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ALAN GLOVER
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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,**
13 **a California corporation, OPTIMA**
14 **TECHNOLOGY CORPORATION, a Nevada**
15 **corporation, REZA ZANDIAN**
16 **aka GOLAMREZA ZANDIANJAZI**
17 **aka GHOLAM REZA ZANDIAN**
18 **aka REZA JAZI aka J. REZA JAZI**
19 **aka G. REZA JAZI aka GHONONREZA**
20 **ZANDIAN JAZI, an individual, DOE**
21 **Companies 1-10, DOE Corporations 11-20,**
22 **and DOE Individuals 21-30,**

23 **Defendants.**

Case No.: 090C00579 1B

Dept. No.: 1

MOTION TO STRIKE

24 COMES NOW Plaintiff Jed Margolin and hereby files this motion to strike Defendant
25 Reza Zandian's ("Zandian") reply to the opposition to the motion to dismiss, which was filed
26 in this Court on December 13, 2011, inasmuch as the reply includes information that is
27 patently false.

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1 This motion is based on the following Memorandum of Points and Authorities and all
2 pleadings, motions, and papers on file herein.

3 Dated this 19th day of January, 2012.

WATSON ROUNDS

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10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. FACTUAL BACKGROUND**

12 Plaintiff Jed Margolin is the named inventor on United States Patent No. 5,566,073
13 (“the ‘073 Patent”), United States Patent No. 5,904,724 (“the ‘724 Patent”), United States
14 Patent No. 5,978,488 (“the ‘488 Patent”) and United States Patent No. 6,377,436 (“the ‘436
15 Patent”)(collectively “the Patents”). In 2004, Mr. Margolin granted to Robert Adams, then
16 CEO of Optima Technology, Inc. (later renamed Optima Technology Group (hereinafter
17 “OTG”), a Cayman Islands Corporation specializing in aerospace technology) a Power of
18 Attorney regarding the Patents. Subsequently, Mr. Margolin assigned the ‘073 and ‘724
19 Patents to OTG and revoked the Power of Attorney.

20 In May 2006, OTG and Mr. Margolin licensed the ‘073 and ‘724 Patents to Geneva
21 Aerospace, Inc., and Mr. Margolin received a royalty payment pursuant to a royalty agreement
22 between Mr. Margolin and OTG. On or about October 2007, OTG licensed the ‘073 Patent to
23 Honeywell International, Inc., and Mr. Margolin received a royalty payment pursuant to a
24 royalty agreement between Mr. Margolin and OTG.

25 On or about December 5, 2007, Defendant Zandian filed with the U.S. Patent and
26 Trademark Office (“USPTO”) fraudulent assignment documents allegedly assigning all four of
27 the Patents to Optima Technology Corporation (“OTC”), a company apparently owned by
28 Defendant Zandian at the time. Shortly thereafter, on November 9, 2007, Mr. Margolin,

1 Robert Adams, and OTG were named as defendants in the case titled *Universal Avionics*
2 *Systems Corporation v. Optima Technology Group, Inc.*, No. CV 07-588-TUC-RCC (the
3 “Arizona action”). Zandian was not a party in the Arizona action. Nevertheless, the plaintiff
4 in the Arizona action asserted that Mr. Margolin and OTG were not the owners of the ‘073 and
5 ‘724 Patents, and OTG filed a cross-claim for declaratory relief against Optima Technology
6 Corporation (“OTC”) in order to obtain legal title to the respective patents.

7 On August 18, 2008, the United States District Court for the District of Arizona
8 entered a default judgment against OTC and found that OTC had no interest in the ‘073 or
9 ‘724 Patents, and that the assignment documents filed with the USPTO were “forged, invalid,
10 void, of no force and effect.” See Exhibit B to Zandian’s Motion to Dismiss, dated 11/16/11,
11 on file herein.

12 Due to Defendants’ fraudulent acts, title to the Patents was clouded and interfered with
13 Plaintiff’s and OTG’s ability to license the Patents. In addition, during the period of time Mr.
14 Margolin worked to correct record title of the Patents in the Arizona action and with the
15 USPTO, he incurred significant litigation and other costs associated with those efforts.

16 **II. PROCEDURAL BACKGROUND**

17 Zandian served his motion to dismiss the amended complaint on a special appearance
18 on November 16, 2011. Mr. Margolin filed and served his opposition on December 5, 2011.
19 Zandian filed his reply on December 13, 2011.

20 Now, Mr. Margolin brings this motion to strike Zandian’s reply inasmuch as the reply
21 contains patently false information relating to Mr. Margolin’s relationship with OTG and OTC
22 and the Arizona action.

23 **III. ARGUMENT**

24 **A. THIS MOTION TO STRIKE IS PROPER PURSUANT TO THE COURT’S** 25 **INHERENT POWER TO STRIKE INAPPROPRIATE MATERIALS FROM** 26 **THE RECORD**

27 Courts have the inherent power to strike inappropriate materials that are improperly
28 part of the public record. See *Jones v. Metropolitan Life Ins. Co. et al*, 2010 WL 4055928, *6

1 (N.D.Cal.). “Therefore, based on its inherent powers, a court may strike material from the
2 docket, including portions of a document, reflecting procedural impropriety or lack of
3 compliance with court rules or orders.” *Id.* (citing *Zep, Inc. v. Midwest Motor Supply Co.*,
4 2010 WL 2572129, at *2-3 (S.D. Ohio 2010)(portions of reply brief ordered stricken based on
5 court’s inherent power to control docket because they supported claim for which party had not
6 moved for summary judgment). In addition, while the filing of Zandian’s reply brief is not
7 necessarily an admission of evidence, “NRS 47.040(1)(a) requires a party who objects to the
8 admission of evidence to make ‘a timely objection or motion to strike ..., stating the specific
9 ground of objection.’” *Thomas v. Hardwick*, 231 P.3d 1111, 1120 (Nev. 2010).

11 In this case, Zandian’s reply to the opposition to the motion to dismiss, filed on
12 December 13, 2011, should be stricken because it contains the following patently false
13 information and should not be part of the public record:

- 14 1. Zandian’s statement that Mr. Margolin litigated the same transactions and occurrences
15 to a final judgment in the Arizona action—“by and through his company, Optima
16 Technology, Inc. a/ka/ Optima Technology Group, Inc. (hereinafter “OTG”)” is false;¹
- 17 2. Zandian’s statement that “[i]n the Arizona action, Margolin, acting as agent for OTC,
18 alleged that Optima Technology Corporation (hereinafter “OTC”) unlawfully
19 converted OTG’s patents to its own dominion and control” is false;²
- 20 3. Zandian’s statement that “[i]n the Arizona action, Margolin characterized the same
21 facts as constituting wrongdoing” is false;³ and
- 22 4. Zandian’s statement that “[i]n the Arizona action, Margolin alleged that ‘Zandian
23 executed [documents purporting to assign or transfer title and/or interest in the Patents
24 to OTC with the PTO] by (*inter alia*) utilizing his signature on behalf of OTC and mis-
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27 ¹ Reply, dated 12/13/11, 2:4-6.

28 ² Reply, dated 12/13/11, 2:9-11.

³ Reply, dated 12/13/11, 2:11-18.

1 stating that Zandian/OTC was exercising the Power of Attorney as the ‘attorney in fact’
2 of Margolin’” is also false.⁴

3 The true facts are as follows: (1) OTG is not and never has been Mr. Margolin’s
4 company and the Power of Attorney he gave to Robert Adams, then CEO of OTG, was
5 revoked prior to the times relevant in the Arizona action and Mr. Margolin did not litigate the
6 Arizona action by and through OTG;⁵ (2) Mr. Margolin has never acted as OTC’s agent and
7 did not litigate the same transactions and occurrences in the Arizona action through OTG or
8 OTC;⁶ (3) Mr. Margolin did not file the amended answer, counterclaims, cross-claims and
9 third-party claims that Zandian states is the basis for Zandian’s allegation that “Margolin
10 characterized the same facts as constituting wrongdoing” in the Arizona action;⁷ (4) OTG filed
11 the amended answer, counterclaims, cross-claims and third-party claims in the Arizona action
12 and OTG was not Mr. Margolin’s agent in the Arizona action and Mr. Margolin did not make
13 allegations in the Arizona action by and through OTG.⁸

14
15 As a result, Zandian’s reply must be stricken anywhere it contains such patently false
16 information.

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18 **B. OTG IS NOT MARGOLIN’S PRIVY AND VICE VERSA**

19 Zandian’s reply also states that “Margolin’s privy, OTG brought a cross-claim against
20 OTC, and alleged that Zandian was involved with OTC.” *See* Reply, dated 12/13/11, 6:23-24.
21 Zandian cites to Exhibit 29, attached to Mr. Margolin’s opposition to the motion to dismiss,
22 dated December 5, 2011, as the basis for the argument that OTG is Mr. Margolin’s privy.
23 However, as stated above, Exhibit 29 shows that OTG brought the cross-claim against OTC in
24 the Arizona action—not Mr. Margolin. More importantly, Mr. Margolin is not and was not the
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26 ⁴ Reply, dated 12/13/11, 2:23-26.

27 ⁵ *See* Declaration of Jed Margolin, dated 1/19/12, ¶ 4 (“Margolin Decl.”).

28 ⁶ *See* Margolin Decl. at ¶ 5.

⁷ *See* Reply, dated 12/13/11, 2:11-18 (OTG filed the pleading).

⁸ *See* Margolin Decl. at ¶ 7.

1 owner of OTG at all relevant times; and OTG is not and was not the agent of Mr. Margolin at
2 all relevant times.⁹

3 Therefore, Zandian's false statement that OTG is Mr. Margolin's privy must be
4 stricken.

5 **IV. CONCLUSION**

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

9
10 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

13
14 Dated this 20th day of January, 2012.

WATSON ROUNDS

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⁹ See Margolin Decl. at ¶ 8.

