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	1	SEVERIN A. CARLSON	REC'D&FILED		
	2	Nevada Bar No. 9373 TARA C. ZIMMERMAN	2015 JUL 20 PM 2: 14		
	2	Nevada Bar No. 12146			
	3	KAEMPFER CROWELL 510 West Fourth Street	SUSAN MERRIVETNER		
	4	Carson City, Nevada 89703			
	5	Telephone: (775) 882-1311 Fax: (775) 882-0257			
	_	scarlson@kcnvlaw.com			
	6	tzimmerman@kcnvlaw.com			
	7	Attorneys for Defendant REZA ZANDIAN			
	8				
	9	IN THE FIRST II DICIAL DISTRICT	COURT OF THE STATE OF NEVADA		
	10	IN AND FOR	CARSON CITY		
	11	JED MARGOLIN, an individual,	Case No. 090C00579 1B		
	12	Plaintiff,	Dept. No. 1		
	1	vs.			
	13	OPTIMA TECHNOLOGY CORPORATION,			
	14	a California corporation; OPTIMA			
	15	TECHNOLOGY CORPORATION, a Nevada corporation; REZA ZANDIAN aka			
		GOLAMREZA ZANDIANJAZI aka			
	16	GHOLAM REZA ZANDIAN aka REZA JAZI aka J. REZA JAZI aka G. REZA JAZI aka			
	17	GHONONREZA ZANDIAN JAZI, an			
	18	individual; DOE COMPANIES 1-10; DOE CORPORATIONS 11-20; and DOE			
		INDIVIDUALS 21-30,			
	19	Defendants.			
	20				
	21				
50	22	DEFENDANT REZA ZANDIAN'S REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER			
towelLL Ih Street ada 897	22				
KAEMPFER CROWELL 510 West Fourth Street Carson Cily, Nevada 89703	23	Defendant REZA ZANDIAN ("Defendant" or "Zandian"), by and through his counsel			
KAEN 510 V Carson (	24	Kaempfer Crowell, hereby submits his Reply ("Reply") in Support of Motion for Protective			
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1	Order ("Motion"). This Reply is supported by the papers and pleadings on file herein, the
2	accompanying Memorandum of Points and Authorities, and any oral argument that may be
3	entertained by this Court.
4	DATED this 20th day of July, 2015.
5	KAEMPFER CROWELL
6	BY: Harry HOZT frey
7	SEVERIN A. CARLSON Nevada Bar No. 9373 TARA C. ZIMERMAN
8	Nevada State Bar No. 12146
9	510 West Fourth Street Carson City, Nevada 89703
10	Attorneys for Defendant REZA ZANDIAN
11	MEMODANDUM OF DOINTS AND AUTHODITIES
12	MEMORANDUM OF POINTS AND AUTHORITIES
13	I. LEGAL ARGUMENT
14	A. <u>Mr. Zandian Cannot Be Made to Appear Before this Court for the</u> <u>Requested Judgment Debtor Examination</u> . <sup>1</sup>
15	The plain language of NRS 21.270 precludes Plaintiff from requiring Zandian to travel to
16	Carson City, Nevada for the purpose of conducting the judgment debtor examination. Pursuant to
17	NRS 21.270, "no judgment debtor may be required to appear [for a judgment debtor
18	examination] outside the county in which he resides." NRS 21.271 (1)(b). Zandian is a resident
19	of France, and not of Carson City. Attached hereto is a utility bill for Mr. Zandian's residence in
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21	<sup>1</sup> Zandian is permitted to respond to arguments presented by Plaintiff regarding the debtor examination of Zandian and the requested discovery from Zandian in this Reply. Zandian's Motion applied to both the debtor
22	examination and discovery requests propounded on Zandian, as well as the third-party subpoenas. See Defendant Reza Zandian's Opposition to Plaintiff's Motion for Judgment Debtor Examination and to Produce Documents and
23	Motion for Protective Order at 8:22-9:2 (requesting as follows: "to the extent that this Court orders that any debtor's examination is permitted at all, a protective order should be issued limiting the first phase of post-judgment discovery to the judgment debtor only. And such discovery should be limited to information and documents that are
24	relevant to judgment debtor's current assets, meaning at most, such information and documents should be limited to the past three years."). Accordingly, it is proper for Zandian to address these arguments in this Reply, and Plaintiff's request to respond to the arguments presented herein must be denied.
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France. See Exhibit 1. The due date for this bill is June 25, 2015 and reflects Zandian's address at 6 Rue Edouard Fournier 75116 Paris. Id. Attached as well are Mr. Zandian's most recent Paris residency and French ownership taxes for 2014, which similarly reflect Zandian's French address of 6 Rue Edouard Fournier 75116 Paris. See Exhibit 2. Finally, attached hereto are copies of Zandian's passport listing his Country of Residency as France, as well as a copy of Zandian's French residency permit with the date of entry to France of March 15, 2012 and an expiration date of August 5, 2015. See Exhibit 3.

The documents relied upon by Plaintiff in his Opposition to Motion for Protective Order 8 ("Opposition") do not, as Plaintiff asserts, "indicate[] that Zandian resides and does business 9 throughout Nevada, including Carson City, Nevada." Opposition at 5:21-23. The deeds Plaintiff 10 cites to and attaches as Exhibits 7-9, 13-15, 19, 21-22 and 25 were all signed in the spring of 11 2014, approximately 15 months ago. That Mr. Zandian traveled to Carson City to execute the 12 deeds in 2014 does not evidence his residency as of today. The 2014 Schedule K-1 is similarly 13 inapposite. We are now seven and a half months removed from the last day covered by the 2014 14 K-1. What's more, this K-1 was filed by Zandian's partners - not Zandian himself - and his 15 partners did not have his updated information in France at the time they filed this schedule. 16

Moreover, despite Plaintiff's assertion to the contrary, Nevada case law does not mandate 17 that Zandian appear at a debtor examination before this Court in Carson City even if he were a 18 resident of Nevada. Plaintiff has cited absolutely no Nevada case law supporting this assertion, 19 relying instead on a non-binding Federal District of Nevada case. See Rausch v. World Series of 20 Golf. Inc., 2012 U.S. Dist. LEXIS 59911, 2012 WL 1517294 (D.Nev.Apr. 23, 2012). This case, 21 however, does not stand for the proposition that Plaintiff relies upon it for. The issue in this case 22 was not whether a non-resident of Nevada can be hailed into Court for a debtor examination in 23 contradiction of the plain language of NRS 21.270(1). Nowhere in Rausch was the issue of 24

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1 || residency and NRS 21.270(1) discussed or contemplated. Rather, the issue before that court was

2 || simply the application of NRS 21.270(3), which states:

[a] judgment debtor who is regularly served with an order issued pursuant to [NRS 21.270], and who fails to appear at the time and place specified in the order, may be punished for contempt by the judge issuing the order.

Unlike in Rausch, this Court has not yet issued an order requiring Zandian to appear for a 6 judgment debtor examination - this is in fact the very issue remaining to be resolved by this 7 motion practice. Accordingly, Plaintiff's reliance on the Rausch case is misplaced. Nevada law is 8 clear: "no judgment debtor may be required to appear [for a judgment debtor examination] 9 outside the county in which he resides." NRS 21.270(1). Plaintiff has cited no authority to the 10 contrary, and has provided no evidentiary proof that Zandian is a resident of Carson City. For 11 these reasons, Zandian must not be required to appear for the debtor examination and Plaintiff's 12 motion to require such must be denied. For the same reasons, Zandian's Motion must be granted. 13

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### B. <u>The Documents Sought From Zandian Are Not Reasonably Calculated to</u> Lead to the Discovery of Relevant Evidence.

The requests upon Zandian amount to an over-sweeping, overly broad and burdensome review of all of Zandian's financial records. Zandian appreciates Plaintiff's concession that request k. is limitless in duration, but disagrees with Plaintiff's characterization of a. and j. as being limited. Neither of these requests contains a time frame or limit on the information being sought, and are each objectionable for that reason.

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The remaining requests, while they do contain a time frame, are similarly overbroad and oppressive. Plaintiff has not shown why he needs records dating back more than eight years. That Zandian executed an agreement with his family on August 21, 2003, and that he allegedly signed fraudulent assignment documents with the U.S. Patent and Trademark office in 2007,

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have absolutely no bearing on his current assets. Moreover, all of the transfers of real estate 1 Plaintiff complains of occurred in 2014. These 2014 transfers do not make it reasonable for 2 Plaintiff to seek discovery of documents going back more than seven years prior to 2007. 3 Instead, it appears that Plaintiff is improperly trying to use discovery related to the requested 4 judgment debtor examination to harass Zandian by conducting a "carte blanche" invasion into 5 facts entirely unrelated to Zandian's current assets available to satisfy the judgment. Schlatter v. 6 7 Eighth Judicial District Court, 93 Nev. 189, 561 P.2d 1342 (1977) (Nevada recognizes that the discovery rules do not provide for a "carte blanche" invasion into a party's private affairs); In re 8 Surety Assoc. of Am., 388 F.2d 412, 414 (2nd Cir. 1967) (Parties are not permitted to "roam in 9 the shadow zones of relevancy" in an attempt to explore irrelevant matters on the theory that they 10 may conceivably become so.). Given the overbroad nature of the requests, Zandian requests that 11 the Court deny Plaintiff's Motion to Produce Documents in its entirety. Alternatively, Zandian 12 requests that this Court modify the requests and permit discovery of only such records related to 13 the current assets of the judgment debtor, or those dating back no further than the last three 14 years. 15

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### C. <u>A Protective Order Prohibiting the Production Requested in the Subpoenas</u> is Proper.

As an initial matter, Zandian did attempt in good faith to resolve this issue. Contrary to
the representation made in Plaintiff's Opposition, in attempting to resolve the discovery dispute,
Zandian's counsel, Ms. Zimmerman,<sup>2</sup> did not propose to resolve the dispute by offering to have

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<sup>&</sup>lt;sup>2</sup> It is not inappropriate for Ms. Zimmerman to represent Zandian in this action on account of her serving as a law clerk to Judge Russell. The Nevada Rules of Professional Conduct do not require Ms. Zimmerman to recuse herself from representation as she neither participated in this action personally nor substantially while serving as a law clerk to Judge Russell. *See* NEV. R. PROF. COND. 1.12(a) ("Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent confirmed in writing."). Ms. Zimmerman has no personal recollection of this case, and explained such to counsel for Plaintiff. Ms. Zimmerman further explained that she clerked for Judge Russell from August 2010 through August 2011 and that, given the nature of the actions that

1 Zandian produce the records requested in the subpoena in lieu of the subpoenaed parties. 2 Likewise, Ms. Zimmerman never took any such resolution off any table. Rather, Ms. Zimmerman simply stated that which is presented in Zandian's Motion: that this discovery 3 being sought from third-parties related to Zandian's assets is available from a less-intrusive 4 source – the judgment debtor himself. This is a basic principle of discovery and is codified in 5 6 Nevada's Rules of Civil Procedure. See NRCP 26(b)(1). Seeking these records from a third-party without first requesting the same from the party himself makes the subpoenas objectionable. 7 Plaintiff must follow the required procedure for obtaining discovery and cannot simply ignore 8 NRCP 26. Given the nature of these documents, Plaintiff cannot bypass requesting these records 9 from a less-intrusive source and instead issue harassing, oppressive, burdensome and annoying 10 subpoenas to third-parties at his own misguided discretion. 11

Plaintiff makes the nonsensical argument that he should be permitted to seek these records from third-parties because he "has not been provided the requested documents by Zandian himself." Opposition at 10:14-15. However, Zandian has not been ordered to produce any records related to his assets. The issue of any such production is still pending before this Court pursuant to Plaintiff's Motion for Judgment Debtor Examination and to Produce Documents. Thus, that Zandian has not produced these documents cannot serve as a valid basis for permitting this improper third-party discovery.

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KAEMPFER CROWELL 510 West Fourth Street arson City, Nevada 89703 Plaintiff asserts that he "is not aware of any rule that requires 'concrete evidence of a concealed or fraudulently transferred asset' before the discovery can go forward". *See* Opposition at 10:22-25. While the Nevada Rules of Civil Procedure do not contain this language verbatim, interpreting substantially similar rules, courts have held that the rules of civil

occurred during that time, even if she had been personally involved in the matter, that involvement was not "substantial". As importantly, none of the actions taken in this case during Ms. Zimmerman's clerkship are currently at issue before this Court. The only actions that occurred in this action during that time were the entry of default(s) and the issuance of an order denying Zandian's Motion to Dismiss and setting aside a default against him. Default was later reentered against Zandian, leading to the present proceedings.

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procedure do not permit discovery intended as a "fishing expedition" on the basis of the 1 propounding party's speculation of relevancy. Zuk v. E. Penn. Psych. Inst., 103 F.3d 294, 299 2 (3rd Cir. 1996); see also Oppenheimer Fund, 437 U.S. at 351 (stating that "discovery, like all 3 matters of procedure, has ultimate and necessary boundaries"). Parties are not entitled to open-4 ended and unlimited discovery based solely on the theory that there may be concealed assets and 5 cannot use this supposition to gain access to financial books and records of third-parties without 6 concrete evidence that specific assets are being concealed. Id. at 299. Furthermore, Plaintiff must 7 show undue hardship with respect to not being able to proceed without the requested 8 information. Wardleigh v. Second Judicial Dist. Court, 111 Nev. 345, 891 P.2d 1180 (1995). As 9 shown herein and in Zandian's Motion, Plaintiff will not be able to show such a hardship given 10 the narrow issue - judgment debtor's present assets currently available to pay the judgment 11 against him. Accordingly, consistent with Zandian's Motion, to the extent that this Court orders 12 that any debtor examination is permitted at all, a protective order should be issued limiting the 13 first phase of post-judgment discovery to the judgment debtor only. And such discovery should 14 be limited to information and documents that are relevant to judgment debtor's current assets, 15 meaning at most, such information and documents should be limited to the past three years. 16 Then, only if concrete evidence of a concealed or fraudulently transferred asset is developed, 17 should this Court even consider expanding discovery to any third-party who allegedly has the 18 asset. 19

### 20 III. CONCLUSION

For the reasons stated herein, a protective order should be issued with respect to Plaintiff's Motion for Judgment Debtor Examination and to Produce Documents, as well as the third-party subpoenas.

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	1	CERTIFICATE OF SERVICE				
	2	I, the undersigned, hereby certify that on the 20 <sup>th</sup> day of July, 2015, I caused the				
	3	foregoing DEFENDANT REZA ZANDIAN'S REPLY IN SUPPORT OF MOTION FOR				
	4	PROTECTIVE ORDER to be served this date by depositing a true copy of the same for mailing				
	5	at Carson City, Nevada, first class postage fully prepaid and addressed to the following:				
	6	Matthew D. Francis, Esq. Adam P. McMillen, Esq.				
	7	Watson Rounds 5371 Kietzke Lane				
	8	Reno, Nevada 89511 775.324.4100				
	9	775.333.8171 - facsimile Attorneys for Plaintiff				
	10					
	11	an employee of Kaempfer Crowell				
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## EXHIBIT 1

# Exhibit 1

N° client : 6 003 992 790 Identifiant Internet : 3MTNETRBR4	5 Cept				
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Par courtier EDF SERVICE CLIENTS TSA 20012 41975 BLOIS CEDEX 9					
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ieu de consommation	Electricité (relevé client) TVA	176,54 € 29,10 €		TTC Prélevé le	
E EDOUARD FOURNIER PARIS	Facture TTC	Rept. N.P. 4	205,64 €	10/07/2015	
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Electricité "Tarif Bleu" Ilvraison (PDL) : 1610 633 121 6 : 06 KVA ese	Prochaine relève ER	DF vers le 07/12/2015.			
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blics, le Tarif Réglementé de Vente D1/11/2014 et le montant de la é au 01/08/2014. Vos Conditions e Vente ont été modifiées au Plus d'information sur le site edf.fr					
	Prélèvement :	untomations			

## EXHIBIT 2

## **EXHIBIT 2**

DIRECTION GENERALE DES FINANCES PUBLIQUES AVIS D'IMPÔT 2014 6616006473 0004 TAXES FONCIÈRES RÉPUBLIQUE FRANÇAISE votées et perçues par la commune, le département et divers organismes CENTRE DES FINANCES PUBLIQUES SIP PARIS 16EME MUETTE 12 RUE GEORGE SAND 75796 PARIS CEDEX 16 eco'pli 77 LOGNES PIC 17.09.14 CI0202 6616006473 0004 ZANDIAN JAZI GHOLAMZEZA м GHOLAM REZA 6 RUE EDOUARD FOURNIER 75016 PARIS Vos références Votre situation 19 75 393 067 438 Numéro fiscal : MONTANT À PAYER Référence de l'avis : 14 75 6034371 31 Au plus tard le 15/10/2014 2 913,00 € Numéro de propriétaire : 116 Z00554W 804 E 272 NILOD Cheque 272 NILOD 12/10/44 NILOD Débiteur(s) légal(aux) : M ZANDIAN JAZI GHOLAMZEZA GHOLAM REZA PROPRIETAIRE 4121 MCZDG8 Numéro de rôle : 221 Date d'établissement : 08/08/2014 Date de mise en recouvrement 31/08/2014 Attention modification de la loi : il est interdit de payer en espèces ce montant supérieur à 300 €. Attention : Terweloppe retour est réservée au paiement par TIP ou par chèque bancaire. Ne joignez aucun autre document (sauf votre RIB si nécessaire)

DIRECTION GÉNÉRALE DES FINANCES PUBLIQUES Pour nous contacter	Liberté - Égalité - F RÉPUBLIQUE FRA
Pour nous contacter Votre centre des finances publiques SIP PARIS IGEME MUETTE 12 RUE GEORGE SAND 75796 PARIS CEDEX 16 Tél : 01 44 30 48 84	CENTR SIP PAR 12 RUE C 75796 PA
Courriel : alp.paris-16e-muette@dgflp.finances.gouv.fr Accuel guichet : avec ou sans rendez-vous TLJ 9H-12H/13H30-16H SF JEUDI AM BDF: BDFEFRPPCCT FR76 3000 1000 6464 7200 0000 085 Vos références Numéro de dossier : 827503315001218 075033 Action : 1M00001	M ZANI GHOLAN 6 RUE PARIS 75016



MISE EN DEMEORE DE .... Art 1 257-0A et L 258 A du Livre des procédures fiscales

Le 07/04/2015

RE DES FINANCES PUBLIQUES RIS 16EME MUETTE GEORGE SAND ARIS CEDEX 16



IDIAN JAZI M REZA E EDOUARD FOURNIER PARIS 16

#### Madame, Monsieur,

Selon mes informations, vous n'avez pas payé les sommes dont le détail figure dans le tableau ci-dessous.

Je vous invite à régulariser votre situation sans délai. À défaut, j'engageral à votre encontre, à l'issue d'un délai de huit jours suivant la notification de la présente mise en demeure d des poursuites pouvant occasionner des frais élevés.

Le présent document TIENT LIEU DU COMMANDEMENT prévu par le code des procédures civiles d'exécution.

Désignation des impositions (1)	Date (2)	Montant dû	Versements effectués	Reste à paye
Taxe habitation 2014 Rôle 78001 Majoration	31/10/2014 15/12/2014	4 487,00 € 449,00 €	0,00 € 0,00 €	4 4) 4
	1231 154		Total dû :	4 93

#### \* Situation arrêtée au 07/04/2015

Vous pouvez contester cette mise en demeure de payer auprès du directeur départemental des finances publiques dans les deu suivant sa notification.

Je vous prie de croire, Madame, Monsieur, à l'assurance de ma considération distinguée.

Le comptable public

## EXHIBIT 3

# EXHIBIT 3

امضاء دارنده گذرنامه **Country of Residence:** کشور محل اقامت: فرانسه Holder's Signature: FRANCE Place of Issue: محل صدور ىارىس PARIS مدرک صدور گذرنامه: گذرنامه ۱۳۸۷/۰۵/۲۵ ۱۴۳۴۷۶۸۸ واشنگتن نام و سمت صادر کننده: فریدون جهانی\_دبیر دوم FEREIDOUN JAHANI\_SECOND SECRETARY Observation : ملاحظات: آخرین تاریخ خروج: ۱۳۹۲/۰۳/۲۰ از: فرودگاه امام خمینی جديهورى اسلامى ايران ISLAMIC REPUBLIC OF IRAN 1-1-5474.1-1 -1-1-Passport Number: H95628481 1444 نام بقلبوادگی. زندیان جزی Sumame: ZANDIAN JAZI نام: غلامرضا Given Name: GHOLAM REZA نام پدر: هيبت آله Father's Name: HEIBATOLLAH تاريخ و على تولد: ٢٥/١٠/١٠ فصفهان Date& Place of Birth: 15/01/1952 ESFAHAN Sex: M تحاره شناسنامه: ۱۱۶۸ 370 Date of Issue: 05/07/2013 تاريخ صدور: ١٣٩٢/٠٩/١٤ Date of Expiry: 05/07/2018 تاريخ انتضاء: ٢/١٤ ١٣٩٧ P<IRN<ZANDIAN<JAZI<<GHOLAM<REZA<<<<<<<

