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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

MOTION FOR ORDER ALLOWING COSTS AND NECESSARY DISBURSEMENTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Plaintiff Jed Margolin has incurred various postjudgment collection costs and fees. Pursuant to the judgment, NRS 18.160, NRS 18.170, and NRS 598.0999(2), Plaintiff moves this Court for an order awarding him postjudgment interest, costs and attorneys' fees.

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POINTS AND AUTHORITIES

I. Postjudgment Interest

On June 24, 2013, the Court entered Default Judgment against Defendants. Notice of entry of the Default Judgment was filed on June 27, 2014. In the Default Judgment, the Court entered judgment in favor of Plaintiff against Defendants, jointly and severally, in the sum of $1,495,775.74, plus interest at the legal rate, pursuant to NRS 17.130, thereon, from the date of default until the judgment is satisfied.

The award of interest in this case is governed by NRS 17.130(2), which states that the postjudgment interest computation in a proceeding to enforce a judgment is subject to either the parties' contract, the judgment against the party, or as otherwise provided by law. Accordingly, the interest computation in this case is governed by the judgment against Defendants. Because the original judgment was entered in Nevada and the judgment set the interest rate at the legal rate of interest according to NRS 17.130, the interest rate is 5.25 percent per-annum, or $215.15 per-day. Further, because Plaintiff is enforcing the Nevada judgment according to its terms, which does not provide for compound interest, simple interest is appropriate. Accordingly, Plaintiff is owed simple interest at 5.25 percent or $215.15 per-day from June 27, 2014, the date of notice of entry of the judgment, through April 18, 2014. It is 296 days from June 27, 2013 to April 18, 2014. Multiplying 296 days by $215.15 equals $63,684.40 in accrued interest.

II. Postjudgment Costs

NRS 18.160(1)(f) allows "[c]osts or disbursements incurred in connection with **any proceeding supplementary to execution** which have been approved as to necessity, propriety and amount by the judge ordering or conducting the proceeding." (emphasis added). NRS 18.170 further provides that a "judgment creditor claiming costs or necessary disbursements reasonably in aid of collection of a judgment or of any execution issued thereon…" must file a

motion for costs and necessary disbursements "at any time or times not more than 6 months after such item has been incurred." "The court or judge hearing such motion shall make such order respecting the costs or disbursements so claimed as the circumstances justify, allowing the same in whole or in part, or disallowing the same." NRS 18.170.

Plaintiff has incurred the following costs or disbursements reasonably in aid of execution of the judgment in the last six months:

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

• Postage/photocopies (in-house)	$ 481.20
• Research	285.31
• Witness Fees (Subpoenas)	215.66
• Process service/courier fees	373.00
	$1,355.17

The above items are correct and reasonable and the disbursements reasonably and necessarily incurred, postjudgment. *See* Declaration of Adam McMillen ("McMillen Decl."), dated April 24, 2014, ¶¶ 11-13 and Exhibits 4-5.

III. Postjudgment Attorney's Fees

"The district court may award attorney fees only if authorized by a rule, contract, or statute." *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 825, 192 P.3d 730, 733 (2008) (citing *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 417, 132 P.3d 1022, 1028 (2006)). A district court's award of attorney fees and costs is reviewed for an abuse of discretion. *Albios,* 122 Nev. at 417, 132 P.3d at 1027–28 (attorney fees); *Bobby Berosini, Ltd. v. PETA,* 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998) (costs).

Under Plaintiff's Deceptive Trade Practices claim, "[t]he court in any such action may, **in addition to any other relief or reimbursement, award reasonable attorney's fees and costs**." NRS 598.0999(2) (emphasis added). Although NRS 598.0999(2) does not explicitly provide for attorney fees incurred postjudgment, the statute does not expressly exclude postjudgment attorney fees from its purview, and for public policy reasons, NRS 598.0999(2)

should be liberally interpreted as allowing for postjudgment attorney fees so as to further the statute's purpose to ensure that those that engage in deceptive trade practices are penalized and deterred from engaging in such practices and so that an attorney fee award properly includes the reasonable fees incurred in seeking the fees. *See Barney*, 124 Nev. at 825-26, 192 P.3d at 733-34 (mechanic lien statute did not expressly provide for attorney fees incurred postjudgment, however, statute did not expressly exclude postjudgment attorney fees from its purview and was liberally interpreted to allow postjudgment attorney fees "so as to further the lien statutes' purpose to ensure that contractors are paid in whole for their work."); *see also Rosen v. LegacyQuest*, A136985, 2014 WL 1372114 (Cal. Ct. App. Mar. 21, 2014) (judgment creditor, who had recovered statutory attorney fees in connection with underlying judgment, authorized to recover attorney fees incurred in enforcing underlying judgment under the statute authorizing recovery of judgment creditor's "reasonable and necessary costs of enforcing a judgment," since the statute authorizing the underlying attorney fee award established that the fee award was "otherwise provided by law" within meaning of the fee statute) (an attorney fee award properly includes the reasonable fees incurred in seeking the fees); *see also Ketchum v. Moses* (2001) 24 Cal.4th 1122, 104 Cal.Rptr.2d 377, 17 P.3d 735 (judgment creditor entitled to fees incurred in enforcing the right to mandatory fees under statute).

"In Nevada, 'the method upon which a reasonable fee is determined is subject to the discretion of the court,' which 'is tempered only by reason and fairness.'" *Shuette v. Beazer Homes Holdings Corp.*, 124 P. 3d 530, 121 Nev. 837 (2005) (citing *University of Nevada v. Tarkanian*, 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994)). "Accordingly, in determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a 'lodestar' amount or a contingency fee." *Id.* (citations omitted). "The lodestar approach involves multiplying 'the number of hours reasonably spent on the

case by a reasonable hourly rate.'" *Id.* at n. 98 (citing *Herbst v. Humana Health Ins. of Nevada*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989)).

However, before awarding attorney's fees, the district court must make findings concerning the reasonableness of the award, as required by *Brunzell v. Golden Gate National Bank*, 455 P.2d 31, 85 Nev. 345 (1969) and *Shuette v. Beazer Homes Holdings Corp.*, 124 P. 3d 530, 121 Nev. 837 (2005). *See Barney*, 124 Nev. at 829-30, 192 P.3d at 735-37.

According to *Brunzell,* the factors that the district court should consider in awarding attorney fees, with no one factor controlling, is as follows:

> (1) the advocate's qualities, including ability, training, education, experience, professional standing, and skill;
> (2) the character of the work, including its difficulty, intricacy, importance, as well as the time and skill required, the responsibility imposed, and the prominence and character of the parties when affecting the importance of the litigation;
> (3) the work performed, including the skill, time, and attention given to the work; and
> (4) the result—whether the attorney was successful and what benefits were derived.

Barney, 192 P.3d at 736 (citing *Brunzell*, 85 Nev. at 349, 455 P.2d at 33).

According to *Shuette,* the district court is required to "provide[ ] sufficient reasoning and findings in support of its ultimate determination." *Id.* (citing *Shuette,* 121 Nev. at 865, 124 P.3d at 549).

As set forth in Plaintiff's counsel's declaration, the lodestar amount of postjudgment attorney's fees is $34,632.50. *See* McMillen Decl., ¶¶ 2-6A and Exhibit 2. This amount only includes reasonable attorney's fees from October 18, 2013 to April 18, 2014, as follows: 14.4 hours of work performed by attorney Matthew D. Francis at $300 per-hour ($4,320.00); 81.5 hours of work performed by attorney Adam P. McMillen at $300 per-hour ($24,450.00); and 46.9 hours of work performed by paralegal Nancy Lindsley at $125 per-hour ($5,862.50). *Id.* This lodestar amount is reasonable under the Brunzell factors as follows.

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

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

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

Accordingly, Plaintiff's claimed postjudgment attorney's fees are reasonable under these factors.

(2) Factor 3 – The Time and Labor Required

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

incorporated by reference herein. McMillen Decl., ¶¶ 5-10 and Exhibits 2-3. In sum, the time expended for the work product in this case is more than reasonable.

(3) Factor 4 - The Result—Whether The Attorney Was Successful And What Benefits Were Derived

Plaintiff prevailed on all of his causes of action in this case. Plaintiff's case against Defendants resulted in a Default Judgment being entered against Defendants on Plaintiff's causes of action. Specifically, the Court ordered Defendants to pay Plaintiff $1,495,775.74, plus interest. In addition, through postjudgment efforts, Plaintiff's counsel has successfully liened Zandian's Nevada real estate to secure the judgment and Plaintiff's counsel is in the process of securing appropriate writs of execution to satisfy the judgment. Thus, Plaintiff obtained the results sought, and this factor weighs in favor of the reasonableness of Plaintiff's fee request.

In sum, an analysis of the *Brunzell* factors and other applicable case law proves Plaintiff's fees in the lodestar amount of $34,632.50 are reasonable and should be awarded.

IV. Conclusion

For the reasons stated above, Plaintiff respectfully requests that this Motion for Order Allowing Costs and Necessary Disbursements be granted in full.

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.

WATSON ROUNDS

By: _____

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CERTIFICATE OF SERVICE

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, **MOTION FOR ORDER ALLOWING COSTS AND NECESSARY DISBURSEMENTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**, addressed as follows:

Jason D. Woodbury
Severin A. Carlson
Kaempfer Crowell
510 West Fourth Street
Carson City, Nevada 89703
Attorneys for Defendant, Reza Zandian

Dated: April 25, 2014

Nancy Lindsley