

1 Case No. 09 OC 00579 1B

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ALAN GLOVER

CLERK
BY *Alan Glover*
DEPUTY

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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,

11 vs.

**ORDER SETTING ASIDE
DEFAULT, DENYING MOTION TO
DISMISS AND GRANTING
EXTENSION OF TIME FOR
SERVICE**

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

22 Defendants.
23 _____ /

24 This matter comes before the Court pursuant to Defendant Reza Zandian's
25 (hereinafter "Zandian" or "Defendant") Motion to Dismiss on a Special Appearance filed
26 on June 9, 2011. On June 22, 2011, Plaintiff filed his Opposition to Motion to Dismiss and
27 Countermotion to Strike and for Leave to Amend Complaint. Defendant filed his Reply to
28 Opposition to Motion to Dismiss on a Special Appearance on July 5, 2011.

29 The Court deeming itself fully advised of the matter, hereby enters its Order as
30 follows:

31 In his Motion, Defendant argues primarily that service of the summons and
32 complaint was never effectuated upon Defendant. Defendant further argues that Nevada
33 does not have personal jurisdiction over Defendant in the instant action.
34

1 In Opposition, Plaintiff argues that service was effectuated upon Defendant as
2 evidenced by the fact that the summons and complaint were mailed to Defendant's attorney
3 and that Defendant was personally served with the summons on February 2, 2010. Plaintiff
4 additionally argues that this Court has personal jurisdiction over the Defendant in this
5 action, Defendant cannot meet the standard for his Motion to Dismiss, and Defendant
6 cannot meet the standard for his Motion to Set Aside. Finally, Plaintiff also asserts that
7 Defendant's Motion to Dismiss should be stricken as he had previously waived his
8 objections to personal jurisdiction, process and service of process. In the event that the
9 Court either dismisses the complaint or sets aside the default, Plaintiff requests leave to
10 amend the complaint to include proper reference to Defendant's actions in the related
11 Arizona case and to re-serve Defendant in a proper manner.

12 A review of the affidavit of Plaintiff's process server, Robert Toth, indicates that
13 service of process was never effectuated upon Defendant. The elderly man with whom the
14 process server left the summons and complaint informed the process server that Defendant
15 did not reside there. Accordingly, Defendant was not properly served. Furthermore,
16 Plaintiff's mailing the summons and complaint to Defendant's attorney did not constitute
17 proper service of process upon Defendant.

18 Having found that service was never effectuated, the Default Judgment entered
19 against Defendant on March 1, 2011 shall be set aside. However, the Court declines to
20 Dismiss the Complaint based on service of process, process or personal jurisdiction at this
21 time. Finally, given Plaintiff's attempts at effectuating service and the difficulty that
22 Plaintiff has faced in serving Defendant, Plaintiff shall be given additional time to
23 effectuate proper service upon Defendant.

24 Therefore, good cause appearing,

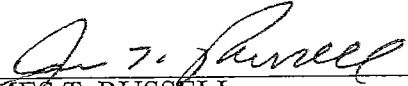
25 IT IS HEREBY ORDERED that the Default Judgment entered against Defendant
26 on March 1, 2011 shall be set aside.

27 IT IS HEREBY FURTHER ORDERED that the Defendant's Motion to Dismiss on
28 a Special Appearance is DENIED without prejudice.

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IT IS HEREBY FURTHER ORDERED that Plaintiff shall have ninety (90) days from the date of this Order to properly effectuate service of the Complaint and Summons and/or an Amended Complaint upon Defendant in accordance with NRCP Rule 4, the Hague convention or any other lawful means of service.

DATED this 3rd day of August, 2011.



JAMES T. RUSSELL
District Court Judge

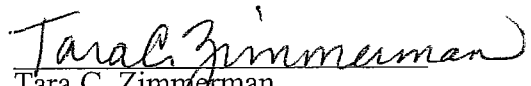
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August, 2011, I placed a copy of the foregoing Order in the United States Mail, postage prepaid, addressed as follows:

Matthew D. Francis, Esq.
5371 Kietzke Lane
Reno, NV 89511

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


Tara C. Zimmerman
Law Clerk, Department One