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Attorneys for Defendants  
Matthew Katzer and Kamind Associates, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ROBERT JACOBSEN, an individual,  
  
Plaintiff,  
  
vs.  
  
MATTHEW KATZER, an individual, and  
KAMIND ASSOCIATES, INC., an Oregon  
corporation dba KAM Industries,  
  
Defendants.

Case Number C06-1905-JSW

**DEFENDANTS MATTHEW  
KATZER AND KAMIND  
ASSOCIATES, INC.'S RESPONSE  
TO PLAINTIFF'S OBJECTIONS  
TO DECLARATION MATTHEW  
KATZER IN SUPPORT OF THE  
RESPONSE IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

1 Defendants KAM and Katzer hereby respond to Plaintiff's Evidentiary Objections to the  
2 Declaration of Matthew Katzer in Support of his Response in Opposition to Plaintiff's Motion  
3 for Preliminary Injunction. Plaintiff objects to virtually every numbered paragraph of Matthew  
4 Katzer's Declaration based, in every instance, on an incorrect application of the Federal Rules of  
5 Evidence ("FRE").

6 As an initial matter, defendants are not bound by plaintiff's version of the facts, as  
7 plaintiff assumes. The fact that plaintiff disagrees with defendants rendition of the facts is not a  
8 proper evidentiary objection. Plaintiff's objections to paragraphs 17, 17A, 18, 21, 23, 24 and 31  
9 of the Declaration of Matthew Katzer on this ground should not be sustained in any instance.

10 Plaintiff also misunderstands the "best evidence rule." This rule, FRE 1002, is more  
11 accurately referred to as the "original document rule." The rule requires production of the  
12 original document when a party attempts to prove its contents. In no instance are defendants  
13 attempting to prove the contents of any written record, but rather that certain events took place.  
14 Plaintiff's objections to paragraphs 19, 21, 22, 23, 25, 26, 28, 29, and 31 of the Declaration of  
15 Matthew Katzer on this ground should not be sustained in any instance.

16 Similarly, defendants have not attempted to introduce any "writing or recorded  
17 statement" as part of the declaration of Matthew Katzer. Therefore, FRE 106 is entirely  
18 inapposite. Plaintiff's objections to paragraphs 21, 25, and 28 of the Declaration of Matthew  
19 Katzer on this ground should not be sustained in any instance.

20 Plaintiff's objection that Katzer is has not been properly qualified as an expert per FRE  
21 702 is inapposite as plaintiff has already stipulated that Katzer is an expert in the field of model  
22 train software. Amended Complaint, ¶ 8. Plaintiff's objections to paragraphs 5, 14, 15, and 16  
23 of the Declaration of Matthew Katzer on this ground should not be sustained in any instance.

24 All of plaintiff's objections to paragraphs 4, 7, 8, 9, 11 and 13 based on the hearsay rule,  
25 FRE 802, are likewise inapposite. In no instance is Katzer relying on an out-of-court statement  
26 to prove the truth of the matter asserted in the out-of-court statement. Rather, Katzer's

1 declaration relates his view of the facts based on his personal knowledge as stated in the  
2 declaration. Plaintiff's objections to these paragraphs in the Declaration of Matthew Katzer  
3 should not be sustained on hearsay grounds.

4 All objections based on FRE 602 are misplaced as Katzer specifically states that he has  
5 personal knowledge of the facts in his declaration. Plaintiff's objections to paragraphs 4, 7, 8, 9,  
6 and 13 of the Declaration of Matthew Katzer on this ground should not be sustained in any  
7 instance.

8 All objections to Katzer's "drawing a legal conclusion" are likewise misplaced. Katzer  
9 offers his characterizations in order to promote a clear understanding of his testimony, not as a  
10 conclusion of law. Plaintiff's objections to paragraphs 13, 14, 17, 17A, 18, and 24 of the  
11 Declaration of Matthew Katzer on this ground should not be sustained in any instance.

12 All objections based on a "lack of foundation" should not be sustained as the proper  
13 foundation has been laid for each assertion. Plaintiff's objections to paragraphs 5, 14, 15, 16 and  
14 26 of the Declaration of Matthew Katzer on this ground should not be sustained in any instance.

15 Finally, all of plaintiff's relevance objections under FRE 402, 403 should not be  
16 sustained in any instance as there is nothing in Matthew Katzer's Declaration that is "confusing  
17 or misleading" and all of the statements in Matthew Katzer's declaration are extremely relevant  
18 as all statements in the declaration tend to make the existence of any fact that is of consequence  
19 to the determination of the preliminary injunction motion more or less probable than it would be  
20 without the declaration. In particular, in regard to paragraphs 25, 28, and 31, it is certainly  
21 relevant to a preliminary injunction hearing whether the activity to be enjoined is ongoing.  
22 Likewise, paragraphs 3, 4, and 5 of the Declaration of Matthew Katzer addresses plaintiff's  
23 unfounded contention that Matthew Katzer is somehow personally liable for the actions of KAM.

24 Plaintiff's objections to paragraphs 3, 4, 7, 8, 9, 11, 13, 15, 16, 17, 17A, 18, 24, 28, and  
25 31 of the Declaration of Matthew Katzer on relevancy grounds should not be sustained in any  
26 instance.

1 Based on the above, none of plaintiff's evidentiary objections to the declaration of  
2 Matthew Katzer in opposition to plaintiff's motion for a preliminary injunction should be  
3 sustained.

4  
5 Dated November 22, 2006.

6 \_\_\_\_\_ /s/  
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14 I certify that on November 22, 2006 I served DEFENDANTS MATTHEW KATZER  
15 AND KAMIND ASSOCIATES, INC.'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO  
16 DECLARATION MATTHEW KATZER IN SUPPORT OF THE RESPONSE IN OPPOSITION  
17 TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION on the following parties  
18 through their attorneys via the Court's ECF filing system:

19 Victoria K. Hall  
20 Attorney for Robert Jacobsen  
21 Law Office of Victoria K. Hall  
22 401 N. Washington Street, Suite 550  
23 Rockville, MD 20850

24 \_\_\_\_\_ /s/  
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