

1 Steven T. Kirsch  
13930 La Paloma Rd  
2 Los Altos Hills, CA 94022  
Phone (650) 941-0248  
3 Fax (408) 716-2493

4 Appearing In Pro Per  
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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 IN AND FOR THE COUNTY OF SANTA CLARA  
8 (Small Claims – Palo Alto Court)

9 STEVEN T. KIRSCH, an individual,

10 Plaintiff,

11 v.

12 Kevin Katz, an individual, Eric M Wilson, an  
13 individual, et al.

14 Defendants.  
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Case Nos.: 2-04-SC-000992 to 1002,  
1005, 1040, and 1041

**DECLARATION OF STEVEN T.  
KIRSCH**

Date: June 21, 2004

Time: 1:00 p.m.

Dept: 86

18 I, Steven T. Kirsch, declare as follows:

19 1. I am the Plaintiff in the above matter.

20 2. I am one of the world's leading experts on junk faxes and on fax.com in particular. I  
21 created and maintain junkfax.org which is the most comprehensive information source on junk  
22 faxes on the Internet. I have been cited in over 50 articles written about junk faxes. I have filed  
23 the largest class action in history, \$2.2 trillion in damages, against fax.com. My website contains  
24 more information about fax.com than any other site on the Internet. My information was  
25 collected from a variety of sources over more than 2 years including current and past employees  
26 of fax.com. I have filed dozens of lawsuits against companies and people who send me junk  
27 faxes, both in Superior Court and small claims court. I have never lost a case.  
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1       3. Eric Matthew Wilson (hereafter “Wilson”) is actively involved in the process of sending  
2 unsolicited faxes for fax.com (hereafter “fax.com”) where fax.com refers to the various entities  
3 cited by the FCC and their successor companies. I know this because (a) Mr. Wilson served me  
4 with a lawsuit he filed on July 7, 2004 against me in which he admitted that he is an employee of  
5 fax.com and that fax.com “transmits messages via fax on behalf of its customers,” and because  
6 (b) I use a process server that serves Wilson on a regular basis with lawsuits and that process  
7 server regularly reports to me that Wilson is still working at an office associated with fax.com.

8       4. Wilson is an officer of fax.com. I know this because (a) he admitted it in his deposition  
9 (March 5, 2002), and (b) he was cited in the FCC Order of Forfeiture (January 5, 2004) as being  
10 an officer. Wilson also has personal direct knowlege that fax.com sends unsolicited faxes. I  
11 know this because the FCC has cited him for doing this and because at least one former fax.com  
12 employee has told me this.

13       5. Wilson was found personally liable of sending unsolicted faxes by the FCC in its Order of  
14 Forfeiture (January 5, 2004).

15       6. Wilson was found personally liable of sending unsolicted faxes in the Covington and  
16 Burling case where Covington & Burling was awarded \$2.288M against fax.com on April 16,  
17 2003. This case took almost 2 years to litigate and fax.com tried every possible defense. fax.com  
18 lost the case and chose not to appeal.

19       7. Wilson has a long history of providing false information in the normal course of business.  
20 For example, he has provided false and misleading information on the domain registration  
21 records for fax.com associated sites. He has also lied to the process server I use, claiming he was  
22 not Eric Wilson. He lied to me outside the courtroom saying “we don’t send faxes anymore.” I  
23 know is false because: (a) I know many people who continue to get faxes from fax.com and (b) I  
24 monitor several “spam trap” locations with phone numbers that have only been discovered by  
25 fax.com and which continue to receive faxes from fax.com.

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1 8. Wilson has provided false testimony under oath. On June 18, 2004, in Besa v. Wilson  
2 (Santa Rosa, CA small claims), Wilson testified to the judge pro tem that he was “only a  
3 shareholder” of fax.com. That was a lie.

4 9. Fax.com is generally considered to be the most notorious junk faxer in the world. They  
5 have been cited more times by the FCC than any other firm including a citation for junk faxing  
6 the FCC itself! They typically send millions of junk faxes a day. I know this because someone  
7 who works there admitted this to me and it is consistent with the revenue numbers that Tom  
8 Roth, fax.com’s CFO, provided under oath in his deposition that the SEC took on January 31,  
9 2003.

10 10. Fax.com is has been not cooperative with the legal process. For example, here’s what the  
11 FCC wrote about fax.com’s responses to the FCC’s investigation:

12 Moreover, the Commission found that Fax.com appears to have engaged in a **pattern of**  
13 **deception to conceal its involvement** in sending the prohibited faxes, and that the  
14 company **has not been forthcoming in its dealings with the agency.**

15 In view of the “**pervasive and egregious pattern of deception**” underlying the apparent  
16 violations and the **gravity of Fax.com's conduct**, the Commission concluded that  
17 Fax.com is apparently liable for the **maximum fine** of \$11,000 for each of the 489 fax  
18 violations, for a total proposed fine of \$5,379,000.

19 11. I know of no other individuals involved in fax broadcasting than the officers of fax.com  
20 where the awarding of treble damages is more warranted.

21 12. Minimal \$500 remedies per fax that have been awarded in TCPA cases by courts in the  
22 past have proven to be ineffective in dissuading fax.com from violating the TCPA. With minimal  
23 fines, the cost of litigation for fax.com is simply written off as a “cost of doing business.” The  
24 small rewards for Plaintiffs also provided little incentive to file a suit and the lack of knowlege of  
25 who to sue and how to sue has also been a factor. As a result, the number of junk faxes has  
26 skyrocketed in recent years because there is no enforcement mechanism.

27 13. That has changed recently as information on how to identify fax.com faxes and how to file  
28 lawsuits has become more readily available on Internet sites such as junkfax.org. In addition,

1 both Plaintiffs and judges have become more sophisticated and are no longer afraid to award  
2 \$2,500 judgments for a single fax.

3 14. Because of the years of research made available to people on junkfax.org, Wilson has  
4 been the subject of a number of small claims suits. In each and every one of those cases that has  
5 gone to trial (except one), the Plaintiffs were awarded \$2,500 for each fax because each fax  
6 contained two TCPA violations and because treble damages were awarded (technically, it would  
7 be \$3,000, but there is a \$2,500 small claims limit).


8 15. All fax.com faxes omit identification of the fax broadcaster as required by 47 C.F.R. §  
9 68.318(d). Therefore, courts normally assess 2 violations per fax: one violation for sending an  
10 unsolicited fax and a second violation because the fax failed to identify the name of the fax  
11 broadcaster as required by the CFR. The TCPA (specifically, 47 U.S.C. § 227(b)(3)) requires the  
12 court to award a minimum of \$500 per violation; and since there are two violations, it is \$1,000  
13 for these faxes. Courts have no discretion in this regard. Under federal law, the court cannot  
14 award less than this amount, however, federal law allows courts the discretion to treble this  
15 amount. In the case of fax.com, most courts have awarded treble damages because since 2000,  
16 the FCC has notified fax.com numerous times they are in violation, yet fax.com continues to  
17 knowingly violate the law because it is profitable for them to do so.

18 16. A fax from fax.com may be identified by looking at the header and the removal number.  
19 All faxes sent by fax.com have a certain unique style in the header, and a removal number with a  
20 recording identical to the recording at 800-658-8133. If an unsolicited fax has both  
21 characteristics, it is virtually certain that the fax was sent by fax.com. I have examined hundreds  
22 of faxes and while I have seen a few unscrupulous junk faxes which try to mimic either the  
23 fax.com header or the fax.com removal number, I have never seen a fax that successfully forges  
24 both the header and the removal number. Therefore, while from a theoretical point of view such  
25 forgery is possible, from a practical point of view it does not happen. The reasons for this are  
26 detailed on my website. Therefore, a fax with a qualifying header and removal number is more  
27 than 99% certain to have been originally transmitted by fax.com.

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 25th day of July, 2004, at Los Altos Hills, CA.



Steven T. Kirsch, Declarant

**STEVEN T. KIRSCH**  
13930 La Paloma Rd., Los Altos Hills, CA 94022  
PHONE (650) 941-0248 FAX (408) 716-2493