

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

2  
3 REZA ZANDIAN A/K/A/  
4 GOLAMREZA ZANDIANJAZI A/K/A  
5 GHOLAM REZA ZANDIAN A/K/A  
6 REZA JAZI A/K/A J. REZA JAZI,  
7 A/K/A/ G. REZA JAZI A/K/A/  
8 GHONOREZA ZANDIAN JAZI, AN  
9 INDIVIDUAL,

10                                   Appellant,

11 vs.

12 JED MARGOLIN, AN INDIVIDUAL,

13                                   Respondent.

**Supreme Court No. 65960**

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Clerk of Supreme Court

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

17                                   **RESPONDENT’S ANSWERING BRIEF**

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1 royalty agreement between Margolin and OTG.<sup>4</sup> On or about October 2007, OTG  
2 licensed the '073 Patent to Honeywell International, Inc., and Margolin received a  
3 royalty payment pursuant to a royalty agreement between Margolin and OTG.<sup>5</sup>  
4

5 On or about December 5, 2007, Zandian signed and filed assignment  
6 documents with the United States Patent and Trademark Office ("USPTO"),  
7 fraudulently assigning all four of the Patents to Optima Technology Corporation  
8 ("OTC"), a company owned by Zandian.<sup>6</sup> Shortly thereafter, on November 9,  
9 2007, Margolin, Robert Adams, and OTG were named as defendants in a case  
10 titled *Universal Avionics Systems Corporation v. Optima Technology Group, Inc.*,  
11 No. CV 07-588-TUC-RCC (the "Arizona action").<sup>7</sup> Zandian was not a party in the  
12 Arizona action.<sup>8</sup> The plaintiff in the Arizona action asserted Margolin and OTG  
13 were not the owners of the '073 and '724 Patents, and OTG filed a cross-claim for  
14 declaratory relief against OTC in order to obtain legal title to the respective  
15 patents.<sup>9</sup>  
16  
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19 On August 18, 2008, the Arizona court expressly found OTC (Zandian's  
20 company) had no interest in the '073 or '724 Patents and the assignment  
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22 <sup>4</sup> See R.A. at Vol. I, 3.

23 <sup>5</sup> See R.A. at Vol. I, 3.

24 <sup>6</sup> See R.A. at Vol. I, 55-64; R.A. at Vol. I, 65-66; R.A. at Vol. I, 67-68 (showing  
same signature from Zandian).

25 <sup>7</sup> See R.A. at Vol. I, 3-4; R.A. at Vol. I, 69-74.

<sup>8</sup> See R.A. at Vol. I, 69-86; R.A. at Vol. I, 87-119.

<sup>9</sup> See R.A. at Vol. I, 69-86; R.A. at Vol. I, 3-4; R.A. at Vol. I, 87-119.

1 documents filed with the USPTO were “forged, invalid, void, of no force and  
2 effect.”<sup>10</sup> It is undisputed Zandian signed the assignment documents. The Arizona  
3 court’s findings show Zandian and/or the corporate Defendants in this matter do  
4 not own the patents.<sup>11</sup> In fact, Zandian has previously conceded as an undisputed  
5 fact that “Margolin was the rightful owner of Patents Nos. 5,566,073 and  
6 5,904,724, dated July 20, 2004.”<sup>12</sup>  
7  
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9 Due to Zandian’s fraudulent acts, title to the Patents was clouded and  
10 interfered with Margolin’s and OTG’s ability to license the Patents.<sup>13</sup> In addition,  
11 during the period of time Margolin worked to correct record title of the Patents in  
12 the Arizona action and with the USPTO, he incurred significant litigation and other  
13 costs associated with those efforts.<sup>14</sup>  
14

15 Zandian’s fraudulent acts are the basis of Margolin’s deceptive trade  
16 practices claim.<sup>15</sup>  
17

## 18 **SUMMARY OF THE ARGUMENT**

19 Zandian does not and cannot dispute he fraudulently assigned the Patents.  
20 NRS 598.0999(2) provides for attorney’s fees as a result of his deceptive trade  
21 practices. NRS 41.600 also provides for attorney’s fees as a result of his deceptive  
22

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23 <sup>10</sup> See R.A. at Vol. I, 65-66.

24 <sup>11</sup> See R.A. at Vol. I, 65-66.

25 <sup>12</sup> See R.A. at Vol. I, 122.

<sup>13</sup> See R.A. at Vol. I, 1-8; R.A. at Vol. I, 9-54; R.A. at Vol. I, 127-139.

<sup>14</sup> See R.A. at Vol. I, 1-8; R.A. at Vol. I, 9-54; R.A. at Vol. I, 127-139.

1 trade practices. As a result, the District Court’s award of attorney fees is  
2 appropriate.

3  
4 Nevertheless, Zandian believes \$300 an hour is not warranted since “a more  
5 generalized practitioner with much less experience” could have prosecuted this  
6 matter.<sup>16</sup> Zandian does not dispute \$300 an hour is reasonable for Margolin’s  
7 counsel. He simply believes other lawyers with much less skill and experience  
8 could have handled this matter at a lower hourly rate. He fails to cite any factual  
9 or legal basis for this argument. Thus, his appeal has no more merit than his  
10 *Motion to Retax*<sup>17</sup> or his *Opposition to Motion for Order Allowing Costs and*  
11 *Necessary Disbursements*.<sup>18</sup>  
12

13  
14 The District Court’s order awarding attorney’s fees is tested under an abuse  
15 of discretion standard, meaning it should only be reversed if it was clearly  
16 erroneous or not supported by substantial evidence. Zandian fails to meet this  
17 heavy burden of showing the evidence before the District Court was not adequate  
18 to support its award of attorney fees.  
19

20 The District Court was presented with sufficient evidence and arguments  
21 relating to the amount of attorney fees and the District Court properly analyzed the  
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23  
24 <sup>15</sup> See J.A. at Vol. I, 16.

25 <sup>16</sup> See Appellant’s Opening Brief at 15:9-11.

<sup>17</sup> See J.A. at Vol. III, 411-94.

<sup>18</sup> See J.A. at Vol IV, 537-45.

1 factors established in *Brunzell v. Golden Gate National Bank*<sup>19</sup> and provided  
2 sufficient reasoning and findings concerning those factors in its order.<sup>20</sup>

## 3 4 **ARGUMENT**

### 5 **I. STANDARD OF REVIEW**

6 An award of attorney fees is reviewed for an abuse of discretion.<sup>21</sup> The  
7 District Court must analyze the *Brunzell* factors<sup>22</sup> in its determination of the  
8 reasonable value of an attorney’s services in a motion for attorney’s fees. The  
9 District Court must also provide sufficient reasoning and findings concerning those  
10 factors in its order.<sup>23</sup> If the District Court’s order does not provide such reasoning  
11 and findings, the Nevada Supreme Court will defer to the District Court’s  
12 discretion in awarding the fees if the record indicates the District Court properly  
13 evaluated the *Brunzell* factors.<sup>24</sup>

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16 A district court’s “findings of fact shall not be set aside unless they are  
17 clearly erroneous and not supported by substantial evidence.”<sup>25</sup> Of course,  
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21 <sup>19</sup> 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969).

22 <sup>20</sup> See J.A. at Vol. IV, 549-58.

23 <sup>21</sup> *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530,  
548–49 (2005).

24 <sup>22</sup> *Brunzell*, 85 Nev. 345, 349–50, 455 P.2d 31, 33.

25 <sup>23</sup> *Shuette*, 121 Nev. at 865, 124 P.3d at 549.

<sup>24</sup> *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428–29 (2001).

<sup>25</sup> *Bahena v. Goodyear Tire & Rubber*, 126 Nev. Adv. Op. 26, 235 P.3d 592, 599  
(2010).

1 “substantial evidence” is merely such evidence “which a reasonable mind might  
2 accept as adequate to support a conclusion.”<sup>26</sup>

3  
4 **II. NRS 598.0999(2) PROVIDES FOR AN AWARD OF**  
5 **ATTORNEY’S FEES TO A VICTIM OF DECEPTIVE TRADE**  
6 **PRACTICES**

7 Under Margolin’s deceptive trade practices claim, “[t]he court in any such  
8 action may, in addition to any other relief or reimbursement, award reasonable  
9 attorney’s fees and costs.”<sup>27</sup> Although NRS 598.0999(2) does not expressly  
10 provide for attorney fees incurred postjudgment, the statute does not expressly  
11 exclude postjudgment attorney fees either. NRS 598.0999(2) should be liberally  
12 construed in order to allow for postjudgment attorney fees so as to further the  
13 statute’s purpose to ensure those engaged in deceptive trade practices are penalized  
14 and deterred from engaging in such practices and so an attorney fee award properly  
15 includes the reasonable fees incurred in seeking payment of the fees.<sup>28</sup>

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18 <sup>26</sup> *Weaver v. State of Nevada*, 121 Nev. 494, 501, fn. 12, 117 P.3d 193, 198, fn. 12  
19 (2005).

20 <sup>27</sup> NRS 598.0999(2).

21 <sup>28</sup> *See Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 825-26, 192  
22 P.3d 730, 733-34 (2008) (mechanic lien statute did not expressly provide for  
23 attorney fees incurred postjudgment, however, statute did not expressly exclude  
24 postjudgment attorney fees from its purview and was liberally interpreted to allow  
25 postjudgment attorney fees “so as to further the lien statutes’ purpose to ensure that  
contractors are paid in whole for their work.”); *see also Rosen v. LegacyQuest*,  
A136985, 2014 WL 1372114 (Cal. Ct. App. Mar. 21, 2014) (judgment creditor  
who had recovered statutory attorney fees in connection with underlying judgment  
was authorized to recover attorney fees incurred in enforcing underlying judgment  
under the statute authorizing recovery of judgment creditor’s “reasonable and

1 NRS 598.0999(2) states as follows:

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

10 The "provisions of NRS 598.0903 to 598.0999" encompass the general  
11 provisions of the deceptive trade practices statute. The language, "any action  
12 brought pursuant to the provisions of NRS 598.0903 to 598.0999," does not limit  
13 deceptive trade practices actions to district attorneys or the Attorney General.<sup>29</sup>

14 The only limitation in NRS 598.0999(2) relates to district attorneys and the  
15 Attorney General being able to pursue a \$5,000 civil penalty. Moreover, the last  
16 sentence of NRS 598.0999(2) stands alone and does not limit attorney fee awards

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20 necessary costs of enforcing a judgment," since the statute authorizing the  
21 underlying attorney fee award established that the fee award was "otherwise  
22 provided by law" within meaning of the fee statute) (an attorney fee award  
23 properly includes the reasonable fees incurred in seeking the fees); *see also*  
24 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 104 Cal.Rptr.2d 377, 17 P.3d 735  
25 (judgment creditor entitled to fees incurred in enforcing the right to mandatory fees  
under statute).

<sup>29</sup> *See also* NRS 598.0977 (civil action by elderly person); NRS 598.0993 (relief  
for injured persons); *see also Betsinger v. DR Horton, Inc.*, 232 P. 3d 433 (Nev.  
2010) (example of a deceptive trade practices action not brought by district  
attorney or Attorney General).

1 to district attorneys or the Attorney General and allows the District Court, in any  
2 deceptive trade practices action, to “award reasonable attorney’s fees and costs.”<sup>30</sup>

3  
4 Zandian’s argument that NRS 598.0999(2) does not permit an award of  
5 attorney’s fees because it is limited to an action brought by the district attorney or  
6 the Attorney General is clearly erroneous. Since NRS 598.0999(2) does not  
7 exclude postjudgment attorney fees, the District Court properly awarded Margolin  
8 his attorney’s fees incurred while enforcing the judgment on the deceptive trade  
9 practices claim.  
10

11 **III. NRS 41.600 ALSO PROVIDES AN AWARD OF ATTORNEY’S**  
12 **FEES TO A VICTIM OF DECEPTIVE TRADE PRACTICES**

13 Among other claims, Margolin brought a claim against Zandian for  
14 deceptive trade practices as defined by NRS 598.0915.<sup>31</sup> “NRS 41.600 permits a  
15 victim of consumer fraud, including a ‘deceptive trade practice as defined in NRS  
16 598.0915 to 598.0925,’ to bring an action in court.”<sup>32</sup> Since Margolin prevailed on  
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19 <sup>30</sup> NRS 598.0999(2).

20 <sup>31</sup> See J.A. at Vol. I, 16.

21 <sup>32</sup> *Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada ex rel. Cnty. of*  
22 *Clark*, 120 Nev. 948, 959, 102 P.3d 578, 586 (2004) (citing NRS 41.600(2)(d));  
23 *see also Del Webb Communities, Inc. v. Partington*, No. 208-CV-00571-RCJ-  
24 GWF, 2009 WL 3053709, at \*10 (D. Nev. Sept. 18, 2009) (“NRS 598.0953(1)  
25 states that ‘[e]vidence that a person has engaged in a deceptive trade practice is  
prima facie evidence of intent to injure *competitors* and to destroy or substantially  
lessen competition.’ As one judge in this district has already concluded, ‘[b]y  
creating a presumption that deceptive trade practices harm competitors, then  
making those same deceptive trade practices into acts of consumer fraud, the  
Nevada legislature impliedly defines competitors harmed by deceptive trade

1 his deceptive trade practices claim, NRS 41.600(3) also entitles Margolin to  
2 recover his attorney's fees.<sup>33</sup>

3  
4 **IV. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION**  
5 **IN AWARDING ATTORNEY'S FEES**

6 Zandian makes one purely factual argument as to why he believes "the  
7 District Court abused its discretion in applying a rate of \$300 per hour for the  
8 attorneys involved in this case..."<sup>34</sup> Zandian believes \$300 an hour is not  
9 warranted since "subsequent to the *Default Judgment*" "a more generalized  
10 practitioner with much less experience" could have prosecuted this matter.<sup>35</sup> There  
11 is no merit to Zandian's argument.  
12

13 Zandian fails to cite any factual or legal basis for his argument that a less  
14 skilled practitioner, much less a lower hourly rate, is required. Zandian fails to  
15 show how the District Court abused its discretion in applying the \$300 hourly rate,  
16 or why Margolin would be required to retain separate counsel to collect on the  
17 judgment and at the same time retain his chosen counsel for the remaining pieces  
18 of this matter.  
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21  
22 practices as victims of consumer fraud.") (citation omitted); *George v. Morton*,  
23 No. 2:06CV1112 PMP GEF, 2007 WL 680787, at \*12 (D. Nev. Mar. 1, 2007)  
24 ("Because Plaintiff's deceptive trade practices allegations fall under the definition  
25 of 'consumer fraud,' Plaintiff may assert a private cause of action notwithstanding  
the fact Plaintiff originally brought his claim under Chapter 598 instead of Nevada  
Revised Statute § 41.600.").

<sup>33</sup> NRS 41.600(3).

<sup>34</sup> See Appellant's Opening Brief at 15:15-17.

1           Moreover, Zandian does not dispute \$300 an hour is reasonable for  
2 Margolin’s counsel. He simply believes other lawyers with much less skill and  
3 experience could have handled this matter at a lower hourly rate. Again, however,  
4 Zandian provides no factual or legal basis for such an argument. He also fails to  
5 provide any basis to determine what lower hourly rate should be applied, or what  
6 that hourly rate would even be.  
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8           The District Court properly reviewed the record, analyzed the *Brunzell*  
9 factors and awarded Margolin his fees and costs.<sup>36</sup>  
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23 <sup>35</sup> See Appellant’s Opening Brief at 14:16-18 and 15:9-11.

24 <sup>36</sup> See J.A. at Vol. III, 419-494; J.A. at Vol. IV, 513-533; J.A. at Vol. III, 495-505;  
25 J.A. at Vol. III, 386-389; J.A. at Vol. III, 411-418; J.A. at Vol. III, 390-399; J.A. at  
Vol. IV, 537-545; J.A. at Vol. IV, 549-558; J.A. at Vol. IV, 506-512; J.A. at Vol.  
III, 408-410.

1 **CONCLUSION**

2 Zandian has failed to meet his burden to demonstrate that the District Court  
3 abused its discretion in awarding Margolin his attorney fees. Margolin respectfully  
4 requests this Court affirm the District Court's *Order on Motion Allowing Costs and*  
5 *Necessary Disbursements and Memorandum of Points and Authorities in Support*  
6 *Thereof.*  
7

8 Dated this 20<sup>th</sup> day of January, 2015.  
9

10 WATSON ROUNDS, P.C.

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1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that I have read this answering brief, and to the best of my  
3 knowledge, information, and belief, it is not frivolous or interposed for any  
4 improper purpose. I further certify that this brief complies with all applicable  
5 Nevada Rules of Appellate Procedure, in particular NRAP 28 (e), which requires  
6 every assertion in the brief regarding matters in the record to be supported by  
7 appropriate references to the record or appeal. I understand that I may be subject  
8 to sanctions in the event that the accompanying brief is not in conformity with the  
9 requirements of Nevada Rules of Appellate Procedure.  
10  
11

12 The brief complies with formatting requirements of Rule 32(a)(4), typeface  
13 requirements of Rule 32(a)(5), and type style requirements of Rule 32(a)(6),  
14 because this brief has been prepared in a proportionally spaced typeface using  
15 Times New Roman, 14-point font. I further certify that this brief complies with the  
16 page limitations of NRAP 32(a)(7), because it does not exceed thirty (30) pages.  
17  
18

19 Dated this 20<sup>th</sup> day of January, 2015.

20 WATSON ROUNDS, P.C.

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(1), I declare that I am an employee of Watson Rounds  
3 and on this 20<sup>th</sup> day of January, 2015, I served a copy of the foregoing  
4  
5 *Respondent's Answering Brief* by Nevada Supreme Court CM/ECF Electronic

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13 DATED: January 20, 2015

14 /s/ Nancy R. Lindsley  
15 An Employee of Watson Rounds  
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