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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

REZA ZANDIAN A/K/A/ GOLAMREZA  
ZANDIANJAZI A/K/A GHOLAM REZA  
ZANDIAN A/K/A REZA JAZI A/K/A J.  
REZA JAZI, A/K/A/ G. REZA JAZI  
A/K/A/ GHONOREZA ZANDIAN JAZI,  
AN INDIVIDUAL,

Appellant,

vs.

JED MARGOLIN, AN INDIVIDUAL,

Respondent.

**Nevada Supreme Court  
Case No. 65960**

District Court Case No.  
090C005791B

Appeal from the First Judicial District Court of the State of Nevada  
In and For Carson City  
The Honorable James T. Russell, District Judge

**RESPONDENT'S APPENDIX  
Volume I  
(Part 3 of 3)**

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*Attorneys for Respondent Jed Margolin*

1 Ann.§ 18.2-500,

2 **COUNT 11**

3 **UNFAIR AND DECEPTIVE COMPETITION/BUSINESS PRACTICES**

4 81. The statements of all of the foregoing paragraphs are incorporated herein by reference  
5 as if fully set forth herein.

6 82. This is a cause of action for unfair and deceptive competition/business practices against  
7 OTC and UAS pursuant to the statutory law of California, California Business and  
8 Professions Code § 17200 *et. seq.*, to the extent such statutory scheme applies in this  
9 matter.

10 83. The actions of OTC and/or UAS, as alleged above, constitute one or more unlawful,  
11 unfair or fraudulent business acts or practices including but not limited to the following:

- 12 a. The acts/practices are/were "fraudulent" as they are/were untrue and/or are/were  
13 likely to deceive the public; and/or
- 14 b. The acts/practices are/were "unfair" as they constituted conduct that significantly  
15 threatens or harms competition; and/or
- 16 c. The acts/practices are/were "unfair" as they constitute conduct that offends an  
17 established public policy or when the practice is immoral, unethical, oppressive,  
18 unscrupulous or substantially injurious to consumers; and/or
- 19 d. The acts/practices are/were "unlawful" as they are/were in violation of the  
20 common-law duties that were owed to Optima; and/or
- 21 e. The acts/practices are/were "unlawful" as they are/were in violation of the legal  
22 principles expressed in the other Counts herein; and/or
- 23 f. The acts/practices are/were "unlawful" as they are/were in committed violation  
24 of Va. Code Ann. § 18.2-172 (a class 5 felony); and/or
- 25 g. The acts/practices are/were "unlawful" as they are/were in committed violation  
26 of Va. Code Ann. § 18.2-499 (a class 1 misdemeanor).

- 1 84. As a result thereof, Optima has suffered and will continue to suffer immediate and
- 2 ongoing harm and monetary damage.
- 3 85. Optima is without an adequate remedy at law.
- 4 86. Unless enjoined the acts of OTC and UAS will continue to cause further, great,
- 5 immediate and irreparable injury to Optima.
- 6 87. Optima is entitled to injunctive relief and restitutionary disgorgement pursuant to
- 7 California Business and Professions Code § 17203.

8 **COUNT 12**

9 **UAS LIABILITY**

- 10 88. The statements of all of the foregoing paragraphs are incorporated herein by reference
- 11 as if fully set forth herein.
- 12 89. In addition to any other liability existing as to the acts of UAS described herein UAS
- 13 is additionally liable under Counts 6-11 herein because:
  - 14 a. OTC acted as the agent and/or servant of UAS; and/or
  - 15 b. UAS aided and abetted the wrongful conduct of OTC through one or more of the
  - 16 following:
    - 17 i. UAS provided aid to OTC in its commission of a wrongful act that caused
    - 18 injury to Optima; and/or
    - 19 ii. UAS substantially assisted and/or encouraged OTC in the principal
    - 20 violation/wrongful act; and/or
    - 21 iii. UAS was aware of its role as part of overall illegal and/or tortious activity
    - 22 at the time it provided the assistance; and/or
    - 23 iv. UAS reached a conscious decision to participate in tortious activity for
    - 24 the purpose of assisting OTC in performing a wrongful act; and/or
    - 25 c. UAS engaged in a civil conspiracy with OTC through an agreement to
    - 26 accomplish an unlawful purpose and/or to accomplish a lawful object by

- 1 unlawful means, one of whom committed an act in furtherance thereof, thereby
- 2 causing damages to Optima; and/or
- 3 d. UAS and OTC acted in concert; and/or
- 4 e. UAS provided affirmative aid and/or encouragement to the wrongful conduct of
- 5 OTC; and/or
- 6 f. UAS directed, ordered and/or induced the wrongful conduct of OTC while
- 7 knowing (or should having known) of circumstances that would have made the
- 8 conduct tortious if it were UAS's; and/or
- 9 g. UAS advised OTC to commit the wrongful conduct which resulted in a legal
- 10 wrong and/or harm to Optima; and/or
- 11 h. UAS acted together with OTC to commit the wrongful conduct pursuant to a
- 12 common design; and/or
- 13 i. UAS knew that the OTC's conduct would constitute a breach of duty and gave
- 14 substantial assistance or encouragement to OTC so to conduct itself; and/or
- 15 j. UAS gave substantial assistance to OTC in accomplishing a tortious result and
- 16 UAS's own conduct, separately considered, constitutes a breach of duty to
- 17 Optima; and/or
- 18 k. UAS knowingly participated in the wrongful action of OTC.
- 19 90. As a result thereof, UAS is jointly and severally liable for any such damages awarded
- 20 to Optima under Counts 6-11 herein.

21 **COUNT 13**

22 **PUNITIVE DAMAGES**

- 23 91. The statements of all of the foregoing paragraphs are incorporated herein by reference
- 24 as if fully set forth herein.
- 25 92. This is a claim for punitive damages against OTC and UAS pursuant to the common law
- 26 and/or statutory law of New York, Delaware, California, Virginia or Arizona.

- 1 93. Through their actions referenced herein, OTC and UAS:
- 2 a. Acted with an intent to injure Optima and/or consciously pursued a course of
- 3 conduct knowing that it created a substantial risk of significant harm to Optima;
- 4 and/or
- 5 b. Acted with an "evil hand" guided by an "evil mind"; and/or
- 6 c. Engaged in intentional and deliberate wrongdoing and with character of outrage
- 7 frequently associated with crime; and/or
- 8 d. Engaged in conduct that may be characterized as gross and morally reprehensible
- 9 and of such wanton dishonesty as to imply criminal indifference to civil
- 10 obligations; and/or
- 11 e. Acted with conduct so reckless and wantonly negligent as to be the equivalent
- 12 of a conscious disregard of the rights of others; and/or
- 13 f. Acted with a fraudulent and/or evil motive; and/or
- 14 g. Acted with aggravation and outrage; and/or
- 15 h. Acted with outrageous conduct with evil motive and/or reckless indifference to
- 16 rights of others; and/or
- 17 i. Acted with wilful and/or wanton disregard for the rights of others; and/or
- 18 j. Were aware of probable dangerous consequences of their conduct and willfully
- 19 and deliberately failed to avoid those consequences; and/or
- 20 k. Acted with the intent to vex, injury or annoy, or with a conscious disregard of the
- 21 right of others; and/or
- 22 l. Engaged in reprehensible and/or fraudulent conduct; and/or
- 23 m. Acted in blatant violation of law or policy; and/or
- 24 n. Acted with extreme indifference to the rights of others; and/or
- 25 o. Are guilty of oppression, fraud and/or malice, as defined by and pursuant to
- 26 Cal.Civ.Code § 3294; and/or

- 1 p. Acted with wilful and wanton conduct so as to evince a conscious disregard of
- 2 the rights of others; and/or
- 3 q. Acted with recklessness and/or negligence so as to evince a conscious disregard
- 4 of the rights of others; and/or
- 5 r. Engaged in malicious conduct; and/or
- 6 s. Engaged in misconduct and/or actual malice.
- 7 94. As a result thereof, Optima is entitled to an award of punitive damages against OTC and
- 8 UAS herein in an amount to be determined by a jury.

9 **EXCEPTIONAL CASE**

10 This is an exceptional case under 35 U.S.C. § 285 in which Counterclaimant and  
11 Cross-Claimant Optima is entitled to its attorneys' fees and costs incurred in connection with  
12 this action.

13 **JURY TRIAL DEMAND**

14 Counterclaimant Optima demands a jury trial on all claims and issues to be litigated in  
15 this matter.

16 **PRAYER FOR RELIEF**

17 WHEREFORE Optima requests that the Court enter judgment in favor of Optima, and  
18 against UAS, OTC, Naimer, and Hummel, on the Counterclaims, Cross-Claims and Third-Party  
19 Claims, as follows:

- 20 1. Declaring that the Infringing Products, and all other of UAS's products shown to be
- 21 encompassed by one or more claims of the asserted Patents infringe said Patents;
- 22 2. Awarding Optima its monetary damages, and a doubling or trebling thereof, incurred
- 23 as a result of Defendants' willful infringement and unlawful conduct, as provided under
- 24 35 U.S.C. § 284;
- 25 3. Declaring that this is an exceptional case pursuant to 35 U.S.C. § 285 and awarding
- 26 Optima its attorneys fees incurred in having to prosecute this action;

- 1 4. Ordering that all of the Counterdefendants, Crossdefendants and Third-Party  
2 Defendants and all those in active concert or privity with them be temporarily,  
3 preliminarily and permanently enjoined from further infringement of U.S. Patent No.  
4 5,566,073 (the '073 patent) and U.S. Patent No. 5,904,724 (the '724 patent);
- 5 5. Awarding Optima its actual, special, compensatory, economic, punitive and other  
6 damages, including but not limited to:
  - 7 a. A reasonable royalty and/or lost profits attributable to defendants' past, present  
8 and ongoing infringement of the Patents;
  - 9 b. The reduced value of the Patents and/or licenses with respect thereto;
  - 10 c. Optima's attorneys' fees and costs incurred in preparing and recording filings  
11 with the PTO; and
  - 12 d. Optima's ongoing attorneys' fees and costs incurred in filing and prosecuting the  
13 cross-claims against OTC herein to establish the invalidity, void nature, etc., of  
14 its filing of the Assignment with the PTO and claim of any right or interest in the  
15 Power of Attorney and/or the Patents, and to otherwise remove the cloud of title,  
16 impairment of vendibility, etc., with respect to Optima's rights in the Patents  
17 and/or the Power of Attorney;
- 18 6. Declaring that OTC has no interest or right in the Patents or the Power of Attorney;
- 19 7. Declaring that the Assignment OTC filed with the PTO is forged, invalid, void, of no  
20 force and effect, should be struck from the records of the PTO, and that the PTO correct  
21 its records with respect to any such claim made by OTC with respect to the Patents  
22 and/or the Power of Attorney;
- 23 8. Enjoining OTC from asserting further rights or interests in the Patents and/or Power of  
24 Attorney;
- 25 9. Enjoining UAS and OTC from further acts of unfair competition;
- 26 10. Granting Optima its attorneys' fees and costs pursuant to applicable law, including but

1 not limited to A.R.S. §12-341.01 and § 12-340 and/or the laws of one or more of New  
2 York, Virginia, Delaware and/or California;

- 3 11. Granting Optima prejudgment and post-judgment interest at the legal rate; and  
4 12. Granting Optima such other and further relief as the Court deems just and proper.

5 RESPECTFULLY SUBMITTED this 24th day of January, 2008.

6 CHANDLER & UDALL, LLP

7  
8 By /s/ Edward Moomjian II  
9 Edward Moomjian II  
10 Jeanna Chandler Nash  
11 Attorneys for Defendants Adams, Margolin  
12 and Optima Technology Inc. a/k/a Optima  
13 Technology Group, Inc.

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on January 24, 2008, I electronically transmitted the attached  
16 document to the Clerk's office using the EM/ECF System for filing and transmittal of a Notice  
17 of Electronic Filing to the following CM/DCF registrants:

18 E. Jeffrey Walsh, Esquire  
19 Greenberg Traurig, LLP  
20 2375 East Camelback Road, Suite 700  
21 Phoenix, Arizona 85016  
22 *Attorneys for Plaintiff*

23 Scott Joseph Bornstein, Esquire  
24 Paul J. Sutton, Esquire  
25 Allan A. Kassenoff, Esquire  
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s/



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11 Attorneys for Defendant Reza Zandian

12 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

13 **IN AND FOR CARSON CITY**

14 JED MARGOLIN, an individual;

Case No.: 090C00579

Dept. No.: I

15 Plaintiff,

16 vs.

17 OPTIMA TECHNOLOGY CORPORATION,  
18 a California corporation, OPTIMA  
19 TECHNOLOGY CORPORATION, a Nevada  
20 coporation, REZA ZANDIAN aka  
21 GOLAMREZA ZANDIANJAZI aka  
22 GHOLAM REZA ZANDIAN aka REZA  
23 JAZI aka J. REZA JAZI AKA G. REZA JAZI  
24 aka GHONONREZA ZANDIAN JAZI, an  
25 individual, DOE Companies 1-10; DOE  
26 Corporations 11-20, and DOE Individuals 21-  
27 30,

28 Defendants.

1334.023382-td

**MOTION TO DISMISS AMENDED COMPLAINT ON SPECIAL APPEARANCE**

COMES NOW Defendant Reza Zandian by and through his counsel John Peter Lee, Ltd., and hereby files his MOTION TO DISMISS AMENDED COMPLAINT ON SPECIAL APPEARANCE.

This Motion is made and based upon all of the pleadings and papers on file herein, exhibits attached hereto, the attached Memorandum of Points and Authorities, and oral argument, if required by the Court.

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R.A.000120

JM\_SC2\_1080

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **ZANDIAN IS AGAIN BEFORE THIS COURT ON A SPECIAL APPEARANCE.**

4 The Nevada Supreme Court has held that “general appearance is entered when a person (or  
5 the person’s attorney) comes into court as a party to a suit and submits to the jurisdiction of the  
6 court.” Milton v. Gesler, 107 Nev. 767, 769, 819 P.2d 245, 247 (1991). “A special appearance is  
7 entered when a person comes into court to test the court’s jurisdiction or the sufficiency of service.”  
8 Id. “Black’s law dictionary defines a general appearance as a ‘simple and unqualified. . . submission  
9 to the jurisdiction of the court’ and defines a special appearance as an appearance ‘for the purpose  
10 of testing the sufficiency of service or the jurisdiction of the court.” Id. at fn. 3 (citing Black’s Law  
11 Dictionary 89 (5th ed. 1979)).

12 Defendant Golamreza Zandianjazi (hereinafter “Zandian”) hereby makes a special appearance  
13 in this case for the purpose of testing both the sufficiency of service and the jurisdiction of the court;  
14 thus, Zandian has not consented to personal jurisdiction of any Nevada court by bringing the instant  
15 motion.

16 **II.**

17 **SUMMARY OF FACTS.**

18 **A. Procedural History.**

19 Plaintiff Jed Margolin (hereinafter “Margolin”) filed a Complaint in 2009 with a Nevada  
20 District Court against Zandian, among other defendants. *See* Court Record. Without serving said  
21 Complaint upon Zandian, Margolin took a default judgment against Zandian. Id. Zandian  
22 challenged the Complaint and the Default Judgment and filed a Motion to Dismiss on a Special  
23 Appearance (hereinafter “First Motion to Dismiss”). Id. In response, Margolin requested, *inter alia*,  
24 that the Court grant him leave to amend his Complaint. Id. “Having found that service was never  
25 effectuated, the Default Judgment entered against [Zandian] on March 1, 2011 [was] set aside.”  
26 Exhibit “A”. The Court denied Zandian’s First Motion to Dismiss “without prejudice” on August  
27 3, 2011, and allowed Margolin a “ninety (90) days from the date of [the] Order to properly effectuate  
28 service of the Complaint and Summons and/or an Amended Complaint upon [Zandian].” Id.

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1 Accordingly, Margolin was to effectuate service by November 2, 2011, pursuant to Court order. *Id.*  
2 To date, there is no evidence in the record that Zandian was ever served by November 2, 2011.

3 **B. Undisputed Facts.**

4 Zandian hereby incorporates the Statement of Fact as stated in his last Motion to Dismiss  
5 Plaintiff's Complaint as though fully stated herein.

6 Margolin was involved in a action before the United States District Court for the District of  
7 Arizona related to the same subject matter that is the subject of the instant action. Exhibit "B". In  
8 the Arizona action, Margolin, along with his co-defendants, was granted relief against "Optima  
9 Technology Corporation, a Nevada corporation," who is a defendant in the instant action. *Id.* That  
10 action involved the same transactions and occurrences that are involved in this action: (1) that  
11 Margolin was the rightful owner of Patents Nos. 5,566,073 and 5,904,724, dated July 20, 2004; (2)  
12 that the assignment of those patents was "forged, invalid, void, of no force and effect"; and (3) that  
13 the assignment was to be "struck from the records of the USPTO." *Id.* The Arizona action,  
14 therefore, involving the same transactions and occurrences has been litigated to a final judgment.  
15 *Id.* Zandian was not a part of that action. *Id.*

16 In the Amended Complaint, Margolin has represented to the Court that "[i]n the Arizona  
17 Action, Mr. Margolin and OTG filed a cross-claim for declaratory relief against Optima Technology  
18 Corporation (Zandian) in order to obtain legal title to their respective patents." *Am. Compl.*, ¶ 17.  
19 Again, however, Zandian was not a party to the Arizona Action! Exhibit "B".

20 In the Amended Complaint there is not a single allegation suggesting that Zandian acted in  
21 his individual capacity in such a way to cause a justiciable injury to Margolin. *See Am. Compl.*  
22 Also, Zandian was never named as a party in the Arizona action where the same transactions and  
23 occurrences have already been litigated to a final judgment. Exhibit "B". Most importantly,  
24 Margolin has not alleged that any transactions or occurrences that are the subject of the Amended  
25 took place within the State of Nevada or within the County of Storey. *See Am. Compl.* The only  
26 conceivable, although speculative, connections between Nevada and Zandian that is provided in the  
27 Amended Complaint include the following: (1) that Zandian "at all relevant times resided in Las  
28 Vegas, Nevada"; (2) that "the Defendants at all times herein mentioned has been and/or is residing

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1 or currently doing business in and/or are responsible for the actions complained of herein in Storey  
2 County”; and (3) that Zandian is in some way connected to Optima Technology Corporation. Am.  
3 Compl., ¶¶ 4, 8 and 6, respectively. Zandian has not been alleged to have committed conversion in  
4 Nevada, interference with a contract in Nevada, interference with a perspective economic advantage  
5 in Nevada, unjust enrichment in Nevada, or unfair and deceptive trade practices in Nevada. *See* Am.  
6 Compl. While there is an allegation that Zandian filed out certain USPTO documents, there is not  
7 any allegations that he did so in his individual capacity or that he did so within the State of Nevada.

8 On or about August 11, 2011, Margolin filed a Motion to Serve by Publication (hereinafter  
9 “Publication Motion”). In that motion, Margolin did not provide any documents or evidence which  
10 suggest that personal service was ever attempted upon Zandian within the State of Nevada.  
11 Although Margolin has alleged that Zandian is a resident of Nevada, he attached a sworn declaration  
12 to his Publication Motion stating that Zandian’s last known address is “8401 Bonita Downs Road,  
13 Fair Oaks, California.” Publication Motion, Ex. “1”. Morgolin also attached three Affidavits of  
14 Service indicating that personal service was attempted on Zandian in Sacramento County, California  
15 only. *Id.* at Ex. “2” through “4”.

16 **III.**

17 **LEGAL ANALYSIS.**

18 **A. Service of the Summons and Complaint was Never Effectuated Upon Zandian.**

19 Proper service of a summons and complaint upon an individual must be made upon the  
20 individual “defendant personally, or by leaving copies thereof at the defendant’s dwelling house or  
21 usual place of abode with some person of suitable age and discretion then residing therein, or by  
22 delivering a copy of the summons and complaint to an agent authorized by appointment or by law  
23 to receive service of process.” NRCPC 4(d)(6). Pursuant to NRCPC 12(b)(4), insufficiency of service  
24 of process is grounds to dismiss a complaint. The Court ordered service to be effectuated on or  
25 before November 1, 2011. Exhibit “A”.

26 Zandian was not served a summons and complaint in the U.S. District Court action which  
27 forms the basis of the instant action. Exhibit “C”. Zandian is not mentioned in the Order issued  
28 from the U.S. District Court. *Id.* at Exhibits “B” & “C”. Zandian was not served a summons and

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1 complaint in the instant action. Exhibit "A". Notwithstanding, Plaintiff took a default judgment  
2 against Zandian. Id. That judgment has now been set aside because this Court found that Zandian  
3 had not been properly served. Id. There is no evidence in the record suggesting that service has been  
4 completed on Zandian as of the filing of this instant motion. See Court Record.

5 Because no summons was ever issued as to Zandian in the underlying U.S. District Court  
6 action which forms the basis of the instant action, any domestication of the U.S. District Court action  
7 as it pertains to Zandian is a clear violation of Zandian's constitutional right to notice under the Due  
8 Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution. Additionally,  
9 Zandian was not served in the instant case, in furtherance of the deprivation of Zandian's right to due  
10 process.

11 Because Zandian has never been given notice as required by NRCP 4 and/or the U.S.  
12 Constitution, Zandian must be dismissed from the instant action upon this instant motion by special  
13 appearance.

14 **B. Nevada Does Not Have Personal Jurisdiction Over Zandian in the Instant**  
15 **Action.**

16 "The plaintiff bears the burden of producing *some* evidence in support of all facts necessary  
17 to establish personal jurisdiction [emphasis added]." Trump v. District Court, 109 Nev. 687, 692-93,  
18 857 p.2d 740, 748 (1993). At first, Margolin alleged that Zandian resided in either San Diego or Las  
19 Vegas, but Plaintiff did not even attempt to serve Zandian in either of these alleged places of  
20 residence. See Compl.; compare to Publication Motion. Now, Margolin alleges in one paragraph  
21 of his Amended Complaint that Zandian has "at all relevant times resided in Las Vegas, Nevada."  
22 Am. Compl., ¶ 4. Margolin makes this allegation so that the Court will deem that it has personal  
23 jurisdiction over Zandian without further inquiry. Three paragraphs later, Margolin has alleged that  
24 Zandian and his co-defendant "at all relevant times herein mentioned has been and/or is residing or  
25 currently doing business in and/or are responsible for the actions complained of herein in Storey  
26 County." Margolin makes this allegation sp that the Court will deem Storey County as the proper  
27 venue without further inquiry. So, Zandian has been alleged to reside in Las Vegas, San Diego, and  
28 now Storey County; however, Margolin has never alleged with any specificity whatsoever that any

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1 of the transactions and occurrences (on the part of Zandian, as an individual) giving rise to this action  
2 took place within the State of Nevada.

3 "There are two types of personal jurisdiction: general and specific." Trump v. District Court,  
4 109 Nev. 687,699, 857 p.2d 740, 748 (1993). "General jurisdiction over the defendant 'is  
5 appropriate where the defendant's forum activities are so 'substantial' or continuous and systematic'  
6 that it may be deemed present in the forum.'" Id.; see also Baker v. Eighth Jud. Dist. Ct., 116 Nev.  
7 527, 531-31, 999 P.2d 1020, 1023 (2000) (holding that "membership in the state bar, in and of itself,  
8 does not subject an individual to general jurisdiction in the state of membership because such contact  
9 is not substantial, continuous, or systematic."). In this case, Plaintiff has not alleged that Zandian  
10 has ever had any "forum activities" in Nevada. Thus, without more, Nevada cannot exercise general  
11 personal jurisdiction over Zandian.

12 "Specific personal jurisdiction over a defendant may be established only where the cause of  
13 action arises from the defendant's contacts with the forum." Baker, supra. "To subject a defendant  
14 to specific jurisdiction, this court must determine if the defendant 'personally established minimum  
15 contacts' so that jurisdiction would 'comport with fair play and substantive justice [internal  
16 quotations omitted].'" Id. (citing Burger King Corp. V. Rudzewicz, 471 U.S. 462, 476-77, 85 L. Ed.  
17 2d 528, 105 S. Ct. 2174 (1985) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 320,  
18 90 L. Ed. 95, 66 S. Ct. 154 (1945)). "In order for a forum state to obtain personal jurisdiction over  
19 a nonresident defendant, the Due Process Clause of the Fourteenth Amendment requires that the  
20 defendant have 'minimum contacts' with the forum state 'such that the maintenance of the suit does  
21 not offend traditional notions of fair play and substantial justice.'" Baker, supra at 531-31. Here,  
22 Plaintiff has not alleged *any* contacts between Zandian and Nevada, except to allege that Zandian  
23 resides in either San Diego or Las Vegas or Storey County, and this is simply not enough to find that  
24 the court has personal jurisdiction over Zandian. Period. It was not enough last time Zandian filed  
25 a Motion to Dismiss this action, and it is not enough this time either, particularly because the  
26 Amended Complaint does not state a single transaction or occurrence that took place in Nevada.  
27 Thus, even if the instant transactions and occurrences complained about in the Amended Complaint  
28 were not adjudicated to a final judgment in Arizona, not a single transaction or occurrence has been

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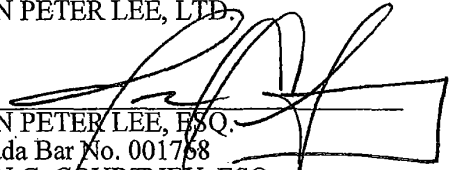
1 stated to have occurred in Nevada.

2 Zandian has not consented to personal jurisdiction in Nevada. Additionally, Zandian appears  
3 now, by and through his counsel, on a limited basis to respectfully dispute the Court's jurisdiction  
4 over him. Because Zandian is appearing for the sole purposes of disputing the Court's jurisdiction  
5 and challenging the propriety of service upon him, Zandian has neither consented to jurisdiction nor  
6 waived the lack thereof.

7 Margolin has not alleged or produced any facts indicating that Zandian has had minimum  
8 contacts with the State of Nevada. Period. This is true even though Margolin was granted leave to  
9 amend his Complaint the last time Zandian sought dismissal. Thus, pursuant to NRCP 12(b)(2), the  
10 Court must dismiss Zandian from the instant action without prejudice.

11 DATED this 16th day of November, 2011.


12 JOHN PETER LEE, LTD.

13 BY:   
14 JOHN PETER LEE, ESQ.  
15 Nevada Bar No. 001758  
16 JOHN C. COURTNEY, ESQ.  
17 Nevada Bar No. 011092  
18 830 Las Vegas Boulevard South  
19 Las Vegas, Nevada 89101  
20 Ph: (702) 382-4044/Fax: (702) 383-9950  
21 Attorneys for Defendant Reza Zandian

22 **CERTIFICATE OF MAILING**

23 I HEREBY CERTIFY that on the 16th day of November, 2011, a copy of the foregoing  
24 MOTION TO DISMISS AMENDED COMPLAINT ON A SPECIAL APPEARANCE was served  
25 on the following parties by mailing a copy thereof, first class mail, postage prepaid, addressed to:

26 Adam McMillen, Esq.  
27 Watson Rounds  
28 5371 Kietzke Lane  
Reno, NV 89511

  
An employee of  
JOHN PETER LEE, LTD.

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*

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2013 APR 17 AM 11:39  
ALAN GLOVER  
BY                      CLERK  
J. HIGGINS

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

24 **Defendants.**

Case No.: 090C00579 1B

Dept. No.: 1

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

25 Plaintiff Jed Margolin hereby applies for a default judgment pursuant to NRC  
26 55(b)(2) against Defendants Reza Zandian ("Zandian"), Optima Technology Corporation, a  
27 Nevada corporation, and Optima Technology Corporation, a California corporation, in the  
28 principal amount of \$1,497,328.90, together with interest at the legal rate accruing from the  
date of default judgment. This Application is based upon the grounds that the Defendants are  
in default for failure to plead or otherwise defend as required by law.

Based on the following arguments and evidence, Plaintiff requests that the Court enter  
judgment in his favor, and against Defendants, in the manner set forth in the Attached Default



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

3 The facts contained in Plaintiff's Amended Complaint, and further discussed below,  
4 warrant entry of Final Judgment against Defendants for conversion, tortious interference with  
5 contract, intentional interference with prospective economic advantage, unjust enrichment, and  
6 unfair and deceptive trade practices.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. FACTUAL BACKGROUND**

9 Plaintiff Jed Margolin is the named inventor on United States Patent No. 5,566,073  
10 ("the '073 Patent"), United States Patent No. 5,904,724 ("the '724 Patent"), United States  
11 Patent No. 5,978,488 ("the '488 Patent") and United States Patent No. 6,377,436 ("the '436  
12 Patent") (collectively "the Patents"). See Amended Complaint, filed 8/11/11, ¶¶ 9-10. In  
13 2004, Mr. Margolin granted to Robert Adams, then CEO of Optima Technology, Inc. (later  
14 renamed Optima Technology Group (hereinafter "OTG"), a Cayman Islands Corporation  
15 specializing in aerospace technology) a Power of Attorney regarding the Patents. *Id.* at ¶ 11.  
16 Subsequently, Mr. Margolin assigned the '073 and '724 Patents to OTG and revoked the  
17 Power of Attorney. *Id.* at ¶ 13.

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

23 On or about December 5, 2007, Defendants filed with the U.S. Patent and Trademark  
24 Office ("USPTO") fraudulent assignment documents allegedly assigning all four of the Patents  
25 to Optima Technology Corporation ("OTC"), a company apparently owned by Defendant  
26 Zandian at the time. *Id.* at ¶ 15. Shortly thereafter, on November 9, 2007, Mr. Margolin,  
27 Robert Adams, and OTG were named as defendants in the case titled *Universal Avionics*  
28 *Systems Corporation v. Optima Technology Group, Inc.*, No. CV 07-588-TUC-RCC (the

1 “Arizona action”). *Id.* at ¶ 17. Zandian was not a party in the Arizona action. Nevertheless,  
2 the plaintiff in the Arizona action asserted that Mr. Margolin and OTG were not the owners of  
3 the ‘073 and ‘724 Patents, and OTG filed a cross-claim for declaratory relief against Optima  
4 Technology Corporation (“OTC”) in order to obtain legal title to the respective patents. *Id.*

5 On August 18, 2008, the United States District Court for the District of Arizona  
6 entered a default judgment against OTC and found that OTC had no interest in the ‘073 or  
7 ‘724 Patents, and that the assignment documents filed with the USPTO were “forged, invalid,  
8 void, of no force and effect.” *Id.* at ¶ 18; *see also* Exhibit B to Zandian’s Motion to Dismiss,  
9 dated 11/16/11, on file herein.

10 Due to Defendants’ fraudulent acts, title to the Patents was clouded and interfered with  
11 Plaintiff’s and OTG’s ability to license the Patents. *Id.* at ¶ 19. In addition, during the period  
12 of time Mr. Margolin worked to correct record title of the Patents in the Arizona action and  
13 with the USPTO, he incurred significant litigation and other costs associated with those  
14 efforts. *Id.* at ¶ 20.

## 15 **II. PROCEDURAL BACKGROUND**

16 Plaintiff filed his Complaint on December 11, 2009, and the Complaint was personally  
17 served on Defendant Zandian on February 2, 2010, and on Defendants Optima Technology  
18 Corporation, a Nevada corporation, and Optima Technology Corporation, a California  
19 corporation on March 21, 2010. Defendant Zandian’s answer to Plaintiff’s Complaint was due  
20 on February 22, 2010, but Defendant Zandian did not answer the Complaint or respond in any  
21 way. Default was entered against Defendant Zandian on December 2, 2010, and Plaintiff  
22 filed and served a Notice of Entry of Default on Defendant Zandian on December 7, 2010 and  
23 on his last known attorney on December 16, 2010.

24 The answers of Defendants Optima Technology Corporation, a Nevada corporation,  
25 and Optima Technology Corporation, a California corporation, were due on March 8, 2010,  
26 but Defendants did not answer the Complaint or respond in any way. Default was entered  
27 against Defendants Optima Technology Corporation, a Nevada corporation, and Optima  
28 Technology Corporation, a California corporation on December 2, 2010. Plaintiff filed and

1 served a Notice of Entry of Default on the corporate entities on December 7, 2010 and on their  
2 last known attorney on December 16, 2010.

3 The defaults were set aside and Defendant Zandian's motion to dismiss was denied on  
4 August 3, 2011. On September 27, 2011, this Court ordered that service of process against all  
5 Defendants may be made by publication. As manifested by the affidavits of service, filed  
6 herein on November 7, 2011, all Defendants were duly served by publication by November  
7 2011.

8 On February 21, 2012, the Court denied Zandian's motion to dismiss the Amended  
9 Complaint. On March 5, 2012, Zandian served a General Denial to the Amended Complaint.  
10 On March 13, 2012, the corporate Defendants served a General Denial to the Amended  
11 Complaint.

12 On June 28, 2012, this Court issued an order requiring the corporate Defendants to  
13 retain counsel and that counsel must enter an appearance on behalf of the corporate  
14 Defendants by July 15, 2012. If no such appearance was entered, the June 28, 2012 order said  
15 that the corporate Defendants' General Denial shall be stricken. Since no appearance was  
16 made on their behalf, a default was entered against them on September 24, 2012. A notice of  
17 entry of default judgment was filed on November 6, 2012.

18 On July 16, 2012, Mr. Margolin served Zandian with Mr. Margolin's First Set of  
19 Requests for Admission, First Set of Interrogatories and First Set of Requests for Production of  
20 Documents, but Zandian never responded to these discovery requests. As such, on December  
21 14, 2012, Mr. Margolin filed and served a Motion for Sanctions pursuant to NRCP 37. In this  
22 Motion, Mr. Margolin requested this Court strike the General Denial of Zandian and award  
23 Mr. Margolin his fees and costs incurred in bringing the Motion.

24 On January 15, 2013, this Court issued an order striking the General Denial of Zandian  
25 and awarding his fees and costs incurred in bringing the NRCP 37 Motion. A default was  
26 entered against Zandian on March 28, 2013, and a notice of entry of default judgment was  
27 filed on April 5, 2013.

28 Plaintiff now applies for a default judgment against all Defendants.

1 **III. ARGUMENT**

2 NRCP 55(b)(2) allows a party to apply to the Court for a default judgment. As set  
3 forth above, defaults have been properly entered against all Defendants. Default was entered  
4 against the corporate Defendants because they did not obtain counsel to represent them and  
5 they ignored the Court's order to obtain counsel. Default was entered against Zandian as a  
6 discovery sanction. When default is entered as a result of a discovery sanction, the non-  
7 offending party need only establish a prima facie case in order to obtain a default judgment.  
8 *Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042, 1049 (Nev. 2010) (default judgment  
9 entered and upheld after pleadings were stricken as a result of discovery sanction). Where a  
10 district court enters default, the facts alleged in the pleadings will be deemed admitted. *Id.*,  
11 *citing Estate of LoMastro v. American Family Ins.*, 124 Nev. 1060, 1068, 195 P.3d 339, 345 n.  
12 14 (2008). Thus, the district court shall consider the allegations deemed admitted to determine  
13 whether the non-offending party has established a prima facie case for liability. *Foster*, 126  
14 Nev. Adv. Op. 6, 227 P.3d at 1050.

15 The Nevada Supreme Court has defined a "prima facie case" as the "sufficiency of  
16 evidence in order to send the question to the jury." *Id.*, *citing Vancheri v. GNLV Corp.*, 105  
17 Nev. 417, 420, 777 P.2d 366, 368 (1989). A prima facie case is supported by sufficient  
18 evidence when enough evidence is produced to permit a trier of fact to infer the fact at issue  
19 and rule in the party's favor. *Foster*, 126 Nev. Adv. Op. 6, 227 P.3d at 1050, *citing Black's*  
20 *Law Dictionary* 1310 (9th ed. 2009). Where the non-offending party seeks monetary relief, a  
21 prima facie case requires the non-offending party to establish that the offending party's  
22 conduct resulted in damages, the amount of which is proven by substantial evidence. *Foster*,  
23 126 Nev. Adv. Op. 6, 227 P.3d at 1050, *citing Vancheri v. GNLV Corp.*, 105 Nev. at 420, 777  
24 P.2d at 368.

25 As a result, all of the averments in Plaintiff's Complaint, other than those as to the  
26 amount of damage, are admitted. *See supra*; *see also* NRCP 8(d). As set forth herein, a prima  
27 facie case exists for Plaintiff's claims for relief for each of his causes of action and Plaintiff  
28 has presented substantial evidence on the amount of damages he has incurred as a result of

1 Defendants' various tortious actions. *See supra.*; *see also* Amended Complaint; Declaration of  
2 Jed Margolin in Support of Application for Default Judgment ("Margolin Decl."), dated  
3 3/27/13, ¶ 3, Exhibit 2. As such, Plaintiff respectfully requests that judgment be entered in the  
4 manner set forth in the proposed Default Judgment filed and served herewith.

5 **A. MR. MARGOLIN HAS PROVIDED ADMISSIBLE EVIDENCE TO**  
6 **SUPPORT HIS CLAIM FOR CONVERSION**

7 Conversion is "a distinct act of dominion wrongfully exerted over another's personal  
8 property in denial of, or inconsistent with his title or rights therein or in derogation, exclusion,  
9 or defiance of such title or rights." *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606  
10 (2002), *quoting Wantz v. Redfield*, 74 Nev. 196, 198 (1958)). Further, conversion is an act of  
11 general intent, which does not require wrongful intent and is not excused by care, good faith,  
12 or lack of knowledge. *Id.*, *citing Bader v. Cerri*, 96 Nev. 352, 357 n. 1 (1980). Conversion  
13 applies to intangible property to the same extent it applies to tangible property. *See M.C.*  
14 *Multi-Family Development, L.L.C. v. Crestdale Associates, Ltd.*, 193 P.3d 536 (Nev. 2008),  
15 *citing Kremen v. Cohen*, 337 F.3d 1024, 1030 (9th Cir.2003)(expressly rejecting the rigid  
16 limitation that personal property must be tangible in order to be the subject of a conversion  
17 claim).

18 When a conversion causes "a serious interference to a party's rights in his property ...  
19 the injured party should receive full compensation for his actual losses." *Winchell v. Schiff*,  
20 193 P.3d 946, 950-951 (2008), *quoting Bader*, 96 Nev. at 356, overruled on other grounds by  
21 *Evans*, 116 Nev. at 608, 611. The return of the property converted does not nullify the  
22 conversion. *Bader*, 96 Nev. at 356.

23 As set forth in the Amended Complaint, Mr. Margolin owned the '488 and '436  
24 Patents, and had a royalty interest in the '073 and '724 Patents. Complaint, ¶¶ 9-14.  
25 Defendants filed false assignment documents with the USPTO in order to gain dominion over  
26 the Patents. *Id.*, ¶ 15; Margolin Decl., Exhibit 2. Defendants failed to pay Mr. Margolin for  
27 interfering with his property rights in the Patents. *Id.* at ¶¶ 22-24. Defendants' retention of  
28 Mr. Margolin's Patents is inconsistent with his ownership interest therein and defied his legal

1 rights thereto. *Id.* As a direct and proximate result of Defendants' conversion of Mr.  
2 Margolin's Patents, Mr. Margolin has suffered damages in the amount of \$300,000, which  
3 includes the amount Mr. Margolin paid in attorneys' fees in the Arizona Action where the  
4 Court ordered that the USPTO correct record title to the Patents (plus pre-judgment interest  
5 and costs – discussed below). Margolin Decl., ¶ 4, Exhibit 3.

6 The \$300,000 in damages also consists of \$210,000 that would have been paid to  
7 Plaintiff pursuant to a patent purchase agreement that was terminated as a result of the  
8 Defendants' actions as stated in the Amended Complaint. *See* Margolin Decl., ¶ 5. Plaintiff  
9 will provide documentation or specific details of the purchase agreement to the Court *in*  
10 *camera* because of the confidentiality provisions in the agreement. *Id.* Also, Plaintiff can  
11 state that on April 14, 2008, OTG entered into a purchase agreement to sell the '073 and '724  
12 patents to another entity which would have netted Plaintiff \$210,000 on the sale of the  
13 Patents. *Id.*; *see also* Amended Complaint, ¶¶ 11-14 (showing royalty agreement). The  
14 purchase agreement also included a provision for post-patent sale royalty payments which  
15 would have provided additional substantial income to the Plaintiff, which post-patent sale  
16 royalty payment damages are not being claimed here. *Id.* Finally, the April 14, 2008 purchase  
17 agreement provided the purchasing entity an opportunity to conduct due diligence regarding  
18 the Arizona Action prior to consummation of the sale. *Id.* On June 13, 2008, the purchasing  
19 entity wrote OTG and stated that they had completed their due diligence investigation and  
20 determined that the Patents and/or the Arizona Action were not acceptable and therefore the  
21 purchase agreement was terminated. *Id.* Thus, the purchase agreement was terminated  
22 because of Defendants' actions as stated herein and in the Amended Complaint. *Id.*

23 Mr. Margolin has stated a claim for conversion and presented evidence to support that  
24 claim and resulting damages.

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

27 "In Nevada, an action for intentional interference with contract requires: (1) a valid and  
28 existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or

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

7 Here, the facts alleged in the Amended Complaint and admitted by Defendants prove  
8 that Defendants intentionally interfered with Mr. Margolin's contract with OTG for the  
9 payment of royalties by filing false assignment documents with the USPTO. Amended  
10 Complaint, ¶¶ 26-30. Because the loss of title to the Patents prevented Mr. Margolin and OTG  
11 from licensing the Patents, no royalties were paid. The illegal act of filing "forged, invalid  
12 [and] void" documents with the USPTO support that Defendants had the requisite intent to  
13 interfere with Mr. Margolin's contract to collect royalties. *See* Margolin Decl., Exhibit 2. As  
14 a direct and proximate result of Defendants' interference of Plaintiff's contract with OTG,  
15 Plaintiff has suffered damages in the amount of \$300,000, as related above.

16 **C. MR. MARGOLIN HAS PROVIDED ADMISSIBLE EVIDENCE TO**  
17 **SUPPORT HIS CLAIM FOR INTENTIONAL INTERFERENCE WITH**  
18 **PROSPECTIVE ECONOMIC ADVANTAGE**

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

25 As alleged in the Amended Complaint, Mr. Margolin and OTG had already licensed  
26 the '073 and '724 Patents and were engaging in negotiations with other prospective licensees  
27 of the Patents when Defendants filed the fraudulent assignment documents with the USPTO  
28 with the intent to disrupt the prospective business. Complaint, ¶¶ 32-35. As a result of

1 Defendants' acts, Plaintiff's prospective business relationships were disrupted and Plaintiff has  
2 suffered damages in the amount of \$300,000, as stated above.

3 **D. MR. MARGOLIN HAS PROVIDED ADMISSIBLE EVIDENCE TO**  
4 **SUPPORT HIS CLAIM FOR UNJUST ENRICHMENT**

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

13 As set forth above and in the Amended Complaint, Mr. Margolin conferred a benefit  
14 on Defendants when Defendants took record title of the Patents. *See* Amended Complaint, ¶  
15 15. Defendants retained this benefit for approximately eight months and failed to provide any  
16 payment for title to the Patents. *Id.* at ¶¶ 15-18. As a direct result of Defendants' unjust  
17 retention of the benefit, Plaintiff suffered damages in the amount of \$300,000, as related  
18 above.

19 **E. MR. MARGOLIN HAS PROVIDED ADMISSIBLE EVIDENCE TO**  
20 **SUPPORT HIS CLAIM FOR UNFAIR TRADE PRACTICES**

21 Under N.R.S. § 598.0915, knowingly making a false representation as to affiliation,  
22 connection, association with another person, or knowingly making a false representation in the  
23 course of business constitutes unfair trade practices. By filing a fraudulent assignment  
24 document with the USPTO, Defendants knowingly made a false representation to the USPTO  
25 that Mr. Margolin and OTG had assigned the Patents to Defendants. *See* Amended Complaint,  
26 ¶¶ 15, 42-43. As a result of Defendants' false representation, Mr. Margolin was deprived of  
27 his ownership interests in the Patents for a period of approximately eight months.

28 The United States District Court for the District of Arizona ruled that OTC had no  
interest in the '073 or '724 Patents, and that the assignment documents Defendants filed with



1 the USPTO were “forged, invalid, void, of no force and effect.” Margolin Decl., Exhibit 2.  
2 Accordingly, Plaintiff has stated a claim for deceptive trade practices and has presented  
3 evidence to support that claim and the resulting damages in the amount of \$300,000, as stated  
4 above.

5 In addition, Plaintiff’s damages should be trebled pursuant to NRS 598.0999(3), which  
6 states as follows:

7 The court may require the natural person, firm, or officer or managing agent of  
8 the corporation or association to pay to the aggrieved party damages on all  
9 profits derived from the knowing and willful engagement in a deceptive trade  
10 practice and treble damages on all damages suffered by reason of the deceptive  
11 trade practice.

12 *Id.* Accordingly, Plaintiff’s \$300,000 in damages should be trebled to \$900,000.

13 Also, Plaintiff is entitled to his attorney’s fees and costs in this action pursuant to NRS  
14 598.0999(3), which states: “The court in any such action may, in addition to any other relief or  
15 reimbursement, award reasonable attorney’s fees and costs.” Plaintiff’s attorney’s fees in this  
16 case are \$83,761.25 to date. McMillen Declaration (“McMillen Decl.”), ¶ 2. Plaintiff’s costs  
17 in this case are \$25,021.96. McMillen Decl., ¶ 3. The total fees and costs in this case are  
18 \$108,783.21. As stated in the McMillen Decl., Plaintiff will provide its ledger *in camera* to  
19 the Court for review. *Id.*

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

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

22 When there is no express contract in writing fixing a different rate of interest,  
23 interest must be allowed at a rate equal to the prime rate at the largest bank in  
24 Nevada, as ascertained by the Commissioner of Financial Institutions, on  
25 January 1, or July 1, as the case may be, immediately preceding the date of the  
26 transaction, plus 2 percent, upon all money from the time it becomes due....

27 *Id.*

28 In Nevada, the prejudgment interest rate on an award is the rate in effect at the time the  
contract between the parties was signed. *Kerala Properties, Inc. v. Familian*, 122 Nev. 601,  
604 (2006). As set forth above, Defendants committed the tortious acts on December 12,  
2007. *See supra*. The controlling interest rate as of July 1, 2007 was 8.25%. *See* McMillen

1 Decl., Exhibit 1 (Prime Interest Rate table and information from the Nevada Division of  
2 Financial Institutions). As a result, the proper interest rate for calculating prejudgment interest  
3 is 10.25%. *Id.*; NRS 99.040.

4 As of December 12, 2007, the amount of \$900,000 was due and owing to Mr.  
5 Margolin. Margolin Decl., ¶ 4, Exhibit 3. As a result, that amount has been due and owing for  
6 at least 1,933 days (December 12, 2007 to March 27, 2013). The prejudgment interest amount  
7 is therefore \$488,545.89 (.1025 x 1,933 days x \$900,000 divided by 365).

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

9 NRS 18.020(1)-(3) provides, in pertinent part:

10 Costs must be allowed of course to the prevailing party against any adverse party  
11 against whom judgment is rendered, in the following cases: 1) in an action for the  
12 recovery of real property or a possessory right thereto; 2) in an action to recover the  
13 possession of personal property, where the value of the property amounts to more  
14 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.

15 *Id.*

16 If the Court grants this Application, Mr. Margolin will be the prevailing party under  
17 NRS 18.020 and will therefore be entitled to costs thereunder. As discussed herein and in the  
18 Complaint, Mr. Margolin is seeking to recover the value of property valued in excess of  
19 \$2,500 as well as money and damages in the amount of \$900,000.

20 To date, Mr. Margolin has incurred costs in the amount of \$25,021.96. McMillen  
21 Decl., ¶ 3.

22 **G. IN THE EVENT THE COURT IS NOT INCLINED TO ENTER  
23 DEFAULT JUDGMENT AGAINST DEFENDANTS IN THE AMOUNT  
24 AND MANNER REQUESTED, MR. MARGOLIN REQUESTS ORAL  
ARGUMENT ON ITS APPLICATION**

25 NRCP 55(b)(2) provides in pertinent part: “[i]f, in order to enable the court to enter  
26 judgment or to carry it into effect, it is necessary to take an account or to determine the amount  
27 of damages or to establish the truth of any averment by evidence or to make an investigation of  
28 any other matter, the court may conduct such hearings or order such references as it deems

1 necessary and proper....” *Id.* In the event the Court is not inclined to grant the requested  
2 relief and enter the Proposed Default Judgment in Mr. Margolin’s favor based on this  
3 Application alone, Mr. Margolin respectfully requests that oral argument be heard on this  
4 matter and on Mr. Margolin’s claims for relief.

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 \$488,545.89; attorney’s fees in the amount of \$83,761.25; and costs in the amount of  
10 \$25,021.96; for a total judgment of \$1,497,328.90.

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 16<sup>th</sup> day of April, 2013.

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**

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Pursuant to NRCF 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**, addressed as follows:

Reza Zandian  
8401 Bonita Downs Road  
Fair Oaks, CA 95628

Optima Technology Corp.  
A California corporation  
8401 Bonita Downs Road  
Fair Oaks, CA 95628

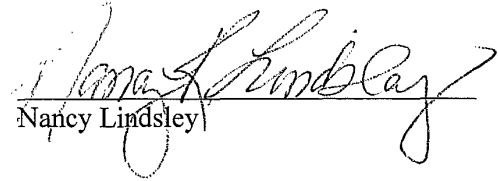
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Dated: April 16, 2013

  
Nancy Lindsley