing an offending report to appear online.

THE COURT FURTHEER FINDS: that Defendant caused the offending report, which was false, to appear online in several websites, one specifically known as Rip-Off Report and others unknown to date, and said false statement identified in the Complaint.

THE COURT FURTHER FINDS: that the offending report caused TCM LAW and Michaelides, Esq. to be seen in a bad, false and negative light and was seen by prospective online clients of TCM LAW.

THE COURT FURTHER FINDS: that the offending report, consisting of defamatory and libelous statements, are hereby found to be false, and has disparaged Plaintiffs business.

NOW IT IS HEREBY ORDERED AND DECREED: that the offending report that appeared on-line in several websites pertaining to TCM LAW and attorney including, but not limited to Rip-Off Report, should be removed by any necessary means necessary.

IT IS SO ORDERED

Honorable

DATED this 30th day of May, 2019.

THE TCM LAW GROUP

/s/ ESQ.
No.

Telephone:
Facsimile:

Attorney for Plaintiff

EXHIBIT C

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9/19/2018 4:35 PM
CLERK OF THE COURT

ORDR

MICHAELIDES, ESQ.
No. 5425

Telephone:
Facsimile:
Attorney for

, MICHAELIDES, an individual,

Plaintiff,

vs.

an individual,

Defendants.

Case No.: A-18-779028-C
Dept. No.: XXIV

ORDER GRANTING PLAINTIFFS' EXPARTE MOTION FOR PUBLICATION OF SUMMONS FOR DEFENDANT

The Court having considered Plaintiff's Ex-Parte Motion for Publication of Summons for Defendan o N.R.C.P. 6(b) and 4(e)(1)(i) and the Court having reviewed the papers, pleadings on file herein, it appears to the satisfaction of the Court, and the Court finds, that Defendant cannot be found within the State of and that Summons cannot be served upon Defendant in person within the State of and it further appearing from the Affidavit and from the Complaint filed herein, the Court herein finds that a cause of action exists in favor of Plaintiff and against the Defendant; that Defendant is a necessary and proper party, and the last-known address of the Defendant was and it further appearing that Las Vegas Legal News is

Case Number: A-18-779028-C

a newspaper published in the City State of and is the newspaper most likely to give notice to the Defendant of the pendency of this suit;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Summons in the suit be served on the Defendant herein, by publication in the above-named newspaper, and that said publication be made for a period of once per week for five (5) consecutive weeks;

IT IS FURTHER ORDERED that a copy of the Summons and a copy of the Complaint be deposited in the United States Post Office, enclosed in an envelope upon which the postage is fully prepaid, addressed to the Defendant at

///

///

///

IT IS FURTHER ORDERED that due service of a copy of the Summons and Complaint on the Defendant in the State of Nevada shall be equivalent to complete service by publication and deposited in the United States Post Office, that such process may be served upon the Defendant as prescribed by statute.

IT IS SO ORDERED.

DATED this 17 day of September, 2018.

Honorable

Submitted By:
TCM LAW GROUP

ESQ.
NV

Telephone:
Facsimile:
tcm@tcmlawgroup.com
Attorneys for Plaintiff

EXHIBIT D

Electronically Filed
5/28/2019 2:22 PM

CLERK OF THE COURT

APPL
TCM LAW GROUP
ESQ.
No. 5425

Telephone:
Facsimile:

Attorney for Plaintiff

IN THE EIGHTH JUDICIAL DISTRICT COURT

OF THE STATE OI N AND FOR THE COUNTY OF

an individual
dba TCM LAW GROUP,

Plaintiffs,

vs.

an individual; DOES I-X, inclusive; and CORPORATIONS XI through XX

Defendants.

Case No.: A-18-779028-C
Dept. No.: XXIV

APPLICATION FOR ENTRY OF DEFAULT JUDGMENT AGAINST DEFENDANT

COMES NOW Plaintiff, by and through his Attorney of Record of The TCM Law Group, and hereby makes this Application for the Entry of Default Judgment against Defendant This Application is made and based upon Nevada Rules of Civil Procedure, Rule 55 the attached Exhibits, all other pleadings, papers, and documents on file with the Court in this action, such further documentary evidence as the Court may deem appropriate.

Plaintiff as a result of this action and based on Defendant's failure to appear in this action, seeks the following Default Judgment from this Court:

1. That the Court finds that the claims made by the Defendants are not meritorious.

2. That the TCM LAW GROUP and Esq. has been defamed and held in a false light by Defendant's false statements which consisted of causing an offending report to appear online.

3. That Defendant caused the offending report, which was false, to appear online in several websites, one specifically known as Rip-Off Report and others unknown to date, and said false statement identified in the Complaint.

4. That the offending report, consisting of defamatory and libelous statements, went directly to TCM LAW's representation of Defendant in his child custody complaint brought against dated December 8, 2015. The offending report, as a result of this judgment, is hereby found to be false, and has disparaged Plaintiffs business.

5. That the offending report caused TCM LAW and Esq. to be seen in a bad, false and negative light and was seen by prospective online clients of TCM LAW.

6. That Defendant be held liable for a money judgment in the amount of $15,001.00 for attorney fees and costs.

DATED this 28th day of May, 2019.

Respectfully submitted:

TCM LAW GROUP
By: /s/ _____
ESQ.
Telephone:
Facsimile:
Attorney for Plaintiff