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Attorney for Plaintiff
ROBERT JACOBSEN

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

ROBERT JACOBSEN,

Plaintiff,

v.

MATTHEW KATZER, et al.,

Defendants.

No. C-06-1905-JSW

**ADMINISTRATIVE MOTION FOR
RULING RE FILING AMENDED
COMPLAINT**

Courtroom: 2, 17th Floor
Judge: Hon. Jeffrey S. White

Filed concurrently:
1. Proposed Order

On Aug. 11, 2006, at this Court's hearing on various motions and the initial case management conference, Plaintiff confirmed that he intended to file an amended Complaint. During the discussion that followed, a question arose regarding whether Plaintiff was required to seek leave of court to file the amended Complaint, or whether Plaintiff could amend as a matter of right because no Answers had been filed. If the former, the Court stated Plaintiff would be required to send the Amended Complaint to Defendant Katzer and KAMIND Associates, Inc. by Thursday, Aug. 31, who would have until Sept. 11, 2006 to file any objections. If the latter, then

1 Plaintiff would be required to file the Amended Complaint by Sept. 11, 2006. As Aug. 31, 2006 is
2 approaching, Plaintiff seeks a ruling from the Court to determine which deadline he must meet.

3 Plaintiff believes that he still may amend the Complaint as a matter of right because no
4 Answers have been filed. As authority, Plaintiff cites Wright, Miller & Kane, Federal Practice &
5 Procedure § 1483 (2d ed. 1990):

6 The first sentence of Rule 15(a) specifically limits a party's ability to amend without
7 leave of court to the time "before a responsive pleading is served. ...[T]he term
8 "responsive pleading" as used in Rule 15(a) must be interpreted in conjunction with
9 the description of the pleadings allowed in federal court actions set forth in Rule
10 7(a). It is axiomatic that the complaint may be amended as of course at any time
11 before the answer is served. [...] The language of Rule 7(a) indicates that a motion
12 is not a responsive pleading.

13 Plaintiff directs the Court's attention to later paragraphs of the same section, which address
14 whether a party may amend as a matter of right when a motion to dismiss has been granted. Two
15 instances, which Plaintiff does not believe apply here, suggest that a party must seek leave to
16 amend when a motion to dismiss has been granted: (1) to amend a claim that has been dismissed
17 and (2) to amend a Complaint that has been dismissed when a significant period of time has lapsed
18 since the Court dismissed the Complaint. Plaintiff will remove the two claims dismissed by the
19 Court, and Defendant Kevin Russell as a party, thus the first set of circumstances does not apply.
20 The second does not apply since the Complaint itself has not been dismissed. Even if Complaint
21 had been dismissed, because of the short time period between the ruling and the filing of the
22 Amended Complaint, the second set of circumstances still would not apply. Thus, Plaintiff
23 believes he may amend the Complaint as a matter of right.

24 Plaintiff Jacobsen's counsel informed defense counsel at approximately 1:30 p.m. Thurs.
25 Aug. 24, 2006, that she intended to file this administrative motion and to ask for their position on
26 it. Hall Decl. Ex. A. She has not heard back from them yet.
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1 DATED: August 24, 2006
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3 By _____ /s/
4 Victoria K. Hall, Esq. (SBN 240602)
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10 ATTORNEY FOR PLAINTIFF
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