

1 Case No. 09 OC 00579 1B
2 Dept. No. I

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ALAN GLOVER
CLERK
BY *Alan Glover*
DEPUTY

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4
5 In The First Judicial District Court of the State of Nevada
6 In and for Carson City

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8 JED MARGOLIN, an individual,
9 Plaintiff,
10 vs.
11 OPTIMA TECHNOLOGY CORPORATION,
12 a California corporation, OPTIMA
13 TECHNOLOGY CORPORATION, a Nevada
14 corporation, REZA ZANDIAN
15 aka GOLAMREZA ZANDIANJAZI
16 aka GHOLAM REZA ZANDIAN
17 aka REZA JAZI aka J. REZA JAZI
18 aka G. REZA JAZI aka GHONONREZA
19 ZANDIAN JAZI, an individual, DOE Companies
20 1-10, DOE Corporations 11-20, and DOE
21 Individuals 21-30,
22 Defendants.

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

19 This matter comes before the Court on Defendant Reza Zandian's ("Zandian" or
20 "Defendant") Motion to Dismiss Amended Complaint on Special Appearance, dated November
21 16, 2011. Plaintiff filed his Opposition to Motion to Dismiss on December 5, 2011. Zandian
22 filed his Reply to Opposition to Motion to Dismiss on December 13, 2011. A Request for
23 Submission was filed on February 13, 2012.

24 Upon consideration of the foregoing documents, and the Court deeming itself fully
25 advised of the matter, the Court hereby enters its Order Denying Defendant's Motion to Dismiss
26 as follows:

27 In his Motion, Defendant argues primarily that service of the summons and complaint
28 was never effectuated upon Defendant. Defendant further argues that Nevada does not have

1 personal jurisdiction over Defendant in this action. Finally, Defendant argues Plaintiff's claims
2 are barred by the doctrine of claim preclusion. The Court rejects these arguments as stated
3 below.

4 **I. Service of Process**

5 In opposition to Defendant's motion to dismiss, Plaintiff argues that pursuant to NRCPP
6 4(e)(1)(iii), Defendant has been properly served with the summons and complaint by
7 publication. NRCPP 4(e)(1)(iii) states as follows:

8 The order [to serve by publication] shall direct the publication to be made in a
9 newspaper, published in the State of Nevada, to be designated by the court or
10 judge thereof, for a period of 4 weeks, and at least once a week during said
11 time. In addition to in-state publication, where the present residence of the
12 defendant is unknown the order may also direct that publication be made in a
13 newspaper published outside the State of Nevada whenever the court is of the
14 opinion that such publication is necessary to give notice that is reasonably
15 calculated to give a defendant actual notice of the proceedings.

16 NRCPP 4(e)(1)(iii).

17 Initially, as Plaintiff was having difficulty serving Defendant, the summons and
18 complaint were mailed to Defendant's attorney on January 8, 2010 and a request for assistance
19 in serving Defendant was made. Receiving no response from Defendant's counsel, Plaintiff
20 attempted to personally serve Defendant at his last-known residential and/or business address
21 of 8401 Bonita Downs Road, Fair Oaks, California 95628.

22 However, on August 3, 2011, the Court found that personal service of process had not
23 yet been effectuated upon Defendant. Also, on August 3, 2011, the Court ordered that Plaintiff
24 shall be given ninety (90) days to effectuate proper service on Defendant.

25 On August 4, 2011, Plaintiff's counsel sent a letter to Defendant's counsel requesting
26 that defense counsel accept service on behalf of Defendant and/or provide a current address for
27 the Defendant. On August 8, 2011, Defendant's counsel declined to accept service and
28 declined to provide a current address for the Defendant.

On August 11, 2011, Plaintiff filed a motion to serve all the Defendants by publication.
No opposition was filed. On September 27, 2011, pursuant to Plaintiff's motion to serve all
Defendants by publication, this Court ordered that service of process, as against all

1 Defendants, may be made by publication by publishing the summons in the San Diego Union-
2 Tribune, the Reno Gazette-Journal and the Las Vegas Review Journal for a period of four
3 weeks and said publication to occur at least once a week during said time.

4 As reflected in the affidavits of service filed on November 7, 2011, this Court finds that
5 Defendant was properly served by publication in the San Diego Union-Tribune on September
6 23, 2011, September 30, 2011, October 7, 2011 and October 14, 2011, in the Reno Gazette-
7 Journal on September 16, 2011, September 23, 2011, September 30, 2011 and October 7,
8 2011, and in the Las Vegas Review Journal on October 7, 2011, October 14, 2011, October 21,
9 2011 and October 28, 2011.

10 II. Jurisdiction

11 Plaintiff argues that Defendant's contacts with the State of Nevada are so substantial,
12 continuous and systematic that he should be deemed present in the forum. Nevada's long arm
13 statute states as follows:

- 14 1. A court of this state may exercise jurisdiction over a party to a civil action
15 on any basis not inconsistent with the Constitution of this state or the
16 Constitution of the United States.
- 17 2. Personal service of summons upon a party outside this state is sufficient to
18 confer upon a court of this state jurisdiction over the party so served if the
19 service is made by delivering a copy of the summons, together with a copy of
20 the complaint, to the party served in the manner provided by statute or rule of
21 court for service upon a person of like kind within this state.
- 22 3. The method of service provided in this section is cumulative, and may be
23 utilized with, after or independently of other methods of service.

24 NRS 14.065(1)-(3).

25 In addition, in Nevada, "[t]here are two types of personal jurisdiction: general and
26 specific." *Baker v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 527, 532,
27 999 P.2d 1020, 1023 (2000). "General jurisdiction is required in matters where a defendant is
28 held to answer in a forum for causes of action unrelated to his forum activities." *Baker v.*
Eighth Judicial Dist. Court ex rel. County of Clark, 116 Nev. 527, 532, 999 P.2d 1020, 1023
(2000). "General jurisdiction over a nonresident will lie where the nonresident's activities in
the forum are 'substantial' or 'continuous and systematic.'" *Id.* "General jurisdiction over the
defendant 'is appropriate where the defendant's forum activities are so "substantial" or

1 “continuous and systematic” that [he] may be deemed present in the forum.” *Freeman v.*
2 *Second Judicial Dist. Court ex rel. County of Washoe*, 116 Nev. 550, 553, 1 P.3d 963, 965
3 (2000).

4 In this matter, it is represented that Defendant owns real property throughout Nevada,
5 that he is listed as the owner of two parcels in Clark County equaling 30 acres combined, that
6 he is listed as an owner of 10 parcels in Washoe County ((APN: 79-150-09: 560 acres)(APN:
7 079-150-10: 639 acres)(APN: 079-150-13: 560 acres)(APN: 084-040-02: 627 acres)(APN:
8 084-040-04: 640 acres)(APN: 084-040-06: 633 acres)(APN: 084-040-10: 390 acres)(APN
9 084-130-07: 275 acres)(APN: 79-150-12:160 acres)), that he is listed as an owner and/or is
10 partial owner of 6 parcels in Lyon County (330.20 acres combined), that he is listed as part
11 owner of two parcels in Churchill County (56.75 acres combined), and that he is listed as part
12 owner of one parcel in Elko County (17.6 acres).

13 With regard to doing business within Nevada, Plaintiffs assert that Defendant is a
14 managing member of and resident agent of many businesses in Nevada. For example,
15 Defendant is a managing member of Johnson Spring Water Company LLC, a Nevada LLC.
16 He is a managing member of Wendover Project L.L.C., a Nevada LLC. He is or was recently
17 a manager of 11000 Reno Highway, Fallon, LLC, a Nevada LLC, and currently, 11000 Reno
18 Highway, Fallon, LLC is listed as the owner of 640 acres of real property in Churchill County.

19 Defendant is or was recently a managing member and registered agent of Misfits
20 Development LLC, a Nevada LLC. He is or was recently a managing member and registered
21 agent of Elko North 5th Avenue, LLC, a Nevada LLC. He is a managing member and
22 registered agent for Stagecoach Valley LLC, an active Nevada LLC.

23 Defendant acted as the resident agent for a revoked Nevada limited liability company
24 named Rock and Royalty LLC, where his resident agent address was 1401 S. Las Vegas
25 Boulevard, Las Vegas, Nevada 89104. He was a managing member of Gold Canyon
26 Development LLC, a Nevada LLC that is now in default status. He was a managing member
27 of High Tech Development LLC, a Nevada LLC that has been dissolved. He was a managing
28 member of Lyon Park Development LLC, a Nevada LLC that has been dissolved. He was a

1 managing member of Churchill Park Development LLC, a Nevada LLC that has been
2 dissolved. He was a manager of Sparks Village LLC, a Nevada LLC that is in default status.
3 He was president, secretary, treasurer, director and resident agent of Optima Technology
4 Corporation, a now revoked Nevada close corporation. He was a managing member of I-50
5 Plaza LLC, a Nevada LLC in default status. He was a manager of Dayton Plaza, LLC, a
6 Nevada LLC in default status. Finally, he was a manager of Reno Highway Plaza, LLC, a
7 Nevada LLC in revoked status.

8 Also, he listed Carson City and Las Vegas addresses for his registered agent and officer
9 information for Rock and Royalty LLC, Optima Technology Corporation, High Tech
10 Development LLC, Lyon Park Development LLC, Churchill Park Development LLC, Sparks
11 Village, LLC, I-50 Plaza LLC, Dayton Plaza, LLC, 11000 Reno Highway Fallon LLC, Misfits
12 Development LLC, Elko North 5th Ave, LLC, and Stagecoach Valley LLC.

13 Thus, it appears to this Court that Defendant owns or partially owns many properties
14 within and throughout the state of Nevada and does a significant amount of business within the
15 state. His property ownership and his business dealings show that his forum activities are so
16 “substantial” or “continuous and systematic” that he should be deemed present in the forum
17 and therefore general jurisdiction is appropriate.

18 **III. Claim Preclusion and Issue Preclusion**

19 There is a three-part test for determining whether claim preclusion applies: (1) the
20 parties or their privies are the same, (2) the final judgment is valid, and (3) the subsequent
21 action is based on the same claims or any part of them that were or could have been brought in
22 the first case. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1028, 194 P.3d 709, 713 (Nev.
23 2008).

24 In this case, Defendant argues that the *Universal Avionics Systems Corporation v.*
25 *Optima Technology Group, Inc.*, No. CV 07-588-TUC-RCC (the “Arizona action”) has no
26 application to him: “Because no summons was ever issued as to Zandian in the underlying
27 U.S. District Court action which forms the basis of the instant action, any domestication of the
28 U.S. District Court action as it pertains to Zandian is a clear violation of Zandian’s

1 constitutional right to notice under the Due Process clauses of the Fifth and Fourteenth
2 Amendments of the U.S. Constitution.” *See* Motion to Dismiss Amended Complaint on
3 Special Appearance, dated 11/17/11, 5:5-10, on file herein. Thus, Defendant correctly points
4 out that Defendant was not a party to the Arizona action and the Arizona action does not apply
5 to him.

6 In addition, the Arizona action was a declaratory judgment action brought by Universal
7 Avionics Systems Corporation (“Universal”) against Plaintiff, Optima Technology Group
8 (“OTG”), Optima Technology Corporation (“OTC”) and Robert Adams. Universal sought a
9 declaratory judgment that the ‘073 and ‘724 patents were invalid and not infringed and
10 asserted claims for breach of contract under the law of the State of Arizona, unfair competition
11 and negligent interference with prospective economic advantage under the laws of the State of
12 California.

13 In the Arizona action, OTG counterclaimed against Universal and cross-claimed
14 against OTC, Joachim Naimer, Jane Naimer, Frank Hummel and Jane Doe Hummel. OTG
15 claimed patent infringement against Universal, Naimer and Hummel. OTG claimed breach of
16 contract, breach of the implied covenant of good faith and fair dealing, and negligence against
17 Universal. OTG sought a declaratory judgment against OTC that OTC had no interest or right
18 in the durable power of attorney from Jed Margolin or the above mentioned patents, that
19 OTC’s filing and/or recording of documents with the U.S. Patent and Trademark Office
20 (“PTO”) was invalid and void, and ordering the PTO to correct and expunge its records with
21 regards to the same. Finally, OTG claimed injurious falsehood, slander of title, trespass to
22 chattels, unfair competition, unfair and deceptive competition and business practices, unlawful
23 conspiracy, joint and several liability, and punitive damages against Universal and OTC.

24 In this case, Jed Margolin is claiming conversion, tortious interference with contract,
25 intentional interference with prospective economic advantage, unjust enrichment, and unfair
26 and deceptive trade practices against all Defendants in this matter, including Zandian in his
27 personal capacity. Zandian was not a party to the Arizona action. The parties and their privies
28

1 and the claims in this matter are not the same as the parties and their privies and the claims in
2 the Arizona action.

3 Therefore, as the parties and their privies and the claims in the Arizona action are not
4 the same as the parties and their privies and the claims in this action, claim preclusion does not
5 apply.

6 Also, there is a four-part test for the application of issue preclusion: “(1) the issue
7 decided in the prior litigation must be identical to the issue presented in the current action; (2)
8 the initial ruling must have been on the merits and have become final; ... (3) the party against
9 whom the judgment is asserted must have been a party or in privity with a party to the prior
10 litigation; and (4) the issue was actually and necessarily litigated.” *Five Star Capital Corp.*,
11 124 Nev. 1028, 194 P.3d at 713.

12 The only issue in the Arizona action that could be identical to an issue in this matter is
13 the fact that the Arizona court found that OTC filed a forged, invalid and void assignment with
14 the PTO and that OTC has no interest in U.S. Patents Nos. 5,566,073 and 5,904,724 (“the
15 Patents”) or the Durable Power of Attorney from Jed Margolin dated July 20, 2004. *See*
16 Exhibit B to Defendant’s Motion to Dismiss Amended Complaint on Special Appearance,
17 dated 11/17/11. The Arizona court also ordered that the “Assignment Optima Technology
18 Corporation filed with the USPTO is forged, invalid, void, of no force and effect, and is
19 hereby struck from the records of the USPTO.” *Id.* Thus, one related issue has been decided.
20 However, that one issue only involved OTC, the California Corporation. That issue was not
21 decided with respect to OTC, the Nevada Corporation and it was not decided with respect to
22 Zandian.

23 In addition, the other claims and issues in this matter are distinct and not identical to
24 the issues raised in the Arizona action, have not been decided on the merits and become final,
25 have not been actually and necessarily litigated and the parties and their privies are not the
26 same.

27 **IV. Conclusion**

28 Therefore, good cause appearing,

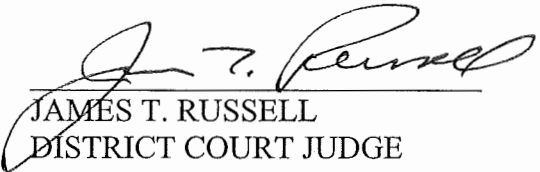
1 THE COURT FINDS that service of process has been properly effectuated against
2 Defendant by publication.

3 THE COURT FINDS that Defendant's forum activities are so substantial and/or
4 continuous and systematic that he should be deemed present in the forum and therefore
5 personal jurisdiction over him is appropriate in this matter.

6 THE COURT FINDS that claim and issue preclusion do not bar this action.

7 THEREFORE, IT IS HEREBY ORDERED that Defendant Zandian's Motion to Dismiss
8 Amended Complaint on Special Appearance is DENIED.

9 Dated this 21st day of February 2012.

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12 JAMES T. RUSSELL
13 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February, 2012, I placed a copy of the foregoing Order in the United States Mail, postage prepaid, addressed as follows:

Matthew D. Francis, Esq.
5371 Kietzke Lane
Reno, NV 89511

John Peter Lee
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