

Kevin L. Russell
Chernoff, Vilhauer, McClung & Stenzel, LLP
601 SW 2nd Avenue, Suite 1600
Portland, OR 97204
Tel: (503) 227-5631
Fax: (503) 228-4373
Email: kevin@chernofflaw.com

Attorneys for Third Party, QS Industries

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

**RESPONSE OF QS INDUSTRIES
IN SUPPORT OF PLAINTIFF'S
ADMINISTRATIVE MOTION TO
SEAL DOCUMENT [CIV. LR 79-
5(D)]**

QS Industries, Inc. hereby respond to Plaintiff's Administrative Motion To Seal Document.

///

QS Industries, Inc. does not object to Plaintiff's motion to seal the unredacted version of Plaintiff's Motion for Summary Judgment attached as Exhibit A to Plaintiff's Motion to Seal [Dkt.#366] and as Exhibit G in [Dkt.#342]. The declaration of Matthew Katzer [Dkt.#354] and the declaration of Fred Severson [Dk.t#355] support Plaintiff's motion. The redactions in

CERTIFICATE OF SERVICE

I certify that on November 16, 2009, I served QS Industries Response to Plaintiff's Motion on the following parties through their attorneys via the Court's ECF filing system:

R. Scott Jerger
Field Jerger LLP
621 SW Morrison, Suite 1225
Portland, OR 97205
Tel: (503) 228-9115
Fax: (503) 225-0276

John C. Gorman
Gorman & Miller, P.C.
210 N 4th Street, Suite 200
San Jose, CA 95112
Tel: (408) 297-2222
Fax: (408) 297-2224

Victoria K. Hall
Attorney for Robert Jacobsen
Law Office of Victoria K. Hall
3 Bethesda Metro Suite 700
Bethesda, MD 20814

David McGowan
Warren Hall
5998 Alcalá Park
San Diego, CA 92110

EXHIBIT A

Kevin Russell

From: Kevin Russell
Sent: Thursday, November 12, 2009 5:13 PM
To: 'victoria@vkhall-law.com'
Cc: Scott Jerger; David McGowan
Subject: RE: Jacobson v. Katzer et. al. - ND California - Protective Order
Importance: High

Dear Counsel:

It is simply dumbfounding to me that Plaintiff's Counsel would intentionally file materials known to be confidential and attorney-eyes-only (also subject to the Court's protective order) on the public PACER system. Similarly, the un-redacted version would not have been on pacer but for Plaintiff's Counsel actions today. It is likewise simply nonsensical to suggest that documents filed under seal somehow "make their way into the public record".

Your citation to the Court's local rules as somehow a justification for Plaintiff's Counsel filing of privileged materials is simply unavailing in this regard and without merit.

I can only presume from your reply that you fully intend to publicly file (yet again) the un-redacted version of the materials if QS Industries does not file yet another declaration in this regard in response to your latest administrative motion.

Also, you never responded whether anyone else (other than Bob Jacobsen) not permitted under the Court's protective order to view the information has either reviewed or has a copy of the un-redacted version of the summary judgment motion.

Also, could you identify who has access to the e-mail address jmri-legal@pacbell.net to which a copy of the un-redacted version of the summary judgment motion may have been automatically forwarded to by PACER. This e-mail address has the same domain as other e-mail addresses by Bob Jacobsen and I can only presume that Bob Jacobsen receives e-mail at that account.

Kevin Russell
Counsel for QS Industries

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

From: victoria@vkhall-law.com [mailto:victoria@vkhall-law.com]
Sent: Thursday, November 12, 2009 4:16 PM
To: Kevin Russell
Cc: Scott Jerger; David McGowan
Subject: RE: Jacobson v. Katzer et. al. - ND California - Protective Order

Dear Mr. Russell,

As noted below, even without the filing made today, there is a reasonable chance that the document has made its way onto the public record because you did not seek to seal it.

I sent you the administrative motion to seal on October 30, 2009. Included with that was Exhibit G, the unredacted Motion for Summary Judgment. You filed a declaration from Mr. Severson relating to exhibits

11/16/2009

A-E, but not relating to Exhibit G.

The Court ordered Exhibit A-E, and portions of Exhibit F, to be sealed. Exhibit G was not sealed. Without a court order, the remaining portions become unsealed, and a part of the public record. See Local Rule 79-5(d):

Within five days thereafter, the designating party must file with the Court and serve a declaration establishing that the designated information is sealable, and must lodge and serve a narrowly tailored proposed sealing order, or must withdraw the designation of confidentiality. If the designating party does not file its responsive declaration as required by this subsection, the document or proposed filing will be made part of the public record.

Given the wording of this section, even without my filing, there is a reasonable chance that the document made its way to the public record when the sealing order did not include it. See Docket #360, 361.

In filing another administrative motion on your behalf, I am giving both Defendants and QSI an opportunity to remedy this, and am spending a significant amount of time, the evening before the opposition to summary judgment is due, to do so. In the meantime, there is a temporary lock on the document while the court considers whether to remove the document from the docket. Mr. Jacobsen has not seen the document, and the lock was on within minutes of the e-filing.

Regards,

Victoria Hall

> ----- Original Message -----
> Subject: Jacobson v. Katzer et. al. - ND California - Protective Order
> From: "Kevin Russell" <klr@chernofflaw.com>
> Date: Thu, November 12, 2009 3:55 pm
> To: "David McGowan" <david.dmcgowan@gmail.com>,
> <victoria@vkhall-law.com>
> Cc: "Scott Jerger" <scott@fieldjerger.com>
> Dear Counsel:
>
> On behalf of QS Industries, it is defies explanation that anyone would
> intentionally file an un-redacted version of Plaintiff's Summary
> Judgment motion with the court that contains attorney-eyes only
> information and confidential information from QS Industries in violation
> of the protective order entered in this case.
>
> Please provide me with written assurances that neither Bob Jacobson nor
> anyone else not permitted under the Court's protective order to view the
> attorney-eyes only information or confidential information has either
> reviewed or has a copy of the un-redacted summary judgment motion.
>
> I can only presume you have called the Court to remedy the situation
> since copies of the un-redacted version of the Plaintiff's Summary
> Judgment motion will be copied into the databases of countless on-line
> court reporting services very shortly.
>

11/16/2009

> It appears that now Plaintiff has filed yet another document (court
> document 364) requiring QS Industries to file yet another (seemingly
> duplicative) declaration in support of the motion to seal.
>
> Is Plaintiff suggesting that without yet another declaration on behalf
> of QS Industries you are permitted to re-file the un-redacted version of
> the summary judgment motion, containing references to sealed portions of
> the record, with the court?
>
> Kevin Russell
> Counsel for QS Industries