

1 R. Scott Jerger (*pro hac vice*)  
2 Field & Jerger, LLP  
3 610 SW Alder Street, Suite 910  
4 Portland, OR 97205  
5 Tel: (503) 228-9115  
6 Fax: (503) 225-0276  
7 Email: [scott@fieldjerger.com](mailto:scott@fieldjerger.com)

8 John C. Gorman (CA State Bar #91515)  
9 Gorman & Miller, P.C.  
10 210 N 4th Street, Suite 200  
11 San Jose, CA 95112  
12 Tel: (408) 297-2222  
13 Fax: (408) 297-2224  
14 Email: [jgorman@gormanmiller.com](mailto:jgorman@gormanmiller.com)

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 )  
22 Plaintiff, )  
23 )  
24 vs. )  
25 )  
26 MATTHEW KATZER, an individual, KAMIND )  
ASSOCIATES, INC., an Oregon corporation dba )  
KAM Industries, and KEVIN RUSSELL, an )  
individual, )  
Defendants. )

Case Number C06-1905-JSW

[PROPOSED] ORDER DISMISSING  
PLAINTIFF'S SHERMAN ACT CLAIM  
AND LIBEL CLAIM UNDER FED. R.  
CIV. P. 12(b) (6) AND BIFURCATING  
AND STAYING PLAINTIFF'S  
CALIFORNIA UNFAIR COMPETITION  
ACT CLAIM

This matter came before the court on August 11, 2006 on Defendants Matthew Katzer and Kamind Associates, Inc.'s Motion to Dismiss Counts 4 and 7 of the complaint for failure to state a claim on which relief can be granted, motion to dismiss Count 4 for lack of subject matter

1 jurisdiction, and motion to bifurcate and stay Count 5 of the complaint. The court reviewed the  
2 parties' written submissions and oral argument and finds as follows:

- 3 1.) Jacobsen does not have standing under § 4 or § 16 of the Clayton Act to bring a Sherman  
4 Act § 2 antitrust claim against KAM and Katzer.
- 5 2.) Jacobsen has failed to state a claim on which relief can be granted under § 2 of the  
6 Sherman Act.
- 7 3.) Jacobsen has failed to state a claim on which relief can be granted under California libel  
8 law.
- 9 4.) Count 5 of the Complaint, the California Unfair Competition claim, should be bifurcated  
10 and stayed pending resolution of the patent issues in order to promote judicial economy  
11 and reduce complexity in this case.

12  
13 Therefore, based upon the above findings and being fully advised in the premises, it is  
14 ORDERED that KAM and Katzer's motion to dismiss Count 4 (Sherman Act §2) and Count 7  
15 (libel) under Fed. R. Civ. P. 12(b)(1), (6) and KAM and Katzer's motion to stay and bifurcate  
16 Count 5 (California Unfair Competition Act, California Business and Professions Code § 17200)  
17 under Fed. R. Civ. P. 42(b) is GRANTED and Counts 4 and 7 of the complaint are DISMISSED  
18 without leave to amend and Count 5 is BIFURCATED and STAYED pending resolution of the  
19 patent claims.  
20

21 \_\_\_\_\_  
22 Hon. Jeffrey S. White  
23 District Court Judge

24 Presented by:

25 \_\_\_\_\_  
26 /s/  
R. Scott Jerger (*pro hac vice*)  
Field & Jerger, LLP  
Attorney for KAM and Katzer

Case Number C 06 1905 JSW  
Order on Defendants' Motion to Dismiss under Fed. R. Civ. P. 12(b)(1), (6) and Motion to  
Bifurcate and Stay under Fed. R. Civ. P. 42(b)