

1 JASON D. WOODBURY
Nevada Bar No. 6870
2 KAEMPFER CROWELL
510 West Fourth Street
3 Carson City, Nevada 89703
Telephone: (775) 884-8300
4 Facsimile: (775) 882-0257
JWoodbury@kcnvlaw.com
5 *Attorneys for Reza Zandian*

REC'D & FILED
2014 APR 30 PM 4:55
ALAN GLOVER
BY J. HARKLER
CLERK
DEPT

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

8 JED MARGOLIN, an individual,

9 Plaintiff,

10 vs.

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

17 Defendants.

Case No. 09OC00579 1B

Dept. No. I


18
19 **DEFENDANTS' MOTION TO RETAX AND SETTLE COSTS**

20 COMES NOW, Defendant REZA ZANDIAN ("ZANDIAN"), by and through his
21 attorneys, Kaempfer Crowell, and hereby files his Motion to Retax and Settle Costs relative to
22 Plaintiff's *Motion For Order Allowing Costs And Necessary Disbursements And Memorandum*
23 *Of Points And Authorities In Support Thereof.*

1 This *Motion* is made pursuant to the attached memorandum of points and authorities, all
2 papers and pleadings on file in this matter and any evidence received and arguments entertained
3 by the Court at any hearing.

4 DATED this 30 day of April, 2014.

5 **KAEMPFER CROWELL**

6  #1027

7 _____
8 Jason D. Woodbury
9 Nevada Bar No. 6870
10 510 West Fourth Street
11 Carson City, Nevada 89703
12 Telephone: (775) 884-8300
13 Facsimile: (775) 882-0257
14 JWoodbury@kcnvlaw.com
15 *Attorneys for Reza Zandian*

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **A. THE COURT HAS DISCRETION TO AWARD COSTS AND EACH PARTY**
3 **SHOULD BEAR THEIR OWN COSTS IN THIS CASE**

4 The determination of allowable costs is within the sound discretion of the trial court.
5 *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 971 P.2d 383, 114 Nev.
6 1348 (1998). However, statutes permitting recovery of costs are in derogation of common law,
7 and therefore must be strictly construed. *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540, 1994
8 Nev. LEXIS 143 (1994). Nev. Rev. Stat. Ann. § 18.005.

9 Here, while Defendant believes each party should bear its own costs, Plaintiff seeks its
10 photocopying costs at a rate of \$0.25 per page, per supporting documentation at "Exhibit 4" of
11 "Declaration of Adam McMillen In Support of Plaintiff's Motion for Order Allowing Costs and
12 Necessary Disbursements" NRS 18.005(12) prescribes "Reasonable costs for photocopies." If
13 the court is inclined to award costs, the Defendant respectfully requests the court reduce the
14 photocopy charges to \$0.15 per page, or a total of \$288.72 for photocopies. *See Affidavit of Jano*
15 *Barnhurst*, attached hereto as Exhibit 1.

16 **B. AN AWARD OF ATTORNEY'S FEES IS NOT APPROPRIATE AS A**
17 **MATTER OF LAW**

18 It is well settled law in Nevada that the district court may not award attorney fees absent
19 authority under a statute, rule, or contract. Here there is no applicable statute or rule and the
20 parties did not enter into an agreement which afforded attorney's fees. Therefore, the American
21 Rule that each party should bear its own attorney's fees and costs applies, in keeping with the
22 following law.

23 **1. NRS 598.0999(2) does not permit an award of attorney's fees in this case**

24 Plaintiff claims that under its claim for "deceptive trade practices" it is entitled to an

1 award of attorney's fees under "NRS 598.0999(2)." See Plaintiff's Motion For Order Allowing
2 Costs And Necessary Disbursements And Memorandum Of Points And Authorities In Support
3 Thereof at p. 3, ll. 24-28. While Plaintiff concedes that "NRS 598.0999(2) does not explicitly
4 provide for attorney fees incurred postjudgment," Plaintiff nonetheless seeks them under the
5 authority of NRS 598.0999(2).

6 However, NRS 598.0999 does not permit an award of attorney's fees in this case. It
7 provides in relevant part:

8 *NRS 598.0999 Civil and criminal penalties for violations.*

9 2. Except as otherwise provided in NRS 598.0974, in any action brought pursuant
10 to the provisions of NRS 598.0903 to 598.0999, inclusive, if the court finds that a person
11 has willfully engaged in a deceptive trade practice, the district attorney of any county in
12 this State or the Attorney General bringing the action may recover a civil penalty not to
13 exceed \$5,000 for each violation. The court in any such action may, in addition to any
14 other relief or reimbursement, award reasonable attorney's fees and costs.

15 Here, "in any such action" refers to the potential action to be brought by the district
16 attorney or the Attorney General in pursuing its civil recourse. It does not refer to an action
17 brought by a Plaintiff in a civil action. Therefore, NRS 598.0999(2) does not apply.

18 **2. The district court may not award attorney fees absent authority under a statute,
19 rule, or contract.**

20 It is well settled Nevada law that attorney's fees are not recoverable unless authorized by
21 a statute, rule, or contractual provision. *Horgan v. Felton*, 123 Nev. 577, 583 (Nev. 2007) citing
22 *Rowland v. Lepire*, 99 Nev. 308, 315, 662 P.2d 1332, 1336 (1983).

23 Here, the American Rule that each party should bear its own attorney's fees and costs
24 remains the case, in the absence of a statute, rule or contract to the contrary. Under the
"American Rule," win or lose, the parties bear their own legal fees. *Fox v. Vice*, 131 S. Ct. 2205,
2213 (2011). The district court may not award attorney fees absent authority under a statute, rule,

1 or contract. *State, Dep't of Human Resources v. Fowler*, 109 Nev. 782, 784, 858 P.2d 375, 376
2 (1993).

3
4 **3. The court's exercise of discretion in determining the reasonable value of an
attorney's services arises only when an award of attorney's fees is prescribed.**

5 While it is within the court's discretion to determine the reasonable amount of attorney's
6 fees under a statute or rule, in exercising its discretion, the court must evaluate the factors set
7 forth in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345 (1969). Here, the court does not
8 arrive at such an analysis because there is no applicable statute or rule which permits an award of
9 fees to the Plaintiff. The *Brunzell* analysis only arises in instances where attorney's fees are
10 prescribed by statute, rule or contract.

11
12 **4. Even if a *Brunzell* Analysis of an award of attorney's fees were permissible,
Plaintiff's fees are inflated.**

13 This case has been a series of default judgments and did not require years of legal work
14 focused on a specialty in intellectual property. While that may, in general, justify opposing
15 counsel's billable hourly rate, this was not a case driven by intellectual property law. Rather, by
16 application of the default judgment scheme, NRS Chapter 17. Further, the Complaint reflects
17 this fact: it offers up the run of the mill torts against Defendants and only alleges "deceptive
18 trade practices," as the one and only "intellectual property" specialty. Further, not one of the
19 Plaintiff's claims was ever never litigated and brought to a judgment on the merits. In fact, the
20 fees Plaintiff seeks to recover are related solely to post-judgment work that has been performed –
21 not work that was performed to bring about the default judgment.

22 The judgment against this Defendant is exclusively by default and therefore, does not
23 impose specialized skill or unusual time and attention to the work performed by counsel in this
24 case. Plaintiff pursued and has only pursued default judgments against all Defendants since the

1 matter's inception. Hence, this case required no specialized legal practice which justifies the
2 hourly rate or justifies collection of an increased fee, if any at all.

3 The *Brunzell* factors evaluate: (1) the qualities of the advocate: his ability, his training,
4 education, experience, professional standing and skill; (2) the character of the work to be done:
5 its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and
6 the prominence and character of the parties where they affect the importance of the litigation; (3)
7 the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the
8 result: whether the attorney was successful and what benefits were derived. *Brunzell v. Golden*
9 *Gate Nat'l Bank*, 85 Nev. 345, 349 (Nev. 1969). As set forth above, no factor weighs in favor of
10 an award of \$34,632.50 for 6 months of work dedicated to opposing the setting aside a default
11 judgment, taking steps to execute against a default judgment, and responding to an appeal
12 (10/18/2013 – 4/18/2014).

13
14 **5. Even if a *Brunzell* Analysis of an award of attorney's fees were permissible,
15 Plaintiff's requested fees are exclusively for post-judgment, pre-appeal work.**

16 Additionally, Plaintiff is asking that the *Brunzell* factors be applied exclusively to post-
17 judgment accrued attorney's fees. The default judgment was obtained on June 24, 2013 and
18 Plaintiff is asking for its attorney's fees from "October 18, 2013 to April 18, 2014." See p. 5, ll.
19 22-23 of Plaintiff's Motion. The *Brunzell* factors are therefore, generally not applicable (if at all
20 in this case) to the effort expended in defeating Defendants' "Motion To Set Aside Default
21 Judgment" filed on January 9, 2014, as fees may not be awarded for work performed related to
22 the appeal noticed by Defendant on March 12, 2014.

23 To the extent that the attorney's fees are applied to post-appeal work by Plaintiff's
24 counsel, an award of attorney's fees is prohibited in this case, as well. "There is no provision in
the statutes authorizing the district court to award attorney fees incurred on appeal. NRAP 38(b)

1 authorizes only this court [the Nevada Supreme Court] to make such an award if it determines
2 that the appeals process has been misused.” *Board of Gallery of History, Inc. v. Datecs Corp.*,
3 116 Nev. 286, 288; 994 P. 2d 1149, 1150 (2000).

4
5 **C. POST-JUDGMENT INTEREST SHOULD NOT COME DUE BY THIS
6 PREMATURE REQUEST**

7 The postjudgment interest is accounted for in the Court’s 6/24/2013 Default Judgment
8 “until satisfied.” And, the interest that Plaintiff alleges is due cannot be advanced via the
9 Motion. Further, the matter is on appeal as of March 14, 2014.

10 **D. CONCLUSION**

11 For all the reasons set forth herein, it is respectfully requested that this Court GRANT
12 Defendants’ *Motion to Retax and Settle Costs* and DENY Plaintiff’s *Motion For Order Allowing*
13 *Costs And Necessary Disbursements And Memorandum Of Points And Authorities In Support*
14 *Thereof.*

15 DATED this 30th day of April, 2014.

16 **KAEMPFER CROWELL**

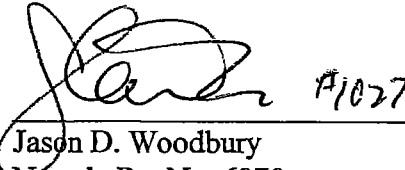
17  #1027
18 Jason D. Woodbury
19 Nevada Bar No. 6870
20 510 West Fourth Street
21 Carson City, Nevada 89703
22 Telephone: (775) 884-8300
23 Facsimile: (775) 882-0257
24 JWoodbury@kcnvlaw.com
Attorneys for Reza Zandian

EXHIBIT 1

EXHIBIT 1

1 JASON D. WOODBURY
Nevada Bar No. 6870
2 KAEMPFER CROWELL
510 West Fourth Street
3 Carson City, Nevada 89703
Telephone: (775) 884-8300
4 Facsimile: (775) 882-0257
JWoodbury@kcnvlaw.com
5 **Attorneys for Reza Zandian**

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

8 JED MARGOLIN, an individual,

Case No. 09OC00579 1B

9 Plaintiff,

Dept. No. I

10 vs.

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

16 Defendants.
17

18 **AFFIDAVIT OF JANO BARNHURST**
19 **IN SUPPORT OF MOTION TO RETAX AND SETTLE COSTS**

20 STATE OF NEVADA)
) ss.
21 CARSON CITY)

22 I, Jano Barnhurst, being first duly sworn under penalty of perjury, depose and
23 state as follows:

- 24 1. I am an employee with the law firm of Kaempfer Crowell.

1 2. Kaempfer Crowell has been retained by Defendant REZA ZANDIAN
2 ("Defendant"), in the above-captioned case.

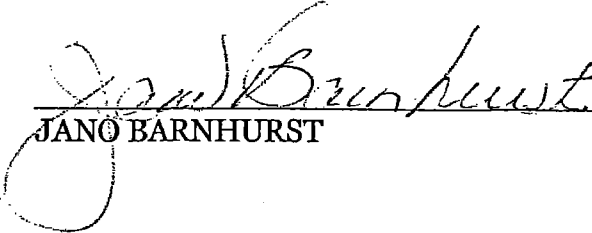
3 3. On April 30, 2014, I contacted FedEx Office of Carson City and inquired as
4 to the cost of photocopies.

5 4. I was advised that if photocopies are made by FedEx Office staff, the cost is
6 .13 cents per page.

7 5. I was further advised that if photocopies were made in the self-service
8 center, the cost is .10 cents per page.

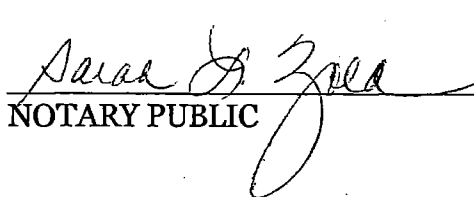
9 FURTHER YOUR AFFLIANT SAYETH NAUGHT.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



JANO BARNHURST

Subscribed and sworn to before me by
Jano Barnhurst on this 30th day of
April, 2014.



NOTARY PUBLIC

