

1 **I. FACTUAL BACKGROUND**

2 Plaintiff Jed Margolin is the named inventor on numerous patents and patent
3 applications, including United States Patent No. 5,566,073 (“the ‘073 Patent”), United States
4 Patent No. 5,904,724 (“the ‘724 Patent”), United States Patent No. 5,978,488 (“the ‘488
5 Patent”) and United States Patent No. 6,377,436 (“the ‘436 Patent”) (collectively “the
6 Patents”). See Amended Complaint, dated 8/11/11, ¶ 9, on file herein. Mr. Margolin is the
7 legal owner and owner of record for the ‘488 and ‘436 Patents, and has never assigned those
8 patents. *Id.* at ¶ 10. In 2004, Mr. Margolin granted to Optima Technology Group (“OTG”), a
9 Cayman Islands Corporation specializing in aerospace technology, a Power of Attorney
10 regarding the ‘073 and ‘724 Patents. *Id.* at ¶ 11. Subsequently, Mr. Margolin assigned the
11 ‘073 and ‘724 Patents to OTG. *Id.* at ¶ 13.

12 In May 2006, OTG and Mr. Margolin licensed the ‘073 and ‘724 Patents to Geneva
13 Aerospace, Inc., and Mr. Margolin received a royalty payment pursuant to the royalty
14 agreement between Mr. Margolin and OTG. *Id.* at ¶ 12. In about October 2007, OTG licensed
15 the ‘073 Patent to Honeywell International, Inc., and Mr. Margolin received a royalty payment
16 pursuant to the royalty agreement between Mr. Margolin and OTG. *Id.* at ¶ 14.

17 On about December 5, 2007, Defendant Zandian filed with the U.S. Patent and
18 Trademark Office (“USPTO”) fraudulent assignment documents assigning all four of the
19 Patents to Optima Technology Corporation (“OTC”), a company apparently owned by
20 Defendant Zandian. *Id.* at ¶ 15. Upon discovery of the fraudulent filings, Mr. Margolin: (a)
21 filed a report with the Storey County Sheriff’s Department; (b) took action to regain record
22 title to the ‘488 and ‘436 Patents that he legally owned; and (c) assisted OTG in regaining
23 record title of the ‘073 and ‘724 patents that it legally owned and upon which it contracted
24 with Mr. Margolin for royalties. *Id.* at ¶ 16.

25 Shortly before this, Mr. Margolin and OTG had been named as defendants in an action
26 for declaratory relief regarding non-infringement of the ‘073 and ‘724 patents in the United
27 States District Court for the District of Arizona, in a case titled: *Universal Avionics Systems*
28 *Corporation v. Optima Technology Group, Inc.*, No. CV 07-588-TUC-RCC (the “Arizona

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

5 On April 14, 2008, OTG entered into an agreement to sell the ‘073 and ‘724
6 patents to another United States company (“Assignee”).¹ The agreement stated that
7 OTG was to sell to Assignee the ‘073 and ‘724 patents for an initial payment of
8 \$350,000.00 and 10% royalty payments from licensing, enforcement or sale of the ‘073
9 and ‘724 patents.² The agreement specifically referenced the Arizona Action and
10 included several provisions that allowed the Assignee to investigate the patents and the
11 Arizona Action as part of Assignee’s due diligence.³ The due diligence clause of the
12 agreement allowed the Assignee to determine in its sole and absolute discretion whether
13 or not the patents and the Arizona Action were acceptable.⁴

14 On June 13, 2008, Assignee sent OTG a “kiss-off” letter stating that they had
15 completed their due diligence investigation and determined that the patents and/or the
16 Arizona Action were not acceptable.⁵ As alleged in the Complaint, Mr. Margolin
17 believes that as a result of the fraudulent actions of Defendants, Mr. Margolin and OTG
18 lost the \$350,000.00 plus royalties deal with the Assignee.⁶

19 Subsequently, on August 18, 2008, the United States District Court for the District of
20 Arizona entered a default judgment in favor of Mr. Margolin and OTG on their declaratory
21 relief action, and ordered that OTC had no interest in the ‘073 or ‘724 patents, and that the
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25 ¹ See Declaration of Jed Margolin, dated 5/10/12, ¶ 2. Plaintiff has intentionally omitted the name of the
Assignee because the agreement is confidential. *Id.* If requested, Plaintiff will submit a copy of the
agreement to the court *in camera*. *Id.*

26 ² *Id.* at ¶ 3.

27 ³ *Id.* at ¶ 4.

28 ⁴ *Id.* at ¶ 5.

⁵ *Id.* at ¶ 6.

⁶ *Id.* at ¶ 7.

1 assignment documents filed by OTC with the USPTO were “forged, invalid, void, of no force
2 and effect.” *See* Exhibit B to Zandian’s Motion to Dismiss, on file herein.

3 Due to Defendants’ fraudulent acts, title to the Patents was clouded **and slandered** and
4 interfered with Plaintiff’s and OTG’s ability to license the Patents. Amended Complaint at ¶
5 19. In addition, during the period of time Mr. Margolin worked to correct record title of the
6 Patents in the Arizona Action and with the USPTO, he incurred significant litigation and other
7 costs associated with those efforts. *Id.* at ¶ 20.

8 **As an example, and as related above, the \$350,000.00 plus royalties deal with the**
9 **Assignee fell through. *See supra.* Pursuant to his agreement with OTG, Mr. Margolin**
10 **would have been entitled to 60% percent of the \$350,000.00 plus royalties deal with**
11 **Assignee, which would have equaled at least \$210,000.00.⁷ Also, Mr. Margolin has not**
12 **yet received a full accounting of any licensing or other profits that Defendants received**
13 **as a result of their fraudulent activity with the subject patents.⁸**

14 **Moreover, Mr. Margolin** was forced to spend \$90,000 in attorneys’ fees in the
15 Arizona Action alone. *See* Declaration of Jed Margolin in Support of Application for Default
16 Judgment, originally filed on February 28, 2011, attached hereto as Exhibit A.⁹ The \$90,000
17 **in attorney’s fees expended in the Arizona Action, does not include attorney’s fees in this**
18 **action, prejudgment interest pursuant to NRS 99.040(1) or costs pursuant to NRS 18.020. In**
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20 ⁷ *Id.* at ¶ 8.

21 ⁸ *Id.* at ¶ 9.

22 ⁹ Pursuant to Nevada law, Mr. Margolin is entitled to seek his attorney’s fees as special damages as a result
23 of Defendants’ actions in falsely claiming ownership to the subject patents. *See Horgan v. Felton*, 123
24 Nev. 577, 585-86, 170 P.3d 982, 987-88 (2007); *see also Am. Fed’n of Musicians v. Reno’s Riverside Hotel,*
25 *Inc.*, 86 Nev. 695, 699, 475 P.2d 220, 222 (1970) (awarding attorney’s fees as damages because the
26 institution of the litigation was due to the activity of the defendant such that the plaintiff had to retain
27 counsel and expend fees to pay for the litigation); *Tracey v. Am. Family Mut. Ins. Co.*, 2:09-CV-1257-
28 GMN-PAL, 2010 WL 5477751 (D. Nev. Dec. 30, 2010) (attorney’s fees awarded as a matter of law to
plaintiff as proximately and necessarily caused damages incurred as a reasonably foreseeable
consequence or result of defendant’s conduct); *Lowden Inv. Co. v. Gen. Elec. Credit Co.*, 103 Nev. 374,
379-80, 741 P.2d 806, 809 (1987) (generally, attorney’s fees may not be awarded unless by agreement,
statute or rule, however, “attorney’s fees attributable to plaintiff’s litigation with other parties may be
recovered as damages when defendant’s conduct caused the litigation”); *Sandy Valley Associates v. Sky*
Ranch Estates Owners Ass’n, 117 Nev. 948, 957-58, 35 P.3d 964, 970 (2001) (“Attorney fees may also be
awarded as damages in those cases in which a party incurred the fees in recovering real or personal
property acquired through the wrongful conduct of the defendant or in clarifying or removing a cloud
upon the title to property.”); Restatement (Second) of Torts § 914 (2) (1979) (same).

1 addition, Mr. Margolin is also seeking treble damages pursuant to NRS 598.0999 and punitive
2 damages pursuant to Nevada law, **all in an amount exceeding \$50,000.00**. See Amended
3 Complaint, dated 8/11/11, on file herein.

4 **II. CONCLUSION**

5 I hereby certify, pursuant to NRCP 11, that this case falls within the exemptions found
6 in Nevada Arbitration Rules 3 and 5 and that I am aware of the sanctions which may be
7 imposed against any attorney or party who without good cause or justification attempts to
8 remove a case from the court-annexed arbitration program.

9 AFFIRMATION PURSUANT TO NRS 239B.030

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

12 Dated this 10th day of May, 2012.

WATSON ROUNDS

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