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11 Attorneys for Defendant Reza Zandian

12 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

13 **IN AND FOR CARSON CITY**

14 JED MARGOLIN, an individual;

Case No.: 090C00579

Dept. No.: I

15 Plaintiff,

16 vs.

17 OPTIMA TECHNOLOGY CORPORATION,
18 a California corporation, OPTIMA
19 TECHNOLOGY CORPORATION, a Nevada
20 coporation, REZA ZANDIAN aka
21 GOLAMREZA ZANDIANJAZI aka
22 GHOLAM REZA ZANDIAN aka REZA
23 JAZI aka J. REZA JAZI AKA G. REZA JAZI
24 aka GHONONREZA ZANDIAN JAZI, an
25 individual, DOE Companies 1-10; DOE
26 Corporations 11-20, and DOE Individuals 21-
27 30,

28 Defendants.

1334.023382-td

MOTION TO DISMISS AMENDED COMPLAINT ON SPECIAL APPEARANCE

29 COMES NOW Defendant Reza Zandian by and through his counsel John Peter Lee, Ltd.,
30 and hereby files his MOTION TO DISMISS AMENDED COMPLAINT ON SPECIAL
31 APPEARANCE.

32 This Motion is made and based upon all of the pleadings and papers on file herein, exhibits
33 attached hereto, the attached Memorandum of Points and Authorities, and oral argument, if required
34 by the Court.

35 ...

36 ...

37 ...

R.A.000120

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **ZANDIAN IS AGAIN BEFORE THIS COURT ON A SPECIAL APPEARANCE.**

4 The Nevada Supreme Court has held that “general appearance is entered when a person (or
5 the person’s attorney) comes into court as a party to a suit and submits to the jurisdiction of the
6 court.” Milton v. Gesler, 107 Nev. 767, 769, 819 P.2d 245, 247 (1991). “A special appearance is
7 entered when a person comes into court to test the court’s jurisdiction or the sufficiency of service.”
8 Id. “Black’s law dictionary defines a general appearance as a ‘simple and unqualified. . . submission
9 to the jurisdiction of the court’ and defines a special appearance as an appearance ‘for the purpose
10 of testing the sufficiency of service or the jurisdiction of the court.” Id. at fn. 3 (citing Black’s Law
11 Dictionary 89 (5th ed. 1979)).

12 Defendant Golamreza Zandianjazi (hereinafter “Zandian”) hereby makes a special appearance
13 in this case for the purpose of testing both the sufficiency of service and the jurisdiction of the court;
14 thus, Zandian has not consented to personal jurisdiction of any Nevada court by bringing the instant
15 motion.

16 **II.**

17 **SUMMARY OF FACTS.**

18 **A. Procedural History.**

19 Plaintiff Jed Margolin (hereinafter “Margolin”) filed a Complaint in 2009 with a Nevada
20 District Court against Zandian, among other defendants. *See* Court Record. Without serving said
21 Complaint upon Zandian, Margolin took a default judgment against Zandian. Id. Zandian
22 challenged the Complaint and the Default Judgment and filed a Motion to Dismiss on a Special
23 Appearance (hereinafter “First Motion to Dismiss”). Id. In response, Margolin requested, *inter alia*,
24 that the Court grant him leave to amend his Complaint. Id. “Having found that service was never
25 effectuated, the Default Judgment entered against [Zandian] on March 1, 2011 [was] set aside.”
26 Exhibit “A”. The Court denied Zandian’s First Motion to Dismiss “without prejudice” on August
27 3, 2011, and allowed Margolin a “ninety (90) days from the date of [the] Order to properly effectuate
28 service of the Complaint and Summons and/or an Amended Complaint upon [Zandian].” Id.

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1 Accordingly, Margolin was to effectuate service by November 2, 2011, pursuant to Court order. Id.
2 To date, there is no evidence in the record that Zandian was ever served by November 2, 2011.

3 **B. Undisputed Facts.**

4 Zandian hereby incorporates the Statement of Fact as stated in his last Motion to Dismiss
5 Plaintiff's Complaint as though fully stated herein.

6 Margolin was involved in a action before the United States District Court for the District of
7 Arizona related to the same subject matter that is the subject of the instant action. Exhibit "B". In
8 the Arizona action, Margolin, along with his co-defendants, was granted relief against "Optima
9 Technology Corporation, a Nevada corporation," who is a defendant in the instant action. Id. That
10 action involved the same transactions and occurrences that are involved in this action: (1) that
11 Margolin was the rightful owner of Patents Nos. 5,566,073 and 5,904,724, dated July 20, 2004; (2)
12 that the assignment of those patents was "forged, invalid, void, of no force and effect"; and (3) that
13 the assignment was to be "struck from the records of the USPTO." Id. The Arizona action,
14 therefore, involving the same transactions and occurrences has been litigated to a final judgment.
15 Id. Zandian was not a part of that action. Id.

16 In the Amended Complaint, Margolin has represented to the Court that "[i]n the Arizona
17 Action, Mr. Margolin and OTG filed a cross-claim for declaratory relief against Optima Technology
18 Corporation (Zandian) in order to obtain legal title to their respective patents." Am. Compl., ¶ 17.
19 Again, however, Zandian was not a party to the Arizona Action! Exhibit "B".

20 In the Amended Complaint there is not a single allegation suggesting that Zandian acted in
21 his individual capacity in such a way to cause a justiciable injury to Margolin. *See* Am. Compl.
22 Also, Zandian was never named as a party in the Arizona action where the same transactions and
23 occurrences have already been litigated to a final judgment. Exhibit "B". Most importantly,
24 Margolin has not alleged that any transactions or occurrences that are the subject of the Amended
25 took place within the State of Nevada or within the County of Storey. *See* Am. Compl. The only
26 conceivable, although speculative, connections between Nevada and Zandian that is provided in the
27 Amended Complaint include the following: (1) that Zandian "at all relevant times resided in Las
28 Vegas, Nevada"; (2) that "the Defendants at all times herein mentioned has been and/or is residing

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1 or currently doing business in and/or are responsible for the actions complained of herein in Storey
2 County”; and (3) that Zandian is in some way connected to Optima Technology Corporation. Am.
3 Compl., ¶¶ 4, 8 and 6, respectively. Zandian has not been alleged to have committed conversion in
4 Nevada, interference with a contract in Nevada, interference with a perspective economic advantage
5 in Nevada, unjust enrichment in Nevada, or unfair and deceptive trade practices in Nevada. See Am.
6 Compl. While there is an allegation that Zandian filed out certain USPTO documents, there is not
7 any allegations that he did so in his individual capacity or that he did so within the State of Nevada.

8 On or about August 11, 2011, Margolin filed a Motion to Serve by Publication (hereinafter
9 “Publication Motion”). In that motion, Margolin did not provide any documents or evidence which
10 suggest that personal service was ever attempted upon Zandian within the State of Nevada.
11 Although Margolin has alleged that Zandian is a resident of Nevada, he attached a sworn declaration
12 to his Publication Motion stating that Zandian’s last known address is “8401 Bonita Downs Road,
13 Fair Oaks, California.” Publication Motion, Ex. “1”. Morgolin also attached three Affidavits of
14 Service indicating that personal service was attempted on Zandian in Sacramento County, California
15 only. Id. at Ex. “2” through “4”.

16 **III.**

17 **LEGAL ANALYSIS.**

18 **A. Service of the Summons and Complaint was Never Effectuated Upon Zandian.**

19 Proper service of a summons and complaint upon an individual must be made upon the
20 individual “defendant personally, or by leaving copies thereof at the defendant’s dwelling house or
21 usual place of abode with some person of suitable age and discretion then residing therein, or by
22 delivering a copy of the summons and complaint to an agent authorized by appointment or by law
23 to receive service of process.” NRCPP 4(d)(6). Pursuant to NRCPP 12(b)(4), insufficiency of service
24 of process is grounds to dismiss a complaint. The Court ordered service to be effectuated on or
25 before November 1, 2011. Exhibit “A”.

26 Zandian was not served a summons and complaint in the U.S. District Court action which
27 forms the basis of the instant action. Exhibit “C”. Zandian is not mentioned in the Order issued
28 from the U.S. District Court. Id. at Exhibits “B” & “C”. Zandian was not served a summons and

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1 complaint in the instant action. Exhibit "A". Notwithstanding, Plaintiff took a default judgment
2 against Zandian. Id. That judgment has now been set aside because this Court found that Zandian
3 had not been properly served. Id. There is no evidence in the record suggesting that service has been
4 completed on Zandian as of the filing of this instant motion. *See* Court Record.

5 Because no summons was ever issued as to Zandian in the underlying U.S. District Court
6 action which forms the basis of the instant action, any domestication of the U.S. District Court action
7 as it pertains to Zandian is a clear violation of Zandian's constitutional right to notice under the Due
8 Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution. Additionally,
9 Zandian was not served in the instant case, in furtherance of the deprivation of Zandian's right to due
10 process.

11 Because Zandian has never been given notice as required by NRCP 4 and/or the U.S.
12 Constitution, Zandian must be dismissed from the instant action upon this instant motion by special
13 appearance.

14 **B. Nevada Does Not Have Personal Jurisdiction Over Zandian in the Instant**
15 **Action.**

16 "The plaintiff bears the burden of producing *some* evidence in support of all facts necessary
17 to establish personal jurisdiction [emphasis added]." Trump v. District Court, 109 Nev. 687, 692-93,
18 857 p.2d 740, 748 (1993). At first, Margolin alleged that Zandian resided in either San Diego or Las
19 Vegas, but Plaintiff did not even attempt to serve Zandian in either of these alleged places of
20 residence. *See* Compl.; *compare to* Publication Motion. Now, Margolin alleges in one paragraph
21 of his Amended Complaint that Zandian has "at all relevant times resided in Las Vegas, Nevada."
22 Am. Compl., ¶ 4. Margolin makes this allegation so that the Court will deem that it has personal
23 jurisdiction over Zandian without further inquiry. Three paragraphs later, Margolin has alleged that
24 Zandian and his co-defendant "at all relevant times herein mentioned has been and/or is residing or
25 currently doing business in and/or are responsible for the actions complained of herein in Storey
26 County." Margolin makes this allegation sp that the Court will deem Storey County as the proper
27 venue without further inquiry. So, Zandian has been alleged to reside in Las Vegas, San Diego, and
28 now Storey County; however, Margolin has never alleged with any specificity whatsoever that any

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1 of the transactions and occurrences (on the part of Zandian, as an individual) giving rise to this action
2 took place within the State of Nevada.

3 "There are two types of personal jurisdiction: general and specific." Trump v. District Court,
4 109 Nev. 687,699, 857 p.2d 740, 748 (1993). "General jurisdiction over the defendant is
5 appropriate where the defendant's forum activities are so 'substantial' or continuous and systematic'
6 that it may be deemed present in the forum.'" Id.; see also Baker v. Eighth Jud. Dist. Ct., 116 Nev.
7 527, 531-31, 999 P.2d 1020, 1023 (2000) (holding that "membership in the state bar, in and of itself,
8 does not subject an individual to general jurisdiction in the state of membership because such contact
9 is not substantial, continuous, or systematic."). In this case, Plaintiff has not alleged that Zandian
10 has ever had any "forum activities" in Nevada. Thus, without more, Nevada cannot exercise general
11 personal jurisdiction over Zandian.

12 "Specific personal jurisdiction over a defendant may be established only where the cause of
13 action arises from the defendant's contacts with the forum." Baker, supra. "To subject a defendant
14 to specific jurisdiction, this court must determine if the defendant 'personally established minimum
15 contacts' so that jurisdiction would 'comport with fair play and substantive justice [internal
16 quotations omitted]'" Id. (citing Burger King Corp. V. Rudzewicz, 471 U.S. 462, 476-77, 85 L. Ed.
17 2d 528, 105 S. Ct. 2174 (1985) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 320,
18 90 L. Ed. 95, 66 S. Ct. 154 (1945)). "In order for a forum state to obtain personal jurisdiction over
19 a nonresident defendant, the Due Process Clause of the Fourteenth Amendment requires that the
20 defendant have 'minimum contacts' with the forum state 'such that the maintenance of the suit does
21 not offend traditional notions of fair play and substantial justice.'" Baker, supra at 531-31. Here,
22 Plaintiff has not alleged *any* contacts between Zandian and Nevada, except to allege that Zandian
23 resides in either San Diego or Las Vegas or Storey County, and this is simply not enough to find that
24 the court has personal jurisdiction over Zandian. Period. It was not enough last time Zandian filed
25 a Motion to Dismiss this action, and it is not enough this time either, particularly because the
26 Amended Complaint does not state a single transaction or occurrence that took place in Nevada.
27 Thus, even if the instant transactions and occurrences complained about in the Amended Complaint
28 were not adjudicated to a final judgment in Arizona, not a single transaction or occurrence has been

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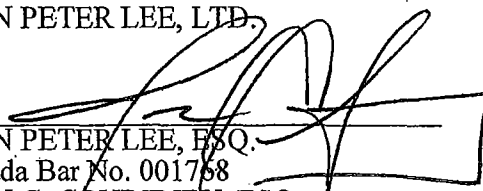
1 stated to have occurred in Nevada.

2 Zandian has not consented to personal jurisdiction in Nevada. Additionally, Zandian appears
3 now, by and through his counsel, on a limited basis to respectfully dispute the Court's jurisdiction
4 over him. Because Zandian is appearing for the sole purposes of disputing the Court's jurisdiction
5 and challenging the propriety of service upon him, Zandian has neither consented to jurisdiction nor
6 waived the lack thereof.

7 Margolin has not alleged or produced any facts indicating that Zandian has had minimum
8 contacts with the State of Nevada. Period. This is true even though Margolin was granted leave to
9 amend his Complaint the last time Zandian sought dismissal. Thus, pursuant to NRCP 12(b)(2), the
10 Court must dismiss Zandian from the instant action without prejudice.

11 DATED this 16th day of November, 2011.


12 JOHN PETER LEE, LTD.

13 BY: 
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20 Ph: (702) 382-4044/Fax: (702) 383-9950
21 Attorneys for Defendant Reza Zandian

22 **CERTIFICATE OF MAILING**

23 I HEREBY CERTIFY that on the 16th day of November, 2011, a copy of the foregoing
24 MOTION TO DISMISS AMENDED COMPLAINT ON A SPECIAL APPEARANCE was served
25 on the following parties by mailing a copy thereof, first class mail, postage prepaid, addressed to:

26 Adam McMillen, Esq.
27 Watson Rounds
28 5371 Kietzke Lane
Reno, NV 89511


An employee of
JOHN PETER LEE, LTD.