

1 **David M. Zeff (S.B. #63289)**  
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7 **ZeffLaw1@aol.com**

8 **Attorneys for Defendant**  
9 **Kevin Russell**

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13 **ROBERT JACOBSEN,**

14 **Plaintiff,**

15 **vs.**

16 **MATTHEW KATZER, KAMIND**  
17 **ASSOCIATES, INC., and KEVIN**  
18 **RUSSELL,**

19 **Defendants.**

20 **Case No. C 06 1905 JSW**

21 **DECLARATION OF DAVID M.**  
22 **ZEFF IN REPLY TO PLAINTIFF'S**  
23 **OBJECTIONS TO DECLARATION**  
24 **OF DAVID M. ZEFF RE:**  
25 **ATTORNEY FEE AWARD**

26 I, David M. Zeff, declare:

27 1. I am the attorney of record for defendant Kevin Russell in this matter. If  
28 called as a witness, I would and could testify to the following as a matter of personal  
knowledge.

2. On August 18, 2006, as a preliminary effort to meet and confer with  
plaintiff's counsel on the attorney fee request, I emailed to her my draft declaration,  
which had to be filed August 25, 2006, and therein stated, in part:

I will call you on Monday, August 21, to discuss this application and  
determine if Mr. Jacobsen will oppose this application and, if so, for what  
reason. If he does, I think it would be instructive for you to disclose the  
total hours you and any other attorney expended in preparing the evidence  
and papers Mr. Jacobsen submitted in opposition to the motion.

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1 It was my thinking that if Jacobsen had valid reasons to object to the amount of time and  
2 money my office put into the anti-SLAPP motion, the amount of time and money his  
3 counsel put into opposing said motion would be probative on that subject. I have never  
4 received a response to this request, but plaintiff has filed objections to the amount of time  
5 and charges prayed for on behalf of Mr. Russell.

6 3. Plaintiff's counsel did not ever attempt to meet and confer with me on this  
7 attorney fee issue at any time prior to her filing Plaintiff's Objections on September 7,  
8 2006. Attached hereto as Exhibit 1 is a true copy of Ms. Hall's email sent at 10:55 p.m.  
9 PST on September 7, 2006, confirming this failure to meet and confer.

10 4. As affirmed in my prior declaration, I retain James W. Moore, an attorney  
11 with more than 20 years' litigation experience, to assist me in this and other matters. His  
12 services are customarily billed to my clients at the rate of \$235.00 per hour, which from  
13 my experience is much lower than the amounts normally charged by attorneys of  
14 comparable skill in the San Francisco area. In assisting me with legal research in the  
15 preparation of Russell's Reply to Plaintiff's Objections to the instant fee application, Mr.  
16 Moore has billed 4.2 hours valued at \$987.00.

17 5. As affirmed in my prior declaration, I am an attorney with 31 years of  
18 litigation experience in San Francisco. My present hourly rates for services are between  
19 \$300.00 and \$450.00 per hour, depending upon the nature of the work done and ability of  
20 the client to pay. On this case, my hourly rate has been \$300 per hour, which I believe is  
21 at the low end of the amounts normally charged by attorneys of comparable experience  
22 and skill in the San Francisco area. In reviewing Plaintiff's Objections to my prior  
23 declaration on this fee application, doing my own legal research, drafting and other  
24 preparation of Russell's Reply to Plaintiff's Objections to the instant fee application, I  
25 have billed 8.1 hours valued at \$2,430.00, for total attorneys fees on this Reply of  
26 \$3,417.00.

27 6. Combining the value of my services and those of Mr. Moore on this reply,  
28 the total value of the attorneys fees incurred by Mr. Russell for said reply is \$3,417.00.

1 Adding that sum to the \$40,074.25 in attorneys fees previously documented and  
2 requested in my prior fee application declaration, Mr. Russell has incurred, and seeks an  
3 award of the sum total \$43,491.25 as and for his attorneys fees incurred in bringing the  
4 successful anti-SLAPP motion and his fee application herein.

5 I certify under penalty of perjury under the laws of the State of California that the  
6 foregoing is true and correct.

7 Dated: September 13, 2006

  
David M. Zeff

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**ZEFF DECL. EXHIBIT 1**

Subj: **Objections to fee petition**  
 Date: 9/7/2006 10:55:55 P.M. Pacific Standard Time  
 From: [victoria@vkhall-law.com](mailto:victoria@vkhall-law.com)  
 To: [ZeffLaw1@aol.com](mailto:ZeffLaw1@aol.com)

Mr. Zeff,

I apologize for not contacting you earlier. I had planned on following up with you on this matter before filing the objections, but I realized yesterday afternoon that since you had filed a day before the deadline, and the Court had indicated that I had 10 days after, then I probably needed to file today (this evening).

I hope that, by starting this discussion again, we may be able to resolve plaintiff's objections to your declaration. I believe the Court would prefer us to handle the matter between ourselves. So I start off by writing you again, and referring you to the objections that plaintiff filed earlier this evening, so that we may begin these talks.

Regards,

Victoria Hall

----- Original Message -----

Subject: RE: Jacobsen v. KAM, et al. our file 9364: Attorney's fee application-URGENT  
 From: [victoria@vkhall-law.com](mailto:victoria@vkhall-law.com)  
 Date: Thu, August 24, 2006 3:39 pm  
 To: [ZeffLaw1@aol.com](mailto:ZeffLaw1@aol.com)

I picked up your message from my voice mail. I will contact you as I prepare plaintiff's objections.

----- Original Message -----

Subject: Re: Jacobsen v. KAM, et al. our file 9364: Attorney's fee application-URGENT  
 From: [ZeffLaw1@aol.com](mailto:ZeffLaw1@aol.com)  
 Date: Thu, August 24, 2006 1:34 pm  
 To: [victoria@vkhall-law.com](mailto:victoria@vkhall-law.com)  
 Cc: [scott@fieldlawfirm.com](mailto:scott@fieldlawfirm.com), [raggmop1@pacbell.net](mailto:raggmop1@pacbell.net)

Dear Ms. Hall:

I called today at 12:30 my time and got your voicemail. I left a message. Please call me to meet and confer before you file any objections. Thank you. David M. Zeff

In a message dated 8/24/2006 1:20:45 P.M. Pacific Standard Time, [victoria@vkhall-law.com](mailto:victoria@vkhall-law.com) writes:

Dear Mr. Zeff,

Thank you for pointing out LR 54-6 vs LR 54-1. We still do believe that we are entitled to see more detailed information and are puzzled by what appears to be your insistence that we must agree by today to your total, without having seen that more detailed information. As you may remember, the Court gave Plaintiff until Sept. 8 to lodge any objections to your declaration, and we will object on that basis.

By the way, I was in the office yesterday, and waited for your call, but you never called. I am working away from my Maryland office today and tomorrow.

I will be in touch with you over the next two weeks via email re our objections, prior to filing them on Sept. 8.

**EXHIBIT 1**

Friday, September 08, 2006 America Online: ZeffLaw1

Regards,

Victoria Hall

**CONFIDENTIAL COMMUNICATION! This email and any documents accompanying it are privileged and confidential information and are only for the use of the intended recipient. If you are not the intended recipient, your dissemination, distribution or copying of this communication is neither intended, nor allowed. If you have received this email in error, please notify us immediately by telephone, collect, at (415) 923-1380, and return by mail or destroy this message and any copies of this email and documents that accompany it. No waiver of any privilege or right may be inferred from an erroneous delivery of this email. Thank you.**