

1 Charles McCrea (NV State Bar No. 104)  
**LIONEL SAWYER & COLLINS**  
 2 1700 Bank of America Plaza  
 3 300 South Fourth Street  
 Las Vegas, Nevada 89101  
 Tel 702.383.8981  
 4 Fax 702.383.8845  
 cmccrea@lionelsawyer.com

5 James D. Nguyen (CA State Bar No. 179370)  
 6 Uleses C. Henderson, Jr. (CA State Bar No. 225246)  
*Pro Hac Vice Applications To Be Submitted*  
**FOLEY & LARDNER LLP**  
 7 2029 Century Park East, 35<sup>th</sup> Floor  
 8 Los Angeles, California 90067-3021  
 Tel: 310-277-2223; Fax: 310-557-8475  
 9 jnguyen@foley.com  
 uhenderson@foley.com

10 Attorneys for Specially Appearing Defendants  
 11 **BODOG ENTERTAINMENT GROUP S.A.**, and  
 erroneously named Specially Appearing Defendants  
 12 **BODOG.NET** and **BODOG.COM**

13  
 14 **UNITED STATES DISTRICT COURT**  
 15 **DISTRICT OF NEVADA**

16 **1ST TECHNOLOGY LLC,**

17 Plaintiff,

18 vs.

19  
 20 **RATIONAL ENTERPRISES LTDA.,**  
 21 **RATIONAL POKER SCHOOL**  
**LIMITED, BODOG**  
 22 **ENTERTAINMENT GROUP S.A.,**  
 23 **BODOG.NET, BODOG.COM, AND**  
**FUTUREBET SYSTEMS LTD.,**

24 Defendants.

Case No: 2:06-cv-1110-RLH-GWF

**SPECIALY APPEARING  
 DEFENDANTS BODOG  
 ENTERTAINMENT GROUP S.A.  
 AND ERRONEOUSLY NAMED  
 SPECIALY APPEARING  
 DEFENDANTS BODOG.NET AND  
 BODOG.COM'S NOTICE OF  
 MOTION AND EMERGENCY  
 MOTION TO VACATE THE  
 ORDER OF EXAMINATION OF  
 JUDGMENT DEBTOR, OR  
 ALTERNATIVELY, FOR STAY  
 PENDING RESOLUTION OF  
 MOTION TO SET ASIDE DEFAULT  
 JUDGMENT**

1 **TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on [INSERT DATE] at [10:00 a.m.] in the  
3 above-entitled Court located at 333 S. Las Vegas Blvd., Las Vegas, Nevada 89101,  
4 Specially Appearing Defendants Bodog Entertainment Group S.A., and  
5 erroneously named Specially Appearing Defendants Bodog.net and Bodog.com  
6 (collectively “Bodog Entertainment”) hereby do move this Court to vacate its  
7 September 4, 2007 order (the “September 4 Order”) requiring Calvin Ayre to  
8 appear for debtor examination in Las Vegas, Nevada, or in the alternative, to stay  
9 the debtor examination pending the outcome of the pending Motion to Set Aside  
10 Default Judgment.

11 This emergency motion is brought on the grounds that plaintiff 1<sup>st</sup>  
12 Technology LLC’s (“1<sup>st</sup> Technology”) *ex parte* request for examination of Calvin  
13 Ayre was unfounded, improper and, most importantly, the debtor examination  
14 itself violates Nevada law by purporting to make a non-U.S. resident appear in the  
15 United States for examination.

16 This motion is made pursuant to this Notice of Motion and Motion, the  
17 Memorandum of Points and Authorities filed herewith, the entire court file in this  
18 action, and all other evidence and argument that may be introduced at the hearing.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: September 7, 2007

Respectfully submitted,

By:           /s/ Charles McCrea          

Charles McCrea

**LIONEL SAWYER & COLLINS**

Attorneys for Specially Appearing Defendants  
**BODOG ENTERTAINMENT GROUP S.A.**,  
and erroneously named Specially Appearing  
Defendants **BODOG.NET** and  
**BODOG.COM**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On August 31, 2007, plaintiff, without giving Bodog Entertainment’s local  
4 counsel any prior notice, filed with the Court an *ex parte* application that it knew  
5 lacked merit and was improper in this action. In its *ex parte* application, plaintiff  
6 improperly requested an order from the Court requiring Calvin Ayre to appear in  
7 Las Vegas for debtor examination. On September 4, 2007, without hearing the  
8 defendants on the matter, the Court granted Plaintiff’s improper *ex parte*  
9 application and issued an order for Mr. Ayre’s examination.

10 Defendants had no idea and was not given a chance to oppose Plaintiff’s *ex*  
11 *parte* application. Bodog Entertainment’s counsel only discovered on September  
12 4, 2007, that Plaintiff’s *ex parte* application had been filed with the Court. By that  
13 time, the Court had already issued the order. Further, Plaintiff’s counsel did not  
14 notify defendants’ counsel of the *ex parte* motion until today, when the September  
15 4 Order was entered into the Court docket. Thus, defendants are now forced to file  
16 this emergency motion. Defendants vigorously oppose plaintiff’s unwarranted *ex*  
17 *parte* request, and respectfully request that the Court vacate the September 4  
18 Order.

19 The Order should be vacated for a number of reasons. First, plaintiff’s *ex*  
20 *parte* application did not comply with the local rules and, in its papers, plaintiff  
21 failed to demonstrate good cause for the issue to proceed by means of expedited, *ex*  
22 *parte* briefing. There are serious issues at stake and full briefing on the merits of  
23 the requested relief should be required by the Court. The *ex parte* application  
24 should have been denied.

25 On the merits of the request, the Court cannot hold a judgment debtor  
26 examination of Calvin Ayre because he is not a resident of the United States;  
27 Nevada’s law on this point is clear – persons can only be required to appear for a  
28

1 debtor examination in their county of residence. Accordingly, Mr. Ayre cannot be  
2 required to appear for a judgment debtor examination in a county where he does  
3 not reside.

4 Finally, because Defendants have filed a motion challenging the default  
5 judgment that was improperly obtained without service of process on them, no  
6 debtor examinations or similar proceedings should be authorized in this case until  
7 this fundamental issue is fully examined and finally resolved. In addition, Plaintiff  
8 does not need a judgment debtor examination because it has already obtained a  
9 writ of execution from the Washington State Court to enforce its default judgment,  
10 and there is no reason offered to examine Mr. Ayre or any other alleged  
11 representative of Defendants.

12 In addition, Plaintiff does not need a judgment debtor examination because it  
13 has already obtained a writ of execution from the Washington State Court to  
14 enforce its default judgment, and Plaintiff offered no reason why examination of  
15 Mr. Ayre or any other alleged representative of defendants was necessary at this  
16 time.

17 There is indisputably no emergency presented in this case, and Defendant  
18 Bodog Entertainment, collectively with erroneously named Defendants Bodog.com  
19 and Bodog.net, hereby requests that this Court vacate the September 4 Order.

20 **III. PLAINTIFF'S EX PARTE APPLICATION SHOULD HAVE BEEN**  
21 **DENIED**

22 **A. Plaintiff's Request Should Not Have Been Heard on an Ex Parte**  
23 **Basis**

24 As courts have acknowledged, *ex parte* applications are highly disfavored  
25 because they "impose an unnecessary administrative burden on the court and an  
26 unnecessary adversarial burden on opposing counsel who are required to make a  
27 hurried response under pressure, usually for no good reason." *In re Intermagnetics*  
28

1 *America, Inc.*, 101 B.R. 191, 193 (C.D. Cal. 1989). Additionally, *ex parte*  
2 applications are often used to obtain an improper and unethical advantage over the  
3 opposing party. Because of the unfair nature of *ex parte* applications, the movant  
4 should establish that its cause will be irreparably prejudiced if the underlying  
5 motion is heard according to regularly noticed motion procedures. *See Mission*  
6 *Power Engineering Co. v. Continental Casualty Co.*, 883 F. Supp. 488, 492 (C.D.  
7 Cal. 1995).

8 Further, under the Nevada local rules:

9 (a) All *ex parte* motions, applications or requests shall contain a  
10 statement showing good cause why the matter was submitted to the  
11 court without notice to all parties.

12 (b) All *ex parte* matters shall state the efforts made to obtain a  
13 stipulation and why a stipulation was no obtained.

14 LR. 7-5.

15 Plaintiff's *ex parte* application did not comply with the local rules. Plaintiff  
16 did not even bother to give defendants notice of its application. Indeed, Plaintiff  
17 does not state its efforts to stipulate on the matter, nor does Plaintiff explain why it  
18 rushed to the Court without providing defendant's notice of it application.

19 Further, there was no basis for deciding Plaintiff's request on an *ex parte*  
20 basis and Plaintiff did not articulate any reasons for its *ex parte* request. Given that  
21 (1) Defendants' pending motion to set aside default judgment is pending before  
22 this Court, and (2) Plaintiff is seeking to execute its default judgment in  
23 Washington, Plaintiff's request for *ex parte* relief was without merit and Plaintiff  
24 would not have been irreparably prejudiced if its request was heard according to  
25 regularly noticed motion procedures.



1           **B. Plaintiff's Requested Examination is Improper Under NRS 21.270**

2           Under Section 21.270 of the Nevada Revised Statute, "[n]o judgment debtor  
3 may be required to appear outside the county in which he resides." NRS 21.270.  
4 Plaintiff seeks to examine Mr. Ayre at counsel's office in Las Vegas, Nevada.  
5 Even if Mr. Ayre were a suitable candidate for examination (which he is not, as set  
6 forth below), an order requiring Mr. Ayre, or any suitable representative of the  
7 judgment debtors who is not a resident of the United States, to appear for  
8 examination in Las Vegas is improper and against Nevada law. Plaintiff obtained  
9 an order from this Court which is patently improper and unenforceable. Plaintiff is  
10 well aware that defendants are foreign corporations and Mr. Ayre does not reside  
11 in the United States.

12           **C. Defendant Is Properly Challenging the Default Judgment**

13           Under Rule 60(b) of the Federal Rules of Civil Procedure, a Court is given  
14 the power to "entertain an independent action to relieve a party from a judgment,  
15 order, proceeding, or to grant relief to a defendant not actually personally notified"  
16 of the claims giving rise to the judgment. As established by Bodog Entertainment  
17 in its motion to set aside default judgment, Bodog Entertainment was never  
18 properly served in this case, and counsel for Plaintiff failed to notify Bodog  
19 Entertainment before entering default in this action. (*See* Defendant's Motion to  
20 Set Aside, Secs. III. A. and B.). Bodog Entertainment now appears before this  
21 Court and has moved to set aside the default judgment. As such, the Court should  
22 not subject Bodog Entertainment to oral examination until, at the very least, Bodog  
23 Entertainment's motion to set aside default judgment has been heard and a ruling  
24 on merits of the motion has been made by this Court.

25           **D. Plaintiff Presents No Reasons for its Requested Examination**

26           Plaintiff presented *no basis* for its requested examination. Plaintiff merely  
27 asserts that an examination is proper because judgment has been entered in this  
28

1 case. However, debtor examinations are only “supplementary to and in aid of [a]  
2 judgment [or] execution” thereof. FRCP 69(a). As explained below, Plaintiff has  
3 already begun to enforce its default judgment; there is no immediate need for the  
4 Court to grant an examination of Bodog Entertainment. Further, Plaintiff seeks to  
5 depose Calvin Ayre as the “owner and CEO” of Defendants, however, Plaintiff has  
6 not established that (1) Mr. Ayre is an officer or owner of Bodog Entertainment—  
7 Calvin Ayre is not a principle of Bodog Entertainment S.A., or (2) that Mr. Ayre  
8 has any relevant knowledge of the assets held by the defendants. Plaintiff’s  
9 improper *ex parte* request is only an attempt to further harass. Plaintiff should not  
10 be allowed to use the Court to harass non-parties to this action when it has other  
11 means to ascertain the extent of Defendants’ assets.

12 **E. Plaintiff Has Already Begun to Enforce its Default Judgment**

13 Plaintiff is enforcing its default judgment. Within one week of the Clerk’s  
14 entry of default judgment in this case, Plaintiff caused a judgment of  
15 \$48,937,456.00 to be enforced in Superior Court of the State of Washington, King  
16 County. In accordance with the state court’s enforcement, thousands of Bodog  
17 Entertainment’s registered domain names (as well as domain names of other  
18 entities who are not named defendants in this action) were seized and are currently  
19 being held to be liquidated in satisfaction of the nearly \$50 million judgment in  
20 favor of Plaintiff.

21 Even if the sale of domain names is permitted by the Washington court  
22 (which Defendants are opposing), the money earned by such sale will be attributed  
23 to satisfaction of the default judgment and any excess is to be deposited with the  
24 Washington court. So it is possible that Plaintiff will satisfy some or most of its  
25 judgment. Thus, there would be no reason for a debtor exam.



1 **IV. CONCLUSION**

2 For the reasons set forth above, Defendants respectfully request that the  
3 Court vacate the September 4 Order requiring Calvin Ayre to appear for oral  
4 examination in Las Vegas.

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: September \_\_, 2007

Respectfully submitted,

By:           /s/ Charles McCrea          

Charles McCrea

**LIONEL SAWYER & COLLINS**

Attorneys for Specially Appearing Defendants  
**BODOG ENTERTAINMENT GROUP S.A.**,  
and erroneously named Specially Appearing  
Defendants **BODOG.NET** and  
**BODOG.COM**

