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ALAN GLOVER
BY: C. GRIBBLE CLERK
DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA IN AND FOR
8 CARSON CITY

9 JED MARGOLIN, an individual,
10 Plaintiff,

11 vs.

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

Case No. 09OC00579 1B

Dept. No. I

18 Defendants.

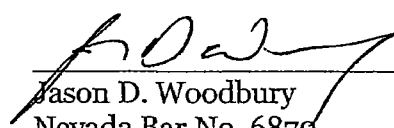
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20 **MOTION TO RETAX AND SETTLE COSTS**

21 COMES NOW, Defendant REZA ZANDIAN ("ZANDIAN"), by and through his
22 attorneys, Kaempfer Crowell, and hereby moves this Court to retax and settle the costs
23 in the above-referenced proceeding. This *Motion* is made pursuant to NRS 18.110(4),
24 18.160(3), and NRS 18.170, and is based on NRS 18.005, 18.020, 18.050, 18.110, 18.160
and 18.170, the attached memorandum of points and authorities, all papers and

1 pleadings on file in this matter and any evidence received and arguments entertained by
2 the Court at any hearing on this *Motion*.

3 DATED this 8th day of April, 2014.

4 **KAEMPFER CROWELL**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Relevant Procedural Background¹**

3 On September 24, 2012, this Court entered a default against Defendant, Optima
4 Technology Corporation, a California corporation, and Optima Technology Corporation,
5 a Nevada corporation (collectively referred to as "OTC").² On September 27, 2012,
6 Plaintiff served notice that the default against OTC had been entered.³ A month later,
7 Plaintiff applied for default judgment against OTC, which was granted on October 31,
8 2012.⁴ Notice of the entry of default judgment against OTC was filed on November 6,
9 2012.⁵

10 This Court entered a default against ZANDIAN on March 28, 2013 and notice of
11 the default was filed April 5, 2013.⁶ Plaintiff subsequently applied for default judgment,
12 the application was granted and notice of the default judgment was filed on June 27,
13 2013.⁷

14 Later, beginning in December 2013 and culminating with this Court's denial in
15 February, 2014, ZANDIAN attempted to have the default judgment against him set
16 aside.⁸ The case has been appealed, and the appeal is pending.⁹ On April 2, 2014,

17 _____
18 ¹ The presentation of the procedural background material to this *Motion* is not intended and should not be
19 construed as an admission that there were not procedural deficiencies in regard to the proceedings
recited. That is to say, for instance, that a representation that a "notice" was made is not intended as a
representation that the referenced "notice" was made in a legally valid and procedurally sufficient
manner.

20 ² See *Default* (Sept. 24, 2012).

21 ³ See *Notice of Entry of Default* (Sept. 27, 2012).

22 ⁴ See *Application for Default J.* (Oct. 30, 2012); *Default J.* (Oct. 31, 2012).

23 ⁵ See *Notice of Entry of J.* (Nov. 6, 2012).

24 ⁶ See *Default* (Mar. 28, 2013); *Amended Not. of Entry of Default* (April 5, 2013).

⁷ See *Application for Default J.* (April 17, 2013); *Default J.* (June 24, 2013); *Notice of Entry of Default J.*
(June 27, 2013).

⁸ See generally, *Order Denying Defendant Reza Zandian aka Golamreza Zandianjazi aka Gholam Reza
Zandian aka Reza Jazi aka J. Reza Jazi aka G. Reza Jazi aka Ghonoreza Zandian Jazi's Motion to Set
Aside Default Judgment* (Feb. 6, 2014).

1 Plaintiff served by mail a document entitled *First Memorandum of Post-Judgment*
2 *Costs and Fees* (“*Memorandum*”). This *Motion* is filed in response.

3 II. Argument

4 **A. Plaintiff should be denied costs and fees because the** 5 ***Memorandum* is procedurally defective.**

6 As a threshold matter, it is not possible to determine whether Plaintiff’s
7 *Memorandum* is presented under NRS 18.110—for costs incurred during the course of
8 an action—under NRS 18.160—for costs incurred following entry of judgment—or under
9 NRS 18.170—for costs incurred following entry of judgment which are not specified in
10 NRS 18.160.¹⁰ On the one hand, the *Memorandum*’s reference to “post-judgment”
11 suggests that its basis is NRS 18.160 or NRS 18.170. But on the other hand, the
12 *Memorandum* references a request for costs of “postage,” “photocopies,” “filing fees and
13 recording fees,” “research,” “witness fees” and “process service/courier fees.” None of
14 those items are identified in NRS 18.160 or NRS 18.170 as costs which may be recovered
15 following a judgment. Rather, those items are within the definition of “costs” as that
16 term is used in NRS 18.010.¹¹ This seems to indicate that the *Memorandum* is
17 presented under the authority of NRS 18.010. Fortunately, this Court need not resolve
18 the confusion over the legal basis for the *Memorandum* because regardless of whether
19 the *Memorandum* is presented under NRS 18.010, NRS 18.160, or NRS 18.170, it is
20 procedurally defective.

21 ⁹ See, e.g., *Notice of Appeal* (Mar. 12, 2014).

22 ¹⁰ Plaintiff does not identify the authority upon which he relies for the *Memorandum*’s request. The
23 absence of any authority in the *Memorandum* is, in and of itself, sufficient cause to reject it. See FJDCR
24 15(5).

¹¹ See NRS 18.005 which provides in pertinent part: “*For the purposes of NRS 18.010 to 18.150,*
inclusive, the term ‘costs’ means: 1. Clerks’ fees.... 4. Fees for witnesses at trial, pretrial hearing and
deposing witnesses 7. The fee of any sheriff or licensed process server for the delivery or service of any
summons or subpoena used in the action.... 12. Reasonable costs for photocopies.... 14. Reasonable
costs for postage.... 17.... [R]easonable and necessary expenses for computerized services for legal
research.” (Emphasis added).

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1. If the Memorandum is presented pursuant to NRS 18.010, it is untimely.

In pertinent part, NRS 18.110 provides:

The party in whose favor judgment is rendered, and who claims costs, **must** file with the clerk, and serve a copy upon the adverse party, **within 5 days after the entry of judgment**, or such further time as the court or judge may grant, a memorandum of the items of the costs in the action or proceeding....¹²

Notice of the default judgments against OTC and ZANDIAN were filed on November 6, 2012, and June 27, 2013 respectively. The *Memorandum* was not filed within five days after the entry of those judgments. Therefore, it is untimely under NRS 18.110 and the *Motion* should be granted.¹³

While NRS 18.110 does permit a court to grant further time beyond the five days, Plaintiff has not requested that additional time.¹⁴ As such, the *Memorandum* does not satisfy the clear requirements of NRS 18.110(1) and should be denied.

2. If the Memorandum is presented pursuant to NRS 18.160, it is untimely and requests costs which are not allowed.

NRS 18.160 provides that a request the recovery of post-judgment costs may be served and filed “at any time or times not more than 6 months after the items have been incurred.”¹⁵ The *Memorandum* of Plaintiff, however, filed April 2, 2014, is a request for costs allegedly incurred from “June 24, 2013 through March 26, 2014.” Even if it applies in these circumstances, the language of NRS 18.160(2) expressly restricts recoverable costs to those “incurred” from October 3, 2013 to April 2, 2014—six months.

¹² NRS 18.110(1) (emphasis added).

¹³ See *Securities Inv. Co. v. Donnelley*, 89 Nev. 341, 349, 513 P.2d 1238, 1243 (1973) (affirming denial of costs when memorandum of costs filed more than five days after judgment).

¹⁴ Indeed, it seems notable that even if Plaintiff had requested additional time to serve the *Memorandum*, such request would have almost certainly been rejected. The *Memorandum* is not merely a few days, or even weeks late. It was filed nearly a year and a half after the OTC judgment and over nine months after the ZANDIAN judgment. Such an extraordinary delay cannot conceivably be justified.

¹⁵ NRS 18.160(2).

1 The *Memorandum* provides no information as to when the costs were incurred.¹⁶

2 Therefore, the *Motion* should be granted.

3 But even to the extent that the *Memorandum* does requests costs which were
4 incurred within the six month time frame fixed by NRS 18.160(2), the *Motion* should
5 still be granted because the *Memorandum* seeks categories of costs which are not
6 allowed by NRS 18.160(1). In fact, *none* of the costs itemized in the *Memorandum* is
7 allowed by NRS 18.160(1).¹⁷ As such, NRS 18.160 does not provide Plaintiff a legal basis
8 to receive the costs he seeks and the *Motion* should be granted.

9 **3. If the Memorandum is presented pursuant to NRS 18.170,**
10 **it should be rejected because it was not preceded or**
accompanied by a motion.

11 When a party seeks post-judgment costs outside the scope of the categories
12 specified by NRS 18.160, NRS 18.170 provides the procedure and states, in pertinent
13 part:

14 A judgment creditor claiming costs or necessary disbursements reasonably
15 incurred in aid of the collection of a judgment or of any execution issued thereon,
16 other than those specified in NRS 18.160, including items which have been
17 disallowed by the judge in the supplemental proceeding, shall serve the adverse
18 party either personally or by mail, and file, at any time or times not more than 6
19 months after such item has been incurred and prior to the time the judgment is
20 fully satisfied, a *notice of motion for an order allowing the same*,
specifying the items claimed and the amount thereof, and supported by an
affidavit of the party or the party's attorney or agent stating that to the best of his
or her knowledge and belief the items are correct and showing that the costs were
reasonable, and the disbursements reasonable and necessarily incurred. The
court or judge hearing *such motion* shall make such order respecting the costs
or disbursements so claimed as the circumstances justify, allowing the same in
whole or in part, or disallowing the same.

21 In other words, NRS 18.170 requires a procedure different than NRS 18.110 or NRS
22 18.160 because it concerns costs which are of a different nature. Nevada law allows a
23

24 ¹⁶ Because the time frame—chosen by Plaintiff—commenced “June 24, 2013” presumably, that is when it
is alleged that post-judgment costs began accruing. As such, clearly some of the costs Plaintiff has
included are disallowed.

1 prevailing party to request costs by “memorandum” under NRS 18.110 and NRS 18.160
2 because those provisions are restricted to costs which have been “pre-determined,” in a
3 sense, to be valid. NRS 18.170, unlike those statutes allows costs beyond those “pre-
4 determined” categories. However, that statute balances the interests of the parties by
5 requiring the requesting party to present a “motion” to the Court for approval of the
6 costs requested.

7 Of course, Plaintiff has not followed that procedure in this case. The requests for
8 costs is not presented in a motion—complete with a sufficient explanation of the costs
9 and legal authority for their allowance—but, rather, a memorandum which provides
10 only the minimal information of a general category of the cost and the alleged amount
11 incurred for that category. This is grossly insufficient under NRS 18.170 and even the
12 most liberal construction of the *Memorandum* cannot turn it into a “motion” which
13 remotely satisfies the letter or purpose of the statute.

14 Consequently, regardless of whether Plaintiff’s legal basis for the Memorandum
15 is NRS 18.110, NRS 18.160, or NRS 18.170, the *Memorandum* is procedurally and fatally
16 defective and the *Motion* should be granted.

17 **B. Plaintiff is not entitled to attorneys’ fees even if allowed to
18 recover costs.**

19 The procedural defects addressed above do not even touch upon the most blatant
20 deficiency of the *Memorandum*: the request for attorneys’ fees disguised as costs.
21 Attorneys’ fees are not the same thing as “costs” for purposes of Chapter 18 of Nevada
22 Revised Statutes.¹⁷ For some unexplained—and unauthorized—reason, however,

23
24 ¹⁷ Compare NRS 18.160(1)(a) – (f) with *Memorandum* at 1:27 – 2:5.

¹⁸ See NRS 18.005, .160.

1 Plaintiff's *Memorandum* includes a request for \$34,787.50 in "post-judgment attorneys'
2 fees" as though it was such a cost.

3 Attorneys' fees are not recoverable unless authorized by a statute, rule, or
4 contractual provision.¹⁹ None provides a legal basis to award Plaintiff's fees as the
5 *Memorandum* requests.

6 The general statute authorizing recovery of fees by a prevailing party, NRS
7 18.010, does not apply to the circumstances of this case. Further, there is no evidence
8 that any offer of judgment was rejected by ZANDIAN or OTC which would trigger a
9 potential award of fees under any statute or rule of civil procedure. No other rule exists
10 which would allow Plaintiff to recover fees in this case.²⁰ The judgments at issue in this
11 case did not include recovery for attorneys' fees subsequent to the entry of judgment.
12 And there has never any allegation by Plaintiff that he and OTC and/or ZANDIAN were
13 parties to *any* contract together—must less any contract which provided for the
14 recovery of attorneys' fees in this litigation.

15 For these reasons, this Court should reject the *Memorandum* and grant the
16 *Motion*, and deny Plaintiff's attempt to recover attorneys' fees disguised as costs.

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24 ¹⁹ See, e.g., *Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982, 986 (2007).

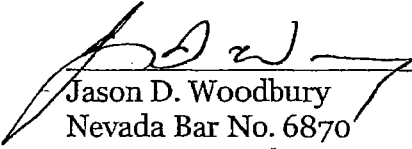
²⁰ Indeed, to the extent that a rule applies to this situation, it contravenes the *Memorandum's* request. NRCPC 54(d) requires that fees must be requested by motion, that the motion must be filed within 20 days

1 **III. Conclusion**

2 For all the reasons hereinabove, it is respectfully requested that this Court grant
3 this *Motion*.

4 DATED this 7th day of April, 2014.

5 **KAEMPFER CROWELL**

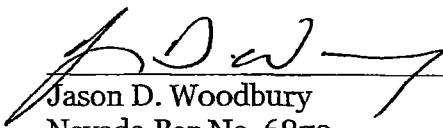
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15 ***Attorneys for Reza Zandian***

12 **AFFIRMATION pursuant to NRS 239B.030**

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

15 DATED this 7th day of April, 2014.

16 **KAEMPFER CROWELL**

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of the notice of entry of judgment, and that it must "specify" the "statute, rule, or other grounds" authorizing the award of fees. The *Memorandum* does none of these.

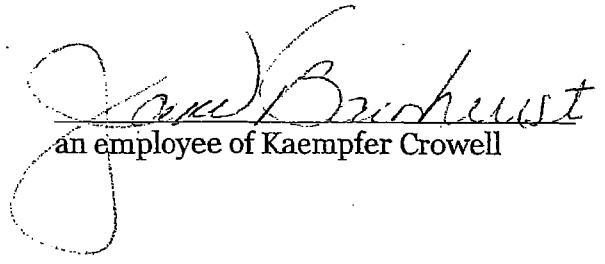
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of the foregoing **MOTION TO RETAX AND SETTLE COSTS** was made this date by depositing a true copy of the same for mailing at Carson City, Nevada, addressed to each of the following:

Matthew D. Francis
Adam P. McMillen
WATSON ROUNDS
5371 Kietzke Lane
Reno, NV 89511

DATED this 9 day of April, 2014.


an employee of Kaempfer Crowell