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10 11	UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA	
12	SAN FRANCISCO DIVISION	
13 14	ROBERT JACOBSEN, an individual,	No. C06-1905-JSW
15 16	v.	PLAINTIFF ROBERT JACOBSEN'S RESPONSES TO DEFENDANTS' OBJECTIONS, AND IN THE
17 18	MATTHEW KATZER, an individual, and) KAMIND ASSOCIATES, INC., an Oregon) corporation dba KAM Industries,)	ALTERNATIVE, MOTION FOR LEAVE TO FILE SWORN DECLARATIONS AUTHENTICATING EXPERT REPORTS
19) Defendants.))	Courtroom: 11, 19th Floor Judge: Hon. Jeffrey S. White
20 21)	
21 22	INTRODUCTION	
22	Plaintiff Robert Jacobsen respectfully submits this response to Defendants' objections to his	
24	Opposition to Defendants' Motion for Partial Summary Judgment. Defendants have lodged three	
25	objections. In the alternative, Professor Jacobsen seeks leave to file sworn declarations that	
26	authenticate the experts' reports.	
27		
28	-1-	
	No. C06-1905-JSW Plaintiff Robert Jacobsen's Responses to Defendants' Objections, and in the Alternative, Motion for Leave to File Sworn Declarations Authenticating Expert Reports	

RESPONSES

1. Defendants' objection on page 2, line 16

Defendants object to Bruce Perens' expert report as being unsworn or not being made under oath. Defendants' Reply in Support of Motion for Summary Judgment [Docket #381] at 2. Mr. Perens' expert report was served on Defendants on October 20, 2009.¹

Rule 56(c) states the materials which may be used in support of, or in opposition to, a motion for summary judgment. In 2007, the Federal Rules of Civil Procedure were changed to add "disclosures" to the list of materials in Rule 56(c). Mr. Perens' report is an expert disclosure 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 decisions that issued prior to the rule change. Thus, Defendants' objection should be overruled.

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

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2. Defendants' objection on page 5, line 26

Defendants object to Michael Einhorn's expert report for the same reasons stated above.³ 16 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.

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3. Defendants' objection on page 6, footnote 4

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

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- ¹ Defendants elected not to depose Mr. Perens.
- 25 ² When submitting deposition testimony, both parties omitted the court reporters' declarations from the deposition transcript excerpts. These declarations are also needed to authenticate deposition 26 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.
- 27 Dr. Einhorn's report also was served on Defendants on October 20; Defendants elected not to depose Dr. Einhorn. 28 -2
 - No. C06-1905-JSW

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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.		
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6	Respectfully submitted,		
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8	DATED: November 24, 2009 By /s/ Victoria K. Hall, Esq. (SBN 240702) LAW OFFICE OF VICTORIA K. HALL 2 Pathasda Matro Suita 700		
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20	No. C06-1905-JSW PLAINTIFF ROBERT JACOBSEN'S RESPONSES TO DEFENDANTS' OBJECTIONS, AND IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE SWORN DECLARATIONS AUTHENTICATING EXPERT REPORTS		