

1 **(1) Factors 1 and 2 - The Advocate's Qualities, Including Ability, Training,**
2 **Education, Experience, Professional Standing, and Skill and The Novelty**
3 **and Difficulty of The Questions Involved, and The Time and Skill Involved**

4 The issues related to this case included: (a) whether Plaintiff's patents were entitled to
5 protection; (b) whether Defendants fraudulently assigned Plaintiff's patents; and (c), whether
6 Plaintiff was damaged by Defendants' conduct. McMillen Decl., ¶ 7. The patent and
7 deceptive trade practices issues, and the unique facts surrounding them, involved careful
8 consideration and research. *Id.* In general, patent and deceptive trade practices litigation is a
9 niche practice that requires a high degree of legal skill and care in order to be performed
10 properly and effectively. *Id.* Each of these causes of action, coupled with the unique facts of
11 this matter, required thorough research and careful analysis. *Id.*

12 In addition, the postjudgment collection efforts so far have included attempting to find
13 Zandian's collectible assets, including researching and investigating his property in Nevada
14 and California and moving for a debtor's examination. *Id.* Considering Zandian's elusive
15 behavior to date and elaborate financial arrangements with a multitude of companies and
16 individuals, Plaintiff has been forced to incur a significant amount of attorney's fees in
17 attempting to collect on the judgment. *Id.*

18 Accordingly, Plaintiff's claimed postjudgment attorney's fees are reasonable under
19 these factors:
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21 **(2) Factor 3 – The Time and Labor Required**

22 Plaintiff's counsel has been required to research Zandian's vast real estate holdings in
23 Nevada. McMillen Decl., ¶ 9. Plaintiff's counsel has recorded the judgment in each Nevada
24 County where Zandian holds property. *Id.* Plaintiff's counsel has researched and subpoenaed
25 Zandian's financial information from several financial institutions. *Id.* Plaintiff's counsel has
26 moved the court for a debtor's examination of Zandian. *Id.* The time and labor required
27 relating to collections efforts are set forth in detail in Plaintiffs' counsel's declaration, and
28

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Adam P. McMillen (10678)
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Attorneys for Plaintiff Jed Margolin

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ALAN GLOVER
CLERK
BY *[Signature]*
AFFIDAVIT

7 In The First Judicial District Court of the State of Nevada
8
9 In and for Carson City

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11 JED MARGOLIN, an individual,
12
13 Plaintiff,

Case No.: 090C00579 1B

Dept. No.: 1

13 vs.

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

**DECLARATION OF ADAM
MCMILLEN IN SUPPORT OF
PLAINTIFF'S MOTION FOR ORDER
ALLOWING COSTS AND
NECESSARY DISBURSEMENTS**

21 Defendants.

22
23 I, Adam P. McMillen, do hereby declare and state:

24 1. I am counsel of record for Plaintiff Jed Margolin in this matter. This declaration is
25 based upon my personal knowledge and is made in support of Plaintiff's Motion for Order
26 Allowing Costs and Necessary Disbursements.
27
28

1 2. I am an associate in the law firm of Watson Rounds. I have over 7 years of
2 experience as a litigator in intellectual property and business litigation matters. Watson
3 Rounds is an AV-rated law firm.

4 3. Matthew D. Francis is a partner in the law firm of Watson Rounds. He has over 14
5 years of experience in the fields of intellectual property and business litigation, including
6 reported decisions.

7 4. Between October 18, 2013 and April 18, 2014, my and Mr. Francis's hourly billing
8 rate for this litigation was \$300 per-hour. It is my understanding that the customary fee
9 charged by attorneys with our experience for similar patent and deceptive trade practices
10 matters in Nevada ranges between \$275-\$450 per-hour. It is also my understanding that
11 intellectual property litigators in major markets, such as San Francisco, Los Angeles, New
12 York, and Boston charge in excess of these amounts, and in some instances, over \$500 per-
13 hour. According to the 2002 Altman Weil "Survey of Law Firm Economics," the median
14 partner hourly rates for intellectual property litigation exceeded well over \$300 per-hour in
15 2002. A true and correct copy of the 2002 Altman Weil Survey entitled "Mining the Surveys:
16 Which Specialties Command the Highest Rates," is attached hereto as Exhibit 1. This Survey
17 was conducted over a decade ago. Furthermore, in 2012, the Ninth Circuit upheld a District of
18 Nevada fee award in a trade dress action in the amount of \$836,899.99, and approved
19 attorneys' fees ranging between \$320 to \$685 per hour. *See Secalt S.A. v. Wuxi Shenxi Const.*
20 *Machinery Co., Ltd.*, 668 F.3d 677, 689 (9th Cir. 2012).

21 4A. Nancy Lindsley, my current secretary and paralegal, has over 30 years of
22 paralegal experience and has worked almost exclusively on intellectual property matters
23 during her tenure at Watson Rounds. Mrs. Lindsley's hourly rate for this action is \$125 per-
24 hour.

25 5. The itemization and description of the work performed for the fees sought herein is
26 set forth in a true and correct copy of Plaintiff's client ledger dated April 23, 2014, and
27 attached hereto as Exhibit 2. Attached collectively hereto as Exhibit 3 are true and correct
28 redacted copies of the actual invoices sent to Plaintiff, which list all activity performed on the

1 file, including fees and costs. Each of the bills set forth in Exhibit 3 was reviewed and edited,
2 and is reasonable.

3 6. The personal abbreviations contained in Exhibits 2 and 3 mean the following: MDF
4 = Matthew D. Francis; NRL = Nancy R. Lindsley; APM = Adam P. McMillen. Attorneys and
5 paralegals at Watson Rounds bill in 1/10 of an hour increments.

6 6A. It is part of my ordinary business practice to review each invoice before it is sent
7 to a client. All of the invoices sent to Plaintiff were personally reviewed by me or by Mr.
8 Francis prior to being sent to Plaintiff for payment. As detailed below, Plaintiff requests
9 reasonable attorneys' fees for this action in the amount of \$34,632.50. This amount only
10 includes attorney's fees from October 18, 2013 to April 18, 2014, as follows: 14.4 hours of
11 work performed by attorney Matthew D. Francis at \$300 per hour (\$4,320.00); 81.5 hours of
12 work performed by attorney Adam P. McMillen at \$300 per hour (\$24,450.00); and 46.90
13 hours of work performed by paralegal Nancy Lindsley at \$125 per hour (\$5,862.50).

14 \$34,632.50 is the lodestar amount Plaintiff is requesting from the Court. *See* Exhibit 2.

15 7. This was a fraudulent patent assignment and deceptive trade practices action. The
16 issues related to this case included: (a) whether Plaintiff's patents were entitled to protection;
17 (b) whether Defendants fraudulently assigned Plaintiff's patents; and (c) whether Plaintiff was
18 damaged by Defendants' conduct. The patent and deceptive trade practices issues, and the
19 unique facts surrounding them, involved careful consideration and research. In general, patent
20 and deceptive trade practices litigation is a niche practice that requires a high degree of legal
21 skill and care in order to be performed properly and effectively. Each of these causes of
22 action, coupled with the unique facts of this matter, required thorough research and careful
23 analysis. In addition, the postjudgment collection efforts so far have included attempting to
24 find Zandian's collectible assets, including researching and investigating his property in
25 Nevada and California and moving for a debtor's examination. Considering Zandian's elusive
26 behavior to date and elaborate financial arrangements with a multitude of companies and
27 individuals, Plaintiff has been forced to incur a significant amount of attorney's fees in
28 attempting to collect on the judgment.

1 8. On June 24, 2013, the Court entered Default Judgment against Defendants. In the
2 Default Judgment, the Court entered judgment in favor of Plaintiff against Defendants, jointly
3 and severally, in the sum of \$1,495,775.74, plus interest at the legal rate, pursuant to NRS
4 17.130, therein from the date of default until the judgment is satisfied.

5 9. In order to begin collecting on the judgment, our office has been required to do the
6 following: research Zandian's vast real estate holdings in Nevada; record the judgment in
7 each Nevada County where Zandian holds property; research and subpoena Zandian's
8 financial information from several financial institutions; move the Court for a debtor's
9 examination of Zandian; among other things. *See Exhibits 2 and 3.*

10 10. The total amount of postjudgment fees relating to the above-identified areas of
11 work identified in paragraph 9 is \$34,632.50. Again, this is the lodestar amount that Plaintiff
12 is claiming.

13 11. Plaintiff incurred a total of \$1,355.17 in postjudgment costs as a result of this
14 action. More specifically, Plaintiff incurred the following costs:

15 COSTS (October 18, 2013 THROUGH April 18, 2014):

| | | |
|----|----------------------------------|---------------|
| 16 | • Postage/photocopies (in-house) | \$ 481.20 |
| 17 | • Research | 285.31 |
| 18 | • Witness Fees (Subpoenas) | 215.66 |
| 19 | • Process service/courier fees | <u>373.00</u> |

20 \$1,355.17

21 *See Exhibit 4, which is a true and correct copy of a client ledger for Plaintiff's postjudgment*
22 *costs and disbursements; see also Exhibit 5, which is a true and correct copy of the invoices*
23 *and receipts for the Plaintiff's postjudgment costs.*

24 12. As mentioned above, Plaintiff's total requested postjudgment fees in this case are
25 \$34,632.50. Plaintiff's total requested postjudgment costs in this case are \$1,355.17.

26 13. To the best of my knowledge and belief the above items are correct and
27 reasonable, and they have been necessarily and reasonably incurred in this action or
28 proceeding.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Affirmation Pursuant to NRS 239B.030

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

Dated: April 25, 2014

By: 
ADAM P. MCMILLEN