

R. Scott Jerger (*pro hac vice*) (Oregon State Bar #02337)
Field Jerger LLP
621 SW Morrison, Suite 1225
Portland, OR 97205
Tel: (503) 228-9115
Fax: (503) 225-0276
Email: scott@fieldjerger.com

John C. Gorman (CA State Bar #91515)
Gorman & Miller, P.C.
210 N 4th Street, Suite 200
San Jose, CA 95112
Tel: (408) 297-2222
Fax: (408) 297-2224
Email: jgorman@gormanmiller.com

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

Hon. Jeffrey S. White

**DECLARATION OF MATTHEW
KATZER IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

1 I, Matthew Katzer, declare:

- 2 1. I am the controlling shareholder and operator of the close corporation Kamind
3 Associates, Inc. (“KAM”). KAM and I are the only two defendants in this
4 lawsuit. If called as a witness, I would and could testify to the following as a
5 matter of personal knowledge.
6
- 7 2. I am authorized by KAM to make this declaration in opposition to Plaintiff’s
8 Motion for Summary Judgment.
9
- 10 3. In my previous October 30, 2009 declaration in support of Defendants’ Motion
11 for Partial Summary judgment I stated that “[t]o date, KAM has sold 29 copies
12 of Decoder Commander and has given away 36 copies of Decoder
13 Commander.” While this is correct, I would like to make a clarification. In
14 2007 and 2008, KAM also sold approximately 29 copies of Decoder
15 Commander (in addition to the 29 copies identified above). Gross revenue
16 from these sales was \$1379. I did not mention these 29 copies in my previous
17 declaration because these 2007 and 2008 Decoder Commander CDs were built
18 from scratch, do not contain any of Plaintiff’s material and, in my opinion,
19 cannot be infringing on any of Plaintiff’s copyright rights. However, since I
20 now understand that Plaintiff is alleging that these files are also potentially
21 infringing, I want to bring this to the Court’s attention.
22
23
24
- 25 4. There have been no sales of Decoder Commander in 2009.
- 26 5. I registered the internet site decoderpro.com.

- 1 6. I never put decoderpro.com online and I never offered any product
2 (commercial or otherwise) on decoderpro.com.
- 3 7. JMRI member Jerry Britton registered KAM's trademark domain name
4 computerdispatcherpro.com and at one point advertised JMRI products to the
5 public on this website.
- 6 8. Attached as Exhibit 1 to this Declaration is a screen shot of the
7 computerdispatcherpro.com website advertising JMRI products.
- 8 9. I sued Jerry Britton to recover the KAM domain name in 2004.
- 9 10. As part of the settlement, Britton and I agreed to swap domain names.
- 10 11. Version 304 of Decoder Commander incorporated components of Version
11 1.7.1 of Plaintiff's Decoder Definition Text Files.
- 12 12. Version 304 of Decoder Commander contains definition files for 107 decoders.
- 13 13. Robert Bouwens was hired to create what became Decoder Commander in
14 2004. Mr. Bouwens did not use any of Plaintiff's architecture, interface, or
15 executable computer code to create the architecture, interface, executable
16 computer code, layout or design found in Decoder Commander.
- 17 14. Bouwens relied exclusively on his own previous work as well as material
18 created by model train manufacturer ESU and the NMRA to create the
19 function, layout and design of Decoder Commander.
- 20 21 15. KAM has rights to use the ESU and the NMRA material described in
22 paragraph 14.
- 23
24
25
26

1 16. Attached as Exhibit 2 to this declaration is a screen shot comparison that I
2 created comparing the interface of ESU Lok Commander with Decoder
3 Commander and showing the similarities.

4 17. I have reviewed Plaintiff's Expert Report of Ph.D economist Michael Einhorn
5 created on October 20, 2009. In this report, Mr. Einhorn concludes in his
6 economic analysis that Plaintiff is entitled to a jury award between \$153,000
7 and \$157,600.
8

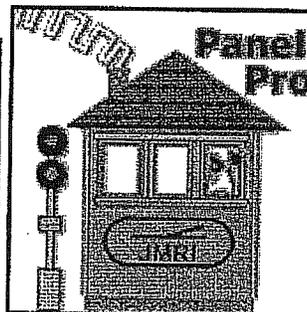
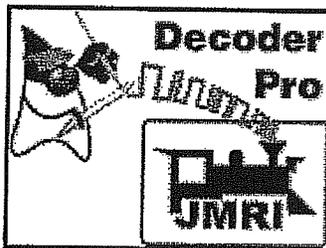
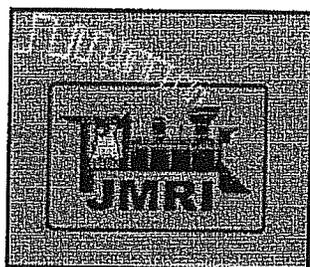
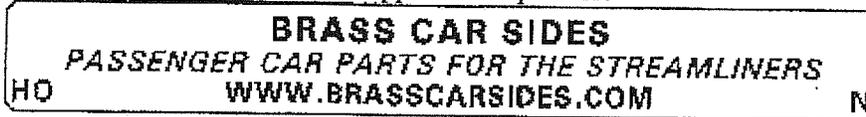
9
10
11 I declare under penalty of perjury under the laws of the United States of America
12 that the foregoing is true and correct.

13
14 Executed on November 13, 2009 at Portland, Oregon.

15
16
17 
18 Matthew Katzer

EXHIBIT 1

Please Support Our Sponsors:



Computerizing Dispatcher Operations per the Prototype

Welcome!

After adopting JMRI and PanelPro for my own use, with extensive feedback from others online, I wanted to "give back" to the JMRI community by sharing some links I found useful.

Why do I like PanelPro? a) it's free; b) it works on multiple platforms; c) it supports multiple users; d) it works over the Internet; e) it is extremely flexible and extensible; f) there is great programmer and peer support; g) many others use it. Did I mention it was free?

PanelPro Examples:

Mark Bridgewater's [Feather River Route](#).

Jerry Britton's [PRR Eastern Region](#) - Scroll down to the section on Yardmaster.

Robert Bucklew's [Quaker Valley Lines](#).

Nick Kulp's [Cornwall Railroad](#).

Patrick Lana's [Cedar River and Iowa Central](#).

Kent Williams' [Oregon Washington Navigation & Railway](#).

PanelPro Tutorials and Tips:

Jerry Britton's [JMRI Tips](#).

Nick Kulp's [JMRI PanelPro Clinic](#).

Nick Kulp's [C/MRI PanelPro Clinic](#).

EXHIBIT 2

