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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-JL

Place: Ct. F, 15th Floor

Hon. James Larson

Time: July 8, 2009 9:30am

**DEFENDANTS MATTHEW
KATZER AND KAMIND
ASSOCIATES, INC.'S RESPONSE
TO PLAINTIFF'S MOTION FOR A
DISCOVERY PLAN**

1 **STATEMENT OF THE ISSUES TO BE DECIDED**

- 2 1. Is Plaintiff entitled to significantly more depositions than allowed under Fed. R. Civ.
3 P. 30(a)(2)?
- 4 2. Is Plaintiff entitled to propound more ten (10) more interrogatories than allowed
5 under Fed. R. Civ. P. 33(a)?
- 6 3. Is Plaintiff entitled to expand the scope of discovery to irrelevant information?
7

8 **STATEMENT OF THE RELEVANT FACTS**

9 This Court entered a discovery plan on May 14, 2009 [Dkt.# 302] after holding a third
10 Case Management Conference. The parties commenced discovery on May 14, 2009. The close
11 of non-expert discovery is October 5, 2009. At this time, no depositions have been taken and
12 Plaintiff has propounded fourteen (14) interrogatories and twenty-eight (28) requests for
13 production to Defendants. Contrary to Plaintiff’s contention, this case does not involve any
14 patent issues, as all of Plaintiff’s patent claims were dismissed without leave to amend on
15 January 5, 2009 by this Court [Dkt.# 284].

16 On May 26, 2009, Plaintiff filed a “Motion for Leave for Discovery Plan and Motion to
17 Shorten Time” [Dkt.# 303]. One of the many motions in this document is a motion to shorten
18 Defendants’ time to respond. Plaintiff did not confer with Defendants on this motion as required
19 by Civ. L.R. 6-3 (a)(4)(i) nor did Plaintiff did submit a declaration outlining the reasons for the
20 requested shortening or the prejudice that would occur if time was not changed. Civ. L.R. 6-
21 3(a)(1)-(5). On May 29, 2009, Plaintiff filed a second “Motion for a Discovery Plan” [Dkt.#
22 305]. The second Motion for a Discovery Plan purports to “replace” the first motion and the
23 only substantive difference appears to be that Plaintiff has removed the motion to shorten time.
24 Motion for a Discovery Plan at 2, fn. 1. Subsequent to the filing of this second motion, the
25 parties stipulated to an expedited schedule for this motion. Plaintiff’s motion is presently noticed
26 for July 8, 2009, however Defendants do not object to an expedited hearing on June 17, 2009 for

1 this motion. [Dkt.# 307]. Defendants will address only the motions contained in Plaintiff's
2 Second Motion for a Discovery Plan (hereinafter "Motion for a Discovery Plan").

3 **ARGUMENT**

4 Plaintiff's Motion for a Discovery Plan is actually three motions: (1) a motion for leave
5 to take over 100 additional depositions; (2) a motion for leave to propound ten (10) additional
6 interrogatories; and (3) a motion to expand the scope of discovery beyond what is relevant to this
7 lawsuit.

8 1. Additional Depositions

9 At this time, Plaintiff has yet to conduct any depositions. Plaintiff seeks to replace the
10 limit in Fed. R. Civ. P. 30 of ten (10) depositions limited to one day of seven (7) hours each with
11 "100 hours of depositions."

12 Ostensibly this would allow Plaintiff to conduct over 100 mini-depositions of the legion
13 of 60 developers and 50 manufacturers that Plaintiff feels he needs to depose. *See* Motion for
14 Discovery Plan at 3 (stating that testimony may be needed from 60 developers and 50
15 manufacturers and that these depositions will last less than 30 minutes each). Plaintiff's counsel
16 has indicated to the undersigned that she intends to depose all of the approximately 60
17 developers who assigned their rights to Plaintiff.

18 Plaintiff's motion is unaccompanied by a declaration and fails to make any showing why
19 extra depositions are necessary as required by the Federal Rules. *See Archer Daniels Midland*
20 *Co. v. Aon Risk Services, Inc. of Minn.*, 187 F.R.D. 578, 586 (D. Minn. 1999) (stating that parties
21 must make a "particularized showing" why extra depositions are necessary and stating that "at a
22 minimum, [Defendant] should appropriately exhaust its current quota of depositions, in order to
23 make an informed request for an opportunity to depose more witnesses..."). *See also Robertson*
24 *v. Bair*, 242 F.R.D. 130, 138 (D.D.C. 2007) (noting that the Court begins with the presumption
25 that the limits on depositions in the Federal Rules were "carefully chosen and that extensions of
26 that limit should be the exception, not the rule.").

1 Additionally, Plaintiff fails entirely to demonstrate why the benefit of taking over 100
2 depositions outweighs the burden and expense of this undertaking given the needs of the case,
3 the amount in controversy, the parties' resources, and the importance of the additional
4 depositions in resolving the issues as required by the Federal Rules. Fed. R. Civ. P.
5 26(b)(2)(C)(iii); *see also* Fed. R. Civ. P. 26(b)(1) noting that all discovery is subject to the
6 limitations in Fed. R. Civ. P. 26(b)(2)(C), *accord*, Adv. Comm. Notes on 1993 Amendments to
7 FRCP 30(a)(2) stating that more than 10 depositions per side should be allowed only when
8 consistent with the "benefits vs. burdens" approach of Rule 26(b)(2).

9 The extreme number of depositions requested by Plaintiff would be tremendously
10 burdensome on Defendants, are vastly disproportionate to the amount in controversy in this case
11 and are of limited relevance. Defendants' gross sales of the software which is the subject of
12 Plaintiff's copyright claim in this lawsuit are approximately \$1,200.00. Decl. of Matthew A.
13 Katzer [Dkt.# 261] ¶ 23. Therefore, Defendants respectfully request that this Court not deviate
14 from the deposition limitations in the Federal Rules.

15 2. Interrogatories

16 Plaintiff seeks ten (10) additional interrogatories. Plaintiff has yet to ask his allotted 25
17 interrogatories to Defendants and has presently only propounded 14 interrogatories to
18 Defendants. As with Plaintiff's request for additional depositions, Plaintiff must make a
19 particularized showing of why these additional interrogatories are necessary when he seeks to
20 serve more interrogatories than contemplated by the Federal Rules. *Archer Daniels Midland Co.*
21 *v. Aon Risk Services, Inc. of Minn.*, 187 F.R.D. at 586. Again, Plaintiff has failed to make any
22 showing why it is necessary to deviate from the Federal Rules.

1 Dated: June 4, 2009.

2 Respectfully submitted,

3 /s/ Scott Jerger
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10 **CERTIFICATE OF SERVICE**

11 I certify that on June 4, 2009 I served Matthew Katzer's and KAM's Response to
12 Plaintiff's Motion for Discovery Plan on the following parties through their attorneys via the
13 Court's ECF filing system:

14 Victoria K. Hall
15 Law Office of Victoria K. Hall
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23 /s Scott Jerger
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