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VICTORIA K. HALL (SBN 240702)
LAW OFFICE OF VICTORIA K. HALL
401 N. Washington St. Suite 550
Rockville MD 20850
Victoria@vkhall-law.com
Telephone: 301-738-7677
Facsimile: 240-536-9142

Attorney for Plaintiff
ROBERT JACOBSEN

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

| | | |
|-------------------------|---|--------------------------------------|
| ROBERT JACOBSEN, |) | No. C-06-1905-JSW |
| |) | |
| Plaintiff, |) | [PROPOSED] ORDER DENYING |
| |) | DEFENDANTS MATTHEW KATZER |
| v. |) | AND KAMIND ASSOCIATES, INC.’S |
| |) | MOTION TO DISMISS FOR FAILURE |
| MATTHEW KATZER, et al., |) | TO STATE A CLAIM ON WHICH |
| |) | RELIEF CAN BE GRANTED AND FOR |
| Defendants. |) | LACK OF SUBJECT MATTER |
| |) | JURISDICTION AND MOTION TO |
| |) | BIFURCATE AND STAY |
| |) | |
| |) | Courtroom: 2, 17th Floor |
| |) | Judge: Hon. Jeffrey S. White |

Defendants Matthew Katzer (“Katzer”) and KAMIND Associates, Inc. (“KAM”) seek to dismiss Count IV (Antitrust Violation under § 2 of the Sherman Act) for lack of subject matter jurisdiction, Count IV and VII (Libel) for failure to state a claim on which relief can be granted, and to bifurcate and stay discovery on Counts IV and V. For the following reasons, the Court DENIES their motion.

Defendants Katzer and KAM have not raised constitutional standing as an issue, but whether Plaintiff Jacobsen is a proper party to bring the antitrust claim, often called “antitrust

1 standing”. The proper motion for dismissal on these grounds is a 12(b)(6) motion. Constitutional
2 standing, which is properly considered in a 12(b)(1) motion, is not challenged. This Court has
3 subject matter jurisdiction over the federal antitrust claim because it arises under federal law.
4 Thus, the motion to dismiss for lack of subject matter jurisdiction is DENIED.

5 Plaintiff Robert Jacobsen is a proper party to seek remedies under the Clayton Act § 4 and §
6 16. The “target area” test which Defendants Katzer and KAM cited in their Memorandum is not
7 the right test when determining whether an antitrust plaintiff is a proper party. Upon reviewing the
8 factor analysis cited in Associated General Contractors of California, Inc. v. California State
9 Council Carpenters, 459 U.S. 519 (1983), this Court holds that Jacobsen can seek damages and
10 injunctive relief, that he has suffered antitrust injury and that a dangerous probability exists that
11 Defendants Katzer and KAM could successfully monopolize the relevant market. The motion to
12 dismiss Claim IV for failure to state a claim on which relief can be granted is DENIED.

13 Plaintiff Robert Jacobsen has stated a claim on which relief can be granted for libel.
14 Jacobsen has alleged that the accusation of patent infringement was false and made to third parties.
15 He has also alleged that the accusation was defamatory and thus would tend to injure him in his
16 profession. Privilege under Cal. Civ. § 47(b) does not apply here because filing a FOIA request
17 does not involve the right to seek redress for harms, either as a statement before an official
18 proceeding or a statement before a judicial proceeding. The FOIA request was a business
19 transaction, not a report of wrongdoing. Defendants have not met the requirements of Mezetti v.
20 State Farm Mutual Auto. Ins. Co., 346 F. Supp. 2d 1058 (N.D. Cal. 2004) to be able to raise
21 litigation privilege as a defense. The motion to dismiss Claim VII for failure to state a claim on
22 which relief can be granted is DENIED.

23 Defendants Katzer and KAM have not established that bifurcation and staying discovery
24 will expedite the case, save judicial resources, or be more convenient. Plaintiff Robert Jacobsen
25 has shown that he will be prejudiced by a delay. Thus, the motion to bifurcate and stay discovery
26 is DENIED.

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Dated: _____

Hon. Jeffrey S. White
District Court Judge