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15 Attorneys for Defendants
16 Matthew Katzer and Kamind Associates, Inc.

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 ROBERT JACOBSEN, an individual,
21 Plaintiff,
22 vs.
23 MATTHEW KATZER, an individual, and
24 KAMIND ASSOCIATES, INC., an Oregon
25 corporation dba KAM Industries,
26 Defendants.

Case Number C06-1905-JSW

Hearing Date: December 15, 2006
Hearing Time: 9:00am
Place: Ct. 2, Floor 17

Hon. Jeffrey S. White

**DEFENDANTS MATTHEW
KATZER AND KAMIND
ASSOCIATES, INC.'S
EVIDENTIARY OBJECTIONS TO
SUPPLEMENTAL DECLARATION
OF ROBERT JACOBSEN,
DECLARATIONS OF PAUL
BENDER AND ALEX SHEPARD IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Defendants Matthew Katzer and Kamind Associates, Inc. ("KAM") object to the following evidence submitted by plaintiff Robert Jacobsen ("Jacobsen") in his Supplemental

1 Declaration and in the Declarations of Paul Bender and Alex Shepard in support of plaintiff's
2 motion for a preliminary injunction set for hearing on December 15, 2006.

3 **A. Declaration of Alex John Shepard**

4 The following statements and exhibits in the declaration constitute inadmissible hearsay
5 under FRE 802 ("hearsay is not admissible except as provided by these rules or by other rules
6 prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress"), LR 7-
7 5(b), and Fed. R. Civ. P. 56(e).

- 8 1. Exhibit A
- 9 2. Exhibit B
- 10 3. Paragraph 5

11 The following statements and exhibits in the declaration lacks an adequate foundation
12 pursuant to FRE Rules 702 and 901 and as required by LR 7-5(b) and Fed. R. Civ. P. 56(e). Mr.
13 Shepard's declaration presents no evidence that he is qualified as an expert to testify in the form
14 of opinion or otherwise. Additionally, Mr. Shepard's declaration fails to satisfy the requirements
15 of FRE 901 by failing to establish the reliability of the process used to produce the results
16 claimed in the declaration by failing to show that the system was correctly operated by a
17 qualified person to produce an accurate result:

- 18 1. Exhibit A
- 19 2. Exhibit B
- 20 3. Paragraph 4

21 **B. Declaration of Paul Bender**

22 The following statements in the declaration lacks an adequate foundation pursuant to FRE
23 Rules 702 and as required by LR 7-5(b) and Fed. R. Civ. P. 56(e). Mr. Bender's declaration
24 presents no evidence that he is qualified as an expert to testify in the form of opinion or
25 otherwise.

- 26 1. Paragraph 4

1 2. Paragraph 5

2 **C. Supplemental Declaration of Robert Jacobsen**

3 The following statements and exhibits in the declaration constitute inadmissible hearsay
4 under FRE 802 (“hearsay is not admissible except as provided by these rules or by other rules
5 prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress”), LR 7-
6 5(b), and Fed. R. Civ. P. 56(e).

7 1. Exhibit B

8 2. Exhibit C

9 3. Exhibit D

10 4. Exhibit E

11 5. Exhibit F

12 6. Exhibit G

13 7. Exhibit J

14 8. Exhibit K

15 9. Exhibit M

16 10. Exhibit N

17 11. Exhibit O

18 12. Paragraph 14

19 13. Paragraph 61

20 14. Paragraph 63

21 The following statements and exhibits in the declaration lacks an adequate foundation
22 pursuant to FRE Rules 702 and 901 and as required by LR 7-5(b) and Fed. R. Civ. P. 56(e). Mr.
23 Jacobsen’s declaration presents no evidence that he is qualified as an expert to testify in the form
24 of opinion or otherwise. Additionally, Mr. Jacobsen’s declaration fails to satisfy the
25 requirements of FRE 901 by failing to establish the reliability of the process used to produce the
26

1 results claimed in the declaration by failing to show that the system was correctly operated by a
2 qualified person to produce an accurate result:

- 3 1. Paragraph 22
- 4 2. Paragraph 23
- 5 3. Paragraph 24
- 6 4. Exhibit F
- 7 5. Exhibit G

8 The following statement in the declaration are the declarant's commentary and is barred
9 by FRE 402, LR 7-5(b) and Fed. R. Civ. P. 56(e):

- 10 1. Paragraph 25

11
12 Dated November 30, 2006.

13 _____
14 /s/
15 R. Scott Jerger (*pro hac vice*)
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22 I certify that on November 30, 2006, I served Matthew Katzer's and KAM's Evidentiary
23 Objections on the following parties through their attorneys via the Court's ECF filing system:

24 Victoria K. Hall
25 Attorney for Robert Jacobsen
26 Law Office of Victoria K. Hall
401 N. Washington Street, Suite 550
Rockville, MD 20850

/s/

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