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

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

13 **ROBERT JACOBSEN,**) **Case No. C 06 1905 JSW**
14 **Plaintiff,**)
15 **vs.**) **ADMINISTRATIVE MOTION TO**
16 **MATTHEW KATZER, KAMIND**) **CONTINUE DATES SET FOR ADR AND**
17 **ASSOCIATES, INC., and KEVIN**) **RULE 26 DISCLOSURE; ZEFF**
18 **RUSSELL,**) **DECLARATION IN SUPPORT THEREOF**
19 **Defendants.**) **[N.D. CAL. CIV. RULE 7-11]**

20 Defendants Matthew Katzer, Kamind Associates, Inc. and Kevin Russell, through
21 their undersigned counsel, hereby move and request that the Court continue the following
22 events set by the Court's "Order Setting Initial Case Management Conference and ADR
23 Deadlines" filed March 13, 2006:

- 24 1. June 27, 2006: Last day for counsel to "meet and confer re initial disclosures,"
25 and to "file Joint ADR Certification:
- 26 2. July 11, 2006: Last day to complete initial Rule 26(f) disclosures, state
27 objections, and file/serve Rule 26(f) Report.

28 The grounds for this administrative motion are as follows:

A. Defendant Russell has filed and served an anti-SLAPP motion to strike and a
motion to dismiss, on multiple grounds, pursuant to FRCP 12 (b). Defendants Matthew

1 Katzner and Kamind Associates, Inc. have filed and served an anti-SLAPP motion to
2 strike as to one cause of action alleged against them by plaintiff. All said motions to
3 dismiss and motions to strike are now set for hearing on August 11, 2006, and the Court
4 has continued the first Case Management Conference to that date.

5 B. Defendants Matthew Katzer and Kamind Associates, Inc. have given the other
6 parties notice that they, additionally, will file a motion to dismiss under FRCP 12 (b), to
7 be heard on August 11, 2006. Please see Zeff Dec. Exh. 1, attached.

8 C. Plaintiff's counsel has indicated that plaintiff intends to file an as yet
9 unidentified motion, also to be heard on August 11, 2006. Zeff Dec. Exh. 2, attached.

10 D. In the event that any of the motions to dismiss are granted, the factual and
11 legal issues of this case and the relevant evidence to be identified and produced pursuant
12 to FRCP 26 will be narrowed if not eliminated. In the event plaintiff's yet unidentified
13 motion is granted, it is likely that the factual and legal issues of this case and the relevant
14 evidence to be identified and produced pursuant to FRCP 26 will be changed and
15 possibly narrowed.

16 E. Any change in the legal or factual matters at issue in the case, or the parties,
17 may seriously affect the decisions of the remaining parties as to what kind of ADR they
18 are willing to participate in.


19 F. If the claims against defendant Russell are dismissed, the time and expense of
20 his counsel's preparation for and participation in the above events will have been a waste
21 of time and money.

22 This is the first request to continue the dates for said events. Counsel for
23 defendants sought the stipulation of plaintiff's counsel to the continuance of said dates,
24 but said request was declined. Please see Zeff Dec. Exh. 2, attached.

25 Dated: May 17, 2006

26 
27 David M. Zeff, Attorney For
28 Defendant Kevin Russell

Dated: May 18, 2006


R. Scott Jerger, Attorney For
Defendants Matthew Katzer and
Kamind Associates, Inc.

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ZEFF DECLARATION IN SUPPORT OF ADMINISTRATIVE MOTION

I, David M. Zeff, declare:

1. I am an attorney licensed to practice in all courts of the State of California and I am admitted to practice before this United States District Court. I have personal knowledge of the matters set forth herein and, if called as a witness, could and would testify from my personal knowledge as follows.

2. I am counsel for defendant Kevin Russell in the above proceeding.

3. Attached hereto as Exhibit 1 is a true copy of an email I received from Mr. Scott Jerger, one of counsel for defendants Matthew Katzer and Kamind Associates, Inc. giving counsel herein notice that they will file an additional motion to dismiss under FRCP 12 (b), to be heard on August 11, 2006.

4. Attached hereto as Exhibit 2 is a true copy of an email I received from Ms. Victoria Hall, counsel for plaintiff Robert Jacobsen, confirming to counsel herein her prior notice that plaintiff may file an unidentified motion to be heard on August 11, 2006.

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

Dated: 5/18/2006



David M. Zeff

Zeff Declaration: Exhibit 1

Subj: **RE: Jacobsen v. Katzer**
Date: 5/17/2006 3:11:47 P.M. Pacific Standard Time
From: scott@fieldlawfirm.com
To: victoria@vkhall-law.com, ZeffLaw1@aol.com

Thanks Victoria,

To give you and David a head's up also, I will be filing a motion to dismiss some of the non-patent claims along with a motion to bifurcate and stay the non-patent claims pending resolution of the infringement issues. Per our stipulated agreement, I will file prior to June 5, and I will notice the hearing on these motions on August 11th.

Regards,

Scott

Scott Jerger
Field & Jerger, LLP
610 SW Alder, Suite 910
Portland, Oregon 97205
503.542.2015 (phone)
503.225.0276 (fax)
503.516.7127 (mobile)

From: victoria@vkhall-law.com [mailto:victoria@vkhall-law.com]
Sent: Wednesday, May 17, 2006 11:19 AM
To: ZeffLaw1@aol.com; Scott Jerger
Subject: Jacobsen v. Katzer

Dave and Scott,

I finally got a break to read your motions. Just to give you a head's up, I plan on making my filings in connection with those motions sometime between June 30 and July 7, maybe earlier depending on how things go. I have at least one motion I plan on filing, which I plan on noticing for Aug. 4 or 11 and which I would rather get to you first, just to give you some extra time to respond.

Regards,

Victoria

Zeff Declaration: Exhibit 1

Thursday, May 18, 2006 America Online: ZeffLaw1

Zeff Declaration: Exhibit 2

Subj: **Jacobsen v. Katzer -- response**
 Date: 5/17/2006 7:21:28 P.M. Pacific Standard Time
 From: victoria@vkhall-law.com
 To: ZeffLaw1@aol.com
 CC: scott@fieldlawfirm.com

As you've probably seen, the court has set dates for when opps to your motions are due. I plan on meeting those deadlines. I haven't decided yet if I will, for certain, file a motion, especially given the court's deadlines, but I will let you know when I have decided to move forward with filing any motion and what the motion is. I will try to get any motion filed on or before June 14, per your request.

I'll do the first draft the Joint CMC statement. It should be to you both well before July 12.

I haven't decided re the joint stip. I realize that you believe that your client will no longer be a party to the complaint after the court hears your motions, but I wouldn't have added him, and kept him to this date, unless I believed otherwise and had research to support it.

I'm out of state on business the rest of the week. I'll be back Monday.

Regards,

Victoria

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

Subject: Re: Jacobsen v. Katzer, et al, our file 9364
 From: ZeffLaw1@aol.com
 Date: Wed, May 17, 2006 3:51 pm
 To: victoria@vkhall-law.com, scott@fieldlawfirm.com
 Cc: Raggmop1@pacbell.net(James W. Moore)

In a message dated 5/17/2006 11:19:20 A.M. Pacific Standard Time, victoria@vkhall-law.com writes:

Dave and Scott,

I finally got a break to read your motions. Just to give you a head's up, I plan on making my filings in connection with those motions sometime between June 30 and July 7, maybe earlier depending on how things go. I have at least one motion I plan on filing, which I plan on noticing for Aug. 4 or 11 and which I would rather get to you first, just to give you some extra time to respond.

Regards,

Victoria

Dear Victoria:

It would help us to know what kind of "motions" you contemplate. Neither Scott nor I are sufficiently clairvoyant to determine what kind of motions a plaintiff makes before responsive pleadings are filed. If you are entertaining a motion for leave to amend, you should be aware that a plaintiff cannot avoid an anti-SLAPP motion by amending prior to the hearing on the motion. *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App. 4th 1049, 1055; Weil & Brown, California Practice Guide, Civil Procedure Before Trial 7:260, p. 7-94.5 [The Rutter Group, 2006]. If you are entertaining a motion for a partial stay or to bifurcate, that probably should be discussed after the August 11th hearing. It may be possible to stipulate to a partial stay or bifurcation once the anti-SLAPP issues are heard.

Zeff Declaration: Exhibit 2

Thursday, May 18, 2006 America Online: ZeffLaw1

If you still intend to file a motion or motions, please note that I will be on vacation from June 28 through July 12, 2006, and out of the State. Thus, I would ask that any motions you intend to file be served upon us 14 days before June 28, 2006. I will also be on vacation from July 22 through July 30, 2006, FYI.

On another subject, the Joint CMC statement is due August 4, 2006. Since you initiated this suit on behalf of Mr. Jacobsen, we ask that you take a first cut at drafting the Joint CMC statement and get it to Scott and to me not later than July 12, 2006.

Also in this connection, Judge White's orders did not vacate the dates set by the Court's first order issued March 13, 2006, setting the dates for counsel to "meet and confer re initial disclosures" and file Joint ADR Certification" (June 27, 2006), or to "complete initial Rule 26(f) disclosures" (July 11, 2006). We ask that counsel stipulate to a joint request, like the one I drafted and sent yesterday (before the Court's sua sponte continuance orders), to continue said events to dates following the August 11 hearing. My expectation and hope is that my client will no longer be a party to this action and, therefore, we need not spend the time and money which would otherwise be involved in preparing and participating in those events. I ask that both Victoria and Scott let me know ASAP if they will agree to such a joint stipulated request.

Thank you. DMZ

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.

Zeff Declaration: Exhibit 2

Thursday, May 18, 2006 America Online: ZeffLaw1