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ENDORSED

2003 JUL -8 AM 9: 23

KIRK TORRE, CEO
SUPERIOR COURT OF CA.
CO. OF SANTA CLARA
BY _____ DEPUTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SANTA CLARA

11 STEVE KIRSCH on behalf of himself and
12 all others similarly situated, and on behalf
of the general public,

13 Plaintiff,

14 v.

15 FAX.COM, INC.; KEVIN KATZ;
16 WILKINS TETHERED
17 COMMUNICATIONS, INC. d.b.a.
18 FLATHEAD SOLUTIONS, and FINE
TELECOMMUNICATIONS, INC., and all
others similarly situated; and DOES 1
through 10,000,

19 Defendants.

Case No. CV 810516

~~PROPOSED~~ TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE RE PRELIMINARY
INJUNCTION

1 To defendants Fax.com, Inc. ("Fax.com") and Kevin Katz (collectively
2 "Defendants"):

3 Based on Plaintiff Steve Kirsch's *Ex Parte* Application For Temporary Restraining
4 Order and supporting documents,

5 YOU AND EACH OF YOU ARE HEREBY ORDERED TO SHOW CAUSE at
6 10:00 a.m. on July 22, 2003, or as soon thereafter as counsel may be heard in Department 17C of
7 the above-entitled Court, located at 161 N. First Street, San Jose, California, why you, your
8 agents, servants, assigns, and all those acting in concert with you, should not be restrained and
9 enjoined pending trial of this action from destroying or disposing of documents as more
10 particularly set forth herein.

11 This Temporary Restraining Order and Order to Show Cause shall be served on
12 Defendants by facsimile no later than July 8, 2003 and by Federal Express for delivery no later
13 than July 9, 2003. Proof of such service shall be filed and delivered in the manner provided by
14 Code of Civil Procedure section 527.

15 The following briefing schedule shall apply: any opposition papers to the Order to
16 Show Cause shall be filed and served on Plaintiff no later than July 15, 2003. Any reply papers to
17 such opposition shall be filed and served on Defendants no later than July 18, 2003.

18 PENDING HEARING on the Order to Show Cause, it is hereby ORDERED as
19 follows:

20 1. **Preservation.** Defendants Fax.com, Inc. ("Fax.com") and Kevin Katz
21 (collectively "Defendants"), as well as their respective officers, agents, servants, employees,
22 attorneys, all persons in active concert or participation with them who receive actual notice of this
23 order by personal service or otherwise, and all persons otherwise acting on Defendants' behalf,
24 are restrained and enjoined from altering, interlining, over-writing, deleting, destroying,
25 permitting the destruction of, or in any other fashion changing any "document" in the actual or
26 constructive care, custody, or control of such person, wherever such document is physically
27 located, or irrevocably changing the form or sequence of the files in which the document is
28

1 located, or disposing of any computers or computer equipment in which such documents are
2 located. Such persons are also enjoined from changing the location of any such documents
3 except to facilitate compilation, review, or production (as by filing in a document depository).

4 2. **Scope.**

5 (a) The term "document" shall mean (but is not limited to) any and all
6 electronic media, computer files, e-mails, correspondence, memoranda, spreadsheets, databases,
7 calendars, Internet usage files, network access information, retrievable data (whether carded, tape
8 coded, electrostatically or electromagnetically recorded, or otherwise), any other data
9 compilations from which information can be obtained or translated – if necessary – by the
10 respondent into reasonably usable form, all written or printed matter of any kind, bills, billing
11 records, books, booklets, brochures, bulletins, pamphlets, circulars, notices, periodicals, papers,
12 contracts, agreements, photographs, minutes, memoranda, manuals, messages, appraisals,
13 analyses, reports, financial calculations and representations, invoices, affidavits, accounting
14 entries, inventory sheets, diaries, appointment books, calendars, teletypes, facsimiles, ledgers,
15 trial balances, correspondence, telegrams, press releases, advertisements, notes, scratch pads,
16 working papers, drawings, schedules, tabulations, charts, projections, plans or models, other
17 formal and informal writings or tangible preservations of information, graphic or manual records
18 or representations of any kind, including but not limited to the following: film, photographs,
19 microfiche, microfilm, videotapes, recordings, and motion pictures.

20 (b) This order pertains only to documents written or generated after
21 January 1, 1998 containing information that may be relevant to, or may lead to the discovery of
22 information relevant to, facsimile advertisements, the design of facsimile advertisements, the
23 transmittal of facsimile advertisements, the number of facsimile advertisements transmitted, the
24 telephone facsimile numbers to which those facsimile advertisements were transmitted, the date
25 and time on which each telephone facsimile advertisement was transmitted, the advertiser or
26 client on whose behalf each facsimile advertisement was transmitted, the prior express consent of
27 each recipient of a transmitted facsimile advertisement, the date and time and means by which
28 that prior express consent was given/obtained by each recipient of a transmitted facsimile

1 advertisement, the identities of each person employed or contracted by Defendants to transmit
2 facsimile advertisements, agreements or understandings between Defendants and their
3 advertisers/clients relating to the telephone facsimile advertisements, agreements or
4 understandings between Defendants and their employees, agents, or independent contractors
5 relating to the transmission of telephone facsimile advertisements, accounting records, records of
6 revenues and/or compensation received by Defendants, the source of revenues and/or
7 compensation received by Defendants, the transfer of any of Defendants' assets to offshore
8 accounts, or the identities and/or locations of the persons, entities, or accounts to which
9 Defendants have transferred any assets.

10 (c) Counsel are directed to confer to resolve questions as to what
11 documents are outside the scope of this order or otherwise need not be preserved and as to an
12 earlier date for permissible destruction of particular categories of documents. If counsel are
13 unable to agree, any party may apply to the court for clarification or relief from this order upon
14 reasonable notice. A party failing, within 60 days after receiving written notice from another
15 party that specified documents will be destroyed, lost, or otherwise altered pursuant to routine
16 policies and programs, to indicate in writing its objection shall be deemed to have agreed to such
17 destruction.

18 3. **Implementation.** After receiving this order, Fax.com shall designate an
19 individual who shall be responsible for ensuring that the party carries out the requirements of this
20 order as to Fax.com.

21
22 Dated: July 8, 2003

Jack Komar

Hon. Jack Komar