

1 Matthew D. Francis (6978)
Adam P. McMillen (10678)
WATSON ROUNDS
2 5371 Kietzke Lane
Reno, NV 89511
3 Telephone: 775-324-4100
Facsimile: 775-333-8171
4 Attorneys for Plaintiff Jed Margolin

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ALAN GLOVER
BY *J. Margolin*
DEPUTY

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

9 **JED MARGOLIN, an individual,**

10 **Plaintiff,**

11 **vs.**

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

23 **Defendants.**

Case No.: 090C00579 1B

Dept. No.: 1

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

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

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

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

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

7 MEMORANDUM OF POINTS AND AUTHORITIES

8 I. FACTUAL BACKGROUND

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

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

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

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

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

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

15 **II. PROCEDURAL BACKGROUND**

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

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

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

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

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

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

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

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

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

1 **III. ARGUMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 *Id.*

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

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

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

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

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

10 Costs must be allowed of course to the prevailing party against any adverse party
11 against whom judgment is rendered, in the following cases: 1) in an action for the
12 recovery of real property or a possessory right thereto; 2) in an action to recover the
13 possession of personal property, where the value of the property amounts to more
14 than \$2,500. The value must be determined by the jury, court or master by whom
the action is tried; 3) in an action for the recovery of money or damages, where the
plaintiff seeks to recover more than \$2,500.

15 *Id.*

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

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

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

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

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

5 **IV. CONCLUSION**

6 In light of the foregoing, Plaintiff respectfully requests that this Application for Default
7 Judgment be granted, and the attached Default Judgment entered. As stated above, Plaintiff is
8 entitled to treble damages in the amount of \$900,000; prejudgment interest in the amount of
9 \$488,545.89; attorney’s fees in the amount of \$83,761.25; and costs in the amount of
10 \$25,021.96; for a total judgment of \$1,497,328.90.

11 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

14 Dated this 16th day of April, 2013.

15
16 BY: 

17 Matthew D. Francis (6978)
18 Adam P. McMillen (10678)
19 WATSON ROUNDS
20 5371 Kietzke Lane
21 Reno, NV 89511
22 Telephone: 775-324-4100
23 Facsimile: 775-333-8171
24 *Attorneys for Plaintiff Jed Margolin*

CERTIFICATE OF SERVICE

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

Reza Zandian
8401 Bonita Downs Road
Fair Oaks, CA 95628

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

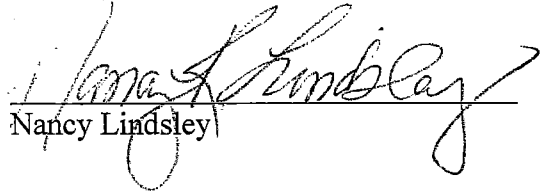
Optima Technology Corp.
A Nevada corporation
8401 Bonita Downs Road
Fair Oaks, CA 95628

Reza Zandian
8775 Costa Verde Blvd. #501
San Diego, CA 92122

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: April 16, 2013


Nancy Lindsley

~~4/16/13~~

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ALAN GLOVER
Alan Glover
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In The First Judicial District Court of the State of Nevada
In and for Carson City

JED MARGOLIN, an individual,
Plaintiff,

vs.

OPTIMA TECHNOLOGY CORPORATION,
a California corporation, OPTIMA
TECHNOLOGY CORPORATION, a Nevada
corporation, REZA ZANDIAN aka
GOLAMREZA ZANDIANJAZI aka
GHOLAM REZA ZANDIAN aka REZA JAZI
aka J. REZA JAZI aka G. REZA JAZI aka
GHONONREZA ZANDIAN JAZI, an
individual, DOE Companies
1-10, DOE Corporations 11-20, and DOE
Individuals 21-30,
Defendants.

Case No.: 090C00579 1B

Dept. No.: 1

DECLARATION OF ADAM P.
MCMILLEN IN SUPPORT OF
APPLICATION FOR DEFAULT
JUDGMENT

I, Adam P. McMillen do hereby declare and state as follows:

1. I am an associate at the law firm of Watson Rounds located at 5371 Kietzke Lane, Reno, Nevada 89511. This declaration is based upon my personal knowledge, and is made in support of Plaintiff's Application for Default Judgment.

2. To date, Plaintiff has incurred billed and unbilled fees in the amount of \$83,761.25. A true and correct copy of a printout from the Watson Rounds client ledger will

1 be provided to the Court *in camera*. As a result, the total amount of fees incurred in this action
2 to date total \$83,761.25.

3 3. To date, Plaintiff has incurred billed and unbilled costs in the amount of
4 \$25,021.96. A true and correct copy of a printout from the Watson Rounds client ledger will
5 be provided to the Court *in camera*. As a result, the total amount of costs incurred in this
6 action to date total \$25,021.96.

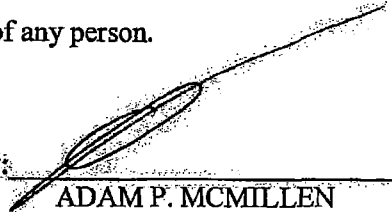
7 4. A true and correct copy of the Prime Interest Rate as published by the Nevada
8 Division of Financial Institutions is attached hereto as Exhibit 1.

9 5. I declare under penalty of perjury that the foregoing is true and correct to the
10 best of my knowledge.

11 **AFFIRMATION**

12 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
13 document does not contain the social security number of any person.

14 Dated this 16th day of April, 2013.

15 By: 
16 ADAM P. MCMILLEN

CERTIFICATE OF SERVICE

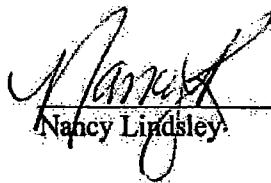
Pursuant to NRC 5(b), I certify that I am an employee of Watson Rounds, and that on this date, I deposited for mailing, in a sealed envelope, with first-class postage prepaid, a true and correct copy of the foregoing document, **DECLARATION OF ADAM P. MCMILLEN IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT**, addressed as follows:

Reza Zandian
8775 Costa Verde Blvd. #501
San Diego, CA 92122

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: April 16, 2013



Nancy Lindsley

Exhibit 1

Exhibit 1

PRIME INTEREST RATE

NRS 99.040(1) requires:

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

Following is the prime rate as ascertained by the Commissioner of Financial Institutions:

| | | | |
|-----------------|---------------|--------------|--------|
| January 1, 2013 | 3.25% | July 1, 2012 | 3.25% |
| January 1, 2012 | 3.25% | July 1, 2011 | 3.25% |
| January 1, 2011 | 3.25% | July 1, 2010 | 3.25% |
| January 1, 2010 | 3.25% | July 1, 2009 | 3.25% |
| January 1, 2009 | 3.25% | July 1, 2008 | 5.00% |
| January 1, 2008 | 7.25% | July 1, 2007 | 8.25% |
| January 1, 2007 | 8.25% | July 1, 2006 | 8.25% |
| January 1, 2006 | 7.25% | July 1, 2005 | 6.25% |
| January 1, 2005 | 5.25% | July 1, 2004 | 4.25% |
| January 1, 2004 | 4.00% | July 1, 2003 | 4.00% |
| January 1, 2003 | 4.25% | July 1, 2002 | 4.75% |
| January 1, 2002 | 4.75% | July 1, 2001 | 6.75% |
| January 1, 2001 | 9.50% | July 1, 2000 | 9.50% |
| January 1, 2000 | 8.25% | July 1, 1999 | 7.75% |
| January 1, 1999 | 7.75% | July 1, 1998 | 8.50% |
| January 1, 1998 | 8.50% | July 1, 1997 | 8.50% |
| January 1, 1997 | 8.25% | July 1, 1996 | 8.25% |
| January 1, 1996 | 8.50% | July 1, 1995 | 9.00% |
| January 1, 1995 | 8.50% | July 1, 1994 | 7.25% |
| January 1, 1994 | 6.00% | July 1, 1993 | 6.00% |
| January 1, 1993 | 6.00% | July 1, 1992 | 6.50% |
| January 1, 1992 | 6.50% | July 1, 1991 | 8.50% |
| January 1, 1991 | 10.00% | July 1, 1990 | 10.00% |
| January 1, 1990 | 10.50% | July 1, 1989 | 11.00% |
| January 1, 1989 | 10.50% | July 1, 1988 | 9.00% |
| January 1, 1988 | 8.75% | July 1, 1987 | 8.25% |
| January 1, 1987 | Not Available | | |

* Attorney General Opinion No. 98-20:

If clearly authorized by the creditor, a collection agency may collect whatever interest on a debt its creditor would be authorized to impose. A collection agency may not impose interest on any account or debt where the creditor has agreed not to impose interest or has otherwise indicated an intent not to collect interest. Simple interest may be imposed at the rate established in NRS 99.040 from the date the debt becomes due on any debt where there is no written contract fixing a different rate of interest, unless the account is an open or store accounts as discussed herein. In the case of open or store accounts, interest may be imposed or awarded only by a court of competent jurisdiction in an action over the debt.

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

2013 APR 17 AM 11:39

BLAN GLOVER
DEPUTY

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

11 **JED MARGOLIN, an individual,**

12 **Plaintiff,**

13 **vs.**

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

25 **Defendants.**

Case No.: 090C00579 1B

Dept. No.: 1

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

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

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

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

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

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **L. FACTUAL BACKGROUND**

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

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

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

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

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

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

15 II. PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

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

1 III. ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 *Id.*

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

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

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

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

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

10 Costs must be allowed of course to the prevailing party against any adverse party
11 against whom judgment is rendered, in the following cases: 1) in an action for the
12 recovery of real property or a possessory right thereto; 2) in an action to recover the
13 possession of personal property, where the value of the property amounts to more
14 than \$2,500. The value must be determined by the jury, court or master by whom
the action is tried; 3) in an action for the recovery of money or damages, where the
plaintiff seeks to recover more than \$2,500.

15 *Id.*

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

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

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

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

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

5 **IV. CONCLUSION**

6 In light of the foregoing, Plaintiff respectfully requests that this Application for Default
7 Judgment be granted, and the attached Default Judgment entered. As stated above, Plaintiff is
8 entitled to treble damages in the amount of \$900,000; prejudgment interest in the amount of
9 \$488,545.89; attorney’s fees in the amount of \$83,761.25; and costs in the amount of
10 \$25,021.96; for a total judgment of \$1,497,328.90.

11 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

14 Dated this 16th day of April, 2013.

15 BY: 

16 Matthew D. Francis (6978)
17 Adam P. McMillen (10678)
18 WATSON ROUNDS
19 5371 Kietzke Lane
20 Reno, NV 89511
21 Telephone: 775-324-4100
22 Facsimile: 775-333-8171
23 *Attorneys for Plaintiff Jed Margolin*

CERTIFICATE OF SERVICE

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

Reza Zandian
8401 Bonita Downs Road
Fair Oaks, CA 95628

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

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

Reza Zandian
8775 Costa Verde Blvd. #501
San Diego, CA 92122

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: April 16, 2013


Nancy Lindsley

4/16/13

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

2013 APR 17 AM 11:41

ALAN GLOVER
[Signature]
DEPT. 1

9
10 **In The First Judicial District Court of the State of Nevada**
11 **In and for Carson City**

12 **JED MARGOLIN, an individual,**

13 **Plaintiff,**

14 vs.

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

26 **Defendants.**

Case No.: 090C00579 1B

Dept. No.: 1

**DECLARATION OF JED MARGOLIN
IN SUPPORT OF APPLICATION FOR
DEFAULT JUDGMENT**

27 I, Jed Margolin do hereby declare and state as follows:

28 1. I am 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").

2. Attached as Exhibit 1 is a true and correct copy of the Amended Answer, Counterclaims, Cross-Claims and Third-Party Claims filed in the action captioned *Universal*

1 *Avionics Systems Corporation v. Optima Technology Group, Inc.*, No. CV 07-588-TUC-RCC
2 (the "Arizona Action").

3 3. Attached as Exhibit 2 is a true and correct copy of the August 18, 2008 Order
4 from the Arizona Action.

5 4. After Defendant Zandian filed the forged and invalid assignment document
6 with the USPTO relating to the Patents, I was forced to spend \$90,000 in attorneys' fees in the
7 Arizona Action where the Court ordered that the USPTO correct record title to the Patents.

8 Attached as Exhibit 3 are true and correct copies of the records from my bank showing three
9 transfers of \$30,000 each. Two transfers went to Optima Technology Group and one transfer
10 went directly to the attorneys representing Optima Technology Group and myself. The three
11 transfers were for the payment of attorneys' fees in the Arizona Action.

12 5. I was to be paid \$210,000 pursuant to a patent purchase agreement that failed
13 as a proximate result of the Defendants' actions as stated in the Amended Complaint. I cannot
14 publicly provide documentation or specific details of the actual purchase agreement because of
15 the confidentiality provisions in the agreement. However, I will provide the Court with
16 documentation of the agreement so the Court can review the agreement *in camera*. Also, on
17 April 14, 2008, Optima Technology Group entered into a purchase agreement to sell the '073
18 and '724 Patents to another entity which would have netted me \$210,000 on the purchase price
19 of the subject Patents alone. The purchase agreement also included a provision for post patent
20 sale royalty payments which would have provided me with additional substantial income.

21 Finally, the April 14, 2008 purchase agreement provided the purchasing entity an opportunity
22 to conduct due diligence regarding the Arizona Action. On June 13, 2008, the purchasing
23 entity wrote Optima Technology Group and stated that they had completed their due diligence
24 investigation and determined that the Patents and/or the Arizona Action were not acceptable
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1 and therefore the purchase agreement was terminated. Simply put, the purchase agreement
2 was terminated because of Defendants' actions.

3 I declare under penalty of perjury that the foregoing is true and correct to the best of
4 my knowledge.

5 Dated: April 8, 2013.

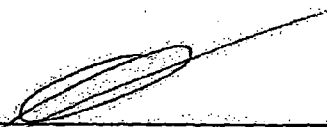
6 By: Jed Margolin
7 JED MARGOLIN
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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: April 16, 2013.

BY: 
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

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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, **DECLARATION OF JED MARGOLIN IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT**, addressed as follows:

Reza Zandian
8775 Costa Verde Blvd. #501
San Diego, CA 92122

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: April 16, 2013



Nancy Lindsley

Exhibit 1

Exhibit 1

1 **CHANDLER & UDALL, LLP**

ATTORNEYS AT LAW

2 4801 E. BROADWAY BLVD., SUITE 400

TUCSON, ARIZONA 85711-3638

3 Telephone: (520) 623-4353

4 Fax: (520)792-3426

Edward Moomjian II, PCC # 65050, SBN 016667

5 Jeanna Chandler Nash, PCC # 65674, SBN 022384

6 Attorneys for Defendants Adams, Margolin and Optima Technology Inc. a/k/a Optima
Technology Group, Inc.

7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF ARIZONA**

9 UNIVERSAL AVIONICS SYSTEMS
10 CORPORATION,

Plaintiff,

11 vs.

12 OPTIMA TECHNOLOGY GROUP, INC.,
13 OPTIMA TECHNOLOGY CORPORATION,
ROBERT ADAMS and JED MARGOLIN,

14 Defendants

NO. CV-00588-RC

**AMENDED ANSWER,
COUNTERCLAIMS, CROSS-
CLAIMS AND THIRD-PARTY
CLAIMS OF OPTIMA
TECHNOLOGY INC. A/K/A
OPTIMA TECHNOLOGY
GROUP, INC.**

15 OPTIMA TECHNOLOGY INC. a/k/a
16 OPTIMA TECHNOLOGY GROUP, INC., a
corporation,

Counterclaimant,

17 vs.

18 UNIVERSAL AVIONICS SYSTEMS
19 CORPORATION, an Arizona corporation,

20 Counterdefendant

JURY TRIAL DEMANDED

Assigned to: Hon. Raner C. Collins

21 OPTIMA TECHNOLOGY INC. a/k/a
22 OPTIMA TECHNOLOGY GROUP, INC., a
corporation,

Cross-Claimant,

23 vs.

24 OPTIMA TECHNOLOGY CORPORATION,
25 a corporation,

26 Cross-Defendant

1
2 OPTIMA TECHNOLOGY INC. a/k/a
3 OPTIMA TECHNOLOGY GROUP, INC., a
4 corporation,

Third-Party Plaintiff,

5 vs.

6 JOACHIM L. NAIMER and JANE DOE
7 NAIMER, husband and wife; and FRANK E.
8 HUMMEL and JANE DOE HUMMEL,

Third-Party Defendants.

9 Defendant/Counterclaimant/Cross-Claimant/Third-Party Plaintiff Optima Technology
10 Inc. a/k/a Optima Technology Group Inc. (hereinafter "Optima"), by and through undersigned
11 counsel, hereby submits its *Amended Answer* to the Plaintiff's *Complaint* herein, including its
12 *Counterclaims*, *Cross-Claims* and *Third-Party Claims* herein.

13 As stated in Optima's original *Answer*, due to its contemporaneously-filed *Motion to*
14 *Dismiss* asserting that Counts V, VI and VII fail to state a claim against Optima, Optima
15 answers herein the general allegations of the *Complaint*, and those of Counts I-IV, and will
16 amend this *Answer* to answer Counts V, VI and/or VII at such time, and to the extent that, the
17 Court herein denies that *Motion* in whole or in part. *See* Rule 12(a)(4), Fed.R.Civ.P.¹

18 The following paragraphs are in response to the allegations of the correspondingly
19 numbered paragraphs of the *Complaint*:

20 **INTRODUCTORY PARAGRAPH**

21 Deny the allegations of Plaintiff's Introductory Paragraph (page 1 line 19 through page

22
23 ¹ The District of Arizona has adopted the majority view "that even though a pending
24 motion to dismiss may only address some of the claims alleged, the motion to dismiss tolls the
25 time to respond to all claims." *Pestube Systems, Inc. v. Hometeam Pest Defense, LLC.*, 2006
26 WL 1441014 *7 (D.Ariz. 2006). However, because this is an unpublished decision, and only
to avoid any potential dispute with Plaintiff whether a failure to answer the allegations of
Counts I-IV of the *Complaint* (i.e., those claims that are not the subject of the *Motion to*
Dismiss) could be deemed a failure to defend those allegations for purposes of a default,
Optima proceeds to answer those allegations and claims herein.

1 2 line 3 of the *Complaint*).

2 **NATURE OF THE ACTION**

3 1. Admit that the *Complaint* seeks declarations of invalidity and non-infringement
4 of U.S. Patent Nos. 5,566,073 (the “’073 patent”) and 5,904,724 (the “’724 patent”).² Admit
5 that the *Complaint* asserts claims for breach of contract, unfair competition and negligent
6 interference. Deny validity of all such assertions and claims. Deny all remaining allegations.

7 **THE PARTIES**

8 2. Deny for lack of knowledge.

9 3. Admit. Affirmatively allege that Optima Technology Group Inc. is also known
10 and has been and does business as Optima Technology Inc.

11 4. Denied. Affirmatively allege that Optima Technology Corporation (hereinafter
12 “OTC”) has no relationship whatsoever to Optima.

13 5. Denied. Affirmatively alleged that Defendant Robert Adams (“Adams”) is the
14 Chief Executive Officer of Optima.

15 6. Denied.

16 7. Denied.

17 **JURISDICTION AND VENUE**

18 8. Admit that the *Complaint* seeks declarations of invalidity and non-infringement
19 of the ‘073 patent and the ‘724 patent, and asserts claims for breach of contract, unfair
20 competition and negligent interference. Deny validity of all such assertions and claims. Deny
21 all remaining allegations.

22 9. Admit that the Court has original jurisdiction over Counts I-IV of the *Complaint*
23 asserting non-infringement and invalidity of the Patents (although Optima denies the assertions
24 and validity of those claims) as to Defendant Optima. Affirmatively allege that co-Defendant
25

26 ² The ‘073 patent and the ‘724 patent are collectively referred to herein as the “Patents.”

1 OTC, to the extent that it purportedly exists, does not own or have any other interest in the
2 Patents. Deny that the Court has jurisdiction over Counts V, VI and VII of the *Complaint*, and
3 affirmatively allege that Plaintiff lacks Article III standing with respect thereto. Affirmatively
4 allege that Counts V, VI and VII fail to state a claim against Optima as asserted in Optima's
5 *Motion to Dismiss*. Deny that the Court has supplemental jurisdiction over Counts V, VI and
6 VII of the *Complaint*. Deny all remaining allegations.

7 10. Deny.

8 **THE PATENTS-IN-SUIT**

9 11. Admit that the '073 patent is duly and legally issued and is valid. Admit that a
10 copy of the '073 patent is attached as Exhibit 1 to the *Complaint*. Admit the '073 patent was
11 assigned to Optima which is the current owner of the '073 patent. Deny that OTC has any right
12 or interest in the '073 patent. Deny all remaining allegations.

13 12. Admit that the '724 patent is duly and legally issued and is valid. Admit that a
14 copy of the '724 patent is attached as Exhibit 2 to the *Complaint*. Admit the '724 patent was
15 assigned to Optima which is the current owner of the '724 patent. Deny that OTC has any right
16 or interest in the '724 patent. Deny all remaining allegations.

17 13. Admit that Defendant Jed Margolin at one time granted a Power of Attorney to
18 Optima. Admit that a copy of the Power of Attorney is attached as Exhibit 3 to the *Complaint*.
19 Admit that the Power of Attorney appointed "Optima Technology Inc. - Robert Adams, CEO"
20 as Margolin's agent with respect to the Patents. Affirmatively allege that OTC has and had no
21 right or interest under the Power of Attorney. Affirmatively allege that the Power of Attorney
22 was superseded by an assignment of the Patents to Optima prior to the filing of the *Complaint*
23 herein. Affirmatively allege that the Power of Attorney was subsequently revoked and is no
24 longer valid or in force. Deny all remaining allegations.

25 **FACTS**

26 14. Admit that Adams communicated (as CEO of Optima) with Plaintiff's counsel.

1 Affirmatively allege that the text of Exhibit 4 to the *Complaint* speaks for itself. Deny all
2 remaining allegations.

3 15. Admit that Jed Margolin communicated with Adams (as CEO of Optima), and
4 that Adams (as CEO of Optima) communicated with Plaintiff's counsel. Affirmatively allege
5 that the text of Exhibit 5 to the *Complaint* speaks for itself. Deny all remaining allegations.

6 16. Admit. Affirmatively allege that Adams' alleged actions as described in
7 Paragraph 16 of the *Complaint* were in his capacity as CEO of Optima.

8 17. Admit that Plaintiff is/was infringing on the Patents. Admit that Adams (as CEO
9 of Optima) communicated with Plaintiff's counsel. Affirmatively allege that the text of
10 Exhibit 5 to the *Complaint* speaks for itself. Deny all remaining allegations.

11 18. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
12 counsel. Admit that Plaintiff is/was infringing on the Patents. Affirmatively allege that the text
13 of Exhibit 5 to the *Complaint* speaks for itself. Deny all remaining allegations.

14 19. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
15 counsel. Admit that Plaintiff is/was infringing on the Patents. Deny all remaining allegations.

16 20. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
17 counsel. Affirmatively allege that the text of Exhibit 6 to the *Complaint* speaks for itself.
18 Deny all remaining allegations.

19 21. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
20 counsel. Affirmatively allege that the text of Exhibit 7 to the *Complaint* speaks for itself.
21 Deny all remaining allegations.

22 22. Admit. Affirmatively allege that Adams' alleged actions as described in
23 Paragraph 22 of the *Complaint* were in his capacity as CEO of Optima.

24 23. Admit. Affirmatively allege that the text of Exhibit 8 to the *Complaint* speaks
25 for itself. Affirmatively allege that Plaintiff, through its actions, has waived its rights under
26 Exhibit 8 to the *Complaint*.

1 24. Affirmatively allege that the text of Exhibit 9 to the *Complaint* speaks for itself.

2 Deny all remaining allegations.

3 25. Admit second sentence of Paragraph 25 of the *Complaint* to the extent it asserts
4 that the following persons attended the meeting on behalf of Plaintiff: Donald Berlin, Andria
5 Poe, Paul DeHerrera, Frank Hummel, Michael P. Delgado, and Scott Bornstein. Deny all
6 remaining allegations.

7 26. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
8 counsel. Deny all remaining allegations.

9 27. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
10 counsel. Deny all remaining allegations.

11 28. Deny.

12 29. Admit that Jed Margolin communicated with Plaintiff. Deny all remaining
13 allegations.

14 30. Admit that OTC, which is upon information and belief owned and controlled by
15 Reza Zandian a/k/a Gholamreza Zandianjazi, may have been involved in filing numerous
16 and/or frivolous state court lawsuits. Deny all remaining allegations. Affirmatively allege that
17 OTC, and any such lawsuits, are completely unrelated to Optima.

18 31. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
19 counsel. Affirmatively allege that the text of Exhibit 10 to the *Complaint* speaks for itself.
20 Deny all remaining allegations.

21 32. Deny for lack of knowledge.

22 33. Deny Plaintiff's "conclusion" for lack of knowledge. Deny all remaining
23 allegations.

24 34. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
25 counsel. Affirmatively allege that the text of Exhibits 11 and 12 to the *Complaint* speak for
26 themselves. Deny all remaining allegations.

1 35. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
2 counsel. Affirmatively allege that the text of Exhibit 13 to the *Complaint* speaks for itself.
3 Deny all remaining allegations.

4 36. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
5 counsel. Deny allegations regarding communications to which Optima was not a party for lack
6 of knowledge. Deny all remaining allegations.

7 37. Deny for lack of knowledge.

8 38. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
9 counsel. Affirmatively allege that the text of Exhibit 14 to the *Complaint* speaks for itself.
10 Deny all remaining allegations.

11 39. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
12 counsel. Affirmatively allege that the text of Exhibit 15 to the *Complaint* speaks for itself.
13 Deny all remaining allegations.

14 40. Admit that Adams communicated (as CEO of Optima) with Plaintiff and its
15 counsel. Affirmatively allege that the text of Exhibit 16 to the *Complaint* speaks for itself.
16 Deny all remaining allegations.

17 41. Admit. Affirmatively allege that the text of Exhibit 17 to the *Complaint* speaks
18 for itself.

19 42. Admit. Affirmatively allege that the text of Exhibit 17 to the *Complaint* speaks
20 for itself.

21 43. Admit.

22 **CLAIMS FOR RELIEF**

23 **COUNT ONE**

24 **Declaratory Judgment of Non-Infringement of the '073 Patent**

25 44. Optima repeats and restates the statements of paragraphs 1-43 above as if fully
26 set forth herein.

1 45. Deny that Optima made an "unreasonable" licensing demand of Plaintiff.
2 Otherwise admit with respect to Optima. Deny that OTC has any right or interest in the
3 Patents. Deny all remaining allegations.

4 46. Deny.

5 47. Admit that Plaintiff seeks a declaration as described in Paragraph 47 of the
6 *Complaint*. Deny that Plaintiff is entitled to such a declaration. Deny all remaining allegations.

7 **COUNT TWO**

8 **Declaratory Judgment of Invalidity of the '073 Patent**

9 48. Optima repeats and restates the statements of paragraphs 1-47 above as if fully
10 set forth herein.

11 49. Deny that Optima made an "unreasonable" licensing demand of Plaintiff. Admit
12 with respect to Optima. Deny that OTC has any right or interest in the Patents. Deny all
13 remaining allegations.

14 50. Deny.

15 51. Admit that Plaintiff seeks a declaration as described in Paragraph 51 of the
16 *Complaint*. Deny that Plaintiff is entitled to such a declaration. Deny all remaining allegations.

17 **COUNT THREE**

18 **Declaratory Judgment of Non-Infringement of the '724 Patent**

19 52. Optima repeats and restates the statements of paragraphs 1-51 above as if fully
20 set forth herein.

21 53. Deny that Optima made an "unreasonable" licensing demand of Plaintiff.
22 Otherwise admit with respect to Optima. Deny that OTC has any right or interest in the
23 Patents. Deny all remaining allegations.

24 54. Deny.

25 55. Admit that Plaintiff seeks a declaration as described in Paragraph 55 of the
26 *Complaint*. Deny that Plaintiff is entitled to such a declaration. Deny all remaining allegations.

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COUNT FOUR

Declaratory Judgment of Invalidity of the '724 Patent

56. Optima repeats and restates the statements of paragraphs 1-55 above as if fully set forth herein.

57. Deny that Optima made an "unreasonable" licensing demand of Plaintiff. Admit with respect to Optima. Deny that OTC has any right or interest in the Patents. Deny all remaining allegations.

58. Deny.

59. Admit that Plaintiff seeks a declaration as described in Paragraph 59 of the *Complaint*. Deny that Plaintiff is entitled to such a declaration. Deny all remaining allegations.

COUNTS FIVE THROUGH SEVEN

Defendant Optima has contemporaneously filed a *Motion to Dismiss* seeking to dismiss Counts Five through Seven of the *Complaint* against it for failure to state a claim. As such, Defendant Optima will amend this *Answer* and respond to Counts V, VI and/or VII of the *Complaint* at such time, and to the extent that, the Court herein denies that *Motion* in whole or in part. See Rule 12(a)(4), Fed.R.Civ.P.

GENERAL DENIAL

Defendant Optima denies each allegation of Plaintiff's *Complaint* not specifically admitted herein.

EXCEPTIONAL CASE

This is an exceptional case under 35 U.S.C. § 285 in which Defendant Optima is entitled to its attorneys' fees and costs incurred in connection Plaintiff's stated claims in bringing this action.

AFFIRMATIVE DEFENSES

Defendant Optima asserts all available affirmative defenses under Rule 8(c), Fed.R.Civ.P., including but not limited to those specifically designated as follows (Defendant

1 Optima hereby reserves the right to amend this *Answer* at any time that discovery, disclosure
2 or additional events reveal the existence of additional affirmative defenses):

3 1. With respect to Counts V, VI and VII of the *Complaint*, Defendant Optima
4 asserts those Rule 12(b)(6) defenses raised in its contemporaneously filed *Motion to Dismiss*
5 including but not limited to: waiver; failure to plead in accordance with the standards
6 expressed under *Bell Atlantic Corp. v. Twombly*, ___ U.S. ___, 127 S.Ct. 1955 (2007); failure
7 to establish Article III standing; lack of jurisdiction; inapplicability of California law to
8 Optima; and failure to establish "unlawful" or "fraudulent" conduct as a predicate act to a claim
9 of California statutory Unfair Competition (California Business and Professions code § 17200
10 *et seq*);

11 2. Laches;

12 3. Waiver; and,

13 4. Estoppel.

14 **JURY TRIAL DEMAND**

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

17 **PRAYER FOR RELIEF**

18 WHEREFORE Defendant Optima requests that the Court enter judgment in its favor on
19 Plaintiff's claims, deny Plaintiff any relief herein, grant Optima its attorneys' fees and costs
20 pursuant to applicable law, including but not limited to 35 U.S.C. § 285, and grant Optima such
21 other and further relief as the Court deems reasonable and just.

22 **COUNTERCLAIMS, CROSS-CLAIMS & THIRD-PARTY CLAIMS³**

23 Counterclaimant/Cross-Claimant/Third-Party Plaintiff Optima brings this civil action
24 against Counterdefendant Universal Avionics Systems Corporation ("UAS"), against

25 _____
26 ³ Except where otherwise noted, all capitalized terms herein are as defined in the
foregoing *Amended Answer*.

1 Cross-Defendant Optima Technology Corporation, a corporation ("OTC"), and against
2 Third-Party Defendants Joachim L. Naimer and Jane Doe Naimer, husband and wife, and Frank
3 E. Hummel and Jane Doe Hummel.

4 **THE PARTIES**

- 5 1. Counterclaimant Optima is, and at all times relevant hereto has been, a Delaware
6 corporation engaged in the business of the design, conception and invention of synthetic
7 vision systems. Optima is the owner of the '073 patent and '724 patent.
- 8 2. Counterdefendant UAS is, upon information and belief, an Arizona corporation who is
9 headquartered and does business in Arizona.
- 10 3. Cross-Defendant Optima Technology Corporation ("OTC") is, upon information and
11 belief, a California corporation.
- 12 4. Third-Party Defendants Joachim L. Naimer and Jane Doe Naimer (individually and
13 collectively "Naimer") are, upon information and belief, husband and wife who reside
14 in California. At all times relevant hereto, Naimer was acting for the benefit of his
15 marital community, and was acting as an agent, employee, servant and/or authorized
16 representative of UAS, and within the course and scope of such agency, employment,
17 service and/or representation. Upon information and belief Naimer is the President and
18 Chief Executive Officer of UAS.
- 19 5. Third-Party Defendants Frank E. Hummel and Jane Doe Hummel (individually and
20 collectively "Hummel") are, upon information and belief, husband and wife who reside
21 in Washington. At all times relevant hereto, Hummel was acting for the benefit of his
22 marital community, and was acting as an agent, employee, servant and/or authorized
23 representative of UAS, and within the course and scope of such agency, employment,
24 service and/or representation. Upon information and belief, Hummel is an officer or
25 managing agent of UAS. Upon information and belief, Hummel is the Vice
26 President/General Manager of Engineering Research and Development for UAS.

1 6. Upon information and belief, UAS, Naimer, and Hummel have transacted business in
2 and/or committed one or more acts in Arizona which give rise to the claims herein.

3 **JURISDICTION AND VENUE**

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

6 8. The Counterclaim, Cross-Claim and Third-Party Claim include claims for patent
7 infringement and for declaratory judgment relating to ownership/rights in patents, which
8 arise under the United States Patent Laws, 35 U.S.C. §101 et seq. The amount in
9 controversy is in excess of \$1,000,000.

10 9. Jurisdiction of this Court is pursuant to 28 U.S.C. §§ 1331, 1367, 1338(a) and (b), and
11 2201 *et seq.*

12 **FACTS**

13 10. The statements of all of the foregoing paragraphs are incorporated herein by reference
14 as if fully set forth herein.

15 11. Upon information and belief, with actual and/or constructive knowledge of the Patents
16 UAS has sold and/or manufactured and/or used and/or advertised/promoted one or more
17 products including those products designated by UAS as the Vision-1, UNS-1 and
18 TAWS Terrain and Awareness & Warning systems all of which infringe one or the
19 other of the Patents in suit ("Infringing Products").

20 12. Optima informed UAS that the Infringing Products infringed upon the Patents prior to
21 the filing of the *Complaint* herein. Upon information and belief, despite such
22 notification UAS has continued to sell and/or manufacture and/or use and/or
23 advertise/promote the Infringing Products.

24 13. Upon information and belief:

25 a. Naimer was the moving force who originated UAS's concept of the Infringing
26 Products; and/or

- 1 b. Naimer was and is the Chief Executive Officer of UAS, thereby controlling UAS
2 and its actions, including UAS's decision to create, develop, manufacture,
3 market and sell the Infringing Products; and/or
- 4 c. Naimer knew and/or should have known of the Patents prior to this lawsuit;
5 and/or
- 6 d. Naimer knew of Optima's allegations that UAS infringed upon the Patents prior
7 to this lawsuit; and/or
- 8 e. Naimer knew of UAS's actions in the nature of those described in Paragraphs 25,
9 31 and 33 of the *Complaint* and participated in and/or directed those UAS
10 actions/efforts; and/or
- 11 f. It was at all times within Naimer's authority and/or ability to stop UAS's
12 continued design, development, manufacturing, marketing and selling of the
13 Infringing Products but, after Naimer knew of the Patents, the allegations that
14 UAS infringed on the Patents and/or UAS's actions in the nature of those
15 described in Paragraphs 25, 31 and 33 of the *Complaint*, he did not stop UAS's
16 continued design, development, manufacturing, marketing and selling of the
17 Infringing Products; and/or
- 18 g. It was at all times within Naimer's authority and/or ability to direct UAS to
19 redesign, revise and/or redevelop the Infringing Products such that they would
20 no longer infringe on the Patents but, after Naimer knew of the Patents, the
21 allegations that UAS infringed on the Patents and/or UAS's actions in the nature
22 of those described in Paragraphs 25, 31 and 33 of the *Complaint*, he did not
23 direct UAS to redesign, revise and/or redevelop the Infringing Products such that
24 they would no longer infringe on the Patents; and/or
- 25 h. Naimer has continued to direct UAS's design, development, manufacturing,
26 marketing and selling of the Infringing Products while knowing and/or intending

1 for UAS to infringe on the Patents.

2 14. Upon information and belief:

- 3 a. Hummel was and is the Vice President/General Manager of Engineering
4 Research and Development of UAS, thereby controlling UAS's design,
5 development and/or manufacture of the Infringing Products; and/or
6 b. Hummel was intimately involved in UAS's design and/or development of the
7 Infringing Products; and/or
8 c. Hummel knew and/or should have known of the Patents prior to this lawsuit;
9 and/or
10 d. Hummel knew of Optima's allegations that UAS infringed upon the Patents prior
11 to this lawsuit; and/or
12 e. Hummel knew of UAS's actions in the nature of those described in Paragraphs
13 25, 31 and 33 of the *Complaint* and participated in and/or directed those UAS
14 actions/efforts; and/or
15 f. It was at all times within Hummel's authority and/or ability to stop UAS's
16 continued design, development and/or manufacturing of the Infringing Products
17 but, after Hummel knew of the Patents, the allegations that UAS infringed on the
18 Patents and/or UAS's actions in the nature of those described in Paragraphs 25,
19 31 and 33 of the *Complaint*, he did not stop UAS's continued design,
20 development and/or manufacturing of the Infringing Products; and/or
21 g. It was at all times within Hummel's authority and/or ability to direct UAS to
22 redesign, revise and/or redevelop the Infringing Products such that they would
23 no longer infringe on the Patents but, after Naimer knew of the Patents, the
24 allegations that UAS infringed on the Patents and/or UAS's actions in the nature
25 of those described in Paragraphs 25, 31 and 33 of the *Complaint*, he did not
26 direct UAS to redesign, revise and/or redevelop the Infringing Products such that

1 they would no longer infringe on the Patents; and/or

2 h. Hummel has continued to direct UAS's design, development and/or
3 manufacturing of the Infringing Products while knowing and/or intending for
4 UAS to infringe on the Patents.

5 15. UAS and Optima entered into the contract attached as Exhibit 8 to the *Complaint* herein
6 (hereinafter the "Contract"). Pursuant to and under the terms of the Contract, Optima
7 provided to UAS a confidential power of attorney (hereinafter the "Power of Attorney")
8 that Jed Margolin ("Margolin"), as the inventor and then-owner of the Patents, had
9 previously executed. The Power of Attorney provided, *inter alia*, that Margolin
10 appointed "Optima Technology Inc. - Robert Adams CEO" as his attorney-in-fact with
11 respect to (*inter alia*) the Patents. Under its express terms, the Power of Attorney could
12 only be exercised by "Optima Technology Inc. - Robert Adams CEO" and could only
13 be exercised by a signature in the following form: "Jed Margolin by Optima
14 Technology, Inc., c/o Robert Adams, CEO his attorney in fact." Optima had not and has
15 not at any time placed the Power of Attorney in the public domain or otherwise provided
16 a copy of it, or made it available, to OTC.

17 16. UAS, through its duly authorized agents, employees and/or attorneys, provided the
18 Power of Attorney (or a copy thereof) to OTC principal, director, officer and/or agent
19 Gholamreza Zandianjazi a/k/a Reza Zandian ("Zandian"). As of that time, neither
20 Zandian nor OTC had ever received, been privy to, obtained or had knowledge of the
21 Power of Attorney.

22 17. OTC does not have, and has never had, any right, interest or valid claim to any right,
23 title or interest in or to either the Patents or the Power of Attorney.

24 18. UAS, by and through its authorized agents and attorneys Scott Bornstein ("Bornstein")
25 and/or Greenberg Traurig, LLP ("GT"), informed, directed, advised, assisted,
26 associated, agreed, conspired and/or engaged in a mutual undertaking with

- 1 Zandian/OTC to record the Power of Attorney with the U.S. Patent and Trademark
2 Office ("PTO") in the name of OTC.
- 3 19. UAS knew or should have known that the Power of Attorney could not be rightfully
4 exercised by OTC/Zandian and/or recorded with the PTO as:
- 5 a. UAS had been advised and/or knew that OTC was a different corporate entity
6 than "Optima Technology, Inc" as listed in the Power of Attorney; and/or
7 b. UAS had been advised and/or knew that "Robert Adams" was not an agent or
8 employee of OTC and, thus, the Power of Attorney could not be rightfully
9 exercised by Zandian on behalf of OTC; and/or
10 c. UAS had been advised and/or knew that OTC had no right or interest whatsoever
11 in the Patents or the Power of Attorney.
- 12 20. Based upon the information, direction, advice and assistance of UAS, Zandian/OTC
13 proceeded to publish and record the Power of Attorney to and with the PTO (in
14 Virginia) as a document in support of a claim of assignment of the Patents to OTC (the
15 "Assignment"). As a result thereof, the Assignment/Power of Attorney have become
16 part of the public PTO record on which the U.S. Patent Office, the public and third
17 parties rely for information regarding title to the Patents.
- 18 21. Robert Adams and Optima did not execute, record or authorize the execution or
19 recording of any documents purporting to assign or transfer title and/or any interest in
20 the Patents to OTC with the PTO.
- 21 22. Upon information and belief, Zandian executed such documents by (*inter alia*) utilizing
22 his signature on behalf of OTC and mis-stating that Zandian/OTC was exercising the
23 Power of Attorney as the "attorney in fact" of Margolin.
- 24 23. Had UAS not provided the Power of Attorney to Zandian/OTC, OTC would not have
25 been able to record it as a purported Assignment with the PTO.
- 26 24. The recording of the Assignment and Power of Attorney with the PTO:

- 1 a. Are circumstances under which reliance upon such recordings by a third person
2 is reasonably foreseeable as the open public records of the PTO are regularly and
3 normally referred to and/or relied upon by persons in determining legal rights
4 with respect to patents (including assignments, transfers of rights and licenses
5 relating thereto), and evaluating such rights with respect to valuation, negotiation
6 and purchase of rights with respect to patents (including assignments, transfers
7 of rights and licenses relating thereto); and/or
- 8 b. Create a cloud of title, an impairment of vendibility, and/or an appearance of
9 lessened desirability for purchase, lease, license or other dealings with respect
10 to the Patents and/or Power of Attorney; and/or
- 11 c. Prevent and/or impair sale and/or licensing of the Patents; and/or
- 12 d. Otherwise impair and/or lessen the value of the Patents and/or any licenses to be
13 issued with respect to them; and/or
- 14 e. Cast doubt upon the extent of Optima's interests in the Patents and/or under the
15 Power of Attorney relating thereto and/or upon Optima's power to make an
16 effective sale, assignment, license or other transfer of rights relating thereto;
17 and/or
- 18 f. Caused damage and harm to Optima; and/or
- 19 g. Reasonably necessitated and/or forced Optima to prepare and record documents
20 with the PTO attempting to correct the public record regarding Optima's rights
21 with respect to the Patents and/or the Power of Attorney for which Optima
22 incurred substantial expenses (attorneys' fees and costs) in the preparation and
23 recording thereof; and/or
- 24 h. Irrespective of Optima's filings with the PTO, created a continuing cloud of title,
25 impairment of vendibility, etc. (as discussed in the foregoing paragraphs) and
26 continuing harm to Optima reasonably necessitating and forcing Optima to bring

1 its declaratory judgment cross-claim against OTC herein to declare and establish
2 true and proper title to the Patents, for which Optima has incurred and will incur
3 substantial expenses (attorneys' fees and costs) in the prosecution thereof.

4 25. Upon information and belief, UAS provided additional information to Zandian/OTC
5 regarding, or of the same nature as that discussed in, Paragraph 33 of and Exhibits 14,
6 15 and 17 to the *Complaint* herein.

7 26. UAS made the disclosures (*inter alia*) as acknowledged in its *Complaint* herein.

8 27. Upon information and belief, UAS also made the disclosures alleged in Paragraph 34
9 of, and in Exhibit 12 attached to, the *Complaint*.

10 28. By filing its *Complaint* as part of the open public record in this case, UAS disclosed the
11 content thereof and the Exhibits attached thereto.

12 29. The actions of UAS and OTC herein were motivated by spite, malice and/or ill-will
13 toward Optima and were for the purpose of and/or were intended to intermeddle with,
14 interfere with, trespass upon and/or cause harm to Optima's rights in the Patents and/or
15 under the Power of Attorney, and/or with knowledge that such intermeddling,
16 interference, trespass and/or harm was substantially certain to occur.

17 30. Upon information and belief, OTC intends to continue to compete, interfere, and/or
18 attempt to compete and/or interfere with Optima regarding the Patents and/or the Power
19 of Attorney. At this time, however, Optima is unaware of any actual attempts yet made
20 by OTC to purportedly license, sell or otherwise transfer rights regarding the Patents
21 under its purported Assignment/Power of Attorney (as recorded with the PTO). If and
22 when Optima becomes aware of such actions, it will timely seek to amend and
23 supplement the Counterclaims, Cross-Claims, Third-Party Claims and/or remedies
24 herein as necessary and applicable.

25

26

COUNT 1

PATENT INFRINGEMENT

1
2
3 31. The statements of all of the foregoing paragraphs are incorporated herein by reference
4 as if fully set forth herein.

5 32. This is a cause of action for patent infringement under 35 U.S.C. § 271 *et seq.* At all
6 relevant times, UAS had actual and constructive knowledge of the Patents in suit
7 including the scope and claim coverage thereof.

8 33. UAS's aforesaid activities constitute a direct, contributory and/or inducement of
9 infringement of the aforesaid patents in violation of 35 U.S.C. § 271 *et seq.* UAS's
10 aforesaid infringement is and has, at all relevant times, been willful and knowing.

11 34. Naimer and Hummel, through their forgoing actions, actively aided and abetted and
12 knowingly and/or intentionally induced, and specifically intended to induce, UAS's
13 direct infringement despite their knowledge of the Patents.

14 35. Optima has suffered and will continue to suffer immediate and ongoing irreparable and
15 actual harm and monetary damage as a result of UAS's, Naimer's and Hummel's willful
16 patent infringement in an amount to be proven at trial.

17 **COUNT 2**

18 **BREACH OF CONTRACT**

19 36. The statements of all of the foregoing paragraphs are incorporated herein by reference
20 as if fully set forth herein.

21 37. This is a cause of action for breach of contract against UAS pursuant to Arizona law.

22 38. UAS's actions constitute one or more breaches of the contract attached as Exhibit 8 to
23 the *Complaint* herein.

24 39. As a result thereof, Optima has suffered and will continue to suffer immediate and
25 ongoing harm and monetary damage in an amount to be proven at trial.

26

COUNT 3

BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING

- 1
2
3 40. The statements of all of the foregoing paragraphs are incorporated herein by reference
4 as if fully set forth herein.
5 41. This is a cause of action for breach of the implied covenant of good faith and fair
6 dealing against UAS pursuant to Arizona law.
7 42. Under Arizona law, every contract contains an implied covenant of good faith and fair
8 dealing.
9 43. UAS's actions constitute one or more breaches of covenant of good faith and fair
10 dealing present and implied in the contract attached as Exhibit 8 to the *Complaint*
11 herein.
12 44. As a result thereof, Optima has suffered and will continue to suffer immediate and
13 ongoing harm and monetary damage in an amount to be proven at trial.

COUNT 4

NEGLIGENCE

- 14
15
16 45. The statements of all of the foregoing paragraphs are incorporated herein by reference
17 as if fully set forth herein.
18 46. This is an cause of action for negligence against UAS pursuant to the law of New York,
19 Delaware, California, Virginia or Arizona.
20 47. UAS owed a duty of care to Optima as a result of Exhibit 8 to the *Complaint* herein, and
21 the obligations created therein and/or relating thereto.
22 48. UAS breached these duties through its foregoing actions as alleged herein, including but
23 not limited to:
24 a. UAS's inclusion in an openly-accessible public record the allegations of its
25 *Complaint*; and/or
26

- 1 b. UAS's inclusion in an openly-accessible public record the exhibits attached to
2 the *Complaint*; and/or
3 c. UAS's provision of a copy of the Power of Attorney prior to and/or as a result
4 of UAS's service of the *Complaint* (with Exhibit 3 thereto) upon OTC; and/or
5 d. UAS's informing, directing, advising, assisting and conspiring of/with
6 Zandian/OTC to record the Power of Attorney with the U.S. Patent and
7 Trademark Office ("PTO").

8 49. As a result thereof, Optima has suffered and will continue to suffer immediate and
9 ongoing harm and monetary damage in an amount to be proven at trial.

10 **COUNT 5**

11 **DECLARATORY JUDGMENT**

12 50. The statements of all of the foregoing paragraphs are incorporated herein by reference
13 as if fully set forth herein.

14 51. This is a cause of action for declaratory judgment under 28 U.S.C. § 2201 *et seq* against
15 OTC.

16 52. Optima was at all times relevant hereto the rightful holder of the Power of Attorney and
17 the rightful owner of the Patents.

18 53. By virtue of OTC's recording of the Assignment and Power of Attorney with the PTO,
19 a cloud of title, impairment of vendibility, etc. (as otherwise alleged above) exists with
20 respect to Optima's exclusive ownership rights relating to the Patents and the exclusive
21 rights under the Power of Attorney.

22 54. An actual and live controversy exists between OTC and Optima.

23 55. As a result thereof, Optima requests a declaration of rights with respect to the foregoing,
24 including but not limited to a declaration that OTC has no interest or right in either the
25 Power of Attorney or the Patents, that OTC's filing/recording of documents with the
26 PTO asserting any interest or right in either the Power of Attorney or the Patents was

- 1 publication(s); and/or
2 g. Are/were in reckless disregard with being in the nature of disparagement(s);
3 and/or
4 h. Are/were motivated by ill will toward Optima; and/or
5 i. Are/were motivated by an intent to injure Optima; and/or
6 j. Are/were committed with an intent to interfere in an unprivileged manner with
7 Optima's interests; and/or
8 k. Are/were committed with negligence regarding the truth or falsity of the
9 statement and/or publication and/or with being in the nature of a disparagement.
10 59. As a result thereof, Optima has suffered and will continue to suffer immediate and
11 ongoing harm and monetary damage in an amount to be proven at trial.

12 **COUNT 7**

13 **TRESPASS TO CHATTELS**

- 14 60. The statements of all of the foregoing paragraphs are incorporated herein by reference
15 as if fully set forth herein.
16 61. This is a cause of action for trespass to chattels against OTC and UAS pursuant to the
17 law of New York, Delaware, California, Virginia or Arizona.
18 62. The actions of OTC and/or UAS, as alleged above:
19 a. Are/were intentional physical, forcible and/or unlawful interference with the use
20 and enjoyment of rights to the Patents and/or Power of Attorney possessed by
21 Optima without justification or consent; and/or
22 b. Are/were possession of and/or the exercise of dominion over rights to the Patents
23 and/or Power of Attorney possessed by Optima without justification or consent;
24 and/or
25 c. Are/were intentional use and/or intermeddling with rights to the Patents and/or
26 Power of Attorney possessed by Optima without authorization; and/or

- 1 d. Resulted in deprivation of Optima's use of and/or rights in the Patents and/or
 - 2 Power of Attorney for a substantial time; and/or
 - 3 e. Resulted in impairment of the condition, quality and/or value of Optima's use of
 - 4 and/or rights in the Patents and/or Power of Attorney; and/or
 - 5 f. Resulted in harm to the legally protected interests of Optima.
- 6 63. As a result thereof, Optima has suffered and will continue to suffer immediate and
- 7 ongoing harm and monetary damage in an amount to be proven at trial.

8 **COUNT 8**

9 **UNFAIR COMPETITION**

- 10 64. The statements of all of the foregoing paragraphs are incorporated herein by reference
- 11 as if fully set forth herein.
- 12 65. This is a cause of action for unfair competition against OTC and UAS pursuant to the
- 13 common law of New York, Delaware, California, Virginia or Arizona.
- 14 66. The actions of OTC and/or UAS, as alleged above:
- 15 a. Are/were an unfair invasion and/or infringement of Optima's property rights of
 - 16 commercial value with respect to the Patents and/or the Power of Attorney;
 - 17 and/or
 - 18 b. Are/were a misappropriation of a benefit and/or property right belonging to
 - 19 Optima with respect to the Patents and/or the Power of Attorney; and/or
 - 20 c. Are/were a deceit and/or fraud upon the public with respect to the true ownership
 - 21 and other rights of Optima relating to the Patents and/or the Power of Attorney;
 - 22 and/or
 - 23 d. Are/were likely to cause confusion of the public with respect to the true
 - 24 ownership and other rights of Optima relating to the Patents and/or the Power of
 - 25 Attorney; and/or
 - 26 e. Will cause and/or are likely to cause an unfair diversion of trade whereby any

1 potential purchaser of a license or other rights from OTC with respect to the
2 Patents and/or Power of Attorney will be cheated into the purchase of something
3 which it is not in fact getting; and/or

4 f. Are likely to divert the trade of Optima; and/or

5 g. Are likely to cause substantial and irreparable harm to Optima.

6 67. As a result thereof, Optima has suffered and will continue to suffer immediate and
7 ongoing harm and monetary damage in an amount to be proven at trial.

8 **COUNT 9**

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

10 68. The statements of all of the foregoing paragraphs are incorporated herein by reference
11 as if fully set forth herein.

12 69. This is a cause of action for unfair and deceptive competition/business practices against
13 OTC and UAS pursuant to the statutory law of Delaware, 6 Del.C. §2531 *et seq.* to the
14 extent such statutory scheme applies in this matter.

15 70. The actions of OTC and/or UAS, as alleged above:

16 a. Are/were those of a person engaged in a course of a business, vocation, or
17 occupation; and/or

18 b. Constitute a deceptive trade practice; and/or

19 c. Cause a likelihood of confusion or of misunderstanding as to affiliation,
20 connection, or association with, or certification by, another; and/or

21 d. Represent that goods or services have sponsorship, approval, characteristics,
22 ingredients, uses, benefits, or quantities that they do not have, or that a person
23 has a sponsorship, approval, status, affiliation, or connection that the person does
24 not have; and/or

25 e. Represent that goods or services are of a particular standard, quality, or grade,
26 or that goods are of a particular style or model, if they are of another; and/or

- 1 f. Disparage the goods, services, or business of another by false or misleading
2 representation of fact; and/or
3 g. Were conduct which similarly creates a likelihood of confusion or of
4 misunderstanding.

5 71. As a result thereof, Optima has suffered and will continue to suffer immediate and
6 ongoing harm and monetary damage in an amount to be proven at trial.

7 72. To the extent Optima is entitled to damages under Delaware common-law it is further
8 entitled to treble damages pursuant to 6 Del.C. §2533(c).

9 73. Optima is entitled to injunctive relief pursuant to 6 Del.C. §2533(a).

10 74. The acts were a willful deceptive trade practice entitling Optima to its attorneys' fees
11 and costs pursuant to 6 Del.C. §2533(b).

12 75. This matter is an "exceptional" case also entitling Optima to its attorneys fees pursuant
13 to 6 Del.C. §2533(b).

14 **COUNT 10**

15 **UNLAWFUL CONSPIRACY TO INJURE TRADE OR BUSINESS**

16 76. The statements of all of the foregoing paragraphs are incorporated herein by reference
17 as if fully set forth herein.

18 77. This is a cause of action for unlawful conspiracy to injure trade or business against OTC
19 and UAS pursuant to the statutory law of Virginia, Va. Code Ann. § 18.2-499 and
20 § 18.2-500, to the extent such statutory scheme applies in this matter.

21 78. The actions of OTC and UAS, as alleged above, were those of two or more persons who
22 combined, associated, agreed, mutually undertook and/or acted in concert together for
23 the purpose of willfully and maliciously injuring Optima and its trade and/or business.

24 79. As a result thereof, Optima has suffered and will continue to suffer immediate and
25 ongoing harm and monetary damage in an amount to be proven at trial.

26 80. Optima is entitled to treble damages plus attorneys' fees and costs under Va. Code

1 Ann. § 18.2-500,

2 **COUNT 11**

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

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

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

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

12 a. The acts/practices are/were "fraudulent" as they are/were untrue and/or are/were
13 likely to deceive the public; and/or

14 b. The acts/practices are/were "unfair" as they constituted conduct that significantly
15 threatens or harms competition; and/or

16 c. The acts/practices are/were "unfair" as they constitute conduct that offends an
17 established public policy or when the practice is immoral, unethical, oppressive,
18 unscrupulous or substantially injurious to consumers; and/or

19 d. The acts/practices are/were "unlawful" as they are/were in violation of the
20 common-law duties that were owed to Optima; and/or

21 e. The acts/practices are/were "unlawful" as they are/were in violation of the legal
22 principles expressed in the other Counts herein; and/or

23 f. The acts/practices are/were "unlawful" as they are/were in committed violation
24 of Va. Code Ann. § 18.2-172 (a class 5 felony); and/or

25 g. The acts/practices are/were "unlawful" as they are/were in committed violation
26 of Va. Code Ann. § 18.2-499 (a class 1 misdemeanor).

1 84. As a result thereof, Optima has suffered and will continue to suffer immediate and
2 ongoing harm and monetary damage.

3 85. Optima is without an adequate remedy at law.

4 86. Unless enjoined the acts of OTC and UAS will continue to cause further, great,
5 immediate and irreparable injury to Optima.

6 87. Optima is entitled to injunctive relief and restitutionary disgorgement pursuant to
7 California Business and Professions Code § 17203.

8 **COUNT 12**

9 **UAS LIABILITY**

10 88. The statements of all of the foregoing paragraphs are incorporated herein by reference
11 as if fully set forth herein.

12 89. In addition to any other liability existing as to the acts of UAS described herein UAS
13 is additionally liable under Counts 6-11 herein because:

- 14 a. OTC acted as the agent and/or servant of UAS; and/or
15 b. UAS aided and abetted the wrongful conduct of OTC through one or more of the
16 following:
17 i. UAS provided aid to OTC in its commission of a wrongful act that caused
18 injury to Optima; and/or
19 ii. UAS substantially assisted and/or encouraged OTC in the principal
20 violation/wrongful act; and/or
21 iii. UAS was aware of its role as part of overall illegal and/or tortious activity
22 at the time it provided the assistance; and/or
23 iv. UAS reached a conscious decision to participate in tortious activity for
24 the purpose of assisting OTC in performing a wrongful act; and/or
25 c. UAS engaged in a civil conspiracy with OTC through an agreement to
26 accomplish an unlawful purpose and/or to accomplish a lawful object by

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

21 **COUNT 13**

22 **PUNITIVE DAMAGES**

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

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

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

9 **EXCEPTIONAL CASE**

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

13 **JURY TRIAL DEMAND**

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

16 **PRAYER FOR RELIEF**

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

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

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

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

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

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

6 CHANDLER & UDALL, LLP

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

14 **CERTIFICATE OF SERVICE**

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

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

23 Scott Joseph Bornstein, Esquire
24 Paul J. Sutton, Esquire
25 Allan A. Kassenoff, Esquire
26 Greenberg Traurig, LLP
200 Park Avenue
New York, New York 10166
Attorneys for Plaintiff

s/

Exhibit 2

Exhibit 2

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNIVERSAL AVIONICS SYSTEMS CORPORATION,

Plaintiff,

vs.

OPTIMA TECHNOLOGY GROUP, INC.,
OPTIMA TECHNOLOGY CORPORATION, ROBERT ADAMS and
JED MARGOLIN,

Defendants.

OPTIMA TECHNOLOGY INC. a/k/a
OPTIMA TECHNOLOGY GROUP, INC.,
a corporation,

Counterclaimant,

vs.

UNIVERSAL AVIONICS SYSTEMS CORPORATION, an Arizona corporation,

Counterdefendant,

OPTIMA TECHNOLOGY INC. a/k/a
OPTIMA TECHNOLOGY GROUP, INC.,

Cross-Claimant,

vs.

OPTIMA TECHNOLOGY CORPORATION,

Cross-Defendant.

No. CV 07-588-TUC-RCC

ORDER

1 This Court, having considered the Defendants' Application for Entry of Default
2 Judgment against Cross-Defendant Optima Technology Corporation, finds no just reason to
3 delay entry of final judgment.

4 Therefore, IT IS HEREBY ORDERED:

5 Final Judgment is entered against Cross-Defendants Optima Technology Corporation,
6 a California corporation, and Optima Technology Corporation, a Nevada corporation, as
7 follows:

8 1. Optima Technology Corporation has no interest in U.S. Patents Nos. 5,566,073 and
9 5,904,724 ("the Patents") or the Durable Power of Attorney from Jed Margolin dated July
10 20, 2004 ("the Power of Attorney");

11 2. The Assignment Optima Technology Corporation filed with the USPTO is forged,
12 invalid, void, of no force and effect, and is hereby struck from the records of the USPTO;

13 3. The USPTO is to correct its records with respect to any claim by Optima
14 Technology Corporation to the Patents and/or the Power of Attorney; and

15 4. OTC is hereby enjoined from asserting further rights or interests in the Patents
16 and/or Power of Attorney; and

17 5. There is no just reason to delay entry of final judgment as to Optima Technology
18 Corporation under Federal Rule of Civil Procedure 54(b).

19 DATED this 18th day of August, 2008.

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Raner C. Collins
United States District Judge

Exhibit 3

Exhibit 3

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|--|--|---|--|---|
| Section I: Requester/Originator Information | | | | |
| Name Jed Margolin | Telephone # 847 7845 | Date Wire to be Sent 1/15/08 | | |
| Address 181 Empire Rd | City Reno | State NV | Zip 89501 | |
| Customer ID Type 1. DL | ID# 1. 08050832 | Issue State/Country 1. NV | Issue Date 1-6-06 | Expiration Date 1-2-2010 |
| Method of Signature Verification (If Applicable) 2. BACC Signature | | | | |
| Section II: Associate/Receiving Wire | | | | |
| Associate Name Kmazza | Phone and Fax # 3560216034 | Unit Cos/CCY 8557 | Date 1/15/08 | Time 1:40 |
| Callback Required if Phone, Fax or Letter <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A | | Name/Number of Person Contacted | Date/Time | Approval (required/Market Approval (if required)) |
| Callback Completed by: | | | | |
| Section III: Amount/Payment Information | | | | |
| Amount of Wire \$ 30,000 | Debit Account Type (circle one) CHKG SAV ICA GL | Serial # (For ICA/GL) or Repetitive ID# | Source <input type="checkbox"/> Fax <input type="checkbox"/> Phone <input checked="" type="checkbox"/> Letter | OTC |
| Account to Debit State: NV | Available Balance | Account Title Jed Margolin | | |
| Overdraft Amount \$ | Overdraft Approved by (Name & Signature) | | Date | Wire Fee 25 |
| Section IV: International Payment Instructions | | | | |
| USD Amount of Wire \$ | Country | Rate | Foreign Currency Code | Foreign Currency Amount |
| Debit Account Type (circle one) CHKG SAV ICA GL | Serial # (For ICA/GL) or Repetitive ID# | FX Reference ID (if Applicable) | Source <input type="checkbox"/> Fax <input type="checkbox"/> Phone <input type="checkbox"/> Letter | |
| Account to Debit State: NV | Available Balance | Account Title | | |
| Overdraft Amount \$ | Overdraft Approved by (Name & Signature) | | Date | Wire Fee \$ |
| Section V: Wire Information | | | | |
| Beneficiary Name Merrill Lynch | | Beneficiary Account # OR IBAN (if IBAN, no further Beneficiary Bank information is required) 1011730 | | |
| Beneficiary Address: Street | | City | State | Country Zip |
| Beneficiary Bank Name Mellon Bank | | ABA # or SWIFT or National ID 043000261 | | |
| Beneficiary Bank Address: Street | | City | State | Country Zip |
| Additional Instructions (Attention To, Please Advise, Customer Reference, Contact Upon Arrival) ETC to Optima Technology acct 223-07406 | | | | |
| Send Thru Bank/IBK (if available) | | ABA # or SWIFT or National ID | | |
| Send Thru Bank Address: Street | | City | State | Country Zip |
| Section VI: Customer Approval | | | | |
| I authorize Bank of America to transfer my funds as set forth in the instructions above (including debiting my account if applicable) and agree that such transfer of funds is subject to the Bank of America standard transfer agreement (see reverse side) and applicable fees. If this is a foreign currency wire transfer, I accept the conversion rate provided in Section IV, or, if no rate is entered, the rate provided by Bank of America at the time the wire transfer is sent. | | | | |
| Customer's Signature: Jed Margolin | | Date of Request: 1-15-2008 | | |
| Section VII: Wire System/Processing Information | | | | |
| BAT Approval Authorization # (if applicable) | | | | |
| Wire Entered by: Name/Signature (attach BFT screens prints) Print: Kmazza Signature: Kmazza | | BFT System Time 124544 | BFT Sequence # 01080115005656 | |
| Date of Entry and Verification 1-15-08 | Verified By (Name/Signature) (Print Verification Screen) Print: Jed Margolin Signature: [Signature] | BFT System Time 13:49:17 | | |

Note: Purpose of Wire must be disclosed if sent to an OFAC blocked country - See OFAC in PRO

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|--|--|---|--|---|---|
| Section I: Requester/Originator Information | | | | | |
| Name Jed Margolin | | Telephone # 847-7845 | | Date Wire to be Sent 3-26-08 | |
| Address 1981 Empire Rd | | City Reno | | State NV | |
| Customer ID Type 1. Drivers Lic | | ID# 0802588352 | | Issue Date 1-6-06 | |
| | | Issue State/Country Nevada | | Expiration Date 2/20/10 | |
| Method of Signature Verification (If Applicable) _____ | | | | | |
| Section II: Associate Accepting Wire | | | | | |
| Associate Name Janet Saldana | | Phone and Fax # 775-325-6021 | | Unit Code/CC# 336/8557 | |
| | | Date 3-26-08 | | Time _____ | |
| Callback Required if Phone, Fax or Letter <input type="checkbox"/> Yes <input type="checkbox"/> N/A | | Name/Number of Person Contacted _____ | | Date/Time _____ | |
| Callback Completed by _____ | | | | Approval (required)/Market Approval (if required) _____ | |
| Section III: Domestic Payment Instructions | | | | | |
| Amount of Wire \$ 30,000 - | | Debit Account Type (circle one) CHKG SAV ICA GL | | Serial # (For ICA/GL) or Repetitive ID# _____ | |
| Account to Debit _____ | | State _____ | | Available Balance _____ | |
| | | Account Title Jed Margolin | | Source <input checked="" type="checkbox"/> Wire <input type="checkbox"/> Phone <input type="checkbox"/> Letter | |
| Overdraft Amount \$ _____ | | Overdraft Approved by (Name & Signature) _____ | | Date _____ | |
| | | | | Wire Fee \$ 25 - | |
| Section IV: International Payment Instructions: <input type="checkbox"/> Check here if funds must be sent in US Dollars | | | | | |
| USD Amount of Wire \$ _____ | | Country _____ | | Rate _____ | |
| | | Foreign Currency Code _____ | | Foreign Currency Amount _____ | |
| Debit Account Type (circle one) CHKG SAV ICA GL | | Serial # (For ICA/GL) or Repetitive ID# _____ | | FX Reference ID (If Applicable) _____ | |
| Account to Debit _____ | | State _____ | | Available Balance _____ | |
| | | Account Title _____ | | Source <input type="checkbox"/> Wire <input type="checkbox"/> Phone <input type="checkbox"/> Letter | |
| Overdraft Amount \$ _____ | | Overdraft Approved by (Name & Signature) _____ | | Date _____ | |
| | | | | Wire Fee \$ _____ | |
| Section V: Wire Information | | | | | |
| Beneficiary Name Merrill Lynch | | | Beneficiary Account # OR IBAN (If IBAN, no further Beneficiary Bank information is required) 1011730 | | |
| Beneficiary Address: Street _____ | | City _____ | | State _____ | |
| | | Country _____ | | Zip _____ | |
| Beneficiary Bank Name Mellon Bank | | | ABA # or SWIFT or National ID 043000261 | | |
| Beneficiary Bank Address: Street _____ | | City _____ | | State _____ | |
| | | Country _____ | | Zip _____ | |
| Additional Instructions (Attention To, Phone Advice, Customer Reference, Contact Upon Arrival) F/CC to Optima Technology Group 223-07406 | | | | | |
| Send Thru Bank/IBK (if available) _____ | | | ABA # or SWIFT or National ID _____ | | |
| Send Thru Bank Address: Street _____ | | City _____ | | State _____ | |
| | | Country _____ | | Zip _____ | |
| Section VI: Customer Approval | | | | | |
| I authorize Bank of America to transfer my funds as set forth in the instructions noted herein (including debiting my account if applicable), and agree that such transfer of funds is subject to the Bank of America standard transfer agreement (see reverse side) and applicable fees. If this is a foreign currency wire transfer, I accept the conversion rate provided in Section IV, or, if no rate is entered, the rate provided by Bank of America at the time the wire transfer is sent. | | | | | |
| Customer's Signature: Jed Margolin | | | | Date of Request: 3-26-08 | |
| Section VII: Wire System Entry/Verification | | | | | |
| Wire Entered by: Name/Signature (attach BFT screen prints) Janet Saldana | | | BAT Approval Authorization # (if applicable) _____ | | BFT System Time 13:353 |
| Print: Janet Saldana Signature: Janet Saldana | | | BFT Sequence # 01080326006579 | | Date of Entry and Verification _____ |
| Verified By: (Name/Signature) (Print Verification Screen) _____ | | | BFT System Time _____ | | Signature: _____ |

Note: Purpose of Wire must be disclosed if sent to an OFAC blocked country - See OFAC in PRO

| Section I: Requester/Originator Information | | | | | |
|--|--|---|---|--|--|
| Name <i>Ted Margolin</i> | | Telephone # <i>775-847-7845</i> | | Date Wire to be Sent <i>6-18-08</i> | |
| Address <i>1981 Empire Rd</i> | | City <i>Reno</i> | | State <i>NV</i> | |
| Customer ID Type <i>DRIVER License</i> | | ID# <i>0802588352</i> | Issue State/Country <i>Nevada</i> | Issue Date <i>01-06-06</i> | Expiration Date <i>02-20-2010</i> |
| Method of Signature Verification (If Applicable) <i>BoFA - ATM 5/124 EXP 5/2010</i> | | | | | |
| Section II: Associate Accepting Wire | | | | | |
| Associate Name <i>Janet Saldana</i> | | Phone and Fax # <i>775-325-6001</i> | | Unit C#/OC# <i>336/8557</i> | Date <i>6-18-08</i> |
| Time <i>9:32</i> | | Name/Number of Person Contacted | | Date/Time | Approval (required)/Market Approval (if required) |
| Callback Required if Phone, Fax or Letter <input type="checkbox"/> Yes <input type="checkbox"/> N/A | | | | | |
| Callback Completed by: | | | | | |
| Section III: Domestic Payment Instructions | | | | | |
| Amount of Wire <i>\$ 30,000.-</i> | | Debit Account Type (circle one) CHKG <input type="checkbox"/> SAV <input checked="" type="checkbox"/> ICA <input type="checkbox"/> GL <input type="checkbox"/> | | Serial # (For ICA/GL) or Repetitive ID# | |
| Account to Debit | | State | | Available Balance <i>\$ 42,339.52</i> | Account Title <i>Ted Margolin</i> |
| Overdraft Amount <i>\$</i> | | Overdraft Approved by (Name & Signature) | | Date <i>6-18-08</i> | Wire Fee <i>\$ 25.-</i> |
| Section IV: International Payment Instructions: <input type="checkbox"/> Check here if funds must be sent in US Dollars | | | | | |
| USD Amount of Wire <i>\$</i> | | Country | | Rate | Foreign Currency Code |
| Debit Account Type (circle one) CHKG SAV ICA GL | | Serial # (For ICA/GL) or Repetitive ID# | | FX Reference ID (If Applicable) | Source <input type="checkbox"/> Fax <input type="checkbox"/> Phone <input type="checkbox"/> Letter <input type="checkbox"/> OTC <input type="checkbox"/> |
| Account to Debit | | State | | Available Balance | Account Title |
| Overdraft Amount <i>\$</i> | | Overdraft Approved by (Name & Signature) | | Date | Wire Fee <i>\$</i> |
| Section V: Wire Information | | | | | |
| Beneficiary Name <i>Snell & Wilmer Trust Acct</i> | | | Beneficiary Account # OR IBAN (if IBAN, no further Beneficiary Bank information is required) <i>411-9025</i> | | |
| Beneficiary Address: Street | | City | | State | Country |
| Beneficiary Bank Name <i>J.P. Morgan Chase NA/Phoenix Trust Acct</i> | | ABA # or SWIFT or National ID <i>021000021</i> | | | |
| Beneficiary Bank Address: Street <i>501 N. Central Ave</i> | | City <i>Phoenix</i> | | State <i>AZ</i> | Country <i>US</i> |
| Additional Instructions (Attention To, Phone Advise, Customer Reference, Contact Upon Arrival) <i>Attn: Jeff Willis Client: Optima Technology Group/Ted Margolin</i> | | Send Thru Bank/IBK (if available) | | ABA # or SWIFT or National ID | |
| Send Thru Bank Address: Street | | City | | State | Country |
| Section VI: Customer Approval | | | | | |
| I authorize Bank of America to transfer my funds as set forth in the instructions noted herein (including debiting my account if applicable), and agree that such transfer of funds is subject to the Bank of America standard transfer agreement (see reverse side) and applicable fees. If this is a foreign currency wire transfer, I accept the conversion rate provided in Section IV, or, if no rate is entered, the rate provided by Bank of America at the time the wire transfer is sent. | | | | | |
| Customer's Signature: <i>Ted Margolin</i> | | | | Date of Request: <i>6-18-08</i> | |
| Section VII: Wire System Entry/Verification | | | | | |
| Wire Entered by: Name/Signature (attach BFT screens prints) <i>Janet Saldana</i> | | | BFT System Time <i>12:054</i> | | BFT Sequence # <i>0108068004513</i> |
| Date of Entry and Verification | | Verified By (Name/Signature) (Print Verification Screen) | | BFT System Time | |
| Print: _____ | | Signature: _____ | | | |

Note: Purpose of Wire must be disclosed if sent to an OFAC blocked country - See OFAC in PRO