

Exhibit E

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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)
v.) **MOTION FOR LEAVE TO FILE**
16) **MOTION FOR RECONSIDERATION OF**
MATTHEW KATZER, an individual, and) **AUGUST 17, 2007 RULING**
17)
KAMIND ASSOCIATES, INC., an Oregon)
corporation dba KAM Industries,)
18)
Defendants.)
19)
20)

21 Plaintiff files this motion for leave to file motion for reconsideration of the Court's August
22 17, 2007 ruling on the basis that the court did not address dispositive legal arguments made in his
23 motion for preliminary injunction. He also files this motion for leave because a material difference
24 of fact exists as to cybersquatting.

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DATED: September 3, 2007

By _____ /s/
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Exhibit A

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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,) **MOTION FOR RECONSIDERATION OF**
15) **AUGUST 17, 2007 RULING**
v.)
16) Courtroom: 2, 17th Floor
MATTHEW KATZER, an individual, and) Judge: Hon. Jeffrey S. White
17 KAMIND ASSOCIATES, INC., an Oregon)
corporation dba KAM Industries,)
18)
Defendants.)
19)
20)

21 Plaintiff asks the Court to reconsider its August 17, 2007 ruling, denying the motion for
22 preliminary injunction, dismissing § 17200, and dismissing the cybersquatting claim as moot.
23

24 Preliminary injunction

25 In his motion, Plaintiff stated that he had revoked the license that Defendants had, and that
26 therefore, Defendants' use of Plaintiff's software, or distribution of Defendants' software, infringed
27 Plaintiff's copyright. A license unsupported by consideration may be revoked at any time, and if it
28

1 is so revoked, then the cause of action lies in copyright. See David Nimmer, 3 Nimmer on
2 Copyright § 10.02[B][5]. See also I.A.E., Inc. v. Shaver, 74 F.3d 768, 772 (7th Cir. 1996). It is an
3 important argument in the open source software community, because, for instance, the GNU
4 General Public License relies on license revocation to enforce its rights in copyright. However, the
5 Court did not address the revocation argument. Plaintiff respectfully asks the Court to reconsider
6 or address this argument, and issue the injunction.

7 In the alternative, Plaintiff asks the Court to restore the cause of action under § 17200 (see
8 next section) and issue the injunction under § 17200. Toward the end of the Jan. 19, 2007 hearing,
9 the Court asked counsel for Plaintiff if she agreed with the Court that if the Court found that the
10 claim sounded in contract, Plaintiff was not entitled to an injunction. Counsel for Plaintiff
11 responded by asking to issue the injunction under § 17200. If the claim sounds in contract, then
12 Defendants committed an unlawful action by breaching the contract. See Watson Labs., Inc. v.
13 Rhone-Poulenc Rorer, Inc., 178 F. Supp. 2d 1099, 1120 (C.D. Cal. 2001) (unlawful practices
14 prohibited under § 17200 include those prohibited by court-made law). Plaintiff, a competitor, has
15 lost a property right – his rights under contract – through Defendants’ misappropriation of
16 Plaintiff’s software, and Plaintiff seeks an injunction to remedy that loss. Under these facts,
17 Plaintiff would be entitled to an injunction under § 17200.

18 Section 17200

19 The cause of action under § 17200 should be restored. Defendants engaged in unlawful
20 acts in violating the license. Plaintiff lost a property right as a result, and he seeks injunctive relief.
21 A contract adds an extra element, and thus is not preempted under the Copyright Act. Grosso v.
22 Miramax Film Corp., 383 F.3d 965, 968 (9th Cir. 2004). Thus, the cause of action under § 17200
23 should stand.

24 Cybersquatting

25 Plaintiff believes that a material difference in fact exists from the time of the hearing and
26 when the court issued its ruling due to a disconnect between the Court and counsel for plaintiff.
27 The Court dismissed the cybersquatting claim as moot because, as it stated, “counsel for Plaintiff
28 contended that the cybersquatting claim is filed as an in rem action.” Order at 5. Plaintiff has

