

1 JASON D. WOODBURY
Nevada Bar No. 6870
2 KAEMPFER CROWELL
510 West Fourth Street
3 Carson City, Nevada 89703
Telephone: (775) 884-8300
4 Facsimile: (775) 882-0257
jwoodbury@kcnvlaw.com
5 **Attorneys for Reza Zandian**

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2014 MAR 12 PM 3:54
ALAN GLOVER
Electronically Filed
Mar 14 2014 10:30 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

6 IN THE FIRST JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA IN AND FOR
8 CARSON CITY

9 JED MARGOLIN, an individual,
10 Plaintiff,

11 vs.

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

Case No. 09 OC 00579 1B
Dept. No. I

19
20 **NOTICE OF APPEAL**

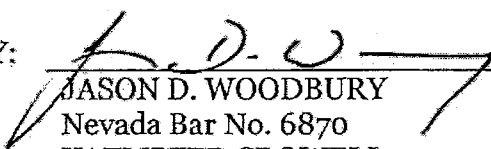
21 Notice is hereby given that REZA ZANDIAN, a Defendant above-named, hereby
22 appeals to the Supreme Court of Nevada from the *Order Denying Defendant Reza*
23 *Zandian aka Golamreza Zandianjazi aka Gholam Reza Zandian aka Reza Jazi aka J.*
24 *Reza Jazi aka G. Reza Jazi aka Ghonoreza Zandian Jazi's Motion to Set Aside Default*
Judgment entered in this action on the 6th day of February, 2014. A *Notice of Entry of*

KAEMPFER CROWELL
510 West Fourth Street
Carson City, Nevada 89703

1 Order was served by mail upon counsel for Reza Zandian on February 10, 2014, a true
2 and correct copy of which is attached to this *Notice of Appeal* as Exhibit 1. A cash
3 deposit in the amount of \$500.00 has been submitted herewith as evidenced by the
4 *Notice of Cash Deposit in Lieu of Bond* filed contemporaneously herewith.

5 DATED this 12th day of March, 2014.

6 KAEMPFER CROWELL

7
8 BY: 
9 JASON D. WOODBURY
10 Nevada Bar No. 6870
11 KAEMPFER CROWELL
12 510 West Fourth Street
13 Carson City, Nevada 89703
14 Telephone: (775) 884-8300
15 Facsimile: (775) 882-0257
16 jwoodbury@kcnvlaw.com
17 ***Attorneys for Reza Zandian***

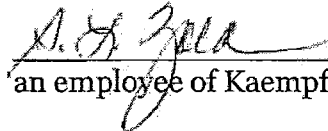
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KAEMPFER CROWELL
510 West Fourth Street
Carson City, Nevada 89703

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(d) and NRCP 5(b), I hereby certify that service of the
3 foregoing **NOTICE OF APPEAL** was made this date by depositing a true copy of the
4 same for mailing at Carson City, Nevada, first class postage pre-paid, addressed to each
5 of the following:

6 Matthew D. Francis
7 Adam P. McMillen
8 WATSON ROUNDS
9 5371 Kietzke Lane
10 Reno, NV 89511

11 DATED this 12th day of March, 2014.

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13 _____
14 an employee of Kaempfer Crowell
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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 GHONOREZA ZANDIAN JAZI, an individual,
DOE Companies 1-10, DOE Corporations 11-20, and DOE Individuals 21-30,**

Defendants.

First Judicial District Court of the State of Nevada in and for Carson City

Case No. 09 OC 00579 1B

Dept. No. I

NOTICE OF APPEAL

Exhibit List

Exhibit No.	Description of Exhibit	Exhibit Pages
1	<i>Notice of Entry of Order (Feb. 6, 2014)</i>	14

EXHIBIT 1

EXHIBIT 1

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

REC'D & FILED
2014 FEB 10 PM 3:19
ALAN GLOVER
CLERK
BY _____ DEPUTY

**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

NOTICE OF ENTRY OF ORDER

TO: All parties:

PLEASE TAKE NOTICE that on February 6, 2014, the Court entered its Order Denying Defendant Reza Zandian aka Golanreza Zandianjazi aka Gholam Reza Zandian aka Reza Jazi aka J. Reza Jazi aka G. Reza Jazi aka Ghononreza Zandian Jazi's Motion to Set

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1 Aside Default Judgment. Attached as Exhibit 1 is a true and correct copy of such Order.

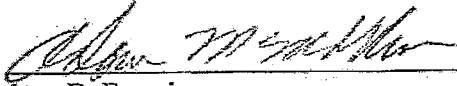
2 Affirmation Pursuant to NRS 239B.030

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

5 DATED: February 7, 2014.

WATSON ROUNDS

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By: 
Matthew D. Francis
Adam P. McMillen
Watson Rounds
5371 Kietzke Lane
Reno, NV 89511
Attorneys for Plaintiff Jed Margolin

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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, **Notice of Entry of Order**, addressed as follows:

Johnathon Fayeghi, Esq.
Hawkins Melendrez
9555 Hillwood Dr., Suite 150
Las Vegas, NV 89134
Counsel for Reza Zandian

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

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

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

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

Dated: February 10th, 2014.

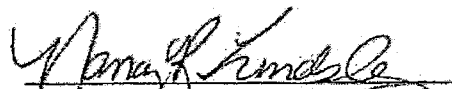

Nancy R. Lindsley

Exhibit 1

Exhibit 1

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Case No.: 09 OC 00579 1B

Dept. No.: 1

REC'D & FILED

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ALAN GLOVER

BY  CLERK
DEPUTY

**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.

**ORDER DENYING DEFENDANT
REZA ZANDIAN AKA GOLAMREZA
ZANDIANJAZI AKA GHOLAM REZA
ZANDIAN AKA REZA JAZI AKA J.
REZA JAZI AKA G. REZA JAZI AKA
GHONONREZA ZANDIAN JAZI'S
MOTION TO SET ASIDE DEFAULT
JUDGMENT**

This matter comes before the Court on REZA ZANDIAN aka GOLAMREZA ZANDIANJAZI aka GHOLAM REZA ZANDIAN aka REZA JAZI aka J. REZA JAZI aka G. REZA JAZI aka GHONONREZA ZANDIAN JAZI's ("Zandian") Motion to Set Aside Default Judgment, dated December 19, 2013. Plaintiff Jed Margolin filed an Opposition to Set Aside Default Judgment on January 19, 2014. Zandian served a reply in support of the Motion to Set Aside on January 23, 2014. Based upon the following facts and conclusions of law, Zandian's Motion to Set Aside is DENIED.

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1 I. FACTUAL BACKGROUND

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

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

16 On or about December 5, 2007, Zandian filed with the U.S. Patent and Trademark
17 Office (“USPTO”) assignment documents allegedly assigning all four of the Patents to Optima
18 Technology Corporation (“OTC”), a company apparently owned by Zandian at the time. *Id.* at
19 ¶ 15. Shortly thereafter, on November 9, 2007, Mr. Margolin, Robert Adams, and OTG were
20 named as defendants in the case titled *Universal Avionics Systems Corporation v. Optima
21 Technology Group, Inc.*, No. CV 07-588-TUC-RCC (the “Arizona action”). *Id.* at ¶ 17.
22 Zandian was not a party in the Arizona action. Nevertheless, the plaintiff in the Arizona action
23 asserted that Mr. Margolin and OTG were not the owners of the ‘073 and ‘724 Patents, and
24 OTG filed a cross-claim for declaratory relief against Optima Technology Corporation
25 (“OTC”) in order to obtain legal title to the respective patents. *Id.*

26 On August 18, 2008, the United States District Court for the District of Arizona
27 entered a default judgment against OTC and found that OTC had no interest in the ‘073 or
28 ‘724 Patents, and that the assignment documents filed with the USPTO were “forged, invalid,

1 void, of no force and effect.” *Id.* at ¶ 18; *see also* Exhibit B to Zandian’s Motion to Dismiss,
2 dated 11/16/11, on file herein.

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

8 II. PROCEDURAL BACKGROUND

9 Plaintiff filed his Complaint on December 11, 2009, and the Complaint was personally
10 served on Zandian on February 2, 2010, and on Defendants Optima Technology Corporation, a
11 Nevada corporation, and Optima Technology Corporation, a California corporation on March
12 21, 2010. Zandian’s answer to Plaintiff’s Complaint was due on February 22, 2010, but
13 Zandian did not answer the Complaint or respond in any way. Default was entered against
14 Zandian on December 2, 2010, and Plaintiff filed and served a Notice of Entry of Default on
15 Zandian on December 7, 2010 and on his last known attorney on December 16, 2010.

16 The answers of Defendants Optima Technology Corporation, a Nevada corporation,
17 and Optima Technology Corporation, a California corporation, were due on March 8, 2010,
18 but Defendants did not answer the Complaint or respond in any way. Default was entered
19 against Defendants Optima Technology Corporation, a Nevada corporation, and Optima
20 Technology Corporation, a California corporation on December 2, 2010. Plaintiff filed and
21 served a Notice of Entry of Default on the corporate entities on December 7, 2010 and on their
22 last known attorney on December 16, 2010.

23 The defaults were set aside and Zandian’s motion to dismiss was denied on August 3,
24 2011. On September 27, 2011, this Court ordered that service of process against all
25 Defendants may be made by publication. As manifested by the affidavits of service, filed
26 herein on November 7, 2011, all Defendants were duly served by publication by November
27 2011.

28

1 On February 21, 2012, the Court denied Zandian's motion to dismiss the Amended
2 Complaint. On March 5, 2012, Zandian served a General Denial to the Amended Complaint.
3 On March 13, 2012, the corporate Defendants served a General Denial to the Amended
4 Complaint.

5 On June 28, 2012, this Court issued an order requiring the corporate Defendants to
6 retain counsel and that counsel enter an appearance on behalf of the corporate Defendants by
7 July 15, 2012. The June 28, 2012 order further provided that if no such appearance was
8 entered, the corporate Defendants' General Denial would be stricken. Since no appearance
9 was their behalf of the corporate Defendants, a default was entered against them on September
10 24, 2012. A notice of entry of default judgment was filed and served on November 6, 2012.

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

17 On January 15, 2013, this Court issued an order striking the General Denial of Zandian
18 and awarding his fees and costs incurred in bringing the NRC 37 Motion. A default was
19 entered against Zandian on March 28, 2013, and a notice of entry of default judgment was
20 filed and served on April 5, 2013.

21 On April 17, 2013, Mr. Margolin filed an Application for Default Judgment, which was
22 served on Zandian and the corporate Defendants. Since Zandian did not respond to the
23 Application for Default Judgment, a Default Judgment was entered on June 24, 2013. Notice
24 of entry of the Default Judgment was served on Zandian on June 26, 2013 and filed on June
25 27, 2013.

26 Over five and a half months later, on December 19, 2013, Zandian served his Motion
27 to Set Aside on Plaintiff. Zandian's Motion to Set Aside claims that he never received any
28 written discovery or notice of the pleadings and papers filed in this matter after his counsel

1 withdrew as his former counsel provided an erroneous last known address to the Court and the
2 parties when he withdrew, and therefore Zandian requests that the judgment be set aside.

3 III. FINDINGS AND CONCLUSIONS OF LAW

4 A party seeking to set aside a default judgment has the burden to prove mistake,
5 inadvertence, surprise, or excusable neglect by a preponderance of the evidence. *Kahn v.*
6 *Orme*, 108 Nev. 510, 513–14, 835 P.2d 790, 793 (1992). The Court finds that Zandian has not
7 met the burden to prove mistake, inadvertence, surprise, or excusable neglect by a
8 preponderance of the evidence.

9 Specifically, Zandian has not met the factors set forth in *Kahn* to compel the court to
10 set aside the judgment. *Id.* at 513, 835 P.2d at 792–93 (holding that the district court must
11 consider whether the party moving to set aside a judgment promptly applied to remove the
12 judgment, lacked intent to delay the proceedings, lacked knowledge of the procedural
13 requirements, and demonstrated good faith, in addition to considering the state's underlying
14 policy of resolving cases on the merits). Zandian failed to promptly apply for relief, has not
15 established a lack of intent to delay these proceedings or a lack of knowledge of the procedural
16 requirements, and did not provide a good-faith reason for the over five-and-a-half-month gap
17 between entry of default and the time he obtained new counsel and filed the Motion to Set
18 Aside Default Judgment.

19 a. Zandian Did Not Promptly Apply To Remove The Judgment

20 Even though a motion to set aside a judgment may be filed within the six month
21 deadline provided for in NRC 60(b), a party can still fail to act promptly. *See Kahn* 108 Nev.
22 at 514, 835 P.2d at 793. Therefore, “want of diligence in seeking to set aside a judgment is
23 ground enough for denial of such a motion.” *Id.* (citing *Union Petrochemical Corp. v. Scott*,
24 96 Nev. 337, 339, 609 P.2d 323, 324 (1980) (citing *Lentz v. Boles*, 84 Nev. 197, 438 P.2d 254
25 (1968); *Hotel Last Frontier v. Frontier Prop.*, 79 Nev. 150, 380 P.2d 293 (1963))).

26 Despite his knowledge of the default judgment, Zandian did not move to have the
27 judgment set aside until nearly six months after its entry. Although Zandian argues he did not
28 receive notice of the various proceedings, notice was mailed to his address. Therefore, the

1 notice requirement of NRC 55 was fulfilled as Plaintiff served written notice of the
2 application for default judgment. Moreover, NRC 55 is likely not implicated since the
3 judgment ultimately resulted from sanctions arising from Zandian's failure to respond to
4 discovery. *See Durango Fire Protection, Inc. v. Troncoso*, 120 Nev. 658 (2004) (trial court's
5 entry of judgment for plaintiff, in action for breach of contract, after striking defendant's
6 answer was a sanction for defendant's failure to appear at several hearings and calendar calls
7 rather than a default judgment, and thus, civil procedure rule requiring written notice before
8 entry of default judgment was not applicable).

9 Further, First Judicial District Court Rule 22(3) expressly states that "[a]ny form of
10 order permitting withdrawal of an attorney submitted to the Court for signature shall contain
11 the address at which the party is to be served with notice of all further proceedings." Plaintiff
12 had a right to rely on the address given by Zandian's prior attorney.

13 No evidence supports Zandian's claims that he lacked knowledge of this matter. Even
14 if Zandian was living in France, for which no competent evidence has been provided to this
15 Court, Zandian was required to provide the Court and the parties with his new address.
16 However, Zandian never informed this Court or the parties of any address change. The record
17 demonstrates that the Plaintiff's discovery requests, motions, application for judgment, orders
18 and notice of judgment were all mailed to Zandian's address of record. Under NRC 5(b),
19 service by mail is complete upon mailing. Thus, Zandian received notice of the proceedings
20 and his repeated failure to respond constituted inexcusable neglect.

21 **b. Zandian Has Failed To Show He Lacked Intent To Delay**

22 Zandian received all of the papers and pleadings in this matter. However, he failed to
23 respond to Plaintiff's discovery and willfully ignored the proceedings of this matter. In fact,
24 Zandian waited nearly six months to secure new counsel and file the motion to set aside.
25 Furthermore, Zandian failed to file an opposition to the application for judgment.
26 Accordingly, the Court finds that Zandian has failed to establish the absence of an intent to
27 delay.

28 **c. Whether Zandian Lacked Knowledge Of Procedural Requirements**

1 Zandian unquestionably had notice of the written discovery, motions and orders filed in
2 this matter, and yet he ignored all of these documents. All that was required of Zandian was to
3 either personally respond to the discovery and motions or obtain counsel to appear on his
4 behalf. Zandian knew discovery had been served but deliberately chose to ignore it. Zandian
5 knew a motion for sanctions and an application for judgment had been filed, which led to the
6 judgment, but Zandian chose to ignore those items as well. Zandian's failure to obtain new
7 counsel or otherwise act on his own behalf is inexcusable. *See Kahn* 108 Nev. at 514-15, 835
8 P.2d at 793-4. As the Nevada Supreme Court stated in *Kahn*:

9 we are not confronted here with some subtle or technical aspect of
10 procedure, ignorance of which could readily be excused. The requirements
11 of the rule are simple and direct. *To condone the actions of a party who has*
12 *sat on its rights only to make a last-minute rush to set aside judgment would*
be to turn NRCP 60(b) into a device for delay rather than the means for
relief from an oppressive judgment that it was intended to be.

13 *Id.* (citing *Union*, 96 Nev. at 339, 609 P.2d at 324 (citing *Franklin v. Bartsas Realty, Inc.*, 95
14 Nev. 559, 598 P.2d 1147 (1979); *Central Operating Co. v. Utility Workers of America*, 491
15 F.2d 245 (4th Cir.1974)) (emphasis added in original)).

16 Zandian had sufficient knowledge to act responsibly. He had previously retained
17 counsel to defend this action and retained new counsel to set aside the judgment. Therefore,
18 this Court cannot conclude that Zandian failed to respond to set aside the default judgment
19 because he was ignorant of procedural requirements.

20
21 **d. Whether Zandian Acted In Good Faith**

22 Zandian has not provided any valid reason for failing to respond to the requested
23 discovery, the motion for sanctions or the application for judgment. Furthermore, he has not
24 provided a reasonable explanation for waiting over five months to obtain other counsel despite
25 having knowledge of the judgment entered against him.

26
27 Based upon the fact that Zandian knew about this case and continued to receive the
28 papers and pleadings from this matter, it was inexcusable for Zandian not to respond to the

1 earlier discovery requests and motions. Zandian has not demonstrated good faith. In fact,
2 Zandian has only demonstrated inexcusable neglect by his willful failure to respond to, and
3 participate in, this action. Accordingly, the Court determines that Zandian lacked good faith in
4 contesting this action.

5 **e. Whether This Case Should Be Tried On The Merits For Policy Reasons**

6 The Nevada Supreme Court has held that “good public policy dictates that cases be
7 adjudicated on their merits.” See *Kahn* 108 Nev. at 516, 835 P.2d at 794 (citing *Hotel Last*
8 *Frontier v. Frontier Prop.*, 79 Nev. 150, 155–56, 380 P.2d 293, 295 (1963) (original
9 emphasis). However, this policy has its limits:
10

11 We wish not to be understood, however, that this judicial tendency to grant
12 relief from a default judgment implies that the trial court should always
13 grant relief from a default judgment. Litigants and their counsel may not
14 properly be allowed to disregard process or procedural rules with impunity.
15 Lack of good faith or diligence, or lack of merit in the proposed defense,
16 may very well warrant a denial of the motion for relief from the judgment.

17 *Id.* (citing *Lentz v. Boles*, 84 Nev. 197, 200, 438 P.2d at 256 (1968)).

18 Zandian has disregarded the process and procedural rules of this matter with impunity.
19 He has repeatedly ignored this matter and failed to respond to the written discovery and
20 motions in this matter since his former attorney John Peter Lee withdrew from representation.
21 Zandian’s lack of good faith or diligence warrants a denial of the motion to set aside.

22 Zandian’s complete failure to respond to the discovery requests and subsequent
23 motions evidences his willful and recalcitrant disregard of the judicial process, which
24 prejudiced Plaintiff. *Foster v. Dingwall*, 227 P.3d 1042, 1049 (Nev. 2010) (citing *Hamlett v.*
25 *Reynolds*, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998) (upholding the district court’s strike
26 order where the defaulting party’s “constant failure to follow [the court’s] orders was
27 unexplained and unwarranted”); *In re Phenylpropanolamine (PPA) Products*, 460 F.3d 1217,
28 1236 (9th Cir.2006) (holding that, with respect to discovery abuses, “[p]rejudice from
unreasonable delay is presumed” and failure to comply with court orders mandating discovery
“is sufficient prejudice”)).

1 In light of Zandian's repeated and continued abuses, the policy of adjudicating cases on
2 the merits would not be furthered in this case, and the ultimate sanctions are necessary to
3 demonstrate to Zandian and future litigants that they are not free to act with wayward
4 disregard of a court's orders. *Foster*, 227 P.3d at 1049. Moreover, Zandian's failure to oppose
5 Plaintiff's motion to strike the General Denial or the application for judgment constitutes an
6 admission that the motion and application were meritorious. *Id.* (citing *King v. Carlidge*, 121
7 Nev. 926, 927, 124 P.3d 1161, 1162 (2005) (stating that an unopposed motion may be
8 considered as an admission of merit and consent to grant the motion) (citing DCR 13(3)).

9 IV. CONCLUSION

10 The record provides substantial evidence to support this denial of Zandian's motion to
11 set aside. Further, the policy of resolving cases on the merits does not allow litigants "to
12 disregard process or procedural rules with impunity." *Kahn*, 108 Nev. at 516, 835 P.2d at 794
13 (quoting *Lentz v. Boles*, 84 Nev. 197, 200, 438 P.2d 254, 256-57 (1968)).

14 Zandian has failed to show mistake, inadvertence, surprise or excusable neglect
15 pursuant to NRCP 60(b). Zandian had every opportunity to properly defend this action and
16 instead made a voluntary choice not to. Therefore, Zandian's motion to set aside is hereby
17 DENIED.

18 DATED: This 6th day of February, 2014. IT IS SO ORDERED:
19

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22 JAMES T. RUSSELL
23 DISTRICT COURT JUDGE
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CERTIFICATE OF MAILING

I hereby certify that on the 10 day of February, 2014, I placed a copy of the foregoing in the United States Mail, postage prepaid, addressed as follows:

Matthew D. Francis
Adam P. McMillen
Watson Rounds
5371 Kietzke Lane
Reno, NV 89511

Geoffrey W. Hawkins
Johnathon Fayeghi
Hawkins Melendrez, P.C.
9555 Hillwood Drive, Suite 150
Las Vegas, NV 89134



Samantha Valerius
Law Clerk, Department I



1 JASON D. WOODBURY
Nevada Bar No. 6870
2 KAEMPFER CROWELL
510 West Fourth Street
3 Carson City, Nevada 89703
Telephone: (775) 884-8300
4 Facsimile: (775) 882-0257
jwoodbury@kcnvlaw.com
5 **Attorneys for Reza Zandian**

REC'D & FILED

2014 MAR 12 PM 3:54

ALAN GLOVER
BY Alan Glover CLERK
DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA IN AND FOR
8 CARSON CITY

9 JED MARGOLIN, an individual,

10 Plaintiff,

11 vs.

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

18 Defendants.

Case No. 09 OC 00579 1B

Dept. No. I

19
20 **CASE APPEAL STATEMENT**

21 Pursuant to NRAP 3(f), Defendant REZA ZANDIAN, an individual, hereby
22 provides the following *Case Appeal Statement*:

23 1. **Name of appellant filing this case appeal statement (NRAP**

24 **3(f)(3)(C):**

REZA ZANDIAN, an individual.

KAEMPFER CROWELL
510 West Fourth Street
Carson City, Nevada 89703

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2. **Identify the judge issuing the decision, judgment, or order appealed from (NRAP 3(f)(3)(B)):**

The Honorable James T. Russell, District Judge, First Judicial District Court of the State of Nevada in and for Carson City, Department I.

3. **Identify all parties to the proceedings in the district court (the use of et al. to denote parties is prohibited) (NRAP 3(f)(3)(A)):**

- (a) JED MARGOLIN, an individual;
- (b) OPTIMA TECHNOLOGY CORPORATION, a California corporation;
- (c) OPTIMA TECHNOLOGY CORPORATION, a Nevada corporation; and
- (d) REZA ZANDIAN aka GOLAMREZA ZANDIANJAZI aka GHOLAM REZA ZANDIAN aka REZA JAZI aka J. REZA JAZI aka G. REZA JAZI aka GHONOREZA ZANDIAN JAZI, an individual;

4. **Identify all parties involved in this appeal (the use of et al. to denote parties is prohibited) (NRAP 3(f)(3)((C), (D)):**

- (a) JED MARGOLIN, an individual; and
- (b) REZA ZANDIAN, an individual.

5. **Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent (NRAP 3(f)(3)(C), (D)):**

(a) Matthew D. Francis
Adam P. McMillen
WATSON ROUNDS
5371 Kietzke Lane
Reno, NV 89511
Telephone: (775) 324-4100
Counsel for Respondent, JED MARGOLIN

1 (b) Jason D. Woodbury
2 KAEMPFER CROWELL
3 510 West Fourth Street
4 Carson City, Nevada 89703
5 Telephone: (775) 884-8300
6 Counsel for Appellant, REZA ZANDIAN

7 6. **Indicate whether appellant was represented by appointed or**
8 **retained counsel in the district court (NRAP 3(f)(3)(F)):**

9 Appellant was represented by retained counsel in district court.

10 7. **Indicate whether appellant is represented by appointed or**
11 **retained counsel on appeal (NRAP 3(f)(3)(F)):**

12 Appellant is represented by retained counsel on appeal.

13 8. **Indicate whether appellant was granted leave to proceed in**
14 **forma pauperis, and the date of entry of the district court order**
15 **granting such leave (NRAP 3(f)(3)(G)):**

16 Appellant was not granted leave to proceed in forma pauperis.

17 9. **Indicate the date of the proceedings commenced in the district**
18 **court (e.g., date complaint, indictment, information, or petition**
19 **was filed) (NRAP 3(f)(3)(H)):**

20 Respondent's *Complaint* was filed in the District Court on December 11,
21 2009.

22 10. **District court case number and caption showing the names of**
23 **all parties to the proceedings below, but the use of et al. to**
24 **denote parties is prohibited (NRAP 3(f)(3)(A)):**

(a) Case number:

First Judicial District Court Case Number: 09 OC 00579 1B
Department Number: I

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(b) Caption:

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 GHONOREZA ZANDIAN JAZI, an individual, DOE Companies 1-10, DOE Corporations 11-20, and DOE Individuals 21-30,

Defendants.

11. Whether any of respondents' attorneys are not licensed to practice law in Nevada, and, if so, whether the district court granted that attorney permission to appear under SCR 42, including a copy of any district court order granting that permission (NRAP 3(f)(3)(E)):

Based upon information and belief, all attorneys for respondents are licensed to practice law in Nevada.

12. Brief description of the nature of the action and result in district court, including the type of judgment or order being appealed and the relief granted by the district court (NRAP 3(f)(3)(I)):

The subject matter of this case concerns various patents and a dispute over their ownership. Plaintiff claims to be the owner of the patents at issue. Plaintiff claims that certain conduct and actions of Optima Technology Corporation, a California corporation, Optima Technology Corporation, a Nevada corporation, (together these

1 corporations are referred to hereinafter as the "Corporate Defendants")
2 and Reza Zandian ("Zandian") (collectively the Corporate Defendants and
3 Zandian are referred to as the "Defendants") disrupted his ownership and
4 control over the patents, thereby causing him damages. Specifically,
5 Plaintiff's *Complaint* alleged the following claims against the Defendants:
6 (1) Conversion; (2) Tortious Interference with Contract; (3) Intentional
7 Interference with Prospective Economic Advantage; (4) Unjust
8 Enrichment; and (5) Unfair and Deceptive Trade Practices.

9 On September 9, 2011, the District Court issued an order
10 authorizing service of Plaintiff's *Amended Complaint*¹ by publication.²
11 Service by publication was accomplished on November 7, 2011. The
12 Defendants answered in March, 2012. On July 16, 2012, Plaintiff served
13 Zandian with several discovery requests. When there was no response to
14 the discovery requests, the District Court granted Plaintiff's request for
15 sanctions and struck Zandian's answer on January 15, 2013.

16 On March 28, 2013, the District Court entered a Default against
17 Zandian. Later, pursuant to the application of Plaintiff, the District Court
18 entered a Default Judgment against the Defendants in the amount of
19 \$1,495,775.74. Plaintiff filed a *Notice of Entry of Default Judgment* on
20 June 27, 2013.

21 On December 20, 2013, Zandian filed a *Motion to Set Aside Default*
22 *Judgment* with the District Court. Plaintiff filed a response, and Zandian
23 replied. No hearing was held on the *Motion to Set Aside*. On February 6,
24

¹ Plaintiff filed his *Amended Complaint* on August 11, 2011.

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2014, the District Court entered its *Order Denying Defendant Reza Zandian aka Golamreza Zandianjazi aka Gholam Reza Zandian aka Reza Jazi aka J. Reza Jazi aka G. Reza Jazi aka Ghonoreza Zandian Jazi's Motion to Set Aside Default Judgment*. And on February 10, 2014, Plaintiff served notice by mail that this Order had been entered.

13. **Whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding (NRAP 3(f)(J)):**

Upon information and belief, this case has not previously been the subject of an appeal to or original writ proceeding in the Supreme Court.

14. **Whether the appeal involves child custody or visitation (NRAP 3(f)(3)(K)):**

The appeal does not involve child custody or visitation.

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KAEMPER CHOWELL
510 West Fourth Street
Carson City, Nevada 89703

² There were proceedings which occurred prior to the issuance of the District Court's order allowing service by publication. However, they are not pertinent for purposes of the *Case Appeal Statement*.

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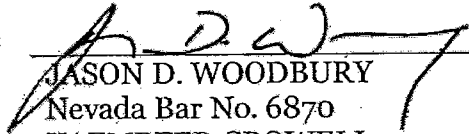
15. In civil cases, whether the appeal involves the possibility of settlement (NRAP 3(f)(3)(L)):

The appeal involves the possibility of settlement.

DATED this 12th day of March, 2014.

KAEMPFER CROWELL

BY:



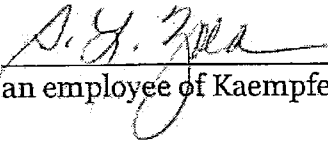
JASON D. WOODBURY
Nevada Bar No. 6870
KAEMPFER CROWELL
510 West Fourth Street
Carson City, Nevada 89703
Telephone: (775) 884-8300
Facsimile: (775) 882-0257
jwoodbury@kenvlaw.com
Attorneys for Reza Zandian

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(d) and NRCP 5(b), I hereby certify that service of the
3 foregoing **CASE APPEAL STATEMENT** was made this date by depositing for mailing
4 of the same in Portable Document Format addressed to each of the following:

5 Matthew D. Francis
6 Adam P. McMillen
7 WATSON ROUNDS
8 5371 Kietzke Lane
9 Reno, NV 89511

10 DATED this 12th day of March, 2014.

11 
12 _____
13 an employee of Kaempfer Crowell
14
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Judge: RUSSELL, JUDGE JAMES
 TODD

Case No. 09 CC 00579 1B

Ticket No.
 CTN:

MARGOLIN, JED

By:

OPTIMA TECHNOLOGY
 CORPORATION

DRSPND

-vs-

By:

Dob:
 Lic:
 ZANDIAN, REZA

Sex:
 Sid:
 DRSPND

By:

Dob:
 Lic:

Sex:
 Sid:

Plate#:

Make:
 Year:
 Type:
 Venue:
 Location:
 Accident:

MARGOLIN, JED

PLNTPET

Bond:
 Type:

Set:
 Posted:

Charges:

Ct. Offense Dt: Cvr:
 Arrest Dt:
 Comments:

Ct. Offense Dt: Cvr:
 Arrest Dt:
 Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	03/12/14	APPEAL BOND DEPOSIT Receipt: 33251 Date: 03/12/2014	1BCCOOPER	500.00	0.00
2	03/12/14	NOTICE OF CASH DEPOSIT IN LIEU OF BOND	1BCCOOPER	0.00	0.00
3	03/12/14	CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
4	03/12/14	NOTICE OF APPEAL FILED Receipt: 33251 Date: 03/12/2014	1BCCOOPER	24.00	0.00
5	03/03/14	OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT	1BCGRIBBLE	0.00	0.00
6	02/21/14	SUBSTITUTION OF COUNSEL	1BCCOOPER	0.00	0.00
7	02/12/14	MOTION FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT	1BCCOOPER	0.00	0.00
8	02/10/14	NOTICE OF ENTRY OF ORDER	1BVANESSA	0.00	0.00
9	02/06/14	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
10	02/06/14	ORDER DENYING DEFENDANT REZA ZANDIAN AKA GOLAMREZA ZANDIANJAZI AKA GHOLAM REZA ZANDIAN AKA REZA JAZI AKA J. REZA JAZI AKA G. REZA JAZI AKA GHONONREZA ZANDIAN JAZI'S MOTION TO SET ASIDE DEFAULT JUDGMENT	1BJHIGGINS	0.00	0.00
11	02/03/14	DEFENDANT REZA ZANDIAN'S REPLY IN SUPPORT OF MOTION FOR STAY OF PROCEEDINGS TO ENFORCE JUDGMENT PURSUANT TO NRCF 62(B)	1BVANESSA	0.00	0.00
12	01/23/14	REQUEST FOR SUBMISSION AND HEARING ON DEFENDANT REZA ZANDIAN'S MOTION TO SET ASIDE DEFAULT JUDGMENT	1BCGRIBBLE		0.00
13	01/23/14	DEFENDANT ZANDIAN'S REPLY IN SUPPORT OF MOTION TO SET ASIDE DEFAULT JUDGMENT	1BCGRIBBLE		0.00

No.	Filed	Action	Operator	Fine/Cost	Due
14	01/17/14	NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S MOTION FOR DEBTOR EXAMINATION AND TO PRODUCE DOCUMENTS	1BCGRIBBLE	0.00	0.00
15	01/17/14	OPPOSITION TO MOTION FOR STAY OF PROCEEDINGS TO ENFORCE JUDGMENT PURSUANT TO NRCF 62(B)	1BCGRIBBLE	0.00	0.00
16	01/13/14	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
17	01/13/14	ORDER GRANTING PLAINTIFFS MOTION FOR DEBTOR EXAMINATION AND TO PRODUCE DOCUMENTS	1BCCOOPER	0.00	0.00
18	01/09/14	REQUEST FOR SUBMISSION	1BVANESSA	0.00	0.00
19	01/09/14	OPPOSITION TO MOTION TO SET ASIDE DEFAULT JUDGMENT	1BVANESSA	0.00	0.00
20	01/02/14	DEFENDANT REZA ZANDIAN AKA GOLAMREZA ZANDIANJAZI AKA GHOLAM REZA ZANDIAN AKA REZA JAZI AKA J. REZA JAZI AKA G. REZA JAZI AKA GHONONREZA ZANDIAN JAZI'S MOTION FOR STAY OF PROCEEDINGS TO ENFORCE JUDGMENT PURSUANT TO NRCF 62(B)	1BCGRIBBLE	0.00	0.00
21	12/20/13	DEFENDANT REZA ZANDIAN AKA GOLAMREZA ZANDIANJAZI AKA GHOLAM REZA ZANDIAN AKA REDA JAZI AKA J. REZA JAZI AKA G. REZA JAZI AKA GHONONREZA ZANDIAN JAZI'S MOTION TO SET ASIDE DEFAULT JUDGMENT	1BCCOOPER	0.00	0.00
22	12/20/13	NOTICE OF APPEARANCE	1BCCOOPER	0.00	0.00
23	12/11/13	MOTION FOR JUDGMENT DEBTOR EXAMINATION AND TO PRODUCE DOCUMENTS	1BCCOOPER	0.00	0.00
24	06/27/13	NOTICE OF ENTRY OF ORDER DEFAULT JUDGMENT	1BVANESSA	0.00	0.00
25	06/26/13	JUDGMENT	1BCCOOPER	0.00	0.00
		Judgment Amount: 1,495,775.74 Judgment Total: 1,495,775.74			
		Terms: JUDGMENT ENTERED @ 4:12 PM			
		Judgment Type: DEFAULT JUDGMENT Judgment Date: 06/24/2013			
		Judgment For: MARGOLIN, JED - PLNTF/PETNR			
		Judgment Against: OPTIMA TECHNOLOGY CORPORATION - DEFENDANT/RESPONDENT			
		ZANDIAN, REZA - DEFENDANT/RESPONDENT			
		Judgment Balance: 1,495,775.74 Case Total: 2,903,922.66 Case Balance: 2,903,922.66			
26	06/24/13	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
27	06/24/13	DEFAULT JUDGMENT	1BCCOOPER	0.00	0.00
28	06/21/13	REQUEST FOR SUBMISSION	1BVANESSA	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
29	04/17/13	DECLARATION OF JED MARGOLIN IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT	1BCGRIBBLE	0.00	0.00
30	04/17/13	DECLARATION OF ADAM P. MCMILLEN IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT	1BCGRIBBLE	0.00	0.00
31	04/17/13	APPLICATION FOR DEFAULT JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF	1BCGRIBBLE	0.00	0.00
32	04/05/13	AMENDED NOTICE OF ENTRY OF DEFAULT	1BCFRANZ	0.00	0.00
33	04/03/13	NOTICE OF ENTRY OF DEFAULT	1BCCOOPER	0.00	0.00
34	04/03/13	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
35	03/29/13	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
36	03/29/13	ORDER GRANTING PLAINTIFF'S APPLICATION FOR ATTORNEY'S FEES AND COSTS	1BCCOOPER	0.00	0.00
37	03/28/13	REQUEST FOR SUBMISSION	1BCGRIBBLE	0.00	0.00
38	03/28/13	DEFAULT	1BCGRIBBLE	0.00	0.00
39	03/04/13	DECLARATION OF MAILING	1BCCOOPER	0.00	0.00
40	02/20/13	PLAINTIFF'S APPLICATION FOR ATTORNEY'S FEES AND COSTS	1BCGRIBBLE	0.00	0.00
41	02/20/13	DECLARATION OF ADAM P. MCMILLEN IN SUPPORT OF PLAINTIFF'S APPLICATION FOR ATTORNEY'S FEES AND COSTS	1BCGRIBBLE	0.00	0.00
42	01/17/13	NOTICE OF ENTRY OF ORDER	1BCGRIBBLE	0.00	0.00
43	01/15/13	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
44	01/15/13	ORDER GRANTING PLAINTIFF'S MOTION FOR SANCTIONS UNDER NRCP 37	1BJHIGGINS	0.00	0.00
45	01/11/13	REQUEST FOR SUBMISSION	1BVANESSA	0.00	0.00
46	12/14/12	DECLARATION OF ADAM P. MCMILLEN IN SUPPORT OF PLAINTIFF'S MOTION FOR SANCTIONS UNDER NRCP 37	1BVANESSA	0.00	0.00
47	12/14/12	PLAINTIFF'S MOTION FOR SANCTIONS UNDER NRCP 37	1BVANESSA	0.00	0.00
48	11/14/12	AFFIDAVIT OF SERVICE	1BCCOOPER	0.00	0.00
49	11/06/12	NOTICE OF ENTRY OF JUEMENT	1BVANESSAG	0.00	0.00
50	10/31/12	JUDGMENT	1BJHIGGINS	0.00	0.00

Judgment Amount:
1,286,552.46
Judgment Total:
1,286,552.46

Terms: JUDGMENT ENTERED AT
1:42 P.M.

Judgment Type: DEFAULT
JUDGMENT FOR THE PLAINTIFF
Judgment Date: 10/31/2012

Judgment For: MARGOLIN, JED -
PLNTF/PETNR

Judgment Against: OPTIMA
TECHNOLOGY CORPORATION -
DEFENDANT/RESPONDENT

Judgment Balance:
1,286,532.46
Case Total: 1,408,146.92
Case Balance:
1,408,146.92

No.	Filed	Action	Operator	Fine/Cost	Due
51	10/31/12	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
52	10/31/12	DEFAULT JUDGMENT	1BJHIGGINS	0.00	0.00
53	10/30/12	DECLARATION OF ADAM P. MCMILLEN IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT	1BJHIGGINS	0.00	0.00
54	10/30/12	DECLARATION OF JED MARGOLIN IN SUPPORT OF APELICATION FOR DEFAULT JUDGMENT	1BJHIGGINS	0.00	0.00
55	10/30/12	APPLICATION FOR DEFAULT JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF	1BJHIGGINS	0.00	0.00
56	10/30/12	AFFIDAVIT OF SERVICE	1BJHIGGINS	0.00	0.00
57	09/27/12	NOTICE OF ENTRY OF DEFAULT	1EVANESSAG	0.00	0.00
58	09/24/12	DEFAULT	1EVANESSAG	0.00	0.00
59	09/14/12	APPLICATION FOR ENTRY OF DEFAULT	1EVANESSAG	0.00	0.00
60	07/02/12	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
61	06/28/12	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00
62	06/28/12	ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL APPEARANCE OF COUNSEL FOR OPTIMA TECHNOLOGY CORPORATIONS, OR N THE ALTERNATIVE, MOTION TO STRIKE GENERAL DENIAL OF OPTIMA TECHNOLOGY CORPORATION	1BJULIEH	0.00	0.00
63	06/14/12	UNILATERAL CASE CONFERENCE REPORT	1EVANESSAG	0.00	0.00
64	06/06/12	REQUEST FOR SUBMISSION	1BCGRIBBLE	0.00	0.00
65	05/29/12	DECISION OF ARBITRATION COMMISSIONER REMOVING MATTER FROM MANDATORY ARBITRATION	1BCGRIBBLE	0.00	0.00
66	05/15/12	PLAINTIFF'S MOTION TO COMPEL APPEARANCE OF COUNSEL FOR OPTIMA TECHNOLOGY CORPORATIONS, OR IN THE ALTERNATIVE, MOTION TO STRIKE GENERAL DENIAL OF OPTIMA TECHNOLOGY CORPORATIONS (COPY) (SEE MINUTE ORDER FILED 06/19/2012)	1EVANESSAG	0.00	0.00
67	05/10/12	DECLARATION OF JED MARGOLIN IN SUPPORT OF REQUEST TO EXEMPT CASE FROM COURT ANNEXED ARBITRATION PROGRAM	1BCGRIBBLE	0.00	0.00
68	05/10/12	SECOND SUPPLEMENTAL REQUEST FOR EXEMPTION FROM ARBITRATION	1BCGRIBBLE	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
69	05/09/12	NOTICE OF ENTRY OF ORDER GRANTING JOHN PETER LEE, LTD.'S AMENDED MOTION TO WITHDRAW FROM REPRESENTATION OF DEFENDANTS OPTIMA TECHNOLOGY CORPORATION OPTIMA TECHNOLOGY CORPORATION, REZA ZANDIAN AKA GOLAMREZA ZANDIANJAZI AKA GHOLAM REZA ZANDIAN AKA REZA JAZI AKA J. REZA JAZI AKA G. REA JAZI AKA GHONONREZA ZANDIAN JAZI	1BCCOOPER	0.00	0.00
70	04/26/12	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BVANESSAG	0.00	0.00
71	04/26/12	ORDER GRANTING JOHN PETER LEE, LTD.'S AMENDED MOTION TO WITHDRAW FROM REPRESENTATION OF DEFENDANTS OPTIMA TECHNOLOGY CORPORATION, A CALIFORNIA CORPORATION; OPTIMA TECHNOLOGY CORPORATION, A NEVADA CORPORATION; AND REZA ZANDIAN AKA GOLAMREZA ZANDIANJAZI AKA GHOLAM REZA ZANDIAN AKA REZA JAZI AKA J. REZA JAZI AKA G. REZA JAZI AKA GHONONREZA ZANDIAN JAZI	1BVANESSAG	0.00	0.00
72	04/23/12	REQUEST FOR SUBMISSION	1BCGRIBBLE	0.00	0.00
73	04/20/12	SUPPLEMENTAL REQUEST FOR EXEMPTION FROM ARBITRATION	1BCGRIBBLE	0.00	0.00
74	03/30/12	DECLARATION OF ADAM P. MCMILLEN IN SUPPORT OF THE NOTICE ON NON-OPPOSITION TO JOHN PETER LEE, LTD.'S AMENDED MOTION TO WITHDRAW FROM REPRESENTATION	1BCCOOPER	0.00	0.00
75	03/30/12	NOTICE OF NON-OPPOSITION TO JOHN PETER LEE, LTD.'S AMENDED MOTION TO WITHDRAW FROM REPRESENTATION	1BCCOOPER	0.00	0.00
76	03/16/12	DECLARATION OF ADAM P. MCMILLEN IN SUPPORT OF THE NOTICE OF NON-OPPOSITION TO JOHN PETER LEE, LTD.'S MOTION TO WITHDRAW FROM REPRESENTATION	1BCCOOPER	0.00	0.00
77	03/16/12	NOTICE OF NON-OPPOSITION TO JOHN PETER LEE, LTD.'S MOTION TO WITHDRAW FROM REPRESENTATION	1BCCOOPER	0.00	0.00
78	03/14/12	GENERAL DENIAL Receipt: 21864 Date: 03/16/2012	1BCCOOPER	218.00	0.00
79	03/14/12	JOHN PETER LEE, LTD.'S AMENDED MOTION TO WITHDRAW FROM REPRESENTATION OF DEFENDANTS OPTIMA TECHNOLOGY CORPORATION, A CALIFORNIA CORPORATION; OPTIMA TECHNOLOGY CORPORATION, A NEVADA CORPORATION; AND REZA ZANDIAN AKA GOLAMREZA ZANDIANJAZI AKA GHOLAM REZA ZANDIAN AKA REZA JAZI AKA J. REZA JAZI AKA G. REZA JAZI AKA GHONONREZA ZANDIAN JAZI	1BJHIGGINS	0.00	0.00
80	03/09/12	REQUEST FOR EXEMPTION FROM ARBITRATION	1BVANESSAG	0.00	0.00
81	03/09/12	NOTICE OF INTENT TO TAKE DEFAULT	1BVANESSAG	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
82	03/07/12	JOHN PETER LEE, LTD.'S MOTION TO WITHDRAW FROM REPRESENTATION OF DEFENDANT REZA ZANDIAN AKA GOLAMREZA ZANDIANJAZI AKA GHOLM REZA ZANDIAN AKA REZA JAZI AKA J. REZA JAZI G. REZA JAZI AKA GHONONREZA ZANDIAN JAZI	1BCCOOPER	0.00	0.00
83	03/06/12	GENERAL DENIAL Receipt: 21739 Date: 03/09/2012 *STRICKEN PER ORDER GRANTING PLAINTIFF'S MOTION FOR SANCTIONS UNDER NRCP 37 FILED JAN. 15, 2013*	1BCCOOPER	218.00	0.00
84	02/24/12	NOTICE OF ENTRY OF ORDER	1BJHIGGINS	0.00	0.00
85	02/23/12	ORDER DENYING MOTION TO STRIKE	1BJHIGGINS	0.00	0.00
86	02/21/12	ORDER DENYING DEFENDANT'S MOTION TO DISMISS	1BJHIGGINS	0.00	0.00
87	02/13/12	REQUEST FOR SUBMISSION (2)	1BCCOOPER	0.00	0.00
88	02/13/12	DECLARATION OF ADAM P. MCMILLEN	1BCCOOPER	0.00	0.00
89	02/13/12	REPLY IN SUPPORT OF MOTION TO STRIKE	1BCCOOPER	0.00	0.00
90	02/02/12	OPPOSITION TO MOTION TO STRIKE	1BJHIGGINS	0.00	0.00
91	01/23/12	DECLARATION OF JED MARGOLIN IN SUPPORT OF MOTION TO STRIKE	1BVANESSAG	0.00	0.00
92	01/23/12	MOTION TO STRIKE	1BVANESSAG	0.00	0.00
93	12/13/11	REPLY TO OPPOSITION TO MOTION TO DISMISS	1BJHIGGINS	0.00	0.00
94	12/05/11	OPPOSITION TO MOTION TO DISMISS	1BKDUNCKHO	0.00	0.00
95	11/17/11	MOTION TO DISMISS AMENDED COMPLAINT ON SPECIAL APPEARANCE	1BKDUNCKHO	0.00	0.00
96	11/08/11	AMENDED CERTIFICATE OF SERVICE	1BVANESSAG	0.00	0.00
97	11/07/11	SUMMONS ON AMENDED COMPLAINT & (2) ADD'L SUMMONS ON AMENDED COMPLAINT	1BKDUNCKHO	0.00	0.00
98	11/07/11	CERTIFICATE OF SERVICE	1BKDUNCKHO	0.00	0.00
99	10/05/11	NOTICE OF ENTRY OF AMENDED ORDER	1BVANESSAG	0.00	0.00
100	09/27/11	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
101	09/27/11	AMENDED ORDER ALLOWING SERVICE BY PUBLICATION	1BJHIGGINS	0.00	0.00
102	09/23/11	REQUEST FOR SUBMISSION	1BCCOOPER	0.00	0.00
103	09/13/11	NOTICE OF ENTRY OF ORDER	1BKDUNCKHO	0.00	0.00
104	09/09/11	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJHIGGINS	0.00	0.00
105	09/09/11	ORDER ALLOWING SERVICE BY PUBLICATION	1BJHIGGINS	0.00	0.00
106	09/07/11	REQUEST FOR SUBMISSION	1BKDUNCKHO	0.00	0.00
107	08/11/11	ISSUING SUMMONS ON AMENDED COMPLAINT & 2 ADDITIONAL	1BKDUNCKHO	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
108	08/11/11	AMENDED COMPLAINT	1BKDUNCKHO	0.00	0.00
109	08/11/11	MOTION TO SERVE BY PUBLICATION	1BKDUNCKHO	0.00	0.00
110	08/03/11	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BJULIEH	0.00	0.00
111	08/03/11	ORDER SETTING ASIDE DEFAULT, DYNING MOTION TO DISMISS AND GRANTING EXTENSION OF TIME FOR SERVICE	1BJULIEH	0.00	0.00
112	07/13/11	REQUEST FOR SUBMISSION	1BCCOOPER	0.00	0.00
113	07/05/11	REPLY TO OPPOSITION TO MOTION TO DISMISS ON A SPECIAL APPEARANCE	1BCCOOPER	0.00	0.00
114	06/22/11	OPPOSITION TO MOTION TO DISMISS AND COUNTER MOTIONS TO STRIKE AND FOR LEAVE TO AMEND THE COMPLAINT	1BMKALE	0.00	0.00
115	06/13/11	NOTICE OF CHANGE OF COUNSEL	1BJHIGGINS	0.00	0.00
116	06/09/11	MOTION TO DISMISS ON A SPECIAL APPEARANCE	1BMKALE	0.00	0.00
117	03/07/11	NOTICE OF ENTRY OF DEFAULT JUDGMENT	1BCCOOPER	0.00	0.00
118	03/01/11	DEFAULT JUDGMENT	1BCCOOPER	0.00	0.00
119	03/01/11	JUDGMENT	1BCCOOPER	0.00	0.00
		Judgment Amount: 121,594.46 Judgment Total: 121,594.46			
		Terms: JUDGMENT ENERED @ 3:24 PM.			
		Judgment Type: DEFAULT JUDGMENT Judgment Date: 03/01/2011			
		Judgment For: MARGOLIN, JED - PLNTFF/PETNR			
		Judgment Against: OPTIMA TECHNOLOGY - DEFENDANT/RESPONDENT			
		ZANDIAN, REZA - DEFENDANT/RESPONDENT			
		Judgment Balance: 121,594.46 Case Total: 121,594.46 Case Balance: 121,594.46			
120	03/01/11	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
121	03/01/11	DEFAULT JUDGMENT	1BCCOOPER	0.00	0.00
122	02/28/11	APPLICATION FOR DEFAULT JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF	1BMKALE	0.00	0.00
123	02/28/11	DECLARATION OF JED MARGOLIN IN SUPPORT OF APPLICATING FOR DEFAULT JUDGMENT	1BMKALE	0.00	0.00
124	02/28/11	DECLARATION FO CASSANDRA P. JOSEPH IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT	1BMKALE	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
125	02/25/11	CERTIFICATE OF SERVICE	1BMKALE	0.00	0.00
126	12/07/10	NOTICE OF ENTRY OF DEFAULT (3)	1BCFRANZ	0.00	0.00
127	12/02/10	DEFAULT	1BCCOOPER	0.00	0.00
128	12/02/10	APPLICATION FOR ENTRY OF DEFAULT	1BCCOOPER	0.00	0.00
129	12/02/10	APPLICATION FOR ENTRY OF DEFAULT	1BCCOOPER	0.00	0.00
130	12/02/10	DEFAULT	1BCCOOPER	0.00	0.00
131	12/02/10	APPLICATION FOR ENTRY OF DEFAULT	1BCCOOPER	0.00	0.00
132	03/26/10	SUMMONS AND ADD'S SUMMONS	1BCFRANZ	0.00	0.00
133	03/09/10	SUMMONS	1BCFRANZ	0.00	0.00
134	03/09/10	ISSUING SUMMONS & ADD'L SUMMONS	1BMKALE	0.00	0.00
135	12/15/09	ISSUING SUMMONS & 2 ADD'L	1BCCOOPER	0.00	0.00
136	12/14/09	COMPLAINT Receipt: 10054 Date: 12/14/2009 Receipt 10054 reversed by 10067 on 12/14/2009. Receipt: 10068 Date: 12/14/2009	1BMKALE	265.00	0.00
Total:				1,225.00	0.00
Totals By: COST				725.00	0.00
HOLDING				500.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

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Case No.: 09 OC 00579 1B

Dept. No.: 1

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2014 FEB -6 AM 8:51

ALAN GLOVER
BY  CLERK
DEPUTY

**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.**

**ORDER DENYING DEFENDANT
REZA ZANDIAN AKA GOLAMREZA
ZANDIANJAZI AKA GHOLAM REZA
ZANDIAN AKA REZA JAZI AKA J.
REZA JAZI AKA G. REZA JAZI AKA
GHONONREZA ZANDIAN JAZI'S
MOTION TO SET ASIDE DEFAULT
JUDGMENT**

This matter comes before the Court on REZA ZANDIAN aka GOLAMREZA ZANDIANJAZI aka GHOLAM REZA ZANDIAN aka REZA JAZI aka J. REZA JAZI aka G. REZA JAZI aka GHONONREZA ZANDIAN JAZI's ("Zandian") Motion to Set Aside Default Judgment, dated December 19, 2013. Plaintiff Jed Margolin filed an Opposition to Set Aside Default Judgment on January 19, 2014. Zandian served a reply in support of the Motion to Set Aside on January 23, 2014. Based upon the following facts and conclusions of law, Zandian's Motion to Set Aside is DENIED.

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I. FACTUAL BACKGROUND

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

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

On or about December 5, 2007, Zandian filed with the U.S. Patent and Trademark Office (“USPTO”) assignment documents allegedly assigning all four of the Patents to Optima Technology Corporation (“OTC”), a company apparently owned by Zandian at the time. *Id.* at ¶ 15. Shortly thereafter, on November 9, 2007, Mr. Margolin, Robert Adams, and OTG were named as defendants in the case titled *Universal Avionics Systems Corporation v. Optima Technology Group, Inc.*, No. CV 07-588-TUC-RCC (the “Arizona action”). *Id.* at ¶ 17. Zandian was not a party in the Arizona action. Nevertheless, the plaintiff in the Arizona action asserted that Mr. Margolin and OTG were not the owners of the ‘073 and ‘724 Patents, and OTG filed a cross-claim for declaratory relief against Optima Technology Corporation (“OTC”) in order to obtain legal title to the respective patents. *Id.*

On August 18, 2008, the United States District Court for the District of Arizona entered a default judgment against OTC and found that OTC had no interest in the ‘073 or ‘724 Patents, and that the assignment documents filed with the USPTO were “forged, invalid,

1 void, of no force and effect.” *Id.* at ¶ 18; *see also* Exhibit B to Zandian’s Motion to Dismiss,
2 dated 11/16/11, on file herein.

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

8 II. PROCEDURAL BACKGROUND

9 Plaintiff filed his Complaint on December 11, 2009, and the Complaint was personally
10 served on Zandian on February 2, 2010, and on Defendants Optima Technology Corporation, a
11 Nevada corporation, and Optima Technology Corporation, a California corporation on March
12 21, 2010. Zandian’s answer to Plaintiff’s Complaint was due on February 22, 2010, but
13 Zandian did not answer the Complaint or respond in any way. Default was entered against
14 Zandian on December 2, 2010, and Plaintiff filed and served a Notice of Entry of Default on
15 Zandian on December 7, 2010 and on his last known attorney on December 16, 2010.

16 The answers of Defendants Optima Technology Corporation, a Nevada corporation,
17 and Optima Technology Corporation, a California corporation, were due on March 8, 2010,
18 but Defendants did not answer the Complaint or respond in any way. Default was entered
19 against Defendants Optima Technology Corporation, a Nevada corporation, and Optima
20 Technology Corporation, a California corporation on December 2, 2010. Plaintiff filed and
21 served a Notice of Entry of Default on the corporate entities on December 7, 2010 and on their
22 last known attorney on December 16, 2010.

23 The defaults were set aside and Zandian’s motion to dismiss was denied on August 3,
24 2011. On September 27, 2011, this Court ordered that service of process against all
25 Defendants may be made by publication. As manifested by the affidavits of service, filed
26 herein on November 7, 2011, all Defendants were duly served by publication by November
27 2011.
28

1 On February 21, 2012, the Court denied Zandian's motion to dismiss the Amended
2 Complaint. On March 5, 2012, Zandian served a General Denial to the Amended Complaint.
3 On March 13, 2012, the corporate Defendants served a General Denial to the Amended
4 Complaint.

5 On June 28, 2012, this Court issued an order requiring the corporate Defendants to
6 retain counsel and that counsel enter an appearance on behalf of the corporate Defendants by
7 July 15, 2012. The June 28, 2012 order further provided that if no such appearance was
8 entered, the corporate Defendants' General Denial would be stricken. Since no appearance
9 was their behalf of the corporate Defendants, a default was entered against them on September
10 24, 2012. A notice of entry of default judgment was filed and served on November 6, 2012.

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

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

21 On April 17, 2013, Mr. Margolin filed an Application for Default Judgment, which was
22 served on Zandian and the corporate Defendants. Since Zandian did not respond to the
23 Application for Default Judgment, a Default Judgment was entered on June 24, 2013. Notice
24 of entry of the Default Judgment was served on Zandian on June 26, 2013 and filed on June
25 27, 2013.

26 Over five and a half months later, on December 19, 2013, Zandian served his Motion
27 to Set Aside on Plaintiff. Zandian's Motion to Set Aside claims that he never received any
28 written discovery or notice of the pleadings and papers filed in this matter after his counsel

1 withdrew as his former counsel provided an erroneous last known address to the Court and the
2 parties when he withdrew, and therefore Zandian requests that the judgment be set aside.

3 III. FINDINGS AND CONCLUSIONS OF LAW

4 A party seeking to set aside a default judgment has the burden to prove mistake,
5 inadvertence, surprise, or excusable neglect by a preponderance of the evidence. *Kahn v.*
6 *Orme*, 108 Nev. 510, 513–14, 835 P.2d 790, 793 (1992). The Court finds that Zandian has not
7 met the burden to prove mistake, inadvertence, surprise, or excusable neglect by a
8 preponderance of the evidence.

9 Specifically, Zandian has not met the factors set forth in *Kahn* to compel the court to
10 set aside the judgment. *Id.* at 513, 835 P.2d at 792–93 (holding that the district court must
11 consider whether the party moving to set aside a judgment promptly applied to remove the
12 judgment, lacked intent to delay the proceedings, lacked knowledge of the procedural
13 requirements, and demonstrated good faith, in addition to considering the state's underlying
14 policy of resolving cases on the merits). Zandian failed to promptly apply for relief, has not
15 established a lack of intent to delay these proceedings or a lack of knowledge of the procedural
16 requirements, and did not provide a good-faith reason for the over five-and-a-half-month gap
17 between entry of default and the time he obtained new counsel and filed the Motion to Set
18 Aside Default Judgment.

19 a. Zandian Did Not Promptly Apply To Remove The Judgment

20 Even though a motion to set aside a judgment may be filed within the six month
21 deadline provided for in NRCP 60(b), a party can still fail to act promptly. *See Kahn* 108 Nev.
22 at 514, 835 P.2d at 793. Therefore, “want of diligence in seeking to set aside a judgment is
23 ground enough for denial of such a motion.” *Id.* (citing *Union Petrochemical Corp. v. Scott*,
24 96 Nev. 337, 339, 609 P.2d 323, 324 (1980) (citing *Lentz v. Boles*, 84 Nev. 197, 438 P.2d 254
25 (1968); *Hotel Last Frontier v. Frontier Prop.*, 79 Nev. 150, 380 P.2d 293 (1963)).

26 Despite his knowledge of the default judgment, Zandian did not move to have the
27 judgment set aside until nearly six months after its entry. Although Zandian argues he did not
28 receive notice of the various proceedings, notice was mailed to his address. Therefore, the

1 notice requirement of NRC 55 was fulfilled as Plaintiff served written notice of the
2 application for default judgment. Moreover, NRC 55 is likely not implicated since the
3 judgment ultimately resulted from sanctions arising from Zandian's failure to respond to
4 discovery. *See Durango Fire Protection, Inc. v. Troncoso*, 120 Nev. 658 (2004) (trial court's
5 entry of judgment for plaintiff, in action for breach of contract, after striking defendant's
6 answer was a sanction for defendant's failure to appear at several hearings and calendar calls
7 rather than a default judgment, and thus, civil procedure rule requiring written notice before
8 entry of default judgment was not applicable).

9 Further, First Judicial District Court Rule 22(3) expressly states that "[a]ny form of
10 order permitting withdrawal of an attorney submitted to the Court for signature shall contain
11 the address at which the party is to be served with notice of all further proceedings." Plaintiff
12 had a right to rely on the address given by Zandian's prior attorney.

13 No evidence supports Zandian's claims that he lacked knowledge of this matter. Even
14 if Zandian was living in France, for which no competent evidence has been provided to this
15 Court, Zandian was required to provide the Court and the parties with his new address.
16 However, Zandian never informed this Court or the parties of any address change. The record
17 demonstrates that the Plaintiff's discovery requests, motions, application for judgment, orders
18 and notice of judgment were all mailed to Zandian's address of record. Under NRC 5(b),
19 service by mail is complete upon mailing. Thus, Zandian received notice of the proceedings
20 and his repeated failure to respond constituted inexcusable neglect.

21 **b. Zandian Has Failed To Show He Lacked Intent To Delay**

22 Zandian received all of the papers and pleadings in this matter. However, he failed to
23 respond to Plaintiff's discovery and willfully ignored the proceedings of this matter. In fact,
24 Zandian waited nearly six months to secure new counsel and file the motion to set aside.
25 Furthermore, Zandian failed to file an opposition to the application for judgment.
26 Accordingly, the Court finds that Zandian has failed to establish the absence of an intent to
27 delay.

28 **c. Whether Zandian Lacked Knowledge Of Procedural Requirements**

1 earlier discovery requests and motions. Zandian has not demonstrated good faith. In fact,
2 Zandian has only demonstrated inexcusable neglect by his willful failure to respond to, and
3 participate in, this action. Accordingly, the Court determines that Zandian lacked good faith in
4 contesting this action.

5 **e. Whether This Case Should Be Tried On The Merits For Policy Reasons**

6 The Nevada Supreme Court has held that “good public policy dictates that cases be
7 adjudicated on their merits.” *See Kahn* 108 Nev. at 516, 835 P.2d at 794 (citing *Hotel Last*
8 *Frontier v. Frontier Prop.*, 79 Nev. 150, 155–56, 380 P.2d 293, 295 (1963) (original
9 emphasis). However, this policy has its limits:
10

11 We wish not to be understood, however, that this judicial tendency to grant
12 relief from a default judgment implies that the trial court should always
13 grant relief from a default judgment. Litigants and their counsel may not
14 properly be allowed to disregard process or procedural rules with impunity.
Lack of good faith or diligence, or lack of merit in the proposed defense,
may very well warrant a denial of the motion for relief from the judgment.

15 *Id.* (citing *Lentz v. Boles*, 84 Nev. 197, 200, 438 P.2d at 256 (1968)).

16 Zandian has disregarded the process and procedural rules of this matter with impunity.
17 He has repeatedly ignored this matter and failed to respond to the written discovery and
18 motions in this matter since his former attorney John Peter Lee withdrew from representation.
19 Zandian’s lack of good faith or diligence warrants a denial of the motion to set aside.

20 Zandian’s complete failure to respond to the discovery requests and subsequent
21 motions evidences his willful and recalcitrant disregard of the judicial process, which
22 prejudiced Plaintiff. *Foster v. Dingwall*, 227 P.3d 1042, 1049 (Nev. 2010) (citing *Hamlett v.*
23 *Reynolds*, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998) (upholding the district court’s strike
24 order where the defaulting party’s “constant failure to follow [the court’s] orders was
25 unexplained and unwarranted”); *In re Phenylpropanolamine (PPA) Products*, 460 F.3d 1217,
26 1236 (9th Cir.2006) (holding that, with respect to discovery abuses, “[p]rejudice from
27 unreasonable delay is presumed” and failure to comply with court orders mandating discovery
28 “is sufficient prejudice”)).

1 In light of Zandian's repeated and continued abuses, the policy of adjudicating cases on
2 the merits would not be furthered in this case, and the ultimate sanctions are necessary to
3 demonstrate to Zandian and future litigants that they are not free to act with wayward
4 disregard of a court's orders. *Foster*, 227 P.3d at 1049. Moreover, Zandian's failure to oppose
5 Plaintiff's motion to strike the General Denial or the application for judgment constitutes an
6 admission that the motion and application were meritorious. *Id.* (citing *King v. Carlidge*, 121
7 Nev. 926, 927, 124 P.3d 1161, 1162 (2005) (stating that an unopposed motion may be
8 considered as an admission of merit and consent to grant the motion) (citing DCR 13(3)).

9 IV. CONCLUSION

10 The record provides substantial evidence to support this denial of Zandian's motion to
11 set aside. Further, the policy of resolving cases on the merits does not allow litigants "to
12 disregard process or procedural rules with impunity." *Kahn*, 108 Nev. at 516, 835 P.2d at 794
13 (quoting *Lentz v. Boles*, 84 Nev. 197, 200, 438 P.2d 254, 256-57 (1968)).

14 Zandian has failed to show mistake, inadvertence, surprise or excusable neglect
15 pursuant to NRCP 60(b). Zandian had every opportunity to properly defend this action and
16 instead made a voluntary choice not to. Therefore, Zandian's motion to set aside is hereby
17 DENIED.

18 DATED: This 6th day of February, 2014. IT IS SO ORDERED:
19

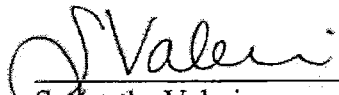
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22 JAMES T. RUSSELL
23 DISTRICT COURT JUDGE
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1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 6 day of February, 2014, I placed a copy of the
3 foregoing in the United States Mail, postage prepaid, addressed as follows:

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

9 Geoffrey W. Hawkins
10 Johnathon Fayeghi
11 Hawkins Melendrez, P.C.
12 9555 Hillwood Drive, Suite 150
13 Las Vegas, NV 89134

14 
15 _____
16 Samantha Valerius
17 Law Clerk, Department I
18
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1 Matthew D. Francis (6978)
2 Adam P. McMillen (10678)
3 WATSON ROUNDS
4 5371 Kietzke Lane
5 Reno, NV 89511
6 Telephone: 775-324-4100
7 Facsimile: 775-333-8171
8 *Attorneys for Plaintiff Jed Margolin*

REC'D & FILED
2014 FEB 10 PM 3:19
ALAN ROYER
CLERK
BY *[Signature]*
DEPUTY

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

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**
17 **aka GOLAMREZA ZANDIANJAZI**
18 **aka GHOLAM REZA ZANDIAN**
19 **aka REZA JAZI aka J. REZA JAZI**
20 **aka G. REZA JAZI aka GHONONREZA**
ZANDIAN JAZI, an individual, DOE
Companies 1-10, DOE Corporations 11-20,
and DOE Individuals 21-30,
21 **Defendants.**

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

NOTICE OF ENTRY OF ORDER

22 TO: All parties:

23 **PLEASE TAKE NOTICE** that on February 6, 2014, the Court entered its Order
24 Denying Defendant Reza Zandian aka Golamreza Zandianjazi aka Gholam Reza Zandian aka
25 Reza Jazi aka J. Reza Jazi aka G. Reza Jazi aka Ghononreza Zandian Jazi's Motion to Set

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27 ///
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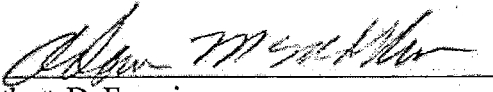
1 Aside Default Judgment. Attached as Exhibit 1 is a true and correct copy of such Order.

2 **Affirmation Pursuant to NRS 239B.030**

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

5 DATED: February 7, 2014.

WATSON ROUNDS

6
7 By: 
8 Matthew D. Francis
9 Adam P. McMillen
10 Watson Rounds
11 5371 Kietzke Lane
12 Reno, NV 89511
13 Attorneys for Plaintiff Jed Margolin
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1 **CERTIFICATE OF SERVICE**

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

5 Johnathon Fayeghi, Esq.
6 Hawkins Melendrez
7 9555 Hillwood Dr., Suite 150
8 Las Vegas, NV 89134
9 *Counsel for Reza Zandian*

10 Optima Technology Corp.
11 A California corporation
12 8401 Bonita Downs Road
13 Fair Oaks, CA 95628

14 Optima Technology Corp.
15 A Nevada corporation
16 8401 Bonita Downs Road
17 Fair Oaks, CA 95628

18 Optima Technology Corp.
19 A California corporation
20 8775 Costa Verde Blvd. #501
21 San Diego, CA 92122

22 Optima Technology Corp.
23 A Nevada corporation
24 8775 Costa Verde Blvd. #501
25 San Diego, CA 92122

26 Dated: February 10th, 2014.

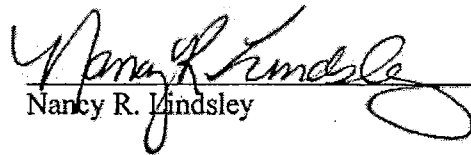
27 
28 Nancy R. Lindsley

Exhibit 1

Exhibit 1

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Case No.: 09 OC 00579 1B

Dept. No.: 1

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2014 FEB -6 AM 8: 51

ALAN GLOVER
BY  CLERK
DEPUTY

**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.

**ORDER DENYING DEFENDANT
REZA ZANDIAN AKA GOLAMREZA
ZANDIANJAZI AKA GHOLAM REZA
ZANDIAN AKA REZA JAZI AKA J.
REZA JAZI AKA G. REZA JAZI AKA
GHONONREZA ZANDIAN JAZI'S
MOTION TO SET ASIDE DEFAULT
JUDGMENT**

This matter comes before the Court on REZA ZANDIAN aka GOLAMREZA ZANDIANJAZI aka GHOLAM REZA ZANDIAN aka REZA JAZI aka J. REZA JAZI aka G. REZA JAZI aka GHONONREZA ZANDIAN JAZI's ("Zandian") Motion to Set Aside Default Judgment, dated December 19, 2013. Plaintiff Jed Margolin filed an Opposition to Set Aside Default Judgment on January 19, 2014. Zandian served a reply in support of the Motion to Set Aside on January 23, 2014. Based upon the following facts and conclusions of law, Zandian's Motion to Set Aside is DENIED.

\\

1 I. FACTUAL BACKGROUND

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

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

16 On or about December 5, 2007, Zandian filed with the U.S. Patent and Trademark
17 Office (“USPTO”) assignment documents allegedly assigning all four of the Patents to Optima
18 Technology Corporation (“OTC”), a company apparently owned by Zandian at the time. *Id.* at
19 ¶ 15. Shortly thereafter, on November 9, 2007, Mr. Margolin, Robert Adams, and OTG were
20 named as defendants in the case titled *Universal Avionics Systems Corporation v. Optima
21 Technology Group, Inc.*, No. CV 07-588-TUC-RCC (the “Arizona action”). *Id.* at ¶ 17.
22 Zandian was not a party in the Arizona action. Nevertheless, the plaintiff in the Arizona action
23 asserted that Mr. Margolin and OTG were not the owners of the ‘073 and ‘724 Patents, and
24 OTG filed a cross-claim for declaratory relief against Optima Technology Corporation
25 (“OTC”) in order to obtain legal title to the respective patents. *Id.*

26 On August 18, 2008, the United States District Court for the District of Arizona
27 entered a default judgment against OTC and found that OTC had no interest in the ‘073 or
28 ‘724 Patents, and that the assignment documents filed with the USPTO were “forged, invalid,

1 void, of no force and effect.” *Id.* at ¶ 18; *see also* Exhibit B to Zandian’s Motion to Dismiss,
2 dated 11/16/11, on file herein.

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

8 II. PROCEDURAL BACKGROUND

9 Plaintiff filed his Complaint on December 11, 2009, and the Complaint was personally
10 served on Zandian on February 2, 2010, and on Defendants Optima Technology Corporation, a
11 Nevada corporation, and Optima Technology Corporation, a California corporation on March
12 21, 2010. Zandian’s answer to Plaintiff’s Complaint was due on February 22, 2010, but
13 Zandian did not answer the Complaint or respond in any way. Default was entered against
14 Zandian on December 2, 2010, and Plaintiff filed and served a Notice of Entry of Default on
15 Zandian on December 7, 2010 and on his last known attorney on December 16, 2010.

16 The answers of Defendants Optima Technology Corporation, a Nevada corporation,
17 and Optima Technology Corporation, a California corporation, were due on March 8, 2010,
18 but Defendants did not answer the Complaint or respond in any way. Default was entered
19 against Defendants Optima Technology Corporation, a Nevada corporation, and Optima
20 Technology Corporation, a California corporation on December 2, 2010. Plaintiff filed and
21 served a Notice of Entry of Default on the corporate entities on December 7, 2010 and on their
22 last known attorney on December 16, 2010.

23 The defaults were set aside and Zandian’s motion to dismiss was denied on August 3,
24 2011. On September 27, 2011, this Court ordered that service of process against all
25 Defendants may be made by publication. As manifested by the affidavits of service, filed
26 herein on November 7, 2011, all Defendants were duly served by publication by November
27 2011.

28

1 On February 21, 2012, the Court denied Zandian's motion to dismiss the Amended
2 Complaint. On March 5, 2012, Zandian served a General Denial to the Amended Complaint.
3 On March 13, 2012, the corporate Defendants served a General Denial to the Amended
4 Complaint.

5 On June 28, 2012, this Court issued an order requiring the corporate Defendants to
6 retain counsel and that counsel enter an appearance on behalf of the corporate Defendants by
7 July 15, 2012. The June 28, 2012 order further provided that if no such appearance was
8 entered, the corporate Defendants' General Denial would be stricken. Since no appearance
9 was their behalf of the corporate Defendants, a default was entered against them on September
10 24, 2012. A notice of entry of default judgment was filed and served on November 6, 2012.

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

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

21 On April 17, 2013, Mr. Margolin filed an Application for Default Judgment, which was
22 served on Zandian and the corporate Defendants. Since Zandian did not respond to the
23 Application for Default Judgment, a Default Judgment was entered on June 24, 2013. Notice
24 of entry of the Default Judgment was served on Zandian on June 26, 2013 and filed on June
25 27, 2013.

26 Over five and a half months later, on December 19, 2013, Zandian served his Motion
27 to Set Aside on Plaintiff. Zandian's Motion to Set Aside claims that he never received any
28 written discovery or notice of the pleadings and papers filed in this matter after his counsel

1 withdrew as his former counsel provided an erroneous last known address to the Court and the
2 parties when he withdrew, and therefore Zandian requests that the judgment be set aside.

3 III. FINDINGS AND CONCLUSIONS OF LAW

4 A party seeking to set aside a default judgment has the burden to prove mistake,
5 inadvertence, surprise, or excusable neglect by a preponderance of the evidence. *Kahn v.*
6 *Orme*, 108 Nev. 510, 513–14, 835 P.2d 790, 793 (1992). The Court finds that Zandian has not
7 met the burden to prove mistake, inadvertence, surprise, or excusable neglect by a
8 preponderance of the evidence.

9 Specifically, Zandian has not met the factors set forth in *Kahn* to compel the court to
10 set aside the judgment. *Id.* at 513, 835 P.2d at 792–93 (holding that the district court must
11 consider whether the party moving to set aside a judgment promptly applied to remove the
12 judgment, lacked intent to delay the proceedings, lacked knowledge of the procedural
13 requirements, and demonstrated good faith, in addition to considering the state's underlying
14 policy of resolving cases on the merits). Zandian failed to promptly apply for relief, has not
15 established a lack of intent to delay these proceedings or a lack of knowledge of the procedural
16 requirements, and did not provide a good-faith reason for the over five-and-a-half-month gap
17 between entry of default and the time he obtained new counsel and filed the Motion to Set
18 Aside Default Judgment.

19 a. Zandian Did Not Promptly Apply To Remove The Judgment

20 Even though a motion to set aside a judgment may be filed within the six month
21 deadline provided for in NRCP 60(b), a party can still fail to act promptly. *See Kahn* 108 Nev.
22 at 514, 835 P.2d at 793. Therefore, “want of diligence in seeking to set aside a judgment is
23 ground enough for denial of such a motion.” *Id.* (citing *Union Petrochemical Corp. v. Scott*,
24 96 Nev. 337, 339, 609 P.2d 323, 324 (1980) (citing *Lentz v. Boles*, 84 Nev. 197, 438 P.2d 254
25 (1968); *Hotel Last Frontier v. Frontier Prop.*, 79 Nev. 150, 380 P.2d 293 (1963)).

26 Despite his knowledge of the default judgment, Zandian did not move to have the
27 judgment set aside until nearly six months after its entry. Although Zandian argues he did not
28 receive notice of the various proceedings, notice was mailed to his address. Therefore, the

1 notice requirement of NRCP 55 was fulfilled as Plaintiff served written notice of the
2 application for default judgment. Moreover, NRCP 55 is likely not implicated since the
3 judgment ultimately resulted from sanctions arising from Zandian's failure to respond to
4 discovery. *See Durango Fire Protection, Inc. v. Troncoso*, 120 Nev. 658 (2004) (trial court's
5 entry of judgment for plaintiff, in action for breach of contract, after striking defendant's
6 answer was a sanction for defendant's failure to appear at several hearings and calendar calls
7 rather than a default judgment, and thus, civil procedure rule requiring written notice before
8 entry of default judgment was not applicable).

9 Further, First Judicial District Court Rule 22(3) expressly states that "[a]ny form of
10 order permitting withdrawal of an attorney submitted to the Court for signature shall contain
11 the address at which the party is to be served with notice of all further proceedings." Plaintiff
12 had a right to rely on the address given by Zandian's prior attorney.

13 No evidence supports Zandian's claims that he lacked knowledge of this matter. Even
14 if Zandian was living in France, for which no competent evidence has been provided to this
15 Court, Zandian was required to provide the Court and the parties with his new address.
16 However, Zandian never informed this Court or the parties of any address change. The record
17 demonstrates that the Plaintiff's discovery requests, motions, application for judgment, orders
18 and notice of judgment were all mailed to Zandian's address of record. Under NRCP 5(b),
19 service by mail is complete upon mailing. Thus, Zandian received notice of the proceedings
20 and his repeated failure to respond constituted inexcusable neglect.

21 **b. Zandian Has Failed To Show He Lacked Intent To Delay**

22 Zandian received all of the papers and pleadings in this matter. However, he failed to
23 respond to Plaintiff's discovery and willfully ignored the proceedings of this matter. In fact,
24 Zandian waited nearly six months to secure new counsel and file the motion to set aside.
25 Furthermore, Zandian failed to file an opposition to the application for judgment.
26 Accordingly, the Court finds that Zandian has failed to establish the absence of an intent to
27 delay.

28 **c. Whether Zandian Lacked Knowledge Of Procedural Requirements**

1 Zandian unquestionably had notice of the written discovery, motions and orders filed in
2 this matter, and yet he ignored all of these documents. All that was required of Zandian was to
3 either personally respond to the discovery and motions or obtain counsel to appear on his
4 behalf. Zandian knew discovery had been served but deliberately chose to ignore it. Zandian
5 knew a motion for sanctions and an application for judgment had been filed, which led to the
6 judgment, but Zandian chose to ignore those items as well. Zandian's failure to obtain new
7 counsel or otherwise act on his own behalf is inexcusable. See *Kahn* 108 Nev. at 514-15, 835
8 P.2d at 793-4. As the Nevada Supreme Court stated in *Kahn*:

9 we are not confronted here with some subtle or technical aspect of
10 procedure, ignorance of which could readily be excused. The requirements
11 of the rule are simple and direct. *To condone the actions of a party who has*
12 *sat on its rights only to make a last-minute rush to set aside judgment would*
be to turn NRCP 60(b) into a device for delay rather than the means for
relief from an oppressive judgment that it was intended to be.

13 *Id.* (citing *Union*, 96 Nev. at 339, 609 P.2d at 324 (citing *Franklin v. Bartsas Realty, Inc.*, 95
14 Nev. 559, 598 P.2d 1147 (1979); *Central Operating Co. v. Utility Workers of America*, 491
15 F.2d 245 (4th Cir.1974)) (emphasis added in original)).

16 Zandian had sufficient knowledge to act responsibly. He had previously retained
17 counsel to defend this action and retained new counsel to set aside the judgment. Therefore,
18 this Court cannot conclude that Zandian failed to respond to set aside the default judgment
19 because he was ignorant of procedural requirements.
20

21 **d. Whether Zandian Acted In Good Faith**

22 Zandian has not provided any valid reason for failing to respond to the requested
23 discovery, the motion for sanctions or the application for judgment. Furthermore, he has not
24 provided a reasonable explanation for waiting over five months to obtain other counsel despite
25 having knowledge of the judgment entered against him.
26

27 Based upon the fact that Zandian knew about this case and continued to receive the
28 papers and pleadings from this matter, it was inexcusable for Zandian not to respond to the

1 earlier discovery requests and motions. Zandian has not demonstrated good faith. In fact,
2 Zandian has only demonstrated inexcusable neglect by his willful failure to respond to, and
3 participate in, this action. Accordingly, the Court determines that Zandian lacked good faith in
4 contesting this action.

5 **e. Whether This Case Should Be Tried On The Merits For Policy Reasons**

6 The Nevada Supreme Court has held that “good public policy dictates that cases be
7 adjudicated on their merits.” *See Kahn* 108 Nev. at 516, 835 P.2d at 794 (citing *Hotel Last*
8 *Frontier v. Frontier Prop.*, 79 Nev. 150, 155–56, 380 P.2d 293, 295 (1963) (original
9 emphasis). However, this policy has its limits:
10

11 We wish not to be understood, however, that this judicial tendency to grant
12 relief from a default judgment implies that the trial court should always
13 grant relief from a default judgment. Litigants and their counsel may not
14 properly be allowed to disregard process or procedural rules with impunity.
Lack of good faith or diligence, or lack of merit in the proposed defense,
may very well warrant a denial of the motion for relief from the judgment.

15 *Id.* (citing *Lentz v. Boles*, 84 Nev. 197, 200, 438 P.2d at 256 (1968)).

16 Zandian has disregarded the process and procedural rules of this matter with impunity.
17 He has repeatedly ignored this matter and failed to respond to the written discovery and
18 motions in this matter since his former attorney John Peter Lee withdrew from representation.
19 Zandian’s lack of good faith or diligence warrants a denial of the motion to set aside.

20 Zandian’s complete failure to respond to the discovery requests and subsequent
21 motions evidences his willful and recalcitrant disregard of the judicial process, which
22 prejudiced Plaintiff. *Foster v. Dingwall*, 227 P.3d 1042, 1049 (Nev. 2010) (citing *Hamlett v.*
23 *Reynolds*, 114 Nev. 863, 865, 963 P.2d 457, 458 (1998) (upholding the district court’s strike
24 order where the defaulting party’s “constant failure to follow [the court’s] orders was
25 unexplained and unwarranted”); *In re Phenylpropanolamine (PPA) Products*, 460 F.3d 1217,
26 1236 (9th Cir.2006) (holding that, with respect to discovery abuses, “[p]rejudice from
27 unreasonable delay is presumed” and failure to comply with court orders mandating discovery
28 “is sufficient prejudice”)).

1 In light of Zandian's repeated and continued abuses, the policy of adjudicating cases on
2 the merits would not be furthered in this case, and the ultimate sanctions are necessary to
3 demonstrate to Zandian and future litigants that they are not free to act with wayward
4 disregard of a court's orders. *Foster*, 227 P.3d at 1049. Moreover, Zandian's failure to oppose
5 Plaintiff's motion to strike the General Denial or the application for judgment constitutes an
6 admission that the motion and application were meritorious. *Id.* (citing *King v. Carlidge*, 121
7 Nev. 926, 927, 124 P.3d 1161, 1162 (2005) (stating that an unopposed motion may be
8 considered as an admission of merit and consent to grant the motion) (citing DCR 13(3)).

9 IV. CONCLUSION

10 The record provides substantial evidence to support this denial of Zandian's motion to
11 set aside. Further, the policy of resolving cases on the merits does not allow litigants "to
12 disregard process or procedural rules with impunity." *Kahn*, 108 Nev. at 516, 835 P.2d at 794
13 (quoting *Lentz v. Boles*, 84 Nev. 197, 200, 438 P.2d 254, 256-57 (1968)).

14 Zandian has failed to show mistake, inadvertence, surprise or excusable neglect
15 pursuant to NRCP 60(b). Zandian had every opportunity to properly defend this action and
16 instead made a voluntary choice not to. Therefore, Zandian's motion to set aside is hereby
17 DENIED.

18 DATED: This 6th day of February, 2014. IT IS SO ORDERED:
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22 JAMES T. RUSSELL
23 DISTRICT COURT JUDGE
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CERTIFICATE OF MAILING

I hereby certify that on the 6 day of February, 2014, I placed a copy of the foregoing in the United States Mail, postage prepaid, addressed as follows:

Matthew D. Francis
Adam P. McMillen
Watson Rounds
5371 Kietzke Lane
Reno, NV 89511

Geoffrey W. Hawkins
Johnathon Fayeghi
Hawkins Melendrez, P.C.
9555 Hillwood Drive, Suite 150
Las Vegas, NV 89134



Samantha Valerius
Law Clerk, Department I

CIVIL COVER SHEET

Carson County, Nevada
 Case No. 09OC00579 1B
 (Assigned by Clerk's Office) I

REC'D & FILED

2009 DEC 11 PM 4:07

I. Party Information

Plaintiff(s) (name/address/phone): JED MARGOLIN	Defendant(s) (name/address/phone): Optima Technology, Reza Zandian, aka Golamreza Zandianjazi
Attorney (name/address/phone): Matthew Francis, Esq, WATSON ROUNDS 5371 Kietzke Ln, Reno, NV 89511 324-4100	Attorney (name/address/phone): <i>[Signature]</i> DEPUTY

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate) Arbitration Requested

Civil Cases	
Real Property	Torts
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other <input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input checked="" type="checkbox"/> Other Torts/Product Liability <input checked="" type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input checked="" type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input checked="" type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input checked="" type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal <input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's C <input checked="" type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

<input type="checkbox"/> NRS Chapters 78-88	<input type="checkbox"/> Investments (NRS 104 Art. 8)	<input type="checkbox"/> Enhanced Case Mgmt/B
<input type="checkbox"/> Commodities (NRS 90)	<input type="checkbox"/> Deceptive Trade Practices (NRS 598)	<input type="checkbox"/> Other Business Court M
<input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Trademarks (NRS 600A)	

Date: December 10, 2009 Signature of initiating party or representative: *[Signature]*

See other side for family-related case filings.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 09 OC 00579 1B

TITLE: JED MARGOLIN 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

06/19/12 – DEPT. I – HONORABLE JAMES T. RUSSELL
J. Higgins, Clerk – Not Reported

MINUTE ORDER

COURT ORDERED: A copy of the document entitled Plaintiff's Motion to Compel Appearance of Counsel for Optima Technology Corporations, or in the Alternative, Motion to Strike General Denial of Optima Technology Corporations filed May 15, 2012 is to be used in the place and stead of the original as it is missing.
