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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, KAMIND)
ASSOCIATES, INC., an Oregon corporation dba)
KAM Industries, and KEVIN RUSSELL, an)
individual,)
)
Defendants.)

Case Number C06-1905-JSW
Hon. Jeffrey S. White
DEFENDANTS MATTHEW
KATZER AND KAMIND
ASSOCIATES, INC.'S RESPONSE
TO PLAINTIFF'S
ADMINISTRATIVE MOTION TO
AMEND MEMORANDUM IN
OPPOSITION TO ANTI-SLAPP
MOTIONS

1 Defendants Matthew Katzer and Kamind Associates, Inc. respond to plaintiff's Motion to
2 Amend 2 Memoranda in Opposition to Defendants' Anti-SLAPP Motions as follows:

3 **STATEMENT OF FACTS**

4 Defendants' KAM and Katzer's special motion to strike (anti-SLAPP motion) has been
5 pending for over two months and was fully briefed as of June 16, 2006. Plaintiff's
6 administrative motion seeks to substitute a new document to replace plaintiff's Memorandum in
7 Opposition to the anti-SLAPP motion. The new motion incorporates approximately 1 ½ pages of
8 argument already contained in plaintiff's opposition to KAM and Katzer's Motion to Dismiss.

9 **ARGUMENT**

- 10 1. Plaintiff filed his original Memorandum in Opposition to defendants KAM and Katzer's
11 Special Motion to Strike on June 9, 2006 (Docket # 49). This opposition memorandum
12 did not address the issue of whether plaintiff has a probability of prevailing on the merits
13 of his libel claim. On June 16, 2006, defendants KAM and Katzer filed their Reply brief
14 (Docket # 59). Plaintiff had approximately one month to file his original memoranda in
15 opposition to the defendants KAM and Katzer's anti-SLAPP motions and had a full
16 opportunity to brief the issues. Additionally, plaintiff has had over one month since
17 defendants Reply to request a response. The request is not timely, especially given that
18 defendants have already submitted their Reply brief.
- 19 2. The argument presented in the plaintiff's Amended Memorandum in Opposition to
20 Defendants Special Motion to Strike is already contained in plaintiff's Memorandum in
21 Opposition to Defendants KAM And Katzer's Motion to Dismiss for Failure to State a
22 Claim on Which Relief can be Granted and for Lack of Subject Matter Jurisdiction and
23 Motion to Bifurcate and Stay (Docket #75). *Cf.* Docket# 77, pages 13-14 with Docket
24 #75 11-14. Since plaintiff's argument is already in the record, additional memoranda will
25 needlessly add to the extensive existing record in this case.
- 26

- 3. While authority on amending supporting memoranda is scant for obvious reasons, at least one other court has denied a motion to amend a memorandum on facts similar to the case at bar on the grounds that the plaintiff had ample opportunity to address the issue in earlier memorandum and arguments contained elsewhere in the record. *Beatty v. Thomas*, 2005 U.S. Dist. LEXIS 37064 (ED VA 2005).
- 4. Lastly, Jacobsen should have requested leave to file a sur-reply rather than an “amended” opposition requiring an amended reply. Oral argument on the motions is less than three weeks away, and the parties’ time is better spent preparing for the oral argument than re-briefing the anti-SLAPP motions.
- 5. Based on the foregoing, the court should deny the plaintiff’s motion.

Dated July 24, 2006.

/s/
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I certify that on July 24, 2006, I served Defendants Matthew Katzer and Kamind Associates, Inc.’s Response to Plaintiff’s Motion to Amend Memorandum in Opposition to Anti-SLAPP Motions on the following parties through their attorneys via the Court’s ECF filing system:

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