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Las Vegas, Nevada 89101
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6 Attorneys for Defendant Reza Zandian

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

8 **IN AND FOR CARSON CITY**

9 JED MARGOLIN, an individual;)
)
10 Plaintiff,)
)
11 vs.)
)
12 OPTIMA TECHNOLOGY CORPORATION,)
a California corporation, OPTIMA)
13 TECHNOLOGY CORPORATION, a Nevada)
coporation, REZA ZANDIAN aka)
14 GOLAMREZA)
ZANDIANJAZI aka GHOLAM REZA)
15 ZANDIAN)
aka REZA JAZI aka J. REZA JAZI AKA G. REZA)
16 JAZI aka GHONONREZA ZANDIAN JAZI,)
an individual, DOE Companites)
17 1-10; DOE Corporations 11-20, and DOE)
Individuals 21-30,)
18 Defendants.)

Case No.: 090C00579
Dept. No.: I

**REPLY TO OPPOSITION TO
MOTION TO DISMISS
ON A SPECIAL
APPEARANCE**

19 _____
1334.023382-tam

20
21 COMES NOW Defendant Reza Zandian by and through his counsel John Peter Lee, Ltd.,
22 and hereby files his REPLY TO OPPOSITION TO MOTION TO DISMISS ON A SPECIAL
23 APPEARANCE.

24 This Reply is made and based upon all of the pleadings and papers on file herein, exhibits
25 attached hereto, the attached Memorandum of Points and Authorities, and oral argument, if required
26 by the Court.

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28 ...

JOHN PETER LEE, LTD.
ATTORNEYS AT LAW
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LAS VEGAS, NEVADA 89101
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **ZANDIAN HAS NOT BEEN SERVED IN THE INSTANT ACTION**

4 Zandian's position, as stated in the instant motion to dismiss, is that he was never served with
5 process in the instant action. Mtn. to Dismiss, p. 3, ll 10-11. The Declaration of the process server
6 attached to Plaintiff's Opposition as Exhibit "2" clearly states that the unidentified man served by
7 Plaintiff's process server told the server that Zandian did not reside at the home where service was
8 tried. See Opposition, Ex. 2, ll. 18-28. This is the only proof that Plaintiff has submitted to evidence
9 that Zandian was served at his place of residence, however, the Plaintiff submitted a statement
10 indicating that the residence was not Zandian's. Thus, Plaintiff has not met its burden of proof
11 demonstrating that Zandian was served at his residence or any other place.

12 Plaintiff also relies on letter attached to Plaintiff's Opposition as Exhibit "3" as proof that
13 Zandian was served. See Opposition, p. 5, ll. 2-5. This letter was sent to the offices of John Peter
14 Lee, Ltd., not to Zandian. At the time that this letter was sent, John Peter Lee, Ltd. was not the legal
15 counsel for Zandian in the instant action. There is no legal authority whatsoever which would
16 indicate that this is a form of proper service. Therefore, this letter is irrelevant as to whether or not
17 Zandian was served with a summons and complaint in the instant action.

18 As previously stated in the instant motion to dismiss, the Complaint alleges that Zandian
19 lives in San Diego, California or Las Vegas, Nevada. The motion also states, "Although Margolin
20 alleged that Zandian resides in Las Vegas or San Diego, Margolin did not attempt service on Zandian
21 at his alleged residence, but instead attempted service on Zandian in an entirely different city, Fair
22 Oaks, California." The instant opposition does not address this issue so that Zandian has never been
23 given a reason why service was never attempted at his alleged places of residences, but instead
24 served to someone who reported to the server that Zandian did not reside at the residence where
25 service was allegedly effectuated. Moreover, in the Complaint, Plaintiff implies that venue is
26 properly before First District Court because Zandian may be a resident of Storey County. Compl.,
27 p. 3, ll. 1-3. There is no evidence that service was ever attempted on Zandian in Storey County
28 either. In fact, all of the evidence presented suggest that Plaintiff may have intentionally served

1 Zandian at a location that Plaintiff either knew or believed was not Zandian's residence in order to
2 take a default. Thus, Plaintiff cannot meet his burden of proof demonstrating that Zandian was
3 afforded his constitutional due process right of notice as prescribed by the clear and unambiguous
4 rules regarding service.

5 **II.**

6 **PLAINTIFF'S COUNTERMOTION TO STRIKE ZANDIAN'S MOTION AND TO**
7 **PROVIDE A MORE DEFINITE STATEMENT MUST BE DENIED.**

8 N.R.C.P. 12(f) provides the basis for a motion to strike:

9 Upon motion made by a party before responding to a pleading or, if
10 no responsive pleading is permitted by these rules, upon motion made
11 by a party within 20 days after the service of the pleading upon the
12 party or upon the court's own initiative at any time, the court may
13 order stricken from any pleading any insufficient defense or any
14 redundant, immaterial, impertinent, or scandalous matter.

15 The Plaintiff's motion meets none of the requirements and must be denied.

16 Furthermore, Plaintiff's counter motion to strike the instant motion to dismiss is without
17 merit. Plaintiff suggest that Zandian waived the right to object to insufficiencies with respect to
18 service and personal jurisdiction because Zandian did not respond in a timely manner. Zandian,
19 however, could not have been expected to respond to Plaintiff's Complaint before he was given
20 proper notice thereof. Thus, Plaintiff's counter motion in this regard must be denied.

21 The Complaint cannot be save now, considering that it was filed 2009, and was not served
22 within the time prescribed by NRCP 4(i) (stating in pertinent part, "If a service of the summons and
23 complaint is not made upon a defendant within 120 days after the filing of the complaint, the action
24 shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice
25 to such party or upon motion"). Thus Plaintiff's counter motion in this regard must be denied.

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27 ...
28 ...

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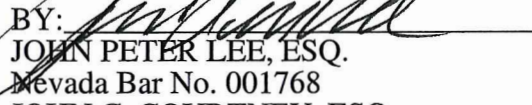
V.

CONCLUSION.

For the above stated reasons, Zandian's Motion to Dismiss Plaintiff's Complaint must be granted, and Plaintiff's countermotions to strike Zandian's objection and to permit Plaintiff to provide a more definite statement must be denied.

DATED this 1st day of July, 2011.

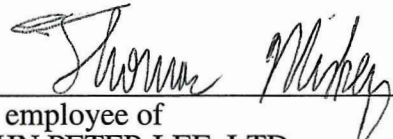
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BY: 
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Attorneys for Defendant Reza Zandian

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 1st day of July, 2011, a copy of the foregoing REPLY TO OPPOSITION TO MOTION TO DISMISS ON A SPECIAL APPEARANCE was served on the following parties by mailing a copy thereof, first class mail, postage prepaid, addressed to:

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


An employee of
JOHN PETER LEE, LTD.