Matthew D. Francis (6978) REC'D & FILED Adam P. McMillen (10678) WATSON ROUNDS 2012 FEB 13 PM 3: 58 5371 Kietzke Lane Reno, NV 89511 Telephone: 775-324-4100 ALAN GLOVER Facsimile: 775-333-8171 C. COOPERITY CLERK Attorneys for Plaintiff Jed Margolin 5 6 In The First Judicial District Court of the State of Nevada 7 In and for Carson City 8 9 JED MARGOLIN, an individual, 10 Plaintiff, Case No.: 090C00579 1B 11 VS. Dept. No.: 1 12 OPTIMA TECHNOLOGY CORPORATION. 13 a California corporation, OPTIMA TECHNOLOGY CORPORATION, a Nevada 14 corporation, REZA ZANDIAN **REPLY IN SUPPORT OF MOTION** aka GOLAMREZA ZANDIANJAZI TO STRIKE 15 aka GHOLAM REZA ZANDIAN aka REZA JAZI aka J. REZA JAZI 16 aka G. REZA JAZI aka GHONONREZA 17 ZANDIAN JAZI, an individual, DOE Companies 1-10, DOE Corporations 11-20, 18 and DOE Individuals 21-30, 19 Defendants. 20 21 COMES NOW Plaintiff Jed Margolin and hereby files this reply in support of his 22 motion to strike Defendant Reza Zandian's ("Zandian") reply to the opposition to the motion 23 to dismiss, which was filed in this Court on December 13, 2011, inasmuch as the reply 24 includes information that is patently false. 25 This reply is based on the following Memorandum of Points and Authorities and all 26 pleadings, motions, and papers on file herein. 27 ///

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REPLY MEMORANDUM OF POINTS AND AUTHORITIES

A. THE MOTION TO STRIKE IS PROPER PURSUANT TO THE COURT'S INHERENT POWER TO STRIKE INAPPROPRIATE MATERIALS FROM THE RECORD AND IS NOT MADE PURSUANT TO NRCP 12(f)

As stated in the motion, courts have the inherent power to strike inappropriate materials that are improperly part of the public record. *See Jones v. Metropolitan Life Ins. Co. et al*, 2010 WL 4055928, *6 (N.D.Cal.). "Therefore, based on its inherent powers, a court may strike material from the docket, including portions of a document, reflecting procedural impropriety or lack of compliance with court rules or orders." *Id.* (citing *Zep, Inc. v. Midwest Motor Supply Co.*, 2010 WL 2572129, at *2-3 (S.D.Ohio 2010)(portions of reply brief ordered stricken based on court's inherent power to control docket because they supported claim for which party had not moved for summary judgment).

Zandian improperly rests its opposition solely on NRCP 12(f), which is directed towards pleadings, such as complaints and answers. On the other hand, Mr. Margolin rests his motion on the Court's inherent power to strike inappropriate material from its docket, not on NRCP 12(f). It is clear that Zandian's opposition is simply calculated to try and distract the Court from the real issues in this matter.

Moreover, Mr. Margolin's counsel did not see a copy of Zandian's reply in support of the motion to dismiss until January 4, 2012, which is when a copy of the reply was requested from Zandian's counsel. *See* Declaration of Adam McMillen, Exhibit A, E-Mail Transmission, dated 1/4/12, from Tiffany Duran, Assistant to John Courtney, to Carla Ousby, Assistant to Adam McMillen. Therefore, the motion to strike was timely, even if NRCP 12(f) applied.

B. ZANDIAN DOES NOT DISPUTE THE LEGAL OR FACTUAL ARGMENTS MADE IN THE MOTION TO STRIKE AND THEREFORE THE MOTION TO STRIKE SHOULD BE GRANTED

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FJDCR 15(5) states in pertinent part as follows: "a failure of an opposing party to file a memorandum of points and authorities in opposition to any motion within the time permitted shall constitute a consent to the granting of the motion." In this case, Zandian's opposition does nothing to rebut the factual and legal arguments made in the motion to strike. This is not surprising, as the information sought to be struck is patently false. Therefore, Zandian's non-opposition to the issues raised in the motion to strike should "constitute a consent to the granting of the motion."

CONCLUSION

Based upon the foregoing, Plaintiff Jed Margolin respectfully requests that this Court strike Zandian's reply to the opposition to the motion to dismiss wherever it contains the patently false statements, as pointed out in the motion.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 13th day of February, 2012.

WATSON ROUNDS

BY: **Adam McMillen**

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Watson Rounds, and that on this date, I deposited for mailing, in a sealed envelope, with first-class postage prepaid, a true and correct copy of the foregoing document, **REPLY IN SUPPORT OF MOTION TO STRIKE**, addressed as follows:

John Peter Lee

John Peter Lee, Ltd. 830 Las Vegas Blvd. South Las Vegas, NV 89101

Dated: February 13, 2012

Carla Ousby