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

JED MARGOLIN, an individual,

Plaintiff,

vs.

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

Defendants.

Case No.: 090C00579 1B

Dept. No.: 1

**APPLICATION FOR DEFAULT
JUDGMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Plaintiff Jed Margolin hereby applies for a default judgment pursuant to NRC P
55(b)(2) against Defendants Reza Zandian ("Zandian"), Optima Technology Corporation, a
Nevada corporation, and Optima Technology Corporation, a California corporation. This
Application is based on the following Memorandum of Points and Authorities and all
pleadings, motions, and papers on file herein.

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1 Based on the following arguments and evidence, Plaintiff requests that the Court enter
2 judgment in his favor, and against Defendants, in the manner set forth in the Attached Default
3 Judgment. Alternatively, in the event the Court is unwilling to grant the requested relief and
4 enter the attached Default Judgment in Plaintiff's favor, Plaintiff respectfully requests that oral
5 argument be heard on this matter.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. FACTUAL BACKGROUND**

8 Plaintiff Jed Margolin is the named inventor on numerous patents and patent
9 applications, including United States Patent No. 5,566,073 ("the '073 Patent"), United States
10 Patent No. 5,904,724 ("the '724 Patent"), United States Patent No. 5,978,488 ("the '488
11 Patent") and United States Patent No. 6,377,436 ("the '436 Patent") (collectively "the
12 Patents"). *See* Complaint, ¶ 9. Mr. Margolin is the legal owner and owner of record for the
13 '488 and '436 Patents, and has never assigned those patents. *Id.*, ¶ 10. In July 2004, Mr.
14 Margolin granted to Optima Technology Group ("OTG"), a Cayman Islands Corporation
15 specializing in aerospace technology, a Power of Attorney regarding the '073 and '724
16 Patents. *Id.*, ¶ 11. Subsequently, Mr. Margolin assigned the '073 and '724 Patents to OTG.
17 *Id.* ¶ 13. In exchange for the Power of Attorney and later Assignment, OTG agreed to pay Mr.
18 Margolin royalties based on OTG's licensing of the '073 and '724 Patents. *Id.*

19 In May 2006, OTG and Mr. Margolin licensed the '073 and '724 Patents to Geneva
20 Aerospace, Inc., and Mr. Margolin received a royalty payment pursuant to the royalty
21 agreement between Mr. Margolin and OTG. *Id.*, ¶ 12. In about October 2007, OTG licensed
22 the '073 Patent to Honeywell International, Inc., and Mr. Margolin received a royalty payment
23 pursuant to the royalty agreement between Mr. Margolin and OTG. *Id.*, ¶ 14.

24 On about December 12, 2007, Defendant Zandian filed with the U.S. Patent and
25 Trademark Office ("USPTO") fraudulent assignment documents allegedly assigning all four of
26 the Patents to Optima Technology Corporation ("OTC"), a company apparently owned by
27 Defendant Zandian. *Id.*, ¶ 15. Upon discovery of the fraudulent filing, Mr. Margolin: (a) filed
28 a report with the Storey County Sheriff's Department; (b) took action to regain record title to

1 Zandian on December 2, 2010, and Plaintiff filed and served a Notice of Entry of Default on
2 Defendant Zandian on December 7, 2010 and on his last known attorney on December 16,
3 2010. *Id.*, ¶ 4, Exhibit B.

4 The answers of Defendants Optima Technology Corporation, a Nevada corporation,
5 and Optima Technology Corporation, a California corporation, were due on March 8, 2010,
6 but Defendants have not answered the Complaint or responded in any way. Joseph Decl., ¶¶
7 2-3, Exhibit A. Default was entered against Defendants Optima Technology Corporation, a
8 Nevada corporation, and Optima Technology Corporation, a California corporation on
9 December 2, 2010, and Plaintiff filed and served a Notice of Entry of Default on the corporate
10 entities on December 7, 2010 and on their last known attorney on December 16, 2010. *Id.*, ¶ 4,
11 Exhibit B.

12 III. ARGUMENT

13 NRCP 55(b)(2) allows a party to apply to the Court for a default judgment. As set
14 forth above, Defendants were properly served with Plaintiff's Complaint, but have failed to
15 answer or otherwise respond. *See supra*. As a result, all of the averments in Plaintiff's
16 Complaint, other than those as to the amount of damage, are admitted. NRCP 8(d). As set
17 forth herein, Plaintiff has stated claims for relief for each of his alternative causes of action,
18 and has presented admissible evidence on the amount of damages he has incurred as a result of
19 Defendants' various tortious actions. *See supra*; *see* Complaint, ¶¶ 9-43; Margolin Decl., ¶ 4,
20 Exhibit C. As such, Plaintiff respectfully requests that judgment be entered in the manner set
21 forth in the proposed Default Judgment filed and served herewith.

22 Defendants' tortious actions discussed in detail below support Plaintiff's claims for
23 relief and provide the basis for Plaintiff's damages.

24 **A. MR. MARGOLIN HAS PROVIDED ADMISSIBLE EVIDENCE TO** 25 **SUPPORT HIS CLAIM FOR CONVERSION**

26 Conversion is "a distinct act of dominion wrongfully exerted over another's personal
27 property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion,
28 or defiance of such title or rights." *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606

1 (2002), quoting *Wantz v. Redfield*, 74 Nev. 196, 198 (1958)). Further, conversion is an act of
2 general intent, which does not require wrongful intent and is not excused by care, good faith,
3 or lack of knowledge. *Id.*, citing *Bader v. Cerri*, 96 Nev. 352, 357 n. 1 (1980). Conversion
4 applies to intangible property to the same extent it applies to tangible property. *See M.C.*
5 *Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd.*, 193 P.3d 536 (Nev. 2008),
6 citing *Kremen v. Cohen*, 337 F.3d 1024, 1030 (9th Cir.2003)(expressly rejecting the rigid
7 limitation that personal property must be tangible in order to be the subject of a conversion
8 claim).

9 When a conversion causes “a serious interference to a party's rights in his property ...
10 the injured party should receive full compensation for his actual losses.” *Winchell v. Schiff*,
11 193 P.3d 946, 950-951 (2008), quoting *Bader*, 96 Nev. at 356, overruled on other grounds by
12 *Evans*, 116 Nev. at 608, 611. The return of the property converted does not nullify the
13 conversion. *Bader*, 96 Nev. at 356.

14 As set forth in the Complaint, Mr. Margolin owned the ‘488 and ‘436 Patents, and had
15 a royalty interest in the ‘073 and ‘724 Patents. Complaint, ¶¶ 9-13. Defendants filed false
16 assignment documents with the USPTO in order to gain dominion over the Patents. *Id.*, ¶15;
17 Margolin Decl., Exhibit B. Defendants failed to pay Mr. Margolin for interfering with his
18 property rights in the Patents. *Id.* Defendants’ retention of Mr. Margolin’s Patents is
19 inconsistent with his ownership interest therein and defied his legal rights thereto. *Id.* As a
20 direct and proximate result of Defendants’ conversion of Mr. Margolin’s Patents, Mr.
21 Margolin has suffered damages in the amount of \$90,000, which is the amount Mr. Margolin
22 paid in attorneys’ fees in the Arizona Action where the Court ordered that the USPTO correct
23 record title to the Patents (plus pre-judgment interest and costs – discussed below). Margolin
24 Decl., ¶ 4, Exhibit C.

25 Mr. Margolin has stated a claim for conversion and presented evidence to support that
26 claim and resulting damages. As a result, default judgment is warranted on at least this claim.

27 ///

28 ///

1 **B. MR. MARGOLIN HAS PROVIDED ADMISSIBLE EVIDENCE TO**
2 **SUPPORT HIS CLAIMS FOR TORTIOUS INTERFERENCE**

3 "In Nevada, an action for intentional interference with contract requires: (1) a valid and
4 existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or
5 designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5)
6 resulting damage." *J.J. Indus., L.L.C. v. Bennett*, 119 Nev. 269, 274 (2003), citing *Sutherland*
7 *v. Gross*, 105 Nev. 192, 772 P.2d 1287, 1290 (1989)). "At the heart of [an intentional
8 interference] action is whether Plaintiff has proved intentional acts by Defendant intended or
9 designed to disrupt Plaintiff's contractual relations...." *Nat. Right to Life P.A. Com. v. Friends*
10 *of Bryan*, 741 F.Supp. 807, 814 (D.Nev. 1990).

11 Here, the facts alleged in the Complaint and admitted by Defendants prove that
12 Defendants intentionally interfered with Mr. Margolin's contract with OTG for the payment of
13 royalties by filing false assignment documents with the USPTO. Complaint, ¶¶ 26-30.
14 Because the loss of title to the Patents prevented Mr. Margolin and OTG from licensing the
15 Patents, no royalties were paid. The illegal act of filing "forged, invalid [and] void"
16 documents with the USPTO support that Defendants had the requisite intent to interfere with
17 Mr. Margolin's contract to collect royalties. *See* Margolin Decl., Exhibit B. As a direct and
18 proximate result of Defendants' interference of Mr. Margolin's contract with OTG, Mr.
19 Margolin has suffered damages in the amount of at least \$90,000, which is the amount Mr.
20 Margolin paid in attorneys' fees in the Arizona Action where the Court ordered that the
21 USPTO correct record title to the Patents (plus pre-judgment interest and costs – discussed
22 below). Margolin Decl., ¶ 4, Exhibit C.

23 Interference with prospective economic advantage requires a showing of the following
24 elements: 1) a prospective contractual relationship between the plaintiff and a third party; 2)
25 the defendant's knowledge of this prospective relationship; 3) the intent to harm the plaintiff
26 by preventing the relationship; 4) the absence of privilege or justification by the defendant;
27 and, 5) actual harm to the plaintiff as a result of the defendant's conduct. *Leavitt v. Leisure*
28 *Sports Incorporation*, 103 Nev. 81, 88 (Nev. 1987).

1 As alleged in the Complaint, Mr. Margolin and OTG had already licensed the '073 and
2 '724 Patents and were engaging in negotiations with other prospective licensees of the Patents
3 when Defendants filed the fraudulent assignment documents with the USPTO with the intent
4 to disrupt the prospective business. Complaint, ¶¶ 32-35. As a result of Defendants' acts, Mr.
5 Margolin's prospective business relationships were disrupted and Mr. Margolin has suffered
6 damages in the amount of \$90,000, which was the amount Mr. Margolin paid in attorneys'
7 fees in the Arizona Action where the Court ordered that the USPTO correct record title to the
8 Patents (plus pre-judgment interest and costs – discussed below). Margolin Decl., ¶ 4, Exhibit
9 C.

10 Mr. Margolin has stated claims for tortious interference and presented evidence to
11 support the claims and resulting damages. As a result, default judgment is appropriate on at
12 least these claims.

13 **C. MR. MARGOLIN HAS PROVIDED ADMISSIBLE EVIDENCE TO**
14 **SUPPORT HIS CLAIM FOR UNJUST ENRICHMENT**

15 Unjust enrichment is the unjust retention of a benefit to the loss of another, or the
16 retention of money or property of another against the fundamental principles of justice or
17 equity and good conscience. *Mainor v. Nault*, 120 Nev. 750, 763 (Nev. 2004);
18 *Nevada Industrial Dev. V. Benedetti*, 103 Nev. 360, 363 n. 2 (1987). The essential elements of
19 a claim for unjust enrichment are a benefit conferred on the defendant by the plaintiff,
20 appreciation of the defendant of such benefit, and acceptance and retention by the defendant of
21 such benefit. *Topaz Mutual Co., Inc. v. Marsh*, 108 Nev. 845, 856 (1992), quoting
22 *Unionamerica Mtg. v. McDonald*, 97 Nev. 210, 212 (1981).

23 As set forth above and in the Complaint, Mr. Margolin conferred a benefit on
24 Defendants when Defendants took record title of the Patents. *See* Complaint, ¶ 15.
25 Defendants retained this benefit for approximately eight months and failed to provide any
26 payment for title to the Patents *Id.* As a direct result of Defendants' unjust retention of the
27 benefit conferred on them by Mr. Margolin, Mr. Margolin has suffered damages in the amount
28 of \$90,000, which is the amount Mr. Margolin spent on attorneys' fees in the Arizona Action

1 where the Court ordered that the USPTO correct record title to the Patents (plus pre-judgment
2 interest and costs – discussed below). Margolin Decl., ¶ 4, Exhibit C.

3 Mr. Margolin has stated a claim for unjust enrichment and presented evidence to
4 support that claim and the resulting damages. As a result, default judgment is warranted on at
5 least this claim.

6
7 **D. MR. MARGOLIN HAS PROVIDED ADMISSIBLE EVIDENCE TO
SUPPORT HIS CLAIM FOR UNFAIR TRADE PRACTICES**

8 Under N.R.S. § 598.0915, knowingly making a false representation as to affiliation,
9 connection, association with another person, or knowingly making a false representation in the
10 course of business constitutes unfair trade practices. *Id.* By filing a fraudulent assignment
11 document with the USPTO, Defendants knowingly made a false representation to the USPTO
12 that Mr. Margolin and OTG had assigned the Patents to Defendants. *See Complaint*, ¶¶ 15,
13 42-43. As a result of Defendants false representation, Mr. Margolin was deprived of his
14 ownership interests in the Patents for a period of approximately eight months.

15 The United States District Court for the District of Arizona ruled that OTC had no
16 interest in the ‘073 or ‘724 Patents, and that the assignment documents Defendants filed with
17 the USPTO were “forged, invalid, void, of no force and effect.” Margolin Decl., Exhibit B.
18 Accordingly, Mr. Margolin has stated a claim for deceptive trade practices and has presented
19 evidence to support that claim and the resulting damages in the amount of \$90,000, which was
20 the amount Mr. Margolin paid in attorneys’ fees in the Arizona Action where the Court
21 ordered that the USPTO correct record title to the Patents (plus pre-judgment interest and costs
22 – discussed below). Margolin Decl., ¶ 4, Exhibit C. As such, default judgment is warranted
23 on at least this claim.

24 **E. MR. MARGOLIN IS ENTITLED TO PREJUDGMENT INTEREST**

25 NRS 99.040(1) provides, in pertinent part:

26 When there is no express contract in writing fixing a different rate of interest,
27 interest must be allowed at a rate equal to the prime rate at the largest bank in
28 Nevada, as ascertained by the Commissioner of Financial Institutions, on

1 January 1, or July 1, as the case may be, immediately preceding the date of the
transaction, plus 2 percent, upon all money from the time it becomes due....

2 *Id.*

3 In Nevada, the prejudgment interest rate on an award is the rate in effect at the time the
4 contract between the parties was signed. *Kerala Properties, Inc. v. Familian*, 122 Nev. 601,
5 604 (2006). As set forth above, Defendants committed the tortious acts on December 12,
6 2007. *See supra*. The controlling interest rate as of July 1, 2007 was 8.25%. Joseph Decl., ¶
7 6, Exhibit D. As a result, the proper interest rate for calculating prejudgment interest is
8 10.25%. *Id.*; NRS 99.040.

9 As of December 12, 2007, the amount of at least \$90,000 was due and owing to Mr.
10 Margolin. Margolin Decl., ¶ 4, Exhibit C. As a result, that amount has been due and owing
11 for at least 1,158 days (December 12, 2007 to February 25, 2011). The prejudgment interest
12 amount is therefore \$29,267 (.1025 x 1,158 days x \$90,000 divided by 365). Joseph Decl., ¶
13 6, Exhibit D.

14 **F. MR. MARGOLIN IS ENTITLED TO COSTS**

15 NRS §§18.020 provides, in pertinent part:

16
17 Costs must be allowed of course to the prevailing party against any adverse party
18 against whom judgment is rendered, in the following cases: 1) in an action for the
19 recovery of real property or a possessory right thereto; 2) in an action to recover the
20 possession of personal property, where the value of the property amounts to more
than \$2,500. The value must be determined by the jury, court or master by whom
the action is tried; 3) in an action for the recovery of money or damages, where the
plaintiff seeks to recover more than \$2,500.

21 *Id.*

22 If the Court grants this Application, Mr. Margolin will be the prevailing party under
23 NRS §§18.020 and will therefore be entitled to costs thereunder. As discussed herein and in
24 the Complaint, Mr. Margolin is seeking to recover the value of property valued in excess of
25 \$2,500 as well as money and damages in the amount of \$90,000.

26 To date, Mr. Margolin has incurred costs in the amount of \$2,327.46. Joseph Decl., ¶
27 5, Exhibit C. When the amount of compensatory damages is combined with prejudgment
28 interest and costs, the total requested judgment figure is \$121,594.46. *See supra*. Mr.

1 Margolin requests that judgment be entered in his favor, and against Defendants, in this
2 amount.

3 **IV. CONCLUSION**

4 In light of the foregoing, Plaintiff's Application for Default Judgment should be
5 granted, and the attached Default Judgment should be entered.

6
7 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

10
11 Dated this 28th day of February, 2011.

12
13 BY: 

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15 Cassandra P. Joseph (9845)
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21 *Attorneys for Plaintiff Jed Margolin*

CERTIFICATE OF SERVICE

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Pursuant to NRCP 5(b), I certify that I am an employee of Watson Rounds, and that on this date, I deposited for mailing, in a sealed envelope, with first-class postage prepaid, a true and correct copy of the foregoing document, **Application for Default Judgment** and the **(Proposed) Default Judgment**, addressed as follows:

John Peter Lee
John Peter Lee, Ltd.
830 Las Vegas Blvd. South
Las Vegas, NV 89101

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Fair Oaks, CA 95628

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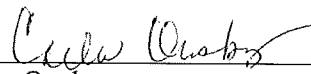
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Dated: February 28, 2011



Carla Ousby