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ROBERT JACOBSEN

10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 ROBERT JACOBSEN, an individual,) No. C06-1905-JSW
14)
Plaintiff,)
15) **PLAINTIFF ROBERT JACOBSEN'S**
v.) **RESPONSES TO DEFENDANTS'**
16) **OBJECTIONS, AND IN THE**
MATTHEW KATZER, an individual, and) **ALTERNATIVE, MOTION FOR LEAVE**
17) **TO FILE SWORN DECLARATIONS**
KAMIND ASSOCIATES, INC., an Oregon) **AUTHENTICATING EXPERT REPORTS**
18 corporation dba KAM Industries,)
19 Defendants.) Courtroom: 11, 19th Floor
Judge: Hon. Jeffrey S. White
20)

21 **INTRODUCTION**

22 Plaintiff Robert Jacobsen respectfully submits this response to Defendants' objections to his
23 Opposition to Defendants' Motion for Partial Summary Judgment. Defendants have lodged three
24 objections. In the alternative, Professor Jacobsen seeks leave to file sworn declarations that
25 authenticate the experts' reports.
26

1 **RESPONSES**

2 1. Defendants’ objection on page 2, line 16

3 Defendants object to Bruce Perens’ expert report as being unsworn or not being made under
4 oath. Defendants’ Reply in Support of Motion for Summary Judgment [Docket #381] at 2. Mr.
5 Perens’ expert report was served on Defendants on October 20, 2009. ¹

6 Rule 56(c) states the materials which may be used in support of, or in opposition to, a
7 motion for summary judgment. In 2007, the Federal Rules of Civil Procedure were changed to add
8 “disclosures” to the list of materials in Rule 56(c). Mr. Perens’ report is an expert disclosure
9 within the meaning of this rule and is signed in accordance with Rule 26.

10 The cases that Katzer relies upon were decided before this rule change, or relied upon
11 decisions that issued prior to the rule change. Thus, Defendants’ objection should be overruled.

12 In the alternative, Professor Jacobsen respectfully seeks leave to file a sworn declaration
13 from Mr. Perens authenticating his expert report. Attached as Exhibit A is a true and correct copy
14 of this declaration.²

15 2. Defendants’ objection on page 5, line 26

16 Defendants object to Michael Einhorn’s expert report for the same reasons stated above.³
17 Professor Jacobsen offers the same responses, and asks the Court to overrule Defendants’
18 objection. In the alternative, Professor Jacobsen respectfully seeks leave to file a sworn declaration
19 from Dr. Einhorn authenticating his expert report. Attached as Exhibit B is a true and correct copy
20 of this declaration.

21 3. Defendants’ objection on page 6, footnote 4

22 Defendants object to Dr. Einhorn’s report on the basis of Federal Rules of Evidence 702,
23

24 ¹ Defendants elected not to depose Mr. Perens.

25 ² When submitting deposition testimony, both parties omitted the court reporters’ declarations from
26 the deposition transcript excerpts. These declarations are also needed to authenticate deposition
27 transcripts. Professor Jacobsen provides them here for both sides to correct the oversight. Attached
as Exhibit C are true and correct copies of these declarations.

³ Dr. Einhorn’s report also was served on Defendants on October 20; Defendants elected not to
depose Dr. Einhorn.

1 but provide no argument nor any evidence to support their objection. Dr. Einhorn's report states
2 his qualifications and the basis for his opinions. The objection should be overruled.

3 **CONCLUSION**

4 For these reasons, Jacobsen respectfully asks the Court to overrule Defendants' objections.

5
6 Respectfully submitted,

7
8 DATED: November 24, 2009

By _____/s/
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