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 14 NINGBO SUNNY ELECTRONIC CO., LTD.

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION  
 17

18 OPTRONIC TECHNOLOGIES, INC. d/b/a  
 Orion Telescopes & Binoculars, a California  
 19 corporation,

20 Plaintiff,

21 v.

22 NINGBO SUNNY ELECTRONIC CO., LTD.,  
 SUNNY OPTICS, INC., MEADE  
 23 INSTRUMENTS CORP., and DOES 1-25,,

24 Defendant.

Case No. 5:16-cv-06370-EJD-VKD  
 Assigned to: Honorable Edward J. Davila

**DEFENDANT NINGBO SUNNY  
 ELECTRONIC CO., LTD.'S NOTICE OF  
 MOTION AND MOTION TO QUASH  
 APPLICATIONS FOR WRITS OF  
 EXECUTION; MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT THEREOF**

Compl. Filed: November 1, 2016  
 First Am. Compl. Filed: November 3, 2017  
 Trial Date: October 22, 2019  
 Hearing Date: March 26, 2020  
 Time: 9:00 a.m.

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT on March 26, 2020, in Courtroom1, 5th Floor, 280 South  
3 1st Street, San Jose, California, before the Honorable Edward J. Davila, Defendant Ningbo Sunny  
4 Electronic Co., Ltd. (“Ningbo Sunny”) will and hereby does move this Court pursuant to Federal  
5 Rule of Civil Procedure 62(a) for an order quashing the Applications for Writs of Execution filed  
6 by Plaintiff Optronics Technologies, Inc.’s (“Orion” or “Plaintiff”) on December 20, 2019 (ECF  
7 Nos. 529-532). As discussed in the accompanying Memorandum of Points and Authorities,  
8 Ningbo Sunny respectfully requests that the Court quash these applications on grounds that they  
9 were filed in violation of the automatic 30-day stay imposed by Rule 62(a).

10 This Motion to Quash is based on this Notice of Motion and Motion, the accompanying  
11 Memorandum of Points and Authorities and Declaration of Leo D. Caseria, the complete files and  
12 records in this action, any oral argument of counsel, and such other matters as the Court may  
13 consider.

14  
15 Dated: December 23, 2019

16 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

17  
18 By \_\_\_\_\_  
19 */s/ Leo D. Caseria*  
20 LEO D. CASERIA  
21 Attorneys for Defendant  
22 NINGBO SUNNY ELECTRONIC CO., LTD.  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

Ningbo Sunny respectfully moves this Court for an order quashing the four Applications for Writs of Execution Orion filed on December 20, 2019. ECF Nos. 529-532. These applications were filed in violation of the automatic 30-day stay mandated by Federal Rule of Civil Procedure 62(a), which provides:

[E]xecution on a judgment and proceedings to enforce it are stayed for **30 days after its entry**, unless the court orders otherwise.

(Emphasis added).<sup>1</sup> As explained by the court in *Khan v. Shamrock Partners, Ltd.*, even “the issuance of writs of execution before expiration of the automatic stay violates Fed. R. Civ. P. 62(a).” No. CV 00-872 CAS (CWX), 2005 WL 8167647, at \*2 (C.D. Cal. Dec. 12, 2005) (rejecting plaintiff’s argument that “the mere issuance of a writ of execution during the automatic stay did not violate Rule 62(a)” and quashing the untimely writs of execution obtained by plaintiff); *see also Samba Enterprises, LLC v. iMesh, Inc.*, No. 06 CIV. 7660 (DC), 2009 WL 3364031, at \*1 (S.D.N.Y. Oct. 16, 2009) (holding that plaintiff could not avoid stay under Rule 62(a) and obtain writ of execution merely by domesticating judgment in state court; plaintiff ordered to release all pending executions, refrain from serving others, and pay for fees incurred); 11 Wright & Miller Fed. Prac. & Proc. Civ. § 2903 (Stay on Posttrial Motion) (3d ed.) (“The party in whose favor the judgment runs is free to have execution on it or to bring proceedings to enforce it after the expiration of the automatic stay provided for in Rule 62(a)”).

The Court entered partial judgment as to Ningbo Sunny on December 5, 2019 and has not entered any order modifying the 30-day stay period provided by Rule 62(a). *See* ECF No. 518. Accordingly, upon receipt of Orion’s applications, counsel for Ningbo Sunny wrote to counsel for Orion, requesting its grounds for filing its applications during the automatic stay period. Declaration of Leo D. Caseria ¶ 3, Ex. A. Counsel for Ningbo Sunny followed up the morning of December 23, 2019, requesting that Orion withdraw its applications. *Id.* As of the time of this filing, Orion has failed to respond. *Id.*

<sup>1</sup> The automatic stay period was extended from 14 days to 30 days when Rule 62(a) was amended in December 2018. *See* Adv. Committee Notes, Rule 62(a).

