JOHN PETEK LEE, LTD. ATTORNEYS AT LAW 830 LAS VEGAS BLVD. SOUTH LAS VEGAS, NEVADA 89101 Telephone (702) 382-4044 Telecopier (702) 383-9950	1 2 3 4 5 6 7	ROPP JOHN PETER LEE, LTD. JOHN PETER LEE, ESQ. Nevada Bar No. 001768 JOHN C. COURTNEY, ESQ. Nevada Bar No. 011092 830 Las Vegas Boulevard South Las Vegas, Nevada 89101 (702) 382-4044 Fax: (702) 383-9950 e-mail: <u>info@johnpeterlee.com</u> Attorneys for Defendant Reza Zandian IN THE FIRST JUDICIAL DISTRICT COM	REC'D & FILED 2011 JUL -5 AM 11: 15 ALAN GLOVER BY DEPUTY CLERK
	8	IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CARSON CITY	
	9	JED MARGOLIN, an individual;	) Case No.: 090C00579
	10	Plaintiff,	Dept. No.: I
	<ol> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> </ol>	vs. OPTIMA TECHNOLOGY CORPORATION, a California corporation, OPTIMA TECHNOLOGY CORPORATION, a Nevada coporation, REZA ZANDIAN aka	REPLY TO OPPOSITION TO MOTION TO DISMISS ON A SPECIAL APPEARANCE
	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 attached hereto, the attached Memorandum of Points and Authorities, and oral argument, if required	
	25		
	26	by the Court.	
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

I.

## ZANDIAN HAS NOT BEEN SERVED IN THE INSTANT ACTION

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

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

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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 an unambiguous 4 rules regarding service.

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

II.

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

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

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

14 Furthermore, Plaintiff's countermotion to strike the instant motion to dismiss is without 15 merit. Plaintiff suggest that Zandian waived the right to object to insufficiencies with respect to 16 service and personal jurisdiction because Zandian did not respond in a timely manner. Zandian, however, could not have been expected to respond to Plaintiff's Complaint before he was given 18 proper notice thereof. Thus, Plaintiff's countermotion in this regard must be denied.

19 The Complaint cannot be save now, considering that it was filed 2009, and was not served 20 within the time prescribed by NRCP 4(i) (stating in pertinent part, "If a service of the summons and 21 complaint is not made upon a defendant within 120 days after the filing of the complaint, the action 22 shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice 23 to such party or upon motion"). Thus Plaintiff's countermotion in this regard must be denied. 24

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V. 1 2 **CONCLUSION.** 3 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 4 5 provide a more definite statement must be denied. DATED this 1st day of July, 2011. 6 7 JOHN PETER LEE, LTD. 8 BΥ PETER LEE, ESQ. 9 Wevada Bar No. 001768 JOHN C. COURTNEY, ESQ. 10Nevada Bar No. 011092 830 Las Vegas Boulevard South 11 Las Vegas, Nevada 89101 12 Ph: (702) 382-4044/Fax: (702) 383-9950 830 LAS VEGAS BLVD. SOUTH LAS VEGAS, NEVADA 89101 Attorneys for Defendant Reza Zandian Telephone (702) 382-4044 Telecopier (702) 383-9950 ATTORNEYS AT LAW 13 **CERTIFICATE OF MAILING** 14 I HEREBY CERTIFY that on the 1st day of July, 2011, a copy of the foregoing REPLY TO 15 OPPOSITION TO MOTION TO DISMISS ON A SPECIAL APPEARANCE was served on the 16 following parties by mailing a copy thereof, first class mail, postage prepaid, addressed to: 17 Adam McMillen, Esq. 18 Watson Rounds 5371 Kietzke Lane 19 Reno, NV 89511 20An employee of 21 JOHN PETER LEE, LTD. 22 23 24 25 26 27 28 - 4 -

**JOHN PETER LEE, LTD**