

No. \_\_\_\_

**In the  
Supreme Court of the United States**

David E. Grober & Voice International, Inc.

Petitioners

v.

Mako Products, Inc., Varnell & Warwick, P.A.,

Brian Warwick, Janet Varnell,

Respondents

On Petition for Writ Of Certiorari  
To The United States Court of Appeals for the  
Federal Circuit

**APPLICATION FOR EXTENSION OF TIME TO FILE A  
PETITION FOR WRIT OF CERTIORARI**

David Grober  
*Pro Se*  
578 Washington Blvd., Suite 866  
Marina Del Rey, CA 90292  
310-951-1110  
[Davidgrober1@gmail.com](mailto:Davidgrober1@gmail.com)

Robert Lauson, Esq.  
Lauson & Associates  
880 Apollo Street, Suite 301  
El Segundo, CA 90245  
310-726-0892  
[bob@lauson.com](mailto:bob@lauson.com)

### **List of Parties And Rule 29.6 Statement**

Petitioner David Grober is an individual and Plaintiff in the underlying case.

Petitioner Voice International, Inc. is a California Corporation wholly owned by Petitioner David Grober. It has no parent corporation and no publicly held corporation owns 10% of its stock.

Defendant Mako Products, Inc. is a defunct corporation of Florida with no parent corporation and no publicly-held corporation owns 10% or more of its stock. Defendants Varnell & Warwick, P.A., Brian Warwick and Janet Varnell are husband and wife litigators who were investors in and counsel for Mako Products, Inc.

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE  
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR  
THE FEDERAL CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 22 and 30, Petitioners respectfully requests a 50-day extension, including June 4, 2019, to file a petition for writ of certiorari to the United States Court of Appeals for the Federal Circuit to review that court's decisions in *Grober v. Mako Products, Inc.*, (Case No. 2:04:cv-08604-JZ-DTB) (attached as Exhibit A, B). In the case below, the Federal Circuit affirmed the lower court on December 6, 2018 without giving an opinion, and then denied the request for rehearing on January 15, 2019, absent an opinion or reason. The ninth circuit's orders ignoring Rule 37 sanctions, dkt. 371 filed on 11/2/09; dkt. 504 filed 7/24/05, defendant response dkt. 506, filed 8/7/15, and dkt. 507 filed 8/7/15 are attached as Exhibits C - F, pertaining to discovery abuse, blocked depositions and 9,383 emails withheld over seven years.

Petitioners intend to file a petition seeking review of this judgment under Supreme Court Rule 12.3. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1) and the time to file a petition for a writ of certiorari will expire without an extension on April 15, 2019. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition will expire.

1. This case presents a very important question of federal law:

Whether the mandatory sanctions of FRCP Rule 37(a) can be circumvented by a court ignoring, or reducing, including to zero, the mandated sanctions absent

the losing party's required burden showing that sanctions would be unjust, and the court's reasoned statement as to why anything less than the mandated sanctions would be appropriate.

2. The Court of Appeal, affirming the district court, leaves the operating result that it is acceptable for courts to ignore the mandated sanctions of Rule 37(a) without the losing party meeting its burden to satisfy one of the exceptions. This counters rulings of this Court, such as in *Roadway Express v. Piper*, 447 U.S. 752 (1980) "Rule 37 sanctions must be applied diligently both "to penalize ... [and] deter ... such conduct" citing *National Hockey League v. Metropolitan Hockey Club*, 427 U. S. 639 (1976), and the Advisory Committee's 1970 amendment change from the losing party "acted *without* substantial justification, to have acted *with* substantial justification", and further stating, "The purpose of this revision was to encourage judges to make the award of expenses the norm..." Research from sources such as the Federal Justice Center in 1980, the American College of Trial Lawyers Task Force on Discovery, and IAALS in 2008, and a DOJ study show after the Rule 37 change, 86.3% of Judges surveyed still rarely imposed sanctions. The issue merits review.

3. Discovery abuse in the underlying case extended it to 14 years, all but bankrupted the Petitioner, an Academy Award winner for his patent-in-suit technology, forcing him to shut his company and lay off his employees.


4. Reason for Extension: Counsel for petitioner, Lauson & Associates, is a small firm. The press of other business is creating a significant hardship to

complete the petition timely with other required work. The office is also preparing for expected trial on the same patent, within the coming months, against essentially the same defendants to the instant case, having repurchased their assets from themselves in bankruptcy and continuing business unabated.

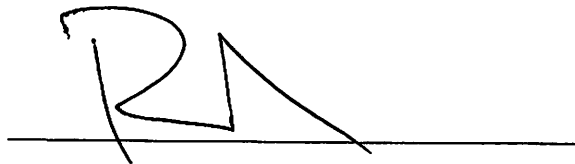
4. Petitioner, David Grober, has been proceeding pro se in this case alongside his company's counsel, Mr. Lauson. Mr. Grober has taken the lead on research, seen here, and has also been looking for substitute counsel to join in the petition due to the Lauson & Associates work load.

Accordingly, Petitioners respectfully requests that an order be entered extending the time to file a petition for writ of certiorari for 50 days, up to and including June 4, 2019.

Respectfully submitted,



David E. Grober  
Pro Se  
578 Washington Blvd., Suite 866  
Marina Del Rey, CA 90292  
310-951-1110  
Davidgrober1@gmail.com



Robert Lauson, Esq.  
Lauson & Associates  
880 Apollo Street, Suite 301  
El Segundo, CA 90245  
310-726-0892  
bob@lauson.com

April 3, 2019

## CERTIFICATE OF SERVICE

It is hereby certified that on April 3, 2019, that the accompanying Application for Extension of Time to File a Petition For Writ Of Certiorari was served on the following by USPS mail:

Brian Warwick  
Janet Varnell  
Varnell & Warwick P.A.  
P.O. Box 1870  
Lady Lake, FL 32158  
bwarwick@varnellandwarwick.com  
Attorneys for Mako Products, Inc., Varnell & Warwick P.A., Brian Warwick  
and Janet Varnell

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

Executed on April 3, 2019.

A handwritten signature in black ink, appearing to read "David E. Grober", written over a horizontal line.

David E. Grober

## **EXHIBIT A**

NOTE: This disposition is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**DAVID GROBER, VOICE INTERNATIONAL, INC.,**  
*Plaintiffs-Appellants*

v.

**MAKO PRODUCTS, INC.,**  
*Defendant-Appellee*

**AIR SEA LAND PRODUCTIONS, INC.,  
CINEVIDEOTECH, INC., SPECTRUM EFFECTS,  
INC., BLUE SKY AERIALS, INC., DOES 1-10,**  
*Defendants*

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2017-1507

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Appeal from the United States District Court for the  
Central District of California in No. 2:04-cv-08604-JZ-  
DTB, Judge Jack Zouhary.

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**JUDGMENT**

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ROBERT J. LAUSON, Lauson & Tarver, LLP, El Segun-  
do, CA, argued for plaintiffs-appellants. Voice Interna-  
tional, Inc. also represented by JON HOKANSON, Lewis  
Brisbois Bisgaard & Smith LLP, Los Angeles, CA.



DAVID LIETZ, Varnell & Warwick, PA, Lady Lake, FL,  
argued for defendant-appellee. Also represented by BRIAN  
W. WARWICK.

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THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (PROST, *Chief Judge*, MOORE and  
WALLACH, *Circuit Judges*).

**AFFIRMED. See Fed. Cir. R. 36.**

ENTERED BY ORDER OF THE COURT

December 6, 2018  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

## **EXHIBIT B**

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**DAVID GROBER, VOICE INTERNATIONAL, INC.,**  
*Plaintiffs-Appellants*

**v.**

**MAKO PRODUCTS, INC.,**  
*Defendant-Appellee*

**AIR SEA LAND PRODUCTIONS, INC.,  
CINEVIDEOTECH, INC., SPECTRUM EFFECTS,  
INC., BLUE SKY AERIALS, INC., DOES 1-10,**  
*Defendants*

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2017-1507

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Appeal from the United States District Court for the  
Central District of California in No. 2:04-cv-08604-JZ-  
DTB, Judge Jack Zouhary.

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**ON PETITION FOR PANEL REHEARING**

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Before PROST, *Chief Judge*, MOORE and WALLACH, *Circuit  
Judges*.

PER CURIAM.

**O R D E R**

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GROBER v. MAKO PRODUCTS, INC.

Appellant David Grober filed a petition for panel rehearing.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The mandate of the court will issue on January 22, 2019.

FOR THE COURT

January 15, 2019  
Date

/s/ Peter R. Marksteiner  
Peter R. Marksteiner  
Clerk of Court

## **EXHIBIT C**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. CV04-8604-SGL(OPx) Date November 2, 2009

Title DAVID GROBER, ET AL -V- MAKO PRODUCTIONS, INC., ET AL

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Present: The OSWALD PARADA, U.S. MAGISTRATE JUDGE  
Honorable

---

MAYNOR GALVEZ

NONE

NONE

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Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys for Plaintiffs:

Attorneys for Defendants:

Robert J. Lauson

Janet Varnell

**Proceedings:** (IN CHAMBERS)

- 1) Plaintiffs' Motion to Compel Deposition of Kleins and Dann in Los Angeles and for Sanctions Against Defendant Mako (Dkt. No. 227);
- 2) Plaintiffs' Motion to Compel Documents, Namely Emails, Photographs, and Videos from Defendant Mako (Dkt. No. 228);
- 3) Defendants' Motion to Strike Plaintiff's Supplemental Memorandum and Declaration in Support of Discovery Motions Pending Before District Judge (Dkt. No. 284);
- 4) Defendants' Motion to Strike Pleadings and Discovery Signed by Plaintiff Grober (Dkt. No. 285);
- 5) Defendants' Motion for Protective Order for Terminating Further Paper Discovery (Dkt. No. 295);
- 6) Plaintiffs' Motion for Review of Defendants' Confidential Attorneys Eyes Only Designations, Compelling Re-Designations of All Documents, and For Sanctions For Abuse of Protective Order (Dkt. No. 233).

**I.**

**Background**

On April 1, 2009, the aforementioned Motions were referred to this Court by District Judge Stephen G. Larson. (Dkt. No. 309.) On June 4, 2009, Judge Larson issued an order construing the claims of Plaintiffs' United States patent, U.S. Patent No. 6,611,662

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV04-8604-SGL(OPx) Date November 2, 2009

Title DAVID GROBER, ET AL -V- MAKO PRODUCTIONS, INC., ET AL

("662 patent"), following a Markman hearing. Grober v. Mako Products, Inc., 2009 WL 1587158 (C.D. Cal. June 4, 2009). In that order, Judge Larson construed the claim term "payload platform" to mean "the horizontal plate, piece or surface upon which the device (e.g., a camera) is directly mounted upon or affixed to." Id. at \*12. The definition resulted in a finding of non-infringement. Id. On October 21, 2009, Judge Larson issued an order denying Plaintiffs' motion for reconsideration of the June 4, 2009, Markman decision and re-affirmed the earlier finding of non-infringement. (Dkt. No. 368.) Judge Larson further granted Plaintiff Grober's motion to discharge his attorneys and proceed pro se for the remainder of the litigation regarding the remaining non-infringement related claims. Finally, Judge Larson ordered that, before such discharge could be formalized, the parties were directed to either stipulate or hold a hearing before this Court to establish a "no-look list" regarding Plaintiff Grober's ability to look at information or other discoverable evidence that constitutes Defendants' trade secrets. Once the "no look" list is approved or ordered by this Court, present counsel will be officially discharged from further representing Plaintiff Grober in this matter.

On October 30, 2009, the Court held a hearing telephonically to discuss the status of the pending motions and to consider argument by counsel. Based on the pleadings filed in relation to these motions and the arguments presented by counsel, the Court rules as follows:

1) **Plaintiffs' Motion to Compel Deposition of Kleins and Dann (Dkt. No 227).**

On October 13, 2008, the parties filed a Joint Stipulation Re: Plaintiffs' Motion to Compel Deposition of Kleins and Dann in Los Angeles and for Sanctions Against Defendant Mako, along with supporting declarations. (Dkt. Nos. 227, 229.) On November 4, 2008, Plaintiffs filed a Declaration of Joel Bennet in Further Support of the Motion to Compel. (Dkt. No. 254.) On June 16, 2009, the parties filed a Joint Statement regarding all pending motions, including discovery motions. (Dkt. No. 333.)

In this Motion, Plaintiffs seek to make-up or complete certain depositions that were scheduled to take place in June 2008 in Florida. The depositions were to take place after the agreed upon inspection of the Mako Head. Defendants refused to commence with the inspection of the Mako Head until Plaintiffs provided Defendants with detailed infringement contentions from Plaintiffs' expert, Jim Radford, as supplemental responses

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV04-8604-SGL(OPx) Date November 2, 2009

Title DAVID GROBER, ET AL -V- MAKO PRODUCTIONS, INC., ET AL

to interrogatories. Over the next several hours, Plaintiffs' expert prepared the detailed infringement contentions and provided them to Defendants the following day. As a result, Plaintiffs contend that they were unable to depose the Kleins or Mr. Dann, were unable to properly depose Mr. Waterford, and incurred additional costs involved with the deposition of Tom Smith. In the Joint Statement filed regarding the pending discovery motions and during argument, Defendants have acknowledged that Plaintiff Grober has additional claims that do not involve the issue of infringement. The parties have also acknowledged that the Kleins and Mr. Dann were never deposed.

The Court finds that, to the extent this Motion seeks discovery related to the issue of infringement, the Motion has been rendered moot by Judge Larson's finding of non-infringement. However, to the extent this Motion seeks discovery related to the remaining non-infringement issues, the Motion has not been rendered moot by Judge Larson's finding of non-infringement. As a result, the Court denies in part and grants in part Plaintiffs' Motion to Compel. Defendants shall make the Kleins and John Dann available for a make-up deposition limited only to the remaining non-infringement issues no later than January 15, 2010, at an agreed upon location. All other relief sought by Plaintiffs in this Motion is denied.

**2) Plaintiffs' Motion to Compel Documents, Namely E-mails, Photographs, and Videos (Dkt. No. 228).**

On October 13, 2008, the parties filed a Joint Stipulations Re: Plaintiffs' Motion to Compel documents, namely emails, photographs, and videos from Defendant Mako, along with supporting declarations. (Dkt. Nos. 228, 230.) On November 4, 2008, Plaintiffs filed a Declaration of Joel Bennet and Lee Wheelbarger in Further Support of the Motion to Compel. (Dkt. Nos. 254, 255.) On June 16, 2009, the parties filed a Joint Statement regarding all pending motions, including discovery motions. (Dkt. No. 333.)

In this Motion, Plaintiffs seek to obtain numerous documents and e-mails, relating to the "design of each version of the Mako Head," documents relating to Defendants ASL, CVT, Spectrum Effects, Oppenheimer, and sales and rentals of the Mako Head, and photographs and videos "showing the design, development and testing" of each version of the Mako Head. In the Joint Statement filed regarding the pending discovery motions and during argument, Defendants have acknowledged that Plaintiff Grober has additional claims that do not involve the issue of infringement.



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV04-8604-SGL(OPx) Date November 2, 2009

Title DAVID GROBER, ET AL -V- MAKO PRODUCTIONS, INC., ET AL

The Court finds that, to the extent this Motion seeks discovery related to the issue of infringement, the Motion has been rendered moot by Judge Larson's finding of non-infringement. However, to the extent this Motion seeks discovery related to the remaining non-infringement issues, the Motion has not been rendered moot by Judge Larson's finding of non-infringement. As a result, the Court denies in part and grants in part Plaintiffs' Motion to Compel. Defendants shall produce all non-privileged documents and e-mails responsive to the discovery request limited only to the remaining non-infringement issues, subject to a protective order, no later than January 15, 2010. All other relief sought by Plaintiffs in this Motion is denied.

**3) Defendants' Motion to Strike Plaintiff's Supplemental Memorandum and Declaration in Support of Discovery Motions (Dkt. No. 284).**

On February 9, 2009, Plaintiffs filed a Supplemental Memorandum in Support of Discovery Motions Pending Before District Judge, along with a supplemental declaration. (Dkt. No. 272.) On March 16, 2009, Defendants filed a Motion to Strike Plaintiff's Supplemental Memorandum, along with supporting exhibits. (Dkt. No. 284.) On March 23, 2009, Plaintiffs filed an Opposition to Motion to Strike. (Dkt. No. 288.) On June 16, 2009, the parties filed a Joint Statement regarding all pending motions, including discovery motions. (Dkt. No. 333.)

The pleadings filed here are related to the discovery motions mentioned above regarding certain deposition testimony (Dkt. No. 227), and the production of documents, e-mails, photographs, and videos (Dkt. No. 228), as those Motions relate to the issue of infringement. The Court has denied that aspect of those Motions as moot due to Judge Larson's finding of non-infringement. As a result, this Motion is also rendered moot. Thus, the Court denies Defendants' Motion to Strike.

**4) Defendants' Motion to Strike Pleadings and Discovery Signed by Plaintiff Grober (Dkt. No. 285).**

On May 27, 2008, Plaintiff David Grober filed a Brief with the Court. (Dkt. No. 196.) On March 16, 2009, Defendants filed a Motion to Strike Pleadings and Discovery signed by Plaintiff Grober. (Dkt. No. 285.) On March 23, 2009, Plaintiffs filed an Opposition to the Motion to Strike Pleadings and Discovery. (Dkt. No. 289.) On June 16, 2009, the parties filed a Joint Statement regarding all pending motions, including discovery

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV04-8604-SGL(OPx) Date November 2, 2009  
Title DAVID GROBER, ET AL -V- MAKO PRODUCTIONS, INC., ET AL

motions. (Dkt. No. 333.)

In the Joint Statement, the parties agree that this Motion is moot and can be withdrawn. Thus, the Court denies Defendants' Motion to Strike as moot.

**5) Defendants' Motion for Protective Order for Terminating Further Paper Discovery (Dkt. No. 295).**

On March 24, 2009, Defendants filed a Motion for Protective Order for Terminating Further Paper Discovery, along with supporting exhibits. (Dkt. No. 295.) On May 6, 2009, Defendants filed a Motion to Supplement Defendants' Motion for Protective Order. (Dkt. No. 323.) On May 26, 2009, Defendants filed a Second Motion to Supplement Defendants' Motion for Protective Order. (Dkt. No. 325.) On May 26, 2009, Plaintiffs filed an Opposition to Motion to Supplement Defendants' Motion for Protective Order. (Dkt. No. 326.) On June 1, 2009, Defendants filed a Reply in Support of the Motion for Protective Order. (Dkt. No. 327.) On June 16, 2009, the parties filed a Joint Statement regarding all pending motions, including discovery motions. (Dkt. No. 333.)

The pleadings filed here are related to the discovery motions mentioned above regarding certain deposition testimony (Dkt. No. 227), and the production of documents, e-mails, photographs, and videos (Dkt. No. 228). The Court finds that, to the extent this Motion seeks discovery related to the issue of infringement, the Motion has been rendered moot by Judge Larson's finding of non-infringement. However, to the extent this Motion seeks discovery related to the remaining non-infringement issues, the Motion has been not rendered moot by Judge Larson's finding of non-infringement. As a result, the Court grants in part and denies in part Defendants' Motion for Protective Order. Defendants shall have until January 15, 2010, to produce the discovery as ordered above limited only to the remaining non-infringement issues.

**6) Plaintiffs' Motion for Review of Defendants' Confidential Attorneys Eyes Only Designations, Compelling Re-Designations of All Documents, and For Sanctions (Dkt. No. 233).**

On October 13, 2008, Plaintiffs filed a Motion for Review of Defendants' Confidential Attorneys Eyes Only Designations, Compelling Re-Designations of All Documents, and for Sanctions for Abuse of Protective Order. (Dkt. No. 233.) On February 9, 2009,

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV04-8604-SGL(OPx) Date November 2, 2009  
Title DAVID GROBER, ET AL -V- MAKO PRODUCTIONS, INC., ET AL

Defendants filed an Opposition to the Motion for Review, along with supporting declarations and exhibits (both sealed and unsealed). (Dkt. Nos. 269, 270, 278, 279.) On March 30, 2009, Plaintiffs filed a Reply to Defendants' Opposition, along with a supporting declaration of Robert Lauson (under seal). (Dkt. Nos. 306, 312.) On June 16, 2009, the parties filed a Joint Statement regarding all pending motions, including discovery motions. (Dkt. No. 333.)

The Court believes this Motion deals with discovery directly related to the issue of infringement and is rendered moot due to Judge Larson's finding of non-infringement. Further, Judge Larson has granted Plaintiff Grober's motion to discharge his attorneys and proceed pro se for the remainder of the litigation regarding Defendants' counterclaim for defamation against him. In so ordering, Judge Larson ordered that the parties were to either stipulate or hold a hearing before this Court to establish a "no-look list" regarding Plaintiff Grober's ability to look at information or other discoverable evidence that constitutes Defendants' trade secrets. Once the "no look list" is approved or ordered by this Court, present counsel will be officially discharged from further representing Plaintiff Grober in this matter. The parties have yet to submit such a list to the Court for approval. Should the parties reach an agreement on this issue, it could render this Motion moot. Thus, the Court denies Plaintiffs' Motion for Review without prejudice.

II.  
Conclusion

Based on the foregoing, the Court rules as follows:

- 1) Plaintiffs' Motion to Compel Deposition of Kleins and Dann in Los Angeles and for Sanctions Against Defendant Mako (Dkt. No. 227) is granted in part and denied in part;
- 2) Plaintiffs' Motion to Compel Documents, Namely Emails, Photographs, and Videos from Defendant Mako (Dkt. No. 228) is granted in part and denied in part;
- 3) Defendants' Motion to Strike Plaintiff's Supplemental Memorandum and Declaration in Support of Discovery Motions Pending Before District Judge (Dkt. No. 284) is denied as moot;
- 4) Defendants' Motion to Strike Pleadings and Discovery Signed by Plaintiff Grober (Dkt. No. 285) is denied as moot;
- 5) Defendants' Motion for Protective Order for Terminating Further

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. CV04-8604-SGL(OPx) Date November 2, 2009

Title DAVID GROBER, ET AL -V- MAKO PRODUCTIONS, INC., ET AL

Paper Discovery (Dkt. No. 295) is granted in part and denied in part;  
and

- 6) Plaintiffs' Motion for Review of Defendants' Confidential Attorneys Eyes Only Designations, Compelling Re-Designations of All Documents, and For Sanctions For Abuse of Protective Order (Dkt. No. 233) is denied without prejudice.

**IT IS SO ORDERED.**

Initials of  
Preparer

\_\_\_\_\_  
mg  
\_\_\_\_\_

## **EXHIBIT D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

David Grober, et al.,

Case No. 2:04 CV 8604 JZ

Plaintiffs,

SHOW CAUSE ORDER

-vs-

JUDGE JACK ZOUHARY

Mako Products, Inc., et al.,

Defendants.

Pending before this Court is "Plaintiffs' Second Request for the Court to Order the Kleins and John Dann Produce Documents this Court Twice Previously Ordered Preserved for this Case." The Request is granted in part (Doc. 503).

The Request is in response to a "Motion to Quash or Modify Subpoena" signed by Jordan Klein Sr., Jordan Klein Jr., and John Dann which states "We do not have possession of information requested" in Plaintiffs' subpoena because "all assets, including records of Mako Products Inc. were sold by the trustee of the bankruptcy court, to Oceanic Production Equipment, Ltd. (Bahamas)" (Doc. 501-1 at 6). In their capacity as principals of Oceanic Production or as former parties to this litigation, this Court has ordered the Kleins and Dann to preserve all potential evidence (*see* Docs. 436 & 457), which would include any document responsive to Plaintiffs' subpoena.

Accordingly, Jordan Klein Sr., Jordan Klein Jr., and John Dann are each ordered to show cause by **August 7, 2015** why this Court should not hold him in contempt for failing to comply with this

Court's Orders requiring parties to adhere to their discovery obligations and to preserve all potential evidence.

It is unclear from the parties' request whether Plaintiffs' subpoena seeks documents already produced by the Kleins and Dann. To the extent Plaintiffs' recent subpoena seeks re-production of documents already produced by either the Kleins, Dann, or other parties, this Show Cause Order may be satisfied by each individual filing a sworn affidavit stating the basis upon which he has personal knowledge that all documents responsive to Plaintiffs' subpoena in his possession, custody, or control have been produced, by whom they were produced, and the date(s) of the production.

IT IS SO ORDERED.

s/ Jack Zouhary  
JACK ZOUHARY  
U. S. DISTRICT JUDGE

July 24, 2015

## **EXHIBIT E**



BRIAN W. WARWICK, ESQ. (*Pro Hac Vice*)  
Varnell and Warwick, P.A.  
P.O. Box 1870  
Lady Lake, Florida 32158  
Tel. (352) 753-8600  
Email: bwarwick@varnellanwarwick.com

*Attorney for John Dann, Jordan Klein, Sr. and  
Jordan Klein, Jr.*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

David Grober, et al.,

*Plaintiff,*

v.

Mako Products, Inc., et al.,

*Defendants.*

) Case No.: 2:04 CV 8604 JZ

) AFFIDAVITS OF JOHN DANN, JORDAN  
) KLEIN, SR., and JORDAN KLEIN, JR.

) Judge: HONORABLE JACK ZOUHARY

Pursuant to the Court's Order of July 24, 2015, (Dkt. 504) JOHN DANN, JORDAN KLEIN, SR., and JORDAN KLEIN, JR., submit the following affidavits showing cause why this Court should not hold them in contempt for failing to comply with this Court's Orders (Docs. 436 and 457).

Attached are the affidavits of Messrs. Dann, Klein, Sr., and Klein, Jr., together with Exhibit A (which is identical for all three affidavits) and the FedEx confirmation showing the scheduled pickup for today from John Dann of the package containing the CD's (referenced in ¶9 of Mr. Dann's Affidavit) being sent to Plaintiff's counsel.

See pp 3-4

Dated: August 7, 2015

VARNELL AND WARWICK, P.A.

By: /s/ Brian W. Warwick, Esq.  
Brian W. Warwick, Esq. (*Pro Hac Vice*)  
VARNELL & WARWICK, P.A.  
P.O. Box 1870  
Lady Lake, FL 32158  
Telephone: (352) 753-8600  
Email: bwarwick@varnellanwarwick.com

ATTORNEYS FOR JOHN DANN, JORDAN KLEIN, SR.  
AND JORDAN KLEIN, JR.

AFFIDAVITS

**AFFIDAVIT OF JOHN DANN**

1  
2 **STATE OF FLORIDA     )**  
3 **COUNTY OF MARION    )**

4       Before me, the undersigned authority, personally appeared John Dann who was sworn  
5 and states:

6  
7       1.     I am over eighteen years of age and am competent to give this testimony.

8       2.     In June 2015, I was served with a subpoena from Plaintiffs asking for the  
9 extremely production of any and all documents, equipment or otherwise related to the  
10 MakoHead.

11       3.     Because all responsive documents were already produced through the discovery  
12 process over the pendency of this litigation, I believed that all documents responsive to the  
13 development of the MakoHead and the rental history of the device by the Rental House  
14 Defendants had been produced long ago when the depositions took place in this matter in 2008.

15       4.     Therefore, I misinterpreted the request as seeking the actual MakoHead devices,  
16 the computer equipment and the records of Oceanic Production Equipment, Ltd., as opposed to  
17 Mako Products, Inc. Because the prior orders of this Court ordered that we retain "evidence"  
18 and the bankruptcy Court allowed the "equipment" to be sold through bankruptcy, I believed that  
19 there was nothing left to produce other than the computers and MakoHead devices themselves  
20 and filed a response accordingly.

21       5.     On July 24, 2015, Judge Zouhary entered a Show Cause Order taking issue with  
22 my previous response. In the last paragraph of its Order, this Court stated: "To the extent  
23 Plaintiffs' recent subpoena seeks re-production of documents already produced by either the  
24 Kleins, Dann, or other parties, this Show Cause Order may be satisfied by each individual filing  
25 a sworn affidavit stating the basis upon which he has personal knowledge that all documents  
26 responsive to Plaintiffs' subpoena in his possession, custody, or control have been produced, by  
27 whom they were produced, and the date(s) of the production." This affidavit is filed in  
28 compliance with this statement.

**AFFIDAVITS**

1           6.       This matter was filed in 2004 and discovery proceeded through the Markman  
2 Hearing and the Appeal to the Federal Circuit in 2010. Between 2004 and 2009, myself, Mako  
3 Product, the Klein Defendants, Fern Creek Electronics and the Rental House Defendants all  
4 produced discovery at various times. I have no way of determining, for certain, precisely when  
5 which documents were produced. I do recall producing everything in my possession responsive  
6 to the requests and there were many.

7           7.       Fortunately, recently Mr. Grober issued a subpoena to Mako's former counsel,  
8 Varnell & Warwick, P.A. and requested that all documents regarding the MakoHead be  
9 produced. Exhibit A attached hereto is correspondence from Mr. Warwick asserting that he  
10 produced the following documents to Plaintiffs on August 3, 2015.

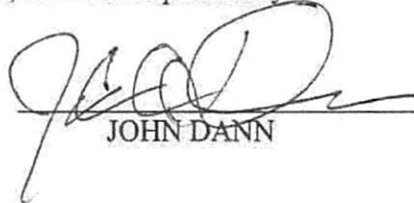
- 11           A. Documents Produced by Mako Products, Inc., bates Nos. 0045 – 2630;  
12           B. Mako Products Income Statements and Balance Sheets;  
13           C. Documents Produced by Jordan Aero Marine/Jordan Klein Sr., bates No. 1-40;  
14           D. Documents Produced by Jordan Klein Film & Video, bates Nos. 1-23;  
15           E. Documents Produced by Fern Creek Electronics, bates Nos. 1-1498;  
16           F. Documents Produced by Air Sea Land, bates Nos. 1-548;  
17           G. Documents Produced by Blue Sky Aerials, bates Nos. 1-324;  
18           H. Documents Produced by Cinevideotech, bates Nos. 1-119;  
19           I. Documents Produced by Spectrum Effects, bates Nos. 1-50;  
20           J. Confidential Photos of the MakoHead, bates No. 2611;  
21           K. Non-Confidential Photos of the Makohead.

22           8.       These are the only responsive documents that I am aware of with one exception.  
23 In 2008, Plaintiffs sought to copy some emails from my business computer. There was some  
24 disagreement regarding which emails were to be copied and which were protected by the  
25 attorney-client privilege.  
26  
27  
28

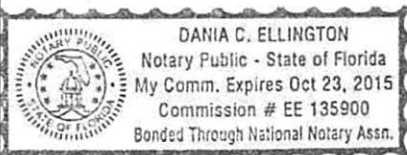
AFFIDAVITS


1 9. Regardless, simultaneous with the filing of this Affidavit I am producing six(6)  
2 CD's containing approximately 9383 emails. These are the only documents not listed above that  
3 I know to exist.

4 10. The MakoHead units themselves and other equipment were purchased out of  
5 bankruptcy by Oceanic Production Equipment, Ltd., and not me personally.

6  
7   
8 JOHN DANN

9 On this 7<sup>th</sup> day of August, 2015, before me, the undersigned Notary Public, in and for  
10 said state, personally appeared JOHN DANN, known to me to be the person who signed on the  
11 preceding document, and acknowledged to me that he signed it for the purpose therein stated.  
12



  
Notary Public

My commission expires: Oct 23, 2015

AFFIDAVITS

## **EXHIBIT F**

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

David Grober, et al.,

Case No. 2:04 CV 8604 JZ

Plaintiffs,

ORDER

-vs-

JUDGE JACK ZOUHARY

Mako Products, Inc., et al.,

Defendants.

This Court has reviewed the Affidavits of John Dann, Jordan Klein, Sr. and Jordan Klein, Jr. (Doc. 506) in which each represents that all documents responsive to Plaintiffs' subpoena were produced by Mako's former counsel, Varnell & Warwick, P.A. on August 3, 2015. In addition, Dann is producing responsive e-mails that were initially withheld as potentially protected from disclosure under the attorney-client privilege. This Court's Order to Show Cause (Doc. 504) is now discharged.

IT IS SO ORDERED.

s/ Jack Zouhary  
JACK ZOUHARY  
U. S. DISTRICT JUDGE

August 7, 2015