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10 Attorneys for Defendants Matthew Katzer and Kamind Associates, Inc.

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 ROBERT JACOBSEN, an individual, )  
16 )  
17 Plaintiff, )  
18 vs. )  
19 MATTHEW KATZER, an individual, KAMIND )  
ASSOCIATES, INC., an Oregon corporation dba )  
20 KAM Industries, )  
21 Defendants. )  
22 )  
23 )  
24 )  
25 )  
26 )

Case Number C06-1905-JSW  
Hon. Jeffrey S. White  
Courtroom 2, 17<sup>th</sup> Floor  
Date: January 18, 2008  
Time: 9:00am

**DEFENDANTS MATTHEW KATZER  
AND KAMIND ASSOCIATES, INC.'S  
MOTION FOR SANCTIONS UNDER  
CIVIL L.R. 7-9 (C) AND FED. R. CIV. P.  
11 AGAINST VICTORIA K. HALL**

1 **NOTICE**

2 To the Court and all interested parties, please take notice that a hearing on Defendants  
3 Matthew Katzer and Kamind Associates, Inc.'s Motion for Sanctions will be held on January 18,  
4 2008 at 9:00am in Courtroom 2, Floor 17, of the above-entitled court located at 450 Golden Gate  
5 Avenue, San Francisco, California.

6 **MOTION**

7  
8 Defendants Matthew Katzer and Kamind Associates Inc. move the court for an order  
9 imposing sanctions on attorney Victoria K. Hall pursuant to Civ. L.R. 7-9 (c) and Fed. R. Civ. P.  
10 11. Defendants request an award of reasonable attorney fees and costs incurred in presenting this  
11 motion pursuant to Fed. R. Civ. P. 11(c)(1)(A) against Victoria K. Hall and in responding to the  
12 Plaintiff's second motion for reconsideration. At this time, Defendants have incurred \$2,750.00  
13 in attorney fees responding to Plaintiff's second motion for reconsideration and \$ 2,709.25.00 in  
14 attorney fees preparing Defendants' Motion for Sanctions. Decl. of R. Scott Jerger, ¶¶ 4, 5.  
15 Defendants also request either a monetary penalty to this Court or an equivalent non-monetary  
16 sanction to deter repetition of the present conduct or any similar conduct. Fed. R. Civ. P.  
17 11(c)(2).

18 **STATEMENT OF ISSUES TO BE DECIDED**

- 19
- 20 1. Whether attorney Victoria K. Hall has violated Civ. L.R. 7-9(a), (c) and Fed. R. Civ. P.  
21 11 by filing a second motion for reconsideration of the dismissed cybersquatting claim  
22 of action.
  - 23 2. Whether Defendants should be awarded reasonable attorney fees and costs incurred in  
24 presenting this motion pursuant to Fed. R. Civ. P. 11(c)(1)(A) against Victoria K. Hall  
25 and in responding to the Plaintiff's second motion for reconsideration.
- 26

1 3. Whether Victoria K. Hall should be required to pay either a monetary penalty to this  
2 Court or an equivalent non-monetary sanction to deter repetition of the present conduct or  
3 any similar conduct. Fed. R. Civ. P. 11(c)(2).

4 **STATEMENT OF RELEVANT FACTS**

5 Pursuant to this Court's Civil Minute Order [Dkt.#166] dated September 14, 2007,  
6 Plaintiff was instructed to serve a copy of Plaintiff's proposed second amended complaint on  
7 Defendants by October 26, 2007. Plaintiff was given until October 31, 2007 to file a motion for  
8 leave to file a second amended complaint should Defendants object to the filing of the second  
9 amended complaint.

10 Plaintiff served two versions of a second amended complaint on Defendants on October  
11 26, 2007. Defendants responded by letter of the same date, stating that they did not object to the  
12 filing of a second amended complaint, however Defendants did object to the filing of two second  
13 amended complaints. *See* Exhibit D to Aff'd of Victoria K. Hall [Dkt.#176-6] in support of  
14 Plaintiff's Motion Regarding Scheduling Plaintiff's Motion for Leave to File Second Amended  
15 Complaint and Scheduling Settlement Conference and CMC Dates. Defendants also expressed  
16 concern over the inclusion of the dismissed cybersquatting claim in "Version A" of the second  
17 amended complaint and stated that defendants would seek sanctions if plaintiff pursued  
18 reinstatement of the cybersquatting claim. *Id.*

19 On October 31, 2007, Plaintiff filed a "Motion for leave to File Second Amended  
20 Complaint, and in the Alternative, Motion for Final Judgment under Rule 54(b) as to  
21 Cybersquatting Cause of Action." [Dkt.#174]. On November 2, 2007, Plaintiff filed an  
22 "Amended Motion for leave to File Second Amended Complaint, and in the Alternative, Motion  
23 for Final Judgment under Rule 54(b) as to Cybersquatting Cause of Action," which contains  
24 some non-substantive changes to the original motion (hereinafter "amended motion")  
25 [Dkt.#177]. Given the confused, contradictory and meandering prose of the amended motion, it  
26 is hard to discern the true nature of the amended motion and the relief requested. However, it is

1 clear that this amended motion is not a motion for leave to file a second amended complaint.  
2 There is no need for a motion to file a second amended complaint as Plaintiff concedes that  
3 Defendants did not oppose the filing of a second amended complaint. Amended Motion at 2.  
4 Rather, this amended motion is a second motion for reconsideration of Plaintiff's dismissed  
5 cybersquatting claim (for which leave has not been granted by this Court) contained in the first  
6 amended complaint. Plaintiff concedes (as he must) that the substance of his amended motion is  
7 that of a motion for reconsideration. Amended Motion at 6. Plaintiff's amended motion requests  
8 that this Court (1) reconsider its dismissal of the cybersquatting cause of action, and then, based  
9 on this ruling, (2) "pick" which submitted version of the second amended complaint that this  
10 Court will "accept for filing." *See* Amended Motion at 7.

11 Plaintiff previously filed a motion for leave to file a motion for reconsideration of the  
12 dismissal of this claim on September 4, 2007 [Dkt.#159-2]. This Court denied this motion for  
13 leave to file a motion for reconsideration on September 5, 2007 [Dkt.#161]. Plaintiff's second  
14 motion for reconsideration of the cybersquatting claim contains exactly the same legal argument  
15 presented in the first motion for reconsideration and argued by Plaintiff in response to the motion  
16 to dismiss.

## 17 ARGUMENT

### 18 1. Violations of this Court's Civil Local Rules

19 Civ. L.R. 7-9(c) states:

20  
21 **Prohibition Against Repetition of Argument.** No motion for leave to file a motion  
22 for reconsideration may repeat any oral or written argument made by the applying party  
23 in support of or in opposition to the interlocutory order which the party now seeks to  
24 have reconsidered. Any party who violates this restriction shall be subject to  
25 appropriate sanctions.

26 Plaintiff's second motion for reconsideration of the dismissal of the cybersquatting claim repeats the *exact* same argument that plaintiff made in plaintiff's first motion for reconsideration, *i.e.* the argument that this Court misunderstood plaintiff's argument regarding the domain name.

1 *Cf.* Motion for leave to File Second Amended Complaint, and in the Alternative, Motion for  
2 Final Judgment under Rule 54(b) as to Cybersquatting Cause of Action *with* Motion for  
3 Reconsideration [Dkt.# 159-2] pages 2-3. The only difference is that plaintiff now has the  
4 transcript of the hearing, however the argument remains exactly the same.

5 In addition to not repeating any argument, plaintiff must show: (1) a material difference  
6 in fact or law exists from that which was presented to the Court before entry of the interlocutory  
7 order for which reconsideration is sought, (2) the emergence of new materials facts or a change  
8 of law occurring at the time of such order, or (3) a manifest failure by the Court to consider  
9 materials facts or dispositive legal arguments. Civ. L.R. 7-9(b)(1)-(3). Plaintiff's ordering of the  
10 transcript does not satisfy this showing.

11 As this Court has already held, "Plaintiff's contention that the Court misunderstood his  
12 argument at the hearing does not constitute a changed material fact and does not alter the Court's  
13 ruling on Defendants' motion to dismiss." Order Denying Motion for Leave to File Motion for  
14 Reconsideration at 2 [Dkt.#161]. Similarly, ordering the transcript does not constitute the  
15 "emergence" of new material facts as this Court was present at the hearing and this Court has  
16 already considered plaintiff's oral argument at the hearing. Finally, as evidenced by this Court's  
17 Order Denying Motion for Leave to File Motion for Reconsideration [Dkt.#161], this Court has  
18 considered plaintiff's legal arguments and found them unpersuasive, therefore plaintiff has not  
19 shown a "manifest failure by the Court to consider...legal argument." Plaintiff has failed to  
20 show any reason why he should be allowed to file a second motion for reconsideration or why he  
21 should be allowed to repeat arguments already made on two occasions to this Court.

22 Plaintiff has also violated Civ. L.R. 7-9(a) by noticing his second motion for  
23 reconsideration without first obtaining leave from this Court to file his motion. By noticing this  
24 second motion for reconsideration as a motion for leave to file an amended complaint, Plaintiff  
25 has worked prejudice on Defendants by forcing them to respond and incur attorney fees  
26 defending this second motion for reconsideration.

1 2. Violation of Fed. R. Civ. P. 11

2 In addition to violating Civ. L.R. 7-9(a), (c), Plaintiff has violated Fed. R. Civ. P. 11.

3 When presenting a written motion to this Court, an attorney is certifying that:

4 “to the best of the person’s knowledge, information and belief, formed after an inquiry  
5 reasonable under the circumstances that:

- 6 (1) it is not being presented for any improper purpose, such as to harass or to  
7 cause unnecessary delay or needless increase in the cost of litigation; [and]  
8 (2) the claims, defenses, and other legal contentions therein are warranted by  
9 existing law or by a nonfrivolous argument for the extension, modification, or  
reversal of existing law or the establishment of new law [...].”

10 Fed. Rule Civ. P. 11(b)(1)-(2).

11 The purpose of this certification is designed to create an affirmative duty of investigation  
12 for the attorney both as to law and as to fact, and thus deter frivolous actions and costly meritless  
13 maneuvers. *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 US 533,  
14 550, 111 S.Ct. 922, 929 (1991). The Ninth Circuit has held that sanctions are appropriate, in a  
15 situation almost identical to the present motion, against an attorney who files a motion for  
16 reconsideration that contained a “total lack of any showing that the court [had] failed to consider  
17 a material fact presented to it”. *Uni-oil, Inc. v. E.F. Hutton & Co.*, 809 F.2d 548, 559 (9<sup>th</sup> Cir.  
18 1986) (finding that the attorney violated Rule 11 by filing a motion for reconsideration that had,  
19 *inter alia*, “unnecessarily and unreasonably multiplied the litigation”). As discussed above, in  
20 this case, this Court has already ruled that “Plaintiff’s contention that the Court misunderstood  
21 his argument at the hearing does not constitute a changed material fact and does not alter the  
22 Court’s ruling on Defendants’ motion to dismiss.” Order Denying Motion for Leave to File  
23 Motion for Reconsideration at 2 [Dkt.#161].

24 In addition to being meritless, Plaintiff’s motion for reconsideration violates this Court’s  
25 local rules (1) since it was noticed without first obtaining leave of this Court (Civ. L.R. 7-9(a))  
26 and (2) since the motion for reconsideration repeats oral and written argument previously made  
by Plaintiff (Civ. L.R. 7-9(c)). These violations of the local rules violate Fed. R. Civ. P. 11(b)(2)

1 since the noticing and the content of the second motion for reconsideration is “not warranted by  
2 existing law.” The Ninth Circuit has affirmed Rule 11 sanctions for a motion for reconsideration  
3 that failed to state any appropriate grounds for reconsideration thereby violating the District  
4 Court for the Central District of California’s civil local rules by “repeat[ing] any oral or written  
5 argument made in support of or in opposition to the original motion.” *Martinis v. Barbanell*,  
6 2000 U.S. App. LEXIS 3653, \*5 (9<sup>th</sup> Cir. 2000) (affirming Rule 11 sanction against an attorney  
7 who filed a motion for reconsideration in violation of C.D. Cal. L. Civ. Rule 7.16 which is  
8 substantially similar to Civ. L.R. 7-9(c)).<sup>1</sup>

9 Prior to filing an independent motion for sanctions under Rule 11, Fed. R. Civ. P.  
10 11(c)(1) requires the movant to serve a copy of the sanctions motion on the opposing party. The  
11 movant must wait at least 21 days after service of the proposed sanctions motion on the opposing  
12 party prior to filing the sanctions motion with the Court. This provision is referred to as the  
13 “safe harbor” provision as it gives the opposing party 21 days to correct the allegedly  
14 sanctionable conduct prior to the filing of the sanctions motion.

15 As discussed above, Defendants first notified Plaintiff via a letter to Plaintiff’s counsel  
16 that it would seek sanctions against Plaintiff prior to Plaintiff filing his second motion for  
17 reconsideration on October 26, 2007. *See* Exhibit D to Aff’d of Victoria K. Hall [Dkt.#176-6] in  
18 support of Plaintiff’s Motion Regarding Scheduling Plaintiff’s Motion for Leave to File Second  
19 Amended Complaint and Scheduling Settlement Conference and CMC Dates. On November 2,  
20 2007, Defendants served a copy of its sanctions motion and an initial draft of this legal  
21 memorandum on Plaintiff’s counsel. Decl. of R. Scott Jerger, ¶ 3. Defendants also reiterated  
22 their intent to seek sanctions in their response to Plaintiff’s Amended Motion for Leave to File  
23 Second Amended Complaint, and in the alternative, Motion for Final Judgment under Rule 54(b)  
24 as to Cybersquatting Cause of Action. Defendants’ Response to Plaintiff’s Amended Motion for  
25  
26

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<sup>1</sup> Pursuant to FRAP 36-3(B)(ii), unpublished Ninth Circuit cases may be cited to show “sanctionable conduct.”

1 Leave to File Second Amended Complaint, and in the alternative, Motion for Final Judgment  
2 under Rule 54(b) as to Cybersquatting Cause of Action at 4 [Dkt.#182] .

3 Despite these attempts by Defendants, Plaintiff has failed to withdraw his second motion  
4 for reconsideration. The 21-day safe harbor has passed. Defendants are therefore forced to file  
5 this motion for sanctions.

6 **SANCTION REQUESTED**

- 7 **1. Attorney Fees.** Defendants request an award of reasonable attorney fees and costs  
8 incurred in presenting this motion pursuant to Fed. R. Civ. P. 11(c)(1)(A) against Victoria  
9 K. Hall and in responding to the Plaintiff's second motion for reconsideration. At this  
10 time, Defendants have incurred \$2,750.00 in attorney fees responding to Plaintiff's  
11 second motion for reconsideration and \$ 2,709.25.00 in attorney fees preparing  
12 Defendants' Motion for Sanctions. Decl. of R. Scott Jerger, ¶¶ 4, 5.
- 13 **2. Fines.** Defendants request that Victoria K. Hall be required to pay either a monetary  
14 penalty to this Court or an equivalent non-monetary sanction to deter repetition of the  
15 present conduct or any similar conduct. Fed. R. Civ. P. 11(c)(2). Defendants leave to  
16 this Court's discretion the nature of this sanction.

17  
18 Dated: November 28, 2007.

19 Respectfully submitted,

20 \_\_\_\_\_  
/s/

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**CERTIFICATE OF SERVICE**

I also that on November 28, 2007, I served Matthew Katzer's and KAM's Motion for Sanctions on Robert Jacobsen and his attorney Victoria Hall to the following address via the Court's ECF filing system:

Victoria K. Hall  
Attorney for Robert Jacobsen  
3 Bethesda Metro Suite 700  
Bethesda, MD 20814  
Victoria@vkhall-law.com

\_\_\_\_\_  
/s/  
R. Scott Jerger (*pro hac vice*)