

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

REZA ZANDIAN, AN INDIVIDUAL,
Appellant,
vs.
JED MARGOLIN, AN INDIVIDUAL,
Respondent.

No. 65205

Electronically Filed
Apr 04 2014 09:31 a.m.

Tracie K. Lindeman
Clerk of Supreme Court
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District First Department 1

County Carson City Judge James T. Russell

District Ct. Case No. 09 OC 00579 1B

2. Attorney filing this docketing statement:

Attorney Jason Woodbury Telephone (775) 884-8300

Firm KAEMPFER CROWELL

Address 510 West Fourth Street
Carson City, Nevada 89703

Client(s) Reza Zandian

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Matthew D. Francis Telephone (775) 324-4100

Firm WATSON ROUNDS

Address 5371 Kietzke Lane
Reno, Nevada 89511

Client(s) Jed Margolin

Attorney Adam P. McMillen Telephone (775) 324-4100

Firm WATSON ROUNDS

Address 5371 Kietzke Lane
Reno, Nevada 89511

Client(s) Jed Margolin

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input checked="" type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Denial of set aside</u> |

5. Does this appeal raise issues concerning any of the following?

- Child Custody
- Venue
- Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

The subject matter of this case concerns various patents and a dispute over their ownership. Margolin claims to be the owner of the patents at issue and that certain conduct of Zandian "clouded the title" and disrupted his ownership and control over the patents, thereby causing him damages. Specifically, Margolin's complaint alleged the following claims against the Zandain: (1) Conversion; (2) Tortious Interference with Contract; (3) Intentional Interference with Prospective Economic Advantage; (4) Unjust Enrichment; and (5) Unfair and Deceptive Trade Practices. After the complaint was served and answered, Zanidan's counsel withdrew and provided an inaccurate service address for further service upon Zandian in the case. Utilizing the incorrect address, Margolin served Zandian with several discovery requests which Zandian failed to answer because he did not receive them. Margolin then requested sanctions against Zandian which included a request that Zandian's answer be stricken. The District Court the request. Subsequently, the District Court entered a default against Zandian and, later, a default judgment. Zandian then moved to set aside the default and the request . The District Court denied the motion to set aside without a hearing.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Did the District Court incorrectly:

- o Enter a default even though ZANDIAN had appeared in the case and no advance notice of any intention to take a default had been provided to ZANDIAN;
- o Sanction ZANDIAN for failing to respond to discovery requests when both the discovery requests and the motion to impose the sanction were served upon an incorrect service address;
- o Impose a dispositive sanction of striking ZANDIAN's answer to the operative complaint under the circumstances of this case;
- o Deny ZANDIAN's motion to set aside the default and default judgment under the circumstances of this case?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

Yes

No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first impression

An issue of public policy

An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

If so, explain:

13. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from February 6, 2014

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served February 10, 2014

Was service by:

Delivery

Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

NRCP 50(b) Date of filing _____

NRCP 52(b) Date of filing _____

NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

Delivery

Mail

18. Date notice of appeal filed March 12, 2014.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order: Denial of a motion to set aside a default and default judgment is a "special order entered after final judgment" which is the subject of a cognizable appeal under NRAP 3A(b)(8).

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

JED MARGOLIN, an individual, Plaintiff
REZA ZANDIAN, an individual, Defendant
OPTIMA TECHNOLOGY CORPORATION, a California corporation, Defendant
OPTIMA TECHNOLOGY CORPORATION, a Nevada corporation, Defendant

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Defendants, OPTIMA TECHNOLOGY CORPORATION, a California corporation, and OPTIMA TECHNOLOGY CORPORATION, a Nevada corporation (collectively "OTC"), were the subjects of a default and default judgment which preceded the default and default judgment to which REZA ZANDIAN was subject. OTC did not move to set aside the default or default judgment to which they were subject.

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Margolin: (1) Conversion; (2) Tortious Interference with Contract; (3) Intentional Interference with Economic Advantage; (4) Unjust Enrichment; (5) Unfair and Deceptive Trade Practices

As to Zandian, all of the claims of Margolin were addressed in the default judgment dated June 24, 2013. By order dated February 6, 2014, the District Court denied the request to set aside the default judgment.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

Yes

No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes

No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

Yes

No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

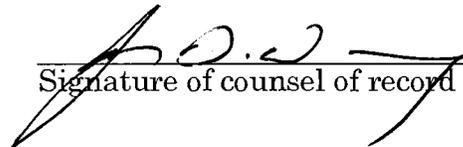
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Reza Zandian
Name of appellant

Jason Woodbury
Name of counsel of record

April 3, 2014
Date


Signature of counsel of record

Carson City, Nevada
State and county where signed

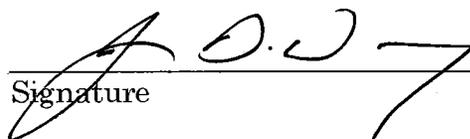
CERTIFICATE OF SERVICE

I certify that on the 3rd day of April, 2014, I served a copy of this completed docketing statement upon all counsel of record:

- By personally serving it upon him/her; or
- By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Matthew D. Francis
Adam P. McMillen
WATSON ROUNDS
5371 Kietzke Lane
Reno, NV 89511

Dated this 3rd day of April, 2014


Signature

ATTACHMENT 1

ATTACHMENT 1

ORIGINAL

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 ✓

2011 AUG 11 PM 4:05

ALAN GLOVER

BY  CLERK
DEPUTY

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

10 **JED MARGOLIN, an individual,**

11 **Plaintiff,**

12 **vs.**

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

24 **Defendants.**

Case No.: 090C00579 1B

Dept. No.: 1

AMENDED COMPLAINT

(Exemption From Arbitration Requested)

22 Plaintiff, JED MARGOLIN ("Mr. Margolin"), by and through his counsel of record,
23 WATSON ROUNDS, and for his Complaint against Defendants, hereby alleges and complains
24 as follows:

25 **The Parties**

- 26 1. Plaintiff Mr. Margolin is an individual residing in Storey County, Nevada.
27 2. On information and belief, Defendant Optima Technology Corporation is a
28 California corporation with its principal place of business in Irvine, California.

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9. Plaintiff Mr. Margolin is the named inventor on numerous patents and patent applications, including 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”).

10. Mr. Margolin is the legal owner and owner of record for the ‘488 and ‘436 Patents, and has never assigned those patents.

11. In July 2004, Mr. Margolin granted to Optima Technology Group (“OTG”), a Cayman Islands Corporation specializing in aerospace technology, a Power of Attorney regarding the ‘073 and ‘724 Patents. In exchange for the Power of Attorney, OTG agreed to pay Mr. Margolin royalties based on OTG’s licensing of the ‘073 and ‘724 Patents.

12. 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 the royalty agreement between Mr. Margolin and OTG.

13. On about July 20, 2004, Mr. Margolin assigned the ‘073 and ‘724 Patents to OTG.

14. In about November 2007, OTG licensed the ‘073 Patent to Honeywell International, Inc., and Mr. Margolin received a royalty payment pursuant to the royalty agreement between Mr. Margolin and OTG.

15. In December 2007, Defendant Zandian filed with the U.S. Patent and Trademark Office (“USPTO”) fraudulent assignment documents allegedly assigning all four of the Patents to Optima Technology Corporation.

16. Upon discovery of the fraudulent filing, Mr. Margolin: (a) filed a report with the Storey County Sheriff’s Department; (b) took action to regain record title to the ‘488 and ‘436 Patents that he legally owned; and (c) assisted OTG in regaining record title of the ‘073 and ‘724 Patents that it legally owned and upon which it contracted with Mr. Margolin for royalties.

17. Shortly before this, Mr. Margolin and OTG had been named as defendants in an action for declaratory relief regarding non-infringement of the ‘073 and ‘724 Patents in the

1 United States District Court for the District of Arizona, in a case titled: *Universal Avionics*
2 *Systems Corporation v. Optima Technology Group, Inc.*, No. CV 07-588-TUC-RCC (the
3 “Arizona Action”). In the Arizona Action, Mr. Margolin and OTG filed a cross-claim for
4 declaratory relief against Optima Technology Corporation (Zandian) in order to obtain legal
5 title to their respective patents.

6 18. On August 18, 2008, the United States District Court for the District of Arizona
7 entered a final judgment in favor of Mr. Margolin and OTG on their declaratory relief action,
8 and ordered that OTC—California and OTC—Nevada had no interest in the ‘073 or ‘724
9 Patents, that the assignment documents filed by Zandian with the USPTO were “forged, invalid,
10 void, of no force and effect,” that the USPTO was to correct its records with respect to any
11 claim by OTC to the Patents and/or the Power of Attorney, and that OTC was enjoined from
12 asserting further rights or interests in the Patents and/or Power of Attorney. Attached as Exhibit
13 A is a copy of the Order from the United States District Court in the Arizona Action.

14 19. Due to Defendants’ fraudulent acts, title to the Patents was clouded and
15 interfered with Plaintiff’s and OTG’s ability to license the Patents.

16 20. During the period of time Mr. Margolin worked to correct record title of the
17 Patents in the Arizona Action and with the USPTO, he incurred significant litigation and other
18 costs associated with those efforts.

19 **Claim 1--Conversion**
20 **(Against All Defendants)**

21 21. Paragraphs 1-20 of the Complaint set forth above are incorporated herein by
22 reference.

23 22. Through the fraudulent acts described above, Defendants wrongfully exerted
24 dominion over the Patents, thereby depriving Mr. Margolin of the use of such property.

25 23. The Patents and the royalties due Mr. Margolin under the Patents were the
26 personal property of Mr. Margolin.

27 24. As a direct and proximate result of the Defendants’ conversion, Mr. Margolin
28 has suffered damages in excess of ten thousand dollars (\$10,000), entitling him to the relief set

1 forth below.

2 **Claim 2--Tortious Interference With Contract**
3 **(Against All Defendants)**

4 25. Paragraphs 1-24 of the Complaint set forth above are incorporated herein by
5 reference.

6 26. Mr. Margolin was a party to a valid contract with OTG for the payment of
7 royalties based on the license of the '073 and '724 Patents.

8 27. Defendants were aware of Mr. Margolin's contract with OTG.

9 28. Defendants committed intentional acts intended and designed to disrupt and
10 interfere with the contractual relationship between Mr. Margolin and OTG.

11 29. As a result of the acts of Defendants, Mr. Margolin's contract with OTG was
12 actually interfered with and disrupted.

13 30. As a direct and proximate result of the Defendants' tortious interference with
14 contract, Mr. Margolin has suffered damages in excess of ten thousand dollars (\$10,000),
15 entitling him to the relief set forth below.

16 **Claim 3—Intentional Interference with Prospective Economic Advantage**
17 **(Against All Defendants)**

18 31. Paragraphs 1-30 of the Complaint set forth above are incorporated herein by
19 reference.

20 32. Defendants were aware of Mr. Margolin's prospective business relations with
21 licensees of the Patents.

22 33. Defendants purposely, willfully and improperly attempted to induce Mr.
23 Margolin's prospective licensees to refrain from engaging in business with Mr. Margolin.

24 34. The foregoing actions by Defendants interfered with the business relationships of
25 Mr. Margolin, and were done intentionally and occurred without consent or authority of Mr.
26 Margolin.

27 35. As a direct and proximate result of the Defendants' tortious interference, Mr.
28 Margolin has suffered damages in excess of ten thousand dollars (\$10,000), entitling him to the
relief set forth below.

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Claim 4—Unjust Enrichment
(Against All Defendants)

36. Paragraphs 1-35 of the Complaint set forth above are incorporated herein by reference.

37. Defendants wrongfully obtained record title to the Patents.

38. Defendants were aware that record title to the Patents was valuable, and were aware of the benefit derived from having record title.

39. Defendants unjustly benefitted from the use of Mr. Margolin's property without compensation to Mr. Margolin.

40. As a direct and proximate result of Defendants' aforementioned acts, Mr. Margolin is entitled to equitable relief.

Claim 5—Unfair and Deceptive Trade Practices
(Against All Defendants)

41. Paragraphs 1-40 of the Complaint set forth above are incorporated herein by reference.

42. The Defendants, engaging in the acts and conduct described above, have knowingly and willfully committed unfair and deceptive trade practices under NRS 598.0915 by making false representations.

43. As a direct and proximate result of the Defendants' unfair and deceptive trade practices, Mr. Margolin has suffered damages in excess of ten thousand dollars (\$10,000), entitling him to the relief set forth below.

WHEREFORE, Plaintiff Jed Margolin, prays for judgment against the Defendants as follows:

1. That Plaintiff be awarded damages for Defendants' tortious conduct;
2. That Plaintiff be awarded damages for Defendants' unjust enrichment;
3. That Plaintiff be awarded damages for Defendants' commission of unfair and deceptive trade practices, in an amount to be proven at trial, with said damages being trebled pursuant to NRS 598.0999;

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4. That Plaintiff be awarded actual, consequential, future, and punitive damages of whatever type or nature;

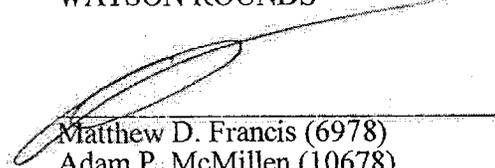
5. That the Court award all such further relief that it deems just and proper.

AFFIRMATION

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

DATED: August 11, 2011

WATSON ROUNDS



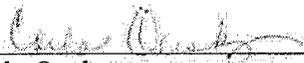
Matthew D. Francis (6978)
Adam P. McMillen (10678)
WATSON ROUNDS
5371 Kietzke Lane
Reno, NV 89511
Telephone: 775-324-4100
Facsimile: 775-333-8171
Attorneys for Plaintiff Jed Margolin

1 **CERTIFICATE OF SERVICE**

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

6 John Peter Lee
7 John Peter Lee, Ltd.
8 830 Las Vegas Blvd. South
9 Las Vegas, NV 89101

10 Dated: August 11, 2011


11 _____
12 Carla Ousby

ATTACHMENT 2

ATTACHMENT 2

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Case No.: 09 OC 00579 1B

Dept. No.: 1

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ALAN GLOVER
BY  CLERK
DEPUTY

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

JED MARGOLIN, an individual,

Plaintiff,

vs.

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

Defendants.

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

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

///

I. FACTUAL BACKGROUND

1
2 Plaintiff Jed Margolin is the named inventor on United States Patent No. 5,566,073
3 (“the ‘073 Patent”), United States Patent No. 5,904,724 (“the ‘724 Patent”), United States
4 Patent No. 5,978,488 (“the ‘488 Patent”) and United States Patent No. 6,377,436 (“the ‘436
5 Patent”) (collectively “the Patents”). See Amended Complaint, filed 8/11/11, ¶¶ 9-10. In
6 2004, Mr. Margolin granted to Robert Adams, then CEO of Optima Technology, Inc. (later
7 renamed Optima Technology Group (hereinafter “OTG”), a Cayman Islands Corporation
8 specializing in aerospace technology) a Power of Attorney regarding the Patents. *Id.* at ¶ 11.
9 Subsequently, Mr. Margolin assigned the ‘073 and ‘724 Patents to OTG and revoked the
10 Power of Attorney. *Id.* at ¶ 13.

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

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

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

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

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

8 II. PROCEDURAL BACKGROUND

9 Plaintiff filed his Complaint on December 11, 2009, and the Complaint was personally
10 served on Zandian on February 2, 2010, and on Defendants Optima Technology Corporation, a
11 Nevada corporation, and Optima Technology Corporation, a California corporation on March
12 21, 2010. Zandian’s answer to Plaintiff’s Complaint was due on February 22, 2010, but
13 Zandian did not answer the Complaint or respond in any way. Default was entered against
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23 The defaults were set aside and Zandian’s motion to dismiss was denied on August 3,
24 2011. On September 27, 2011, this Court ordered that service of process against all
25 Defendants may be made by publication. As manifested by the affidavits of service, filed
26 herein on November 7, 2011, all Defendants were duly served by publication by November
27 2011.

28

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

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

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

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18 and awarding his fees and costs incurred in bringing the NRCP 37 Motion. A default was
19 entered against Zandian on March 28, 2013, and a notice of entry of default judgment was
20 filed and served on April 5, 2013.

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

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

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

3 III. FINDINGS AND CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 IV. CONCLUSION

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

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

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

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

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

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

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



Samantha Valerius
Law Clerk, Department I

RECEIVED
FEB 12 2014

ATTACHMENT 3

ATTACHMENT 3

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

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

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

10 **JED MARGOLIN, an individual,**
11 **Plaintiff,**

12 vs.

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

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

NOTICE OF ENTRY OF ORDER

22 TO: All parties:

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

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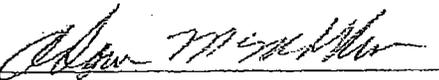
1 Aside Default Judgment. Attached as Exhibit 1 is a true and correct copy of such Order.

2 Affirmation Pursuant to NRS 239B.030

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

5 DATED: February 7, 2014.

WATSON ROUNDS

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

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

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

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

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

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

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

Dated: February 10th, 2014.

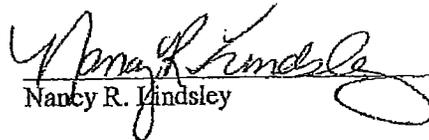

Nancy R. Lindsley

Exhibit 1

Exhibit 1

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

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ALAN GLOVER
BY CLERK
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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
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corporation, REZA ZANDIAN
aka GOLAMREZA ZANDIANJAZI
aka GHOLAM REZA ZANDIAN
aka REZA JAZI aka J. REZA JAZI
aka G. REZA JAZI aka GHONONREZA
ZANDIAN JAZI, an individual, DOE
Companies 1-10, DOE Corporations 11-20,
and DOE Individuals 21-30,
Defendants.

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

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

\\

1 I. FACTUAL BACKGROUND

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

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

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

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

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

3 Due to Zandian's acts, title to the Patents was clouded and interfered with Plaintiff's
4 and OTG's ability to license the Patents. *Id.* at ¶ 19. In addition, during the period of time Mr.
5 Margolin worked to correct record title of the Patents in the Arizona action and with the
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8 preponderance of the evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

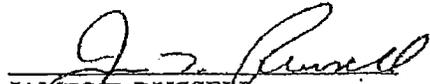
1 In light of Zandian's repeated and continued abuses, the policy of adjudicating cases on
2 the merits would not be furthered in this case, and the ultimate sanctions are necessary to
3 demonstrate to Zandian and future litigants that they are not free to act with wayward
4 disregard of a court's orders.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

9 IV. CONCLUSION

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

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

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

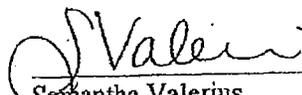
20
21 
22 JAMES T. RUSSELL
23 DISTRICT COURT JUDGE
24
25
26
27
28

CERTIFICATE OF MAILING

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

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Adam P. McMillen
Watson Rounds
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Samantha Valerius
Law Clerk, Department I

CERTIFIED