

1 Matthew D. Francis (6978)  
Adam P. McMillen (10678)  
WATSON ROUNDS  
2 5371 Kietzke Lane  
Reno, NV 89511  
3 Telephone: 775-324-4100  
Facsimile: 775-333-8171  
4 Attorneys for Plaintiff Jed Margolin

REC'D & FILED  
2012 OCT 30 AM 11:29  
ALAN GLOVER  
BY **H. HIGGINS** CLERK  
DEPUTY

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

9  
10 JED MARGOLIN, an individual,  
11 Plaintiff,

12 vs.

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

Case No.: 090C00579 1B

Dept. No.: 1

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

20  
21 Plaintiff Jed Margolin hereby applies for a default judgment pursuant to NRCP  
22 55(b)(2) against Defendants Optima Technology Corporation, a Nevada corporation, and  
23 Optima Technology Corporation, a California corporation (together the "Defendants") in the  
24 principal amount of \$1,286,552.46, together with interest at the legal rate of 5.25% per annum  
25 accruing from the date of default, September 24, 2012. This Application is based upon the  
26 grounds that no appearance of counsel for the Defendants has been entered, the Defendants'  
27 General Denial has been stricken, and the Defendants are in default for failure to plead or  
28 otherwise defend as required by law.

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 herein and in the  
3 attached Default Judgment.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. FACTUAL BACKGROUND**

6 Plaintiff filed the Amended Complaint in this action on August 11, 2011. After  
7 extensive briefing regarding service on Defendants, and after the Court denied Defendants'  
8 Motion to Dismiss, Defendants served and filed a General Denial in response to the Amended  
9 Complaint. The General Denial was served on March 13, 2012 on behalf of the Defendants.

10 Also on March 13, 2012, Defense counsel moved to withdraw from representing all of  
11 the individual and corporate Defendants in this action. On March 16, 2012, Plaintiff filed a  
12 non-opposition to Defense counsel's Motion to Withdraw, and on April 26, 2012, this Court  
13 granted Defense counsel's Motion to Withdraw.

14 On May 15, 2012, Plaintiff moved this Court for an order compelling the appearance of  
15 counsel for the Defendants or in the alternative an order striking the General Denial of the  
16 Defendants. The Defendants did not respond to the motion. On June 28, 2012, this Court  
17 ordered that the Defendants retain counsel and that counsel enter an appearance in this matter  
18 on behalf of the Defendants by July 15, 2012. This Court also ordered that if no appearance  
19 was made by that date, the General Denial would be stricken.

20 Since no appearance was made on behalf of the Defendants, Plaintiff filed an  
21 application for entry of default on September 14, 2012. On September 24, 2012, this Court  
22 entered a default against the Defendants. The notice of entry of default was served on  
23 September 26, 2012, and filed on September 27, 2012. Now Plaintiff seeks entry of a default  
24 judgment against Defendants.

25 Defendants are not infants or incompetent persons, and are not in the military service  
26 of the United States as defined by 50 U.S.C. Appx. § 521.

1 The facts in Plaintiff's amended complaint warrant entry of Final Judgment against  
2 Defendants for conversion, tortious interference with contract, intentional interference with  
3 prospective economic advantage, unjust enrichment, and unfair and deceptive trade practices.

### 4 III. ARGUMENT

5 NRCP 55(b)(2) allows a party to apply to the Court for a default judgment. As set  
6 forth above, Defendants have failed to have counsel enter an appearance, and their General  
7 Denial was stricken and a default entered. As a result, all of the averments in Plaintiff's  
8 Amended Complaint, other than those as to the amount of damages, are admitted. NRCP 8(d).  
9 As set forth in the Amended Complaint, Plaintiff states claims for relief for each of his  
10 alternative causes of action. As set forth herein, Plaintiff presents admissible evidence on the  
11 amount of damages he has incurred as a result of Defendants' actions.

#### 12 **A. MR. MARGOLIN PROVIDES ADMISSIBLE EVIDENCE TO SUPPORT** 13 **HIS CLAIM FOR CONVERSION**

14 Conversion is "a distinct act of dominion wrongfully exerted over another's personal  
15 property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion,  
16 or defiance of such title or rights." *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5  
17 P.3d 1043, 1048 (2002), quoting *Wantz v. Redfield*, 74 Nev. 196, 198 (1958). Further,  
18 conversion is an act of general intent, which does not require wrongful intent and is not  
19 excused by care, good faith, or lack of knowledge. *Id.*, citing *Bader v. Cerri*, 96 Nev. 352, 357  
20 n. 1 (1980). Conversion applies to intangible property to the same extent it applies to tangible  
21 property. See *M.C. Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd.*, 124 Nev.  
22 901, 911, 193 P.3d 536, 543 (Nev. 2008), citing *Kremen v. Cohen*, 337 F.3d 1024, 1030 (9th  
23 Cir.2003)(expressly rejecting the rigid limitation that personal property must be tangible in  
24 order to be the subject of a conversion claim).

25 When a conversion causes "a serious interference to a party's rights in his property ...  
26 the injured party should receive full compensation for his actual losses." *Winchell v. Schiff*,  
27 124 Nev. 938, 945, 193 P.3d 946, 951 (2008), quoting *Bader*, 96 Nev. at 356, overruled on  
28

1 other grounds by *Evans*, 116 Nev. at 608, 611. The return of the property converted does not  
2 nullify the conversion. *Bader*, 96 Nev. at 356.

3 As set forth in the Amended Complaint, Plaintiff owned the '488 and '436 Patents, and  
4 had a royalty interest in the '073 and '724 Patents. Amended Complaint, ¶¶ 9-12. Defendants  
5 filed false assignment documents with the USPTO in order to gain dominion over the Patents.  
6 *Id.* at ¶15; Margolin Decl., Exhibit 2. Defendants failed to pay Plaintiff for interfering with his  
7 property rights in the Patents. Defendants' retention of Plaintiff's Patents was inconsistent  
8 with Plaintiff's ownership interest therein and defied his legal rights thereto. As a direct and  
9 proximate result of Defendants' conversion of Plaintiff's Patents, Plaintiff has suffered  
10 damages in the amount of \$300,000. The \$300,000 includes \$90,000 Plaintiff paid in  
11 attorneys' fees in the Arizona Action where that court ordered the USPTO to correct the record  
12 of title to the Patents (plus pre-judgment interest, attorney's fees and costs – discussed below).  
13 Margolin Decl., ¶ 4, Exhibit 3.

14 The \$300,000 damages figure also consists of \$210,000 that would have been paid to  
15 Plaintiff pursuant to a patent purchase agreement that was terminated as a result of the  
16 Defendants' actions as stated in the Amended Complaint. Margolin Decl., ¶ 5. Plaintiff  
17 cannot provide documentation or specific details of the purchase agreement because of the  
18 confidentiality provisions in the agreement (although Plaintiff is willing to provide the  
19 documentation to the Court for an *in camera* review). Margolin Decl., ¶ 5. However, Plaintiff  
20 can state that on April 14, 2008, Optima Technology Group ("OTG") entered into a purchase  
21 agreement to sell the '073 and '724 patents to another entity which would have netted Plaintiff  
22 \$210,000 on the sale of the Patents. *See* Margolin Decl., ¶ 5; *See also* Amended Complaint, ¶¶  
23 11-14 (showing royalty agreement). The purchase agreement also included a provision for  
24 post-patent sale royalty payments which would have provided additional substantial income to  
25 the Plaintiff. *Id.* Finally, the April 14, 2008 purchase agreement provided the purchasing  
26 entity an opportunity to conduct due diligence regarding the Arizona Action prior to  
27 consummation of the sale. Margolin Decl., ¶ 5. On June 13, 2008, the purchasing entity wrote  
28 OTG and stated that they had completed their due diligence investigation and determined that

1 Amended Complaint, Plaintiff is seeking to recover the value of property valued in excess of  
2 \$2,500 as well as money and damages in the amount of \$900,000.

3 To date, as stated above, Plaintiff has incurred costs in the amount of \$23,979.86.  
4 McMillen Decl., ¶ 5, Exhibit 3.

5 **IV. CONCLUSION**

6 In light of the foregoing, Plaintiff respectfully requests that this Application for Default  
7 Judgment be granted, and the attached Default Judgment entered. As stated above, Plaintiff is  
8 entitled to treble damages in the amount of \$900,000; prejudgment interest in the amount of  
9 \$292,672.60; attorney's fees in the amount of \$69,900.00; and costs in the amount of  
10 \$23,979.86; for a total judgment of \$1,286,552.46.

11 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

14 Dated this 29th day of October, 2012.

15  
16 BY: \_\_\_\_\_

17 Matthew D. Francis (6978)  
18 Adam P. McMillen (10678)  
19 WATSON ROUNDS  
20 5371 Kietzke Lane  
21 Reno, NV 89511  
22 Telephone: 775-324-4100  
23 Facsimile: 775-333-8171  
24 *Attorneys for Plaintiff Jed Margolin*

**CERTIFICATE OF SERVICE**

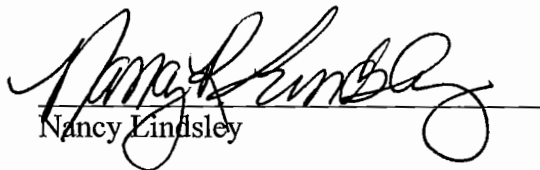
1 Pursuant to NRCP 5(b), I certify that I am an employee of Watson Rounds, and that on  
2 this date, I deposited for mailing, in a sealed envelope, with first-class postage prepaid, a true  
3 and correct copy of the foregoing document, **Application for Default Judgment** and the  
4 **(Proposed) Default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

6 Reza Zandian  
7 8775 Costa Verde Blvd. #501  
8 San Diego, CA 92122

9 Optima Technology Corp.  
10 A California corporation  
11 8775 Costa Verde Blvd. #501  
12 San Diego, CA 92122

13 Optima Technology Corp.  
14 A Nevada corporation  
15 8775 Costa Verde Blvd. #501  
16 San Diego, CA 92122

17 Dated: October 29, 2012

  
Nancy Lindsley