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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

**DECLARATION OF VICTORIA HALL
IN SUPPORT OF PLAINTIFF'S
RESPONSE TO DEFENDANT KEVIN
RUSSELL'S REPLY TO PLAINTIFF'S
OBJECTIONS TO DECLARATION OF
DAVID M. ZEFF RE: ATTORNEY FEE
AWARD**

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

I, Victoria Hall, have personal knowledge to the facts stated herein and hereby declare as follows:

1. I am the attorney for Plaintiff Robert Jacobsen in this matter. I am submitting this Declaration in support of Plaintiff's Response to Defendant Kevin Russell's Reply to Plaintiff's Objections to Declaration of David M. Zeff re: Attorney Fee Award.

2. Attached as Exhibit A are true and correct copies of email exchanges between myself and David M. Zeff in mid-September 2006.

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No. C-06-1905-JSW

DECLARATION OF VICTORIA HALL IN SUPPORT OF
PLAINTIFF'S RESPONSE TO DEFENDANT KEVIN
RUSSELL'S REPLY TO PLAINTIFF'S OBJECTIONS TO
DECLARATION OF DAVID M. ZEFF RE: ATTORNEY FEE
AWARD

1
2
3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct.

5 Executed this 6th day of October, 2006, in Rockville, Maryland.

6
7
8
9 By _____/s/_____
Victoria Hall

Hall Declaration Exhibit A

[Print](#) | [Close Window](#)**Subject: RE: [FWD: Objections to fee petition]]Jacobsen v. KAM, file 9364****From: victoria@vkhall-law.com****Date: Wed, Sep 20, 2006 8:06 am****To: ZeffLaw1@aol.com**

Dear Mr. Zeff,

Thank you for getting back to me. I am glad that we are able to continue this discussion.

There are a couple of key points that we clearly disagree about. First is regarding your hours and hourly rates. Second is whether privilege applies to the billing records.

Hours and hourly rates: Two important factors in determining whether the hours and hourly rates are reasonable are the novelty and complexity of the issues and the special skill and experience of counsel. *Morales v. City of San Rafael*, 96 F.3d 359, 364 n.9 (9th Cir. 1996). You've stated in your response that these two motions were simple. So our question is, then, why do you need to bill 140+ hours for two simple motions? You have suggested that I compare the hours that I have spent on the anti-SLAPP, and you state that you have received no response. This was our response, and I repeat it again: you have repeatedly pointed out that you have 30+ years experience, Mr. Moore has 20+ years, both of which is significantly more than I have. You both should be expected to draft drafting these motions more efficiently than I would. Thus, the time I spent is irrelevant - FRE 402/403. Also, as you have noted in your response, plaintiff produced significantly more evidence in his declarations. It took a significant amount of time to collect that evidence and to develop the declarations, in addition to the oppositions themselves. So, to use the hours that I spent as a comparison for reasonableness is comparing apples to oranges. Again, FRE 402/403. We also have concerns about your using a case in which litigation dragged for 3 years, resulting in a \$300,000+ award, as evidence that your fee award is reasonable. This does not make sense. If you are going to use examples to support your contention that the fee award is reasonable, then you should use examples that are more closely in line with the amount of time and work involved in this litigation. A three-year battle in the courts is not comparable, and thus is not relevant. FRE 402/403. As we have stated in our objections, we also do not think it is relevant to compare the fee rates of attorneys at large or medium size firms, to justify the rates of solo practitioners. FRE 402/403.

Billing records: As you know, we believe that we are entitled to see attorney billing records under Fed. R. Evid. 1006. You have provided a summary in your declaration, and we are entitled to see the underlying data for that summary under FRE 1006. You state that these records are subject to privilege. However, billing records are not protected by attorney-client privilege per se. *United States v. Amlani*, 169 F.3d 1189, 1194 (9th Cir. 2003) ("...attorney billing records ... are not protected by attorney-client privilege"); accord *Clarke v. Am. Commerce Nat'l Bank*, 974 F.2d 127, 129 (9th Cir. 1992) ("Not all communications between attorney and client are privileged. Our decisions have recognized that the identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege."). There are exceptions, such as when the billing records reflect litigation strategy or the motive of the client for seeking representation. *Clark*, 974 F.2d at 129. However, attorney-client privilege is a narrow privilege. "[S]ince it has the effect of withholding relevant information from the fact-finder, it applies only when necessary to achieve its purpose." *Fisher v. United States*, 425 U.S. 391, 403 (1976) (emphasis added). It "protects only those disclosures necessary to obtain legal advice which might not have been made absent the privilege." *Id.* Signing a fee agreement, and providing invoices and daily time records do not involve correspondence in seeking or providing advice, and thus are not subject to attorney-client privilege. The Ninth Circuit has recognized this. And the burden is on you to show that it exists. *Clark*, 974 F.2d at 129. I don't see any reason why these records cannot be redacted and produced. For these reasons, we believe that we are entitled to the records. We cannot offer an opinion on the amounts claimed in your petition until we see them.

Regards,

Victoria Hall

P.S. To correct the record, I did not state that Court does not have the authority to permit the fee petition. I

would not have included the section re jurisdiction in plaintiff's objections if I thought so. I stated that if the Court is without jurisdiction, then it cannot rule on the merits of the action. And I did provide a citation for that most basic and fundamental proposition in plaintiff's objections -- Pennoyer.

----- Original Message -----

Subject: Re: [FWD: Objections to fee petition]]Jacobsen v. KAM, file 9364

From: ZeffLaw1@aol.com

Date: Fri, September 15, 2006 5:49 pm

To: victoria@vkhall-law.com

Cc: raggmop1@pacbell.net

Dear Ms. Hall:

I did not intend to bicker, but rather to solicit a concrete proposal toward compromise--some resolution between our claim for 100% and your claim that Russell is entitled to ??????. We really don't know what you claim he is entitled to recover, except that you claimed that the Court had no power even to permit the fee petition. You now assert FRE 1006 as authority for your request that, as part of this fee application, you are entitled to see our confidential and privileged attorney billing and cost records (note that no costs are claimed). FRE 1006 does not provide you with any authority for this request. Mr. Jerger and I have cited you authority as to why such a request is out of order. I have asked you to provide your billing information, if your client thinks our time and charges are out of line, but I have had no response.

I think we are at the same place we started, at impasse. You know what our claim is--the number of hours, the kinds of tasks performed and the rates. We don't know what your client thinks is reasonable and, from your communication, it appears that your client does not feel like he needs to tell us that unless and until we produce our confidential and privileged attorney billing records.

I'm sorry if this does not appear to be a civil discussion. I just can't figure out why we can't get a concrete proposal toward compromise from you and your client, but instead get a request, based upon an erroneously cited Rule of Evidence, that we produce to our opposition confidential and privileged attorney billing records that we only would have to produce, in camera, if the judge specifically demanded them.

Sincerely, David M. Zeff

In a message dated 9/15/2006 5:27:26 P.M. Pacific Standard Time, victoria@vkhall-law.com writes:

Dear Mr. Zeff,

Thank you for your quick response. We believe that we can still come to a resolution about our differences, even after you filed your petition and we filed our objections. And we will continue to seek your cooperation in coming to that resolution. For our part, we seek attorney billing and cost records that we are entitled to under FRE 1006.

On another note, I would like to remind you of the Court's order to counsel not to bicker. When you are ready to discuss this matter in a more civil manner, we will be interested in talking with you. We look forward to that discussion.

Regards,

Victoria Hall

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On another note, I would like to remind you of the Court's order to counsel not to bicker. When you are ready to discuss this matter in a more civil manner, we will be interested in talking with you. We look forward to that discussion.

Regards,

Victoria Hall

----- Original Message -----

Subject: Re: [FWD: Objections to fee petition]]Jacobsen v. KAM, file 9364

From: ZeffLaw1@aol.com

Date: Fri, September 15, 2006 4:25 pm

To: victoria@vkhall-law.com

Cc: raggmop1@pacbell.net

Dear Ms. Hall:

I think the time to meet and confer was before I filed my declaration, and certainly before you filed your Objections. I don't think the Court will hold a hearing unless it finds merit in the objections, and my guess is it will not. If you have a proposal to make, based upon something other than Mr. Jacobsen's reasoning or what you and he consider to be "axiomatic," please make a proposal. On this subject I am merely a conduit to my client, who makes the final decisions.

Have a lovely weekend. Sincerely, David M. Zeff

In a message dated 9/15/2006 4:03:54 P.M. Pacific Standard Time, victoria@vkhall-law.com writes:

Dear Mr. Zeff,

Again, plaintiff reaches out to you in an attempt to resolve our differences re your fee petition.

When you are ready to work with us to come to a resolution on this matter, please contact us. We are interested in resolving the matter with you instead of having to burden the Court with one more hearing.

Regards,

Victoria Hall

----- Original Message -----

Subject: [FWD: Objections to fee petition]

From: victoria@vkhall-law.com

Date: Wed, September 13, 2006 1:37 pm

To: ZeffLaw1@aol.com

Mr. Zeff,

I see you have filed a reply to plaintiff's objections. I had hoped that you -- after going to some lengths to state that you were acting in good faith and accusing me of not acting in good faith -- would have emailed me first so that we could resolve plaintiff's objections.

When you decide that you would like to resolve plaintiff's objections, please contact me. We are still committed to work with you to resolve this matter, despite that filing.

Regards,

Victoria Hall

----- Original Message -----

Subject: Objections to fee petition

From: victoria@vkhall-law.com

Date: Thu, September 07, 2006 10:55 pm

To: ZeffLaw1@aol.com

Mr. Zeff,

I apologize for not contacting you earlier. I had planned on following up with you on this matter before filing the objections, but I realized yesterday afternoon that since you had filed a day before the deadline, and the Court had indicated that I had 10 days after, then I probably needed to file today (this evening).

I hope that, by starting this discussion again, we may be able to resolve plaintiff's objections to your declaration. I believe the Court would prefer us to handle the matter between ourselves. So I start off by writing you again, and referring you to the objections that plaintiff filed earlier this evening, so that we may begin these talks.

Regards,

Victoria Hall

----- Original Message -----

Subject: RE: Jacobsen v. KAM, et al. our file 9364: Attorney's fee application--URGENT

From: victoria@vkhall-law.com

Date: Thu, August 24, 2006 3:39 pm

To: ZeffLaw1@aol.com

I picked up your message from my voice mail. I will contact you as I prepare plaintiff's objections.

----- Original Message -----

Subject: Re: Jacobsen v. KAM, et al. our file 9364: Attorney's fee application--URGENT

From: ZeffLaw1@aol.com

Date: Thu, August 24, 2006 1:34 pm

To: victoria@vkhall-law.com

Cc: scott@fieldlawfirm.com, raggmop1@pacbell.net

Dear Ms. Hall:

I called today at 12:30 my time and got your voicemail. I left a message. Please call me to meet and confer before you file any objections.

Thank you. David M. Zeff

In a message dated 8/24/2006 1:20:45 P.M. Pacific Standard Time, victoria@vkhall-law.com writes:

Dear Mr. Zeff,

Thank you for pointing out LR 54-6 vs LR 54-1. We still do believe that we are entitled to see more detailed information and are puzzled by what appears to be your insistence that we must agree by today to your total, without having seen that more detailed information. As you may remember, the Court gave Plaintiff until Sept. 8 to lodge any objections to your declaration, and we will object on that basis.

By the way, I was in the office yesterday, and waited for your call, but you never called. I am working away from my Maryland office today and tomorrow.

I will be in touch with you over the next two weeks via email re our objections, prior to filing them on Sept. 8.

Regards,

Victoria Hall

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