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5 *Attorney for Defendant Ray Roth*

FILED
 Superior Court of California
 County of Los Angeles

DEC 23 2014

Sherrri R. Carter, Executive Officer/Clerk
 By *[Signature]* Deputy
 Nancy Alvarez

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF LOS ANGELES**

11 DANIEL RESNIC dba
 12 STRATA VARIOUS PRODUCT DESIGN

13 Plaintiff,

14 v.

15 REMIJO "RAY" CHAVEZ a/k/a
 16 REMIJO "RAY" ROTH;
 17 JEFFREY KERR;
 And DOES 1 – 10.

18 Defendants.

Case No. BC534287

**NOTICE OF MOTION AND
 MOTION TO DISMISS FOR
 PLAINTIFF'S FAILURE TO FILE
 AMENDED COMPLAINT;
 MEMORANDUM OF POINTS
 AND AUTHORITIES.**

*[Proposed] Order and filed
 contemporaneously in support
 hereof].*

Dept.: 54
 Judge: Hon. Earnest M. Hiroshige
 Complaint Filed: January 24, 2014
 Trial Date: None
 Hearing Date: January 21, 2015
 Hearing Time: 8:30 AM

RECEIPT #: CCH451233006
 DATE PAID: 12/23/14 09:45 AM
 PAYMENT: \$60.00 310
 RECEIVED:
 CHECK: \$0.00
 CASH: \$0.00
 CHANGE: \$0.00
 CARD: \$60.00

CIT/CORSE: BC534287
 LEA/DEFA:

SOOFI LEGAL COUNSEL

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12480 2 BLVD 2014
 LOS ANGELES STREET

1 TO ALL OF THE PARTIES AND THEIR ATTORNEYS HEREIN:

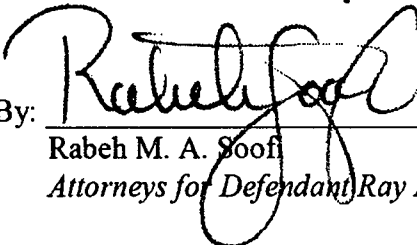
2 PLEASE TAKE NOTICE that on JANUARY 21, 2015 at 8:30 AM, or as soon
3 thereafter as the matter may be heard in Department 54 of the above-entitled Court at 111 Hill
4 Street, Los Angeles, CA 90012, Defendant Ray Roth (incorrectly sued as Remijo Chavez a/k/a
5 Remijo Roth) will present his Motion to Dismiss the claims filed by Daniel Resnic for failing to
6 file an Amended Complaint as ordered by the Court.

7 The Motion will be based upon this Notice, the attached Memorandum of Points and
8 Authorities, the pleadings and papers on file herein and upon such further oral and/or
9 documentary evidence as may be properly presented at or before the time of the hearing on
10 this Motion.

11 Dated: December 19, 2014

Respectfully submitted,

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13 SOOFI | Legal Counsel

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15 By: 
16 Rabeh M. A. Soofi
17 Attorneys for Defendant Ray Roth

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1 **I. SUMMARY**

2 This motion is being brought due to Plaintiff Daniel Resnic's failure to file an Amended
3 Complaint as required by the Court, pursuant to California Code of Civil Procedure §581(f)(2).
4 Over 90 days have passed since Mr. Resnic was ordered to file an amended complaint and he
5 has not yet done so. Accordingly, Defendant Roth asks the Court to dismiss his claims.

6 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

7 California Code of Civil Procedure §581(f)(2) permits a party to request dismissal
8 when a plaintiff fails to amend its Complaint in the time allotted by the court. The purpose of
9 this code provision is to ensure that matters brought by plaintiffs are timely and diligently
10 prosecuted.

11 In this case, Plaintiff appears to have abandoned his action. The demurrer in this matter
12 was heard more than three (3) months ago, on September 16, 2014. Plaintiff was given twenty
13 (20) days to amend his Complaint, and this deadline expired on October 6, 2014.
14 Plaintiff did not file an amended pleading, and in the entire time since then, has failed to file an
15 amended pleading. Plaintiff has also failed to Answer Defendant Kerr's crosscomplaint and
16 Defendant Kerr has proceeded to serve his statement of damages and filed a request for entry
17 of default. Plaintiff also failed to attend the hearing of December 19, 2014 and an OSC has
18 been set due to his failure to appear. In the year that this matter has been pending, no
19 discovery was ever issued to Defendant Ray Roth by Plaintiff. No depositions have been taken,
20 no experts have been hired or retained, and the matter has simply stagnated. If Plaintiff has
21 abandoned this matter, it is pointless to schedule a case management conference and set this
22 matter for trial because Plaintiff has failed to ever file an amended Complaint and is
23 simultaneously in default of Defendant's crosscomplaint.

24 Accordingly, because Plaintiff is currently in violation of Court order and has failed to
25 ever file his amended Complaint, Defendant Roth asks for a dismissal of his claims as provided
26 by California Code of Civil Procedure §581(f)(2).

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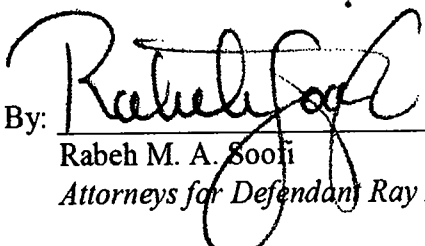
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Dated: December 19, 2014

Respectfully submitted,

SOOFI | Legal Counsel

By: 
Rabeh M. A. Soofi
Attorneys for Defendant Ray Roth

 SOOFI | LEGAL COUNSEL

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12/22/2014 23:51 ET

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 5670 Wilshire Blvd. - 18th Floor, Los Angeles, CA 90036.

On **December 19, 2014** served the document described as:

NOTICE OF MOTION AND MOTION TO DISMISS on the interested parties in this action by sending a true copy thereof to:

- Daniel Resnic, Strata Various Product Design, 4223 Glencoe Ave. , Suite C-106, Marina del Rey, CA 90292, dan.resnic@gmail.com, origamicondoms@gmail.com,
- Daniel Resnic, Strata Various Product Design, 4060 Glencoe Ave. #113, Marina del Rey, CA 90292, dan.resnic@gmail.com, origamicondoms@gmail.com,

BY MAIL (ENCLOSED IN A SEALED ENVELOPE): I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

BY E-MAIL: I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed hissing at their most recent known e-mail address or e-mail of record in this action.

BY FAX: I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

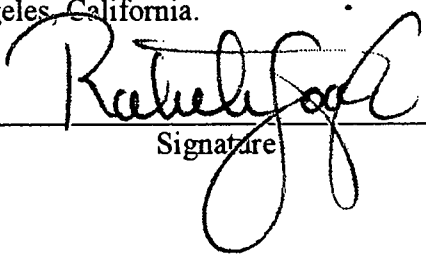
BY PERSONAL SERVICE: I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

BY OVERNIGHT DELIVERY: I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached hereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **December 19, 2014** at Los Angeles, California.

Rabeh M. A. Soofi
Type or Print Name


Signature

SOOFI LEGAL COUNSEL

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