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

13 ROBERT JACOBSEN,) No. C-06-1905-JSW
14)
Plaintiff,)
15)
v.) **PLAINTIFF’S RESPONSE TO**
16) **DEFENDANTS MATTHEW KATZER**
MATTHEW KATZER, et al.,) **AND KAMIND ASSOCIATES, INC.’S**
17) **REPLY TO PLAINTIFF’S OBJECTIONS**
Defendants.) **TO DECLARATION OF R. SCOTT**
18) **JERGER**
19) Courtroom: 2, 17th Floor
Judge: Hon. Jeffrey S. White
20)

21 Plaintiff Robert Jacobsen responds to Defendants Matthew Katzer and KAMIND
22 Associates, Inc.’s Reply to Plaintiff’s Objections to Declaration of R. Scott Jerger [Dkt 95]
23 [hereinafter Katzer/KAMIND Reply to Objections - Docket 95]. After Mr. Katzer and KAMIND
24 Associates, Inc. filed their reply, Plaintiff, through his counsel, contacted their counsel in an
25 attempt to work out their differences. They have come to an impasse, and Plaintiff asks the Court
26 to resolve the matter.

27 Although not specifically raised in Katzer/KAMIND Reply to Objections – Docket 95, one
28

1 key point the parties disagree about is whether privilege applies to the billing records. Hall Decl.
2 Ex. A. Plaintiff submits this response to present his views on this subject.

3 As Mr. Jerger knows from initial email exchanges between him and Plaintiff's counsel,
4 Plaintiff believes that he is entitled to see attorney billing records under Fed. R. Evid. 1006. Mr.
5 Jerger provided a summary in his declaration, and Plaintiff is entitled to see the underlying data for
6 that summary under Fed. R. Evid. 1006. In his email, Mr. Jerger stated that these records are
7 subject to privilege. However, billing records are not protected by attorney-client privilege per se.
8 United States v. Amlani, 169 F.3d 1189, 1194 (9th Cir. 2003) ("...attorney billing records ... are
9 not protected by attorney-client privilege"); accord Clarke v. Am. Commerce Nat'l Bank, 974 F.2d
10 127, 129 (9th Cir. 1992) ("Not all communications between attorney and client are privileged. Our
11 decisions have recognized that the identity of the client, the amount of the fee, the identification of
12 payment by case file name, and the general purpose of the work performed are usually not
13 protected from disclosure by the attorney-client privilege."). There are exceptions, such as when
14 the billing records reflect litigation strategy or the motive of the client for seeking representation.
15 Clark, 974 F.2d at 129. However, attorney-client privilege is a narrow privilege. "[S]ince it has the
16 effect of withholding relevant information from the fact-finder, it applies only when necessary to
17 achieve its purpose." Fisher v. United States, 425 U.S. 391, 403 (1976) (emphasis added). It
18 "protects only those disclosures necessary to obtain legal advice which might not have been made
19 absent the privilege." Id. Signing a fee agreement, and providing invoices and daily time records
20 do not involve correspondence in seeking or providing advice, and thus are not subject to attorney-
21 client privilege. The Ninth Circuit has recognized this. And the burden is on Mr. Katzer and
22 KAMIND Associates, Inc. to show that it exists. Clark, 974 F.2d at 129. Plaintiff does not see any
23 reason why these records cannot be redacted and produced. For these reasons, Plaintiff believes
24 that he is entitled to the records. Plaintiff cannot offer an opinion on the amounts claimed in Mr.
25 Jerger's petition until he sees them.

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DATED: October 6, 2006

By _____ /s/
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