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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
Hearing Date: December 4, 2009
Hearing Time: 9:00am
Place: Ct. 11, Floor 19
Hon. Jeffrey S. White

**DEFENDANTS MATTHEW
KATZER AND KAMIND
ASSOCIATES, INC.'S RESPONSE
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO FILE
UNTIMELY DOCUMENTS**

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2 **STATEMENT OF ISSUES TO BE DECIDED**

- 3 1. Is Plaintiff's motion for leave proper under the Civ. Local Rules?

4 **STATEMENT OF FACTS**

5 This Court ordered the parties to complete summary judgment briefing on November 20,
6 2009 [Dkt# 357]. That happened. In their Reply brief, Defendants pointed out that Plaintiff's
7 could not rely on unsworn expert reports at summary judgment under Fed. R. Civ. P. 56.¹
8 Plaintiff has filed an unnoticed Motion for Leave in response.

9 **ARGUMENT**

10 Briefly, in reply to Plaintiff's response to the objection, the change in Federal Rule of
11 Civil Procedure 56(c) discussed by Plaintiff is irrelevant to the issue at hand. Fed. R. Civ. P.
12 56(e) requires that affidavits in support of summary judgment be sworn as discussed in
13 Defendants' Reply brief.

14 More importantly, Plaintiff's substantive, un-noticed motion for leave to supplement the
15 record with untimely, sworn expert reports does not comply with this Court's Civil Local Rules.
16 Plaintiff's motion, filed on Thanksgiving eve, is not an administrative motion as it deals with the
17 substantive issues of admissibility. Plaintiff's motion does not comply with Civ. Local Rule 7-1
18 because it was not duly noticed pursuant to Civ. Local Rule 7-2 nor is it in the proper form of a
19 motion as required by Civ. Local Rule 7-2.

20 Plaintiff's failure to comply with this Court's Local Rules works prejudice on
21 Defendants. Under this Court's local rules, Defendants have until 21 days before the hearing
22 date to respond to this motion. However, Plaintiff has not set a hearing for this motion and the
23 parties are well within 21 days of the summary judgment hearing.

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¹ Plaintiff's unsworn expert reports are not relevant to summary judgment since they deal with
opinions, not issues of fact.

1 I certify that on November 25, 2009, I served Matthew Katzer's and KAM's RESPONSE
2 IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE on the following parties through
3 their attorneys via the Court's ECF filing system:

4 Victoria K. Hall
5 Attorney for Robert Jacobsen
6 Law Office of Victoria K. Hall
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8 Bethesda, MD 20814

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9 _____
10 /s/ Scott Jerger
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12 Field Jerger LLP
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