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In The First Judicial District Court of the State of Nevada

In and for Carson City

JED MARGOLIN, an individual,

Plaintiff,

vs.

**OPTIMA TECHNOLOGY CORPORATION,
a California corporation, OPTIMA
TECHNOLOGY CORPORATION, a Nevada
corporation, REZA ZANDIAN
aka GOLAMREZA ZANDIANJAZI
aka GHOLAM REZA ZANDIAN
aka REZA JAZI aka J. REZA JAZI
aka G. REZA JAZI aka GHONONREZA
ZANDIAN JAZI, an individual, DOE
Companies 1-10, DOE Corporations 11-20,
and DOE Individuals 21-30,**

Defendants.

Case No.: 090C00579 1B

Dept. No.: 1

**PLAINTIFF'S MOTION FOR
SANCTIONS UNDER NRCP 37**

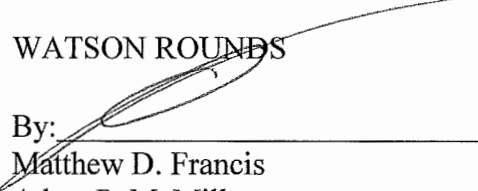
Pursuant to NRCP 37(d), Plaintiff JED MARGOLIN ("Margolin") moves this Court for an Order striking Defendant REZA ZANDIAN aka GOLAMREZA ZANDIANJAZI aka GHOLAM REZA ZANDIAN aka REZA JAZI aka J. REZA JAZI aka G. REZA JAZI aka GHONONREZA ZANDIAN JAZI's ("Zandian") General Denial and awarding Margolin his fees and costs incurred in bringing this Motion.

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ased upon the pleadings and papers on file in this matter, the
ndum of Points and Authorities, the Declaration of Adam P. McMillen
r's Motion for Sanctions NRCP 37(d) ("McMillen Decl."), and any
argument.

s 13th day of December, 2012. WATSON ROUNDS

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1 This Motion is based on **MORANDUM OF POINTS AND AUTHORITIES**
2 accompanying Memorandum
3 in Support of Plaintiff arises from Zandian's and the other corporate Defendants' fraudulent
4 requested oral use of Margolin's patents.

5 DATED this on July 16, 2012, Margolin served Zandian with Margolin's First Set of Requests for
6 Admissions, First Set of Interrogatories and First Set of Requests for Production of Documents.

7 McMillen Decl., ¶ 2, Exhibits 1 and 2. Pursuant to NRCPC 33, 34 and 36, responses to these
8 discovery requests were due on August 20, 2012. *Id.* Zandian has never provided any responses
9 or documents. *Id.*

10 On September 10, 2012, Margolin mailed a meet and confer letter to Zandian demanding
11 that he serve responses and documents to the aforementioned discovery no later than September
12 17, 2012. McMillen Decl., ¶ 5, Exhibit 4. In the September 10, 2012 letter, Margolin demanded
13 that Zandian "respond, without objection, to the requests for admissions, the requests to produce
14 documents (including the actual production of documents), and the interrogatories no later than
15 September 17, 2012." Exhibit 4. Margolin stated that if Zandian failed to comply with this
16 request, Margolin would file a motion to compel with this Court and seek sanctions. *Id.*
17 Margolin also stated that since Margolin did not respond to Margolin's First Set of Requests for
18 Admissions, those admissions were (and are) deemed admitted. Exhibit 4, *citing Wagner v.*
19 *Carex Investigations & Sec. Inc.*, 93 Nev. 627, 630, 572 P.2d 921, 923 (1977). Despite
20 Margolin's efforts to meet and confer, Zandian has not served responses or documents pursuant
21 to any of the aforementioned discovery requests, nor has he responded to the September 10, 2012
22 letter or otherwise contacted Plaintiff's counsel. *See supra*, Exhibit 4.

23 Based on these facts, and the authority stated below, Margolin's Motion for Sanctions
24 should be granted in full, and sanctions should be levied against Zandian for his willful non-
25 compliance with the Nevada Rules of Civil Procedure.

26 **B. ARGUMENT**

27 NRCPC 37(a)(2)(B) states that if a party fails to answer an interrogatory submitted under
28 NRCPC 33, or if a party fails to respond to a request for production submitted under NRCPC 34,

1 “the discovering party may move for an order compelling an answer, or a designation, or an
2 order compelling inspection in accordance with the request.” *Id.*

3 As stated above, Zandian has not served responses or documents in response to
4 Margolin’s First Set of Interrogatories to Zandian or Margolin’s First Set of Requests for
5 Production to Zandian. *See supra.* Zandian has also not responded to the September 10, 2012
6 letter requesting that he respond to the written discovery. McMillen Decl., ¶ 5. Therefore,
7 Margolin needs not move to compel responses and may rely upon NRCP Rule 37(d),
8 immediately, to request evidentiary and terminating sanctions for Zandian’s failure to respond.

9 NRCP Rule 37(d)(2) provides that:

10 If a party . . . fails (2) to serve answers or objections to interrogatories submitted
11 under Rule 33, after proper service of the interrogatories, or (3) to serve a written
12 response to a request for inspection submitted under Rule 34, after proper service
13 of the request, the court in which the action is pending on motion may make such
14 orders in regard to the failure as are just, and among others it may take any action
15 authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this
16 rule.

15 NRCP 37(b)(2)(A-C) provides that:

16 (A) An order that the matters regarding which the order was made or any
17 other designated facts shall be taken to be established for the purposes of the
18 action in accordance with the claim of the party obtaining the order;

18 (B) An order refusing to allow the disobedient party to support or oppose
19 designated claims or defenses, or prohibiting that party from introducing
20 designated matters in evidence;

20 (C) An order striking out pleadings or parts thereof, or staying further
21 proceedings until the order is obeyed, or dismissing the action or proceeding or
22 any part thereof, or rendering a judgment by default against the disobedient party.

23 NRCP 37(b)(2) also provides that:

24 In lieu of any of the foregoing orders or in addition thereto, the court shall require
25 the party failing to obey the order or the attorney advising that party or both to
26 pay the reasonable expenses, including attorney’s fees, caused by the failure,
27 unless the court finds that the failure was substantially justified or that other
28 circumstances make an award of expenses unjust.

27 Margolin’s First Set of Interrogatories to Zandian and Margolin’s First Set of Requests
28 for Production to Zandian seek information and documents relating to the following crucial

1 topics: why Zandian signed and filed an assignment of the patents at issue; who was involved in
2 the fraudulent assignment; who paid for the fraudulent assignment; the licensing activity Zandian
3 engaged in regarding the patents after he filed the fraudulent assignment; all revenues derived
4 from Zandian's activities related to the patents after filing the assignment. *See* McMillen Decl.,
5 Exhibits 1 through 4. All of this information is extremely important to Margolin's liability and
6 damage analysis.

7 Fundamental notions of fairness and due process require that discovery sanctions be just
8 and that sanctions relate to the specific conduct at issue. *GNLV Corp. v. Serv. Control Corp.*,
9 111 Nev. 866, 870, 900 P.2d 323, 326 (1995), *citing* *Young v. Johnny Ribeiro Bldg., Inc.*, 106
10 Nev. 88, 92, 787 P.2d 777, 779 (1990). As discussed above, sanctions may be imposed where
11 there has been willful noncompliance, and the adversary process has been halted by the actions
12 of the unresponsive party. *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev. 648, 652, 747
13 P.2d 911, 914 (1987). Reasoned and thoughtful analysis dictates that this Court is justified in
14 using its discretion to enter in an order striking Zandian's General Denial and awarding Margolin
15 its attorneys' fees and costs incurred in bringing this Motion.

16 *First*, Zandian acted willfully in failing to respond to the aforementioned discovery
17 requests. Nevada Courts have consistently stated the basis for the imposition of sanctions was
18 the failure to complete discovery. *See Havas v. Bank of Nevada*, 96 Nev. 567, 571, 613 P.2d
19 706, 709 (1980); *Kelly Broadcasting Co. v. Sovereign Broadcast, Inc.*, 96 Nev. 188, 192, 606
20 P.2d 1089, 1092 (1980). Although Margolin's First Set of Interrogatories to Zandian and
21 Margolin's First Set of Requests for Production were served five months ago, Zandian has failed
22 to serve responses or documents. *See supra*. Furthermore, Zandian has not made any attempt to
23 justify this inexcusable willful neglect, and has not even bothered to contact Margolin's counsel
24 regarding the discovery. *See* McMillen Decl., ¶¶ 5 and 6.

25 *Second*, Margolin is being prejudiced by Zandian's failure to respond to the
26 aforementioned discovery requests, and Margolin should not be forced to suffer further prejudice
27 which would result from lesser sanctions. While Margolin believes that liability is established
28 by Zandian failing to respond to the requests for admissions, Margolin believes that responses to

1 the outstanding discovery will further prove the extent of the Defendants' malfeasance and
2 damage. Margolin has already been forced to delay the case because no discovery has been
3 responded to by Margolin. This alone is sufficient prejudice to justify the entering of a default
4 judgment. *See Fire Ins. Exch.*, 103 Nev. at 651, 747 P.2d at 914.

5 While Margolin understands and appreciates the nature of the sanctions contained in this
6 Motion, the requested relief is necessitated by Zandian's willful violations of the Nevada Rules
7 of Civil Procedure. Simply put, common law and NRCP 37(d) dictate that Margolin is entitled
8 to an Order striking Zandian's General Denial and awarding Margolin his attorneys' fees and
9 costs incurred in bringing this Motion. *See supra.*, NRCP 37(d)(2-3), NRCP 37(b)(2)(A-C).

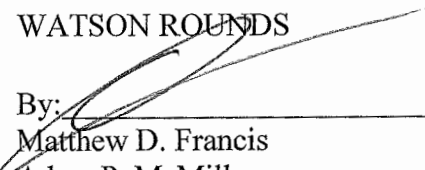
10 **C. CONCLUSION**

11 For all of the foregoing reasons, Jed Margolin requests that his Motion be granted in the
12 manner requested.

13 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

16 DATED this ^{14th} ~~13th~~ day of December, 2012. WATSON ROUNDS

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19 Adam P. McMillen
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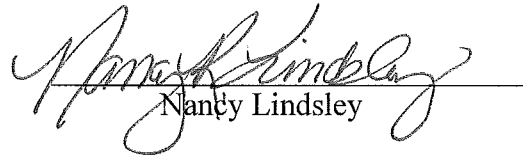
1 CERTIFICATE OF SERVICE

2 Pursuant to Rule 5(b), Nevada Rules of Civil Procedure, I hereby certify that I am an
3 employee of WATSON ROUNDS, and on this date a true and correct copy of the foregoing
4 document, **Plaintiff's Motion for Sanctions Under NRCP 37**, will be served on the following
5 by first-class mail through the U.S. Postal Service.

6 Reza Zandian
7 8775 Costa Verde Blvd.
8 San Diego, CA 92122

9 Reza Zandian
10 8775 Costa Verde Blvd, Apt. 501
11 San Diego, CA 92122

12 Dated: December 14, 2012.

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14 Nancy Lindsley
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