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December 7, 2005

Small Claims Court
Superior Court-Palo Alto Courthouse
270 Grant Avenue
Palo Alto, California 94306

Re: *Kirsch v. Bush Ross P.A.*
Case No. 205SC002909

Dear Commissioner Madden:

This is a special appearance by the defendant, Buss Ross P.A., to challenge personal jurisdiction, venue and court location, and to quash subpoena duces tecum. Our challenge is made pursuant to California Code of Civil Procedure Section 116.370 and upon constitutional due process grounds. We ask that the case be dismissed for all the reasons set forth below. In addition, the subpoena duces tecum issued to the United States Securities and Exchange Commission should be quashed.

In short, we are a law firm based in Tampa, Florida. We have never maintained an office in California and do not practice law in California. There is no basis for jurisdiction over the firm in California courts.

More specifically, Kirsch has already sued one of our name partners, Jeremy P. Ross, in federal court in California. That case was dismissed for lack of personal jurisdiction on October 20, 2005. Kirsch filed the small claims case two weeks later. A copy of the court's order dismissing the federal court action is attached as Exhibit 1. A copy of the supporting declaration of Jeremy Ross is attached as Exhibit 2.

The basis for Kirsch's complaint in federal court was the same as the alleged basis for the small claims case; to wit the alleged sending of "junk faxes." The only difference is that here he names the law firm and not Ross as a defendant. The pending case in small claims court is just as devoid of merit as was the case in federal court. Since that case was dismissed for lack of jurisdiction, the small claims case should be similarly dismissed.

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Constitutional due process requires an adequate basis for jurisdiction over each defendant sought to be bound by the court's judgment or decree. (*International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316; *Shaffer v. Heitner* (1977) 433 U.S. 186, 207.) Typically, this is done by showing that a defendant has "certain minimum contacts with (the forum state) such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." (*International Shoe, supra*, 326 U.S. at 316.) The purpose of the minimum contacts requirement is to (1) protect the defendant against the burdens of litigating at a distant or inconvenient forum, and (2) ensure that states do not reach out beyond the limits of their sovereignty imposed by their status in a federal system. (*World-wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 292.) This precept was convincing to the federal court and should apply equally to the California Superior Court.

Kirsch now seeks to avoid the effect of the federal court's order by pursuing us in small claims court. But we have not been served with process and Kirsch's sworn declaration for an order to serve the California Secretary of State is false in several respects.

First, his declaration states that Bush Ross sent him an unsolicited fax. This is false.

Second, his declaration states that special jurisdiction applies because Bush Ross is an "intentional tortfeasor." This statement is false and also contradicted by the enclosed federal court order and Ross declaration.

Third, Kirsch states that bank records show that our firm paid nearly \$500,000 to have the fax sent. This statement is false.

Fourth, his declaration states that Bush Ross was a "key conspirator in the pump and dump securities fraud." This statement is false.

This court's order authorizing service is, therefore, based on a false declaration. Bush Ross does not conduct any business in the State of California. Considering the federal court pleadings, Kirsch's statements are, at best, fictional contrivances put forth to harass an out-of-state entity and, at worst, outright lies to the court. We believe Kirsch should be sanctioned, investigated and/or held in contempt of court.

Based on the federal court order, and the supporting declaration of Jeremy Ross, our firm does not qualify as a user, sender or facsimile broadcaster under the Telephone Consumer Protection Act. Without such an identification, which Kirsch does not even attempt, there can be no violation of the statute and its implementing regulations. Yet he declares the allegations to be true and correct under penalty of perjury.

Regarding the subpoena to the United States Securities and Exchange Commission, it is defective because it is missing pages 2 and 3. It should be quashed for this and many other reasons which cannot be described here because we haven't seen the full subpoena. (Kirsch has

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previously attempted to subpoena our trust account records from a Florida bank, in Case No. 2-04SC-001384. This Court quashed the subpoena on November 16, 2004.)

We also note that the answer to question number 9 of Kirsch's claim is checked "No." Yet enclosed is a recent news article stating that "Since November of last year, Kirsch has filed 44 small claims...San Jose based Propel [Kirsch's company] has filed 26 more. And Propel employee Jimmy Sutton has 62 more claims..." We recognize this news piece is not under oath and may not have emanated from Kirsch but nonetheless it bears investigation, since Kirsch may be responsible for bringing well over 100 claims.

We further note that Code of Civil Procedure Section 116.230(d) states that the number of claims filed by a party during the previous 12 months shall be determined by a declaration stating the number of claims so filed and submitted to the clerk with the current claim. We cannot determine from having reviewed the court file in this case whether Kirsch has submitted such a declaration. Finally, under Code of Civil Procedure Section 116.231(a), no person may file more than two small claims actions in any calendar year in which the amount demanded exceeds \$2,500.

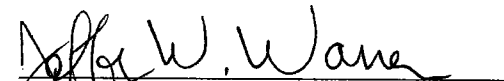
To date, our firm has not received any formal service of process. We became aware of this litigation from Kirsch's e-mail message sent to me on December 2, 2005.

Please let us know if this case will be dismissed or rescheduled to accommodate our motion. If a hearing is necessary, we request that our attorney in California, Jeffrey A. Snyder of Thoits, Love, Hershberger & McLean, be allowed to appear in our behalf to argue the motion for dismissal.

Thank you for your courtesy and attention to this matter.

Very truly yours,

BUSH ROSS P.A.



Jeffrey W. Warren
Its President

cc: Steven T. Kirsch
Jeffrey A. Snyder, Esq.
Alise M. Johnson, Esq.