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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

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

Plaintiff Jed Margolin hereby applies for a default judgment pursuant to NRCP 55(b)(2) against Defendants Reza Zandian ("Zandian"), Optima Technology Corporation, a 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

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND

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

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

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

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

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

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

II. PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

Plaintiff now applies for a default judgment against all Defendants.

III. ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Interference with prospective economic advantage requires a showing of the following elements: 1) a prospective contractual relationship between the plaintiff and a third party; 2) the defendant's knowledge of this prospective relationship; 3) the intent to harm the plaintiff by preventing the relationship; 4) the absence of privilege or justification by the defendant; 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).

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

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

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

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

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

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

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

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

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

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

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

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

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

E. MR. MARGOLIN IS ENTITLED TO PREJUDGMENT INTEREST

NRS 99.040(1) provides, in pertinent part:

> 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....

Id.

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

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

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

F. MR. MARGOLIN IS ENTITLED TO COSTS

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

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

Id.

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

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

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

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

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

IV. CONCLUSION

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

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 this 16th day of April, 2013.

BY: _____

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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, **Application for Default Judgment**, addressed as follows:

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Dated: April 16, 2013

Nancy Lindsley