

1 Case No.: 090C00579 1B
2 Dept. No.: 1

REC'D & FILED

2014 MAY 19 PM 2: 22

3 ALAN GLOVER
4 BY  CLERK
5 DEPUTY

6
7 **In The First Judicial District Court of the State of Nevada**
8 **In and for Carson City**
9

10
11 JED MARGOLIN, an individual,
12 Plaintiff,

Case No.: 090C00579 1B
Dept. No.: 1

13 vs.

14 OPTIMA TECHNOLOGY CORPORATION,
15 a California corporation, OPTIMA
16 TECHNOLOGY CORPORATION, a Nevada
17 corporation, REZA ZANDIAN
18 aka GOLAMREZA ZANDIANJAZI
19 aka GHOLAM REZA ZANDIAN
20 aka REZA JAZI aka J. REZA JAZI
21 aka G. REZA JAZI aka GHONONREZA
22 ZANDIAN JAZI, an individual, DOE Companies
23 1-10, DOE Corporations 11-20, and DOE
24 Individuals 21-30,
25 Defendants.

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

22 This matter comes before the Court on Plaintiff Jed Margolin's ("Margolin") Motion
23 for Order Allowing Costs and Necessary Disbursements and Memorandum of Points and
24 Authorities in Support Thereof, filed on April 28, 2014. On April 30, 2014, Defendant Reza
25 Zandian ("Zandian") filed a Motion to Retax and Settle Costs, wherein Defendant Zandian
26 addressed Margolin's Motion for Order Allowing Costs and Necessary Disbursements. On
27 May 12, 2014, Zandian served an Opposition to Motion for Order Allowing Costs and
28

1 Necessary Disbursements, which restates the arguments included in the Motion to Retax. On
2 May 12, 2014, Margolin filed a Reply in Support of the Motion for Order Allowing Costs and
3 Necessary Disbursements and Margolin also filed a Request for Submission on the same date.
4 On May 14, 2014, Margolin filed an Amended Request for Submission, finally submitting the
5 Motion for Order Allowing Costs and Necessary Disbursements to the Court for decision.

6 Based upon the following facts and conclusions of law, the Motion for Order Allowing
7 Costs and Necessary Disbursements is hereby GRANTED.

8
9 **I. Postjudgment Costs**

10 Zandian does not dispute Margolin is allowed postjudgment costs under NRS 18.160
11 and NRS 18.170. Zandian does not dispute the requested research, witness fees or process
12 service/courier costs. Zandian only requests that the Court reduce the photocopy charges from
13 \$0.25 to \$0.15 per page. Zandian relies upon what the "FedEx Office" in Carson City charges
14 for copies to demonstrate that Margolin's rate of \$0.25 per page is not reasonable.

15 Margolin cites to the First Judicial District Court's own fee schedule for copy charges,
16 which shows the Court charges \$0.50 per page for copies. The District Court's own fee
17 schedule is a better exemplar of what reasonable copy charges should be in this matter. The
18 rate of \$0.25 per page is half of what the Court charges for legal copies and the Court finds
19 that \$0.25 is reasonable under the circumstances. Therefore, Margolin's copy charges will not
20 be reduced and are awarded in full in the amount requested. Since Zandian did not oppose the
21 other costs, Margolin is granted his costs pursuant to NRS 18.160 and NRS 18.170, as follows:

22
23 **COSTS (October 18, 2013 THROUGH April 18, 2014):**

24
25 Postage/photocopies (in-house) \$ 481.20
26 Research 285.31
27 Witness Fees (Subpoenas) 215.66
28 Process service/courier fees 373.00
\$1,355.17

1 **II. Postjudgment Attorney's Fees**

2 Zandian argued that there is no applicable statute or rule upon which postjudgment
3 attorney's fees can be awarded to Margolin and that the parties did not enter into an agreement
4 which affords attorney's fees and therefore Margolin's request for postjudgment attorney's
5 fees should be denied. Further, Zandian argues that NRS 598.0999(2) does not permit an
6 award of attorney's fees in this case.

7 However, NRS 598.0999(2) is applicable to any action filed pursuant to the provisions
8 of NRS 598.0903 to 598.0999, inclusive. Accordingly, Margolin should be awarded his
9 postjudgment fees pursuant to the Deceptive Trade Practices statute.
10

11 **a. NRS 598.0999(2) provides for an award of attorney's fees**

12 NRS 598.0999(2) states as follows:

13 Except as otherwise provided in NRS 598.0974, in any action brought pursuant
14 to the provisions of NRS 598.0903 to 598.0999, inclusive, if the court finds that
15 a person has willfully engaged in a deceptive trade practice, the district attorney
16 of any county in this State or the Attorney General bringing the action may
17 recover a civil penalty not to exceed \$5,000 for each violation. The court in any
18 such action may, in addition to any other relief or reimbursement, award
19 reasonable attorney's fees and costs.

20 NRS 598.0999(2) (emphasis added).

21 Thus, the phrase, "provisions of NRS 598.0903 to 598.0999," encompasses all actions
22 brought under those sections. The language, "any action brought pursuant to the provisions of
23 NRS 598.0903 to 598.0999," does not limit Deceptive Trade Practices actions to district
24 attorneys or the Attorney General. The only limitation in NRS 598.0999(2) relates to the
25 district attorney's and the Attorney General being able to pursue the \$5,000 civil penalty. In
26 contrast, the last sentence of NRS 598.0999(2) stands alone and does not limit attorney fee
27 awards to district attorneys or the Attorney General and allows the Court, in any Deceptive
28 Trade Practices action, to "award reasonable attorney's fees and costs." NRS 598.0999(2).

1 As NRS 598.0999(2) provides for attorney's fees based upon actions filed pursuant to
2 the provisions of NRS 598.0903 to 598.0999, inclusive, and since NRS 598.0999(2) does not
3 exclude postjudgment attorney fees, Margolin's attorney's fees are hereby awarded for having
4 to incur fees enforcing the judgment on the deceptive trade practices claim.

5 **b. Margolin's attorneys' fees are reasonable**

6 "In Nevada, 'the method upon which a reasonable fee is determined is subject to the
7 discretion of the court,' which 'is tempered only by reason and fairness.'" *Shuette v. Beazer*
8 *Homes Holdings Corp.*, 124 P. 3d 530, 121 Nev. 837 (2005) (citing *University of Nevada v.*
9 *Tarkanian*, 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994)). "Accordingly, in
10 determining the amount of fees to award, the court is not limited to one specific approach; its
11 analysis may begin with any method rationally designed to calculate a reasonable amount,
12 including those based on a 'lodestar' amount or a contingency fee." *Id.* (citations omitted).
13 "The lodestar approach involves multiplying 'the number of hours reasonably spent on the
14 case by a reasonable hourly rate.'" *Id.* at n. 98 (citing *Herbst v. Humana Health Ins. of*
15 *Nevada*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989)).
16

17
18 Before awarding attorney's fees, the district court must make findings concerning the
19 reasonableness of the award, as required by *Brunzell v. Golden Gate National Bank*, 455 P.2d
20 31, 85 Nev. 345 (1969) and *Shuette v. Beazer Homes Holdings Corp.*, 124 P. 3d 530, 121 Nev.
21 837 (2005). See *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 829-30, 192
22 P.3d 730, 735-7 (2008).

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

- 25
26 (1) the advocate's qualities, including ability, training, education, experience,
27 professional standing, and skill;
28 (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;

- 1 (3) the work performed, including the skill, time, and attention given to the
work; and
2 (4) the result—whether the attorney was successful and what benefits were
derived.

3 *Barney*, 192 P.3d at 736 (citing *Brunzell*, 85 Nev. at 349, 455 P.2d at 33). According to
4 *Shuette*, the district court is required to “provide[] sufficient reasoning and findings in support
5 of its ultimate determination.” *Id.* (citing *Shuette*, 121 Nev. at 865, 124 P.3d at 549).
6

7 Margolin concedes that he is not currently entitled to attorney’s fees that are incurred
8 on appeal. See *Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 288, 994 P.2d
9 1149, 1150 (2000). However, as stated above, Margolin is entitled to his postjudgment
10 attorney’s fees, including those incurred in executing on the judgment. Therefore, Margolin is
11 hereby awarded only those fees that have been incurred, postjudgment, with regards to
12 execution of the judgment, for a total of \$31,247.50 in fees, which reflects the lodestar amount
13 of postjudgment attorney’s fees.
14

15 The amount of attorney’s fees awarded only includes reasonable attorney’s fees from
16 October 18, 2013 to April 18, 2014, as follows: 11.4 hours of work performed by attorney
17 Matthew D. Francis at \$300 per-hour (\$3,420.00); 75.3 hours of work performed by attorney
18 Adam P. McMillen at \$300 per-hour (\$22,590.00); and 41.9 hours of work performed by
19 paralegal Nancy Lindsley at \$125 per-hour (\$5,237.50). This lodestar amount is reasonable
20 under the *Brunzell* factors as follows.
21

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

24 The issues related to this case included: (a) whether Plaintiff’s patents were entitled to
25 protection; (b) whether Defendants fraudulently assigned Plaintiff’s patents; and (c), whether
26 Plaintiff was damaged by Defendants’ conduct. The patent and deceptive trade practices
27 issues, and the unique facts surrounding them, involved careful consideration and research. In
28 general, patent and deceptive trade practices litigation is a niche practice that requires a high

1 degree of legal skill and care in order to be performed properly and effectively. Each of these
2 causes of action, coupled with the unique facts of this matter, required thorough research and
3 careful analysis.

4 In addition, the postjudgment collection efforts so far have included attempting to find
5 Zandian's collectible assets, including researching and investigating his property in Nevada
6 and California and moving for a debtor's examination. Considering Zandian's elusive
7 behavior to date and elaborate financial arrangements with a multitude of companies and
8 individuals, Margolin has been forced to incur a significant amount of attorney's fees in
9 attempting to collect on the judgment.
10

11 Accordingly, Margolin's claimed postjudgment attorney's fees are reasonable under
12 these factors.

13 **(2) Factor 3 – The Time and Labor Required**

14 Margolin's counsel has been required to research Zandian's vast real estate holdings in
15 Nevada. Margolin's counsel has recorded the judgment in each Nevada County where
16 Zandian holds property. Margolin's counsel has researched and subpoenaed Zandian's
17 financial information from several financial institutions. Margolin's counsel has moved the
18 court for a debtor's examination of Zandian. The time and labor required relating to
19 collections efforts have been reasonable and significant.
20

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

23 Margolin prevailed on all of his causes of action in this case. Margolin's case against
24 the Defendants resulted in a Default Judgment being entered against the Defendants on
25 Margolin's causes of action. Specifically, the Court ordered Defendants to pay Plaintiff
26 \$1,495,775.74, plus interest. In addition, through postjudgment efforts, Margolin's counsel
27 has successfully liened Zandian's Nevada real estate to secure the judgment and Margolin's
28 counsel is in the process of securing appropriate writs of execution to satisfy the judgment.

1 Thus, Margolin obtained the results sought, and this factor weighs in favor of the
2 reasonableness of Margolin's fee request.

3 Further, the Court finds that while Zandian's failure to appear and defend this action
4 led to the default judgments being entered, the nature of this matter required specialized skill
5 and required a significant amount of time and attention by the attorneys involved.

6 The Court finds that patent and deceptive trade practices issues, and the unique facts
7 surrounding them; involved careful consideration and research. Patent and deceptive trade
8 practices litigation is a not a routine practice but requires a high degree of legal skill and care
9 in order to be performed properly and effectively. Each of the causes of action in this matter,
10 coupled with the unique facts of this matter, required thorough research and careful analysis.
11 The Court finds that Margolin's counsel billed at an hourly rate of \$300, which is reasonable
12 for this matter.
13

14 In summary, an analysis of the *Brunzell* factors proves Margolin's fees in the lodestar
15 amount of \$31,247.50 are reasonable and are hereby awarded.
16

17 **III. Postjudgment Interest**

18 Margolin seeks a formal judgment for the postjudgment interest accrued on the
19 judgment to date. Zandian argues it is premature for Margolin to request an order stating what
20 the current amount of accrued postjudgment interest is at this time. Zandian does not argue
21 that Margolin is not entitled to postjudgment interest.

22 "The purpose of post-judgment interest is to compensate the plaintiff for loss of the use
23 of the money awarded in the judgment 'without regard to the elements of which that judgment
24 is composed.'" *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 1269, 969 P.2d 949, 963
25 (1998) (citing *Ainsworth v. Combined Ins. Co.*, 105 Nev. 237, 244, 774 P.2d 1003, 1009
26 (1989); see also *Waddell v. L.V.R.V. Inc.*, 122 Nev. 15, 26, 125 P.3d 1160, 1167 (2006)
27 ("[t]he purpose of post-judgment interest is to compensate the plaintiff for loss of the use of
28

1 the money awarded in the judgment' without regard to the various elements that make up the
2 judgment.”).

3 Since Zandian has not provided a supersedeas bond to stop execution of the judgment,
4 Margolin is entitled to postjudgment interest until the judgment is satisfied. *See* NRCP 62(d)
5 (by giving a supersedeas bond a party may obtain stay of execution); *see also* NRS 17.130(2)
6 (interest accrues until judgment satisfied). As the original judgment was entered in Nevada
7 and the judgment set the interest rate at the legal rate of interest according to NRS 17.130, the
8 interest rate is 5.25 percent per-annum, or \$215.15 per-day. Accordingly, the Court hereby
9 finds that Margolin is owed simple interest at 5.25 percent or \$215.15 per-day from June 27,
10 2013, the date of notice of entry of the judgment, through April 18, 2014. It is 296 days from
11 June 27, 2013 to April 18, 2014. Multiplying 296 days by \$215.15 equals \$63,684.40 in
12 accrued interest, which is the amount of interest currently due and owing.¹

14 **IV. Conclusion**

15 Based upon the above, the Motion for Order Allowing Costs and Necessary
16 Disbursements is GRANTED in full. Therefore, Margolin is awarded his postjudgment costs,
17 from October 18, 2013 through April 18, 2014, in the amount of \$1,355.17. Margolin is
18 awarded his postjudgment attorney’s fees in the amount of \$31,247.50. Margolin is awarded
19 his postjudgment interest in the amount of \$63,684.40.
20

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

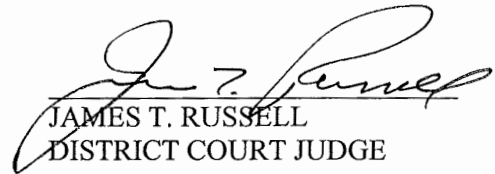
28

¹ Interest continues to accrue until the judgment is satisfied. *See* NRS 17.130(2).

1 The total amount awarded to Margolin herein is \$96,287.07. This award shall be added
2 to the judgment. This award must be paid before satisfaction of judgment may be entered in
3 this matter. Payment of this award shall be made within 10 days of notice of entry of this
4 Order. Payment shall be made payable to the Watson Rounds Trust Account or to Jed
5 Margolin. Payment shall be delivered to the law office of Watson Rounds.

6 DATED: This 19 day of May, 2014.

IT IS SO ORDERED:

7
8
9 
10 JAMES T. RUSSELL
11 DISTRICT COURT JUDGE
12
13
14
15

16 Respectfully submitted by,

17 WATSON ROUNDS, P.C.

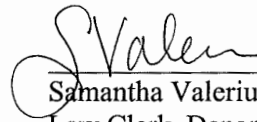
18 By: _____
19 Adam P. McMillen, Esquire
20 Nevada Bar No. 10678
21 5371 Kietzke Lane
22 Reno, NV 89511
23 Telephone: (775) 324-4100
24 Facsimile: (775) 333-8171
25 Email: amcmillen@watsonrounds.com
26 Attorneys for Plaintiff
27
28

1 CERTIFICATE OF MAILING

2 I hereby certify that on the 19th day of May, 2014, I placed a copy of the
3 foregoing in the United States Mail, postage prepaid, addressed as follows:

4
5 Matthew D. Francis
6 Adam P. McMillen
7 Watson Rounds
8 5371 Kietzke Lane
9 Reno, NV 89511

10 Jason D. Woodbury
11 Severin A. Carlson
12 Kaempfer Crowell
13 510 West Fourth Street
14 Carson City, NV 89703



15
16
17
18
19
20
21
22
23
24
25
26
27
28
Samantha Valerius
Law Clerk, Department I