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**PIERCE & SHEARER LLP**

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# CONFIDENTIAL FAX

<b>To: Steve Kirsch</b>	<b>From: Andrew Pierce</b>
<b>Fax No: 408-716-2493</b>	<b>Date: December 3, 2004</b>
<b>Phone No:</b>	<b>12, pages, including this cover</b>
<b>Re:</b>	

2465 E. Bayshore Road, Suite 403  
Palo Alto, CA 94303  
Phone (650) 843-1900  
Fax (650) 843-1999

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12/01/2004 13:28 650-843-1999

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8 Attorneys for Plaintiff  
9 STEVEN T. KIRSCH

**ORIGINAL FILED**  
**DEC 01 2004**  
**LOS ANGELES**  
**SUPERIOR COURT**

**BY FAX**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

10 STEVEN T. KIRSCH,

11 Plaintiffs,

12 vs.

13 ERIC WILSON, DEENA LUMIA, and Does 1  
14 to 50

15 Defendants.

Case No.: GC034577

**COMPLAINT (1) TO SET ASIDE OR  
ANNUL FRAUDULENT TRANSFER  
AND (2) TO ENJOIN DISBURSEMENT  
OF MONIES FROM THE PROCEEDS OF  
A SALE**

PIERCE & SHEARER LLP  
2465 E. Bayshore Road, Suite 403, Palo Alto, CA 94303  
Phone (650) 843-1900 Fax (650) 843-1999

17 Plaintiff alleges as follows:

18 1. Plaintiff Steven T. Kirsch is, and at all times relevant was, a citizen of California  
19 residing in Los Altos Hills, California.

20 2. Defendants Eric Wilson and Deena Lumia are citizens of California and have been  
21 residing in Sierra Madre, California.

22 3. The true names and capacities, whether individual, corporate, associate, or otherwise  
23 of Defendants DOES 1-50, inclusive, being unknown, Plaintiff sues these Defendants under  
24 Fictitious names pursuant to Code of Civil Procedure Section 474. Plaintiff is informed and  
25 believes and thereon alleges that each of these fictitiously named Defendants is responsible in  
26  
27  
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-1-

COMPLAINT (1) TO SET ASIDE OR ANNUL FRAUDULENT TRANSFER AND (2) TO ENJOIN DISBURSEMENT OF MONIES FROM THE  
PROCEEDS OF A SALE

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5 Attorneys for Plaintiff  
 STEVEN T. KIRSCH

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 COUNTY OF LOS ANGELES

10 STEVEN T. KIRSCH,

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 26  
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1 some manner for the occurrences alleged in this complaint and that Plaintiff's injuries were  
2 proximately caused by the conduct of these Defendants.

### 3 4 GENERAL ALLEGATIONS

5 4. Plaintiff Steven T. Kirsch is the creditor of defendant Eric Wilson pursuant to a  
6 judgment ("Judgment") entered on October 25, 2004 in Orange County Superior Court in the  
7 case of Eric Wilson v. Steven T. Kirsch, et al., case number 04CC07429 by which Steven T.  
8 Kirsch and others are entitled to have and take judgment against Eric Wilson in the sum of  
9 \$13,059.30. A true and correct copy of the Judgment is attached hereto and incorporated herein  
10 by this reference as Exhibit 1.

11  
12 5. Defendant Eric Wilson was the founder and chief technology officer of Fax.com, Inc.  
13 and owned 33% of the shares thereof. As such, Mr. Wilson was named as a defendant in  
14 numerous lawsuits brought for violations the federal Telephone Consumer Protection Act, 47  
15 U.S.C. § 227 et seq. ("TCPA") resulting from the transmission by facsimile of millions of  
16 unsolicited commercial advertisements to unconsenting recipients. Knowing that massive  
17 judgments would be entered against him, defendant Eric Wilson has taken steps to transfer both  
18 his own personal assets and the community assets of his marriage with the actual intent to hinder  
19 or delay the satisfaction of such judgments in violation of California Civil Code § 3439.04(a).

20  
21 6. On information and belief, defendant Eric Wilson and his former wife, defendant  
22 Deena Lumia, entered into a joint enterprise to hinder or delay the satisfaction of such judgments,  
23 including the Judgment obtained by plaintiff Steven T. Kirsch, in violation of California Civil  
24 Code § 3439.04(a). The joint enterprise included a sham divorce in Los Angeles County Superior  
25 Court, in the case styled Deena Lumia v. Eric Wilson, case number GD034000. The divorce  
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1 petition was filed less than two weeks after the law firm of Covington & Burling obtained a  
2 judgment against Eric Wilson for approximately \$800,000.00. Pursuant a settlement, petitioner  
3 wife received the reachable assets including the community residence located at 678 Alta Vista  
4 Drive, Sierra Madre, California, located in Los Angeles County, among other assets, and  
5 respondent Eric Wilson received, assets against which collection would be difficult including  
6 among other things, his interest in Fax.com, Inc., which has since transferred its assets. This  
7 transfer was made with actual intent to hinder, delay, and defraud creditors. Defendant Eric  
8 Wilson did not receive a reasonably equivalent value in the transfer. Defendant Wilson has  
9 incurred and knew he would continue to incur debts and judgments in excess of his ability to pay.

12 7. In that sham divorce proceeding, which was facilitated by attorneys expert in the field  
13 of asset protect, Mr. Wilson was ordered to assume and hold petitioner Deena Lumia harmless  
14 from any and all obligations of any kind arising out of the conduct of Mr. Wilson in Fax.com's  
15 business.

17 8. On information and belief, Mr. Wilson and Ms. Lumia continue to live together as  
18 husband and wife and continue to raise the child that was born to the marriage; Ms. Lumia has,  
19 since the time of the "divorce," conceived another of Mr. Wilson's children.

20 9. Ms. Lumia has, since the time of the "divorce," sold her purported sole and separate  
21 property interest in the 678 Alta Vista Drive, Sierra Madre property, purchased with the proceeds  
22 thereof a second residence located at 415 North Canon Avenue, Sierra Madre, California, and  
23 now seeks to sell that property, all in an effort to further the scheme that she and Mr. Wilson  
24 entered into to hide and shield their assets from the reach of creditors who have obtained  
25 judgments against Mr. Wilson.

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**FIRST CLAIM**

**AGAINST ERIC WILSON, DEENA LUMIA AND DOES 1 TO 50**

**TO SET ASIDE OR ANNUL FRAUDULENT TRANSFERS**

10. Plaintiff here alleges what is set forth in paragraphs 1-9 above as though fully set forth here.

11. In violation of California Civil Code § 3439.04(a), defendants Eric Wilson and Deena Lumia, and Does 1 to 25 each of them, have hindered and delayed plaintiff Steven T. Kirsch in his efforts to satisfy the Judgment.

12. Wherefore, pursuant to California Civil Code § 3439.07, plaintiff Steven T. Kirsch seeks for three forms of relief: (a) an order requiring the return of the transferred assets and their proceeds, including the property located at 415 North Canon Avenue, Sierra Madre, to his own name or the proceeds of the transfer or sale thereof into accounts in his own name, with identification of the institutions and account numbers; (b) an injunction against the further transfer of assets by Mr. Wilson or Ms. Lumia until such time as plaintiff Steven T. Kirsch's Judgment is satisfied; and (c) appointment of a receiver to take charge of the affairs of Mr. Wilson and Ms. Lumia until the Judgment is satisfied.

**SECOND CLAIM**

**ERIC WILSON, DEENA LUMIA AND DOES 1 TO 50**

**TO ENJOIN DISBURSEMENT OF MONIES FROM THE PROCEEDS OF SALE**

13. Plaintiff here alleges what is set forth in paragraphs 1-9 above as though fully set forth here.

14. Defendants are or will shortly be in possession of monies the constitute the proceeds

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1 of the sale of the property located at 415 North Canon Avenue, Sierra Madre, California, which,  
2 on information and belief, is presently in escrow for sale by Ms. Lumia.

3  
4 15. If the sale of the property at 415 North Canon Avenue, Sierra Madre, California is  
5 consummated and the proceeds of that sale are allowed to be disbursed to Ms. Lumia without an  
6 adjudication of the issue of setting aside or annulling the above-alleged fraudulent transfer, the  
7 defendants Mr. Wilson and Ms. Lumia will have succeeded in their effort to shield their  
8 community property from the Judgment. Plaintiff therefore stands to suffer irreparable injury if  
9 defendants are not enjoined from disbursing the monies from the proceeds of the sale of the 415  
10 North Canon Avenue, Sierra Madre, California property until the issue of setting aside or  
11 annulling the above-alleged fraudulent transfer is resolved.  
12

13 Wherefore, plaintiff prays:

- 14 1. That an order issue requiring the return of the above transferred assets to Mr. Wilson's  
15 own name or the proceeds of the transfer or sale thereof be transferred into accounts in Mr.  
16 Wilson's own name, with identification of the institutions and account numbers;  
17  
18 2. That an injunction issue against the further transfer of assets by Mr. Wilson or Ms.  
19 Lumia until such time as plaintiff Steven T. Kirsch's Judgment is satisfied;  
20  
21 3. That appointment of a receiver to take charge of the affairs of Mr. Wilson and Ms.  
22 Lumia until the Judgment is satisfied;  
23  
24 4. That a temporary restraining order, a preliminary injunction and a permanent  
25 injunction issue enjoining defendants from disbursing monies from the proceeds of the sale of the  
26 415 North Canon Avenue, Sierra Madre, California property until the issue of setting aside or  
27 annulling the above-alleged fraudulent transfer is resolved.  
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5. Reasonable attorneys fees and costs.

6. Interest as permitted by law.

DATED: December 1, 2004

PIERCE & SHEARER, LLP

By: Andrew F. Pierce  
ANDREW F. PIERCE  
Attorneys for Plaintiff, Steven T. Kirsch

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DEC 02 2004

Recording Requested by  
Andrew F. Pierce

When recorded, mail to  
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LOS ANGELES COUNTY REGISTRAR - RECORDER

NOTICE OF PENDING ACTION  
(LIS PENDENS)

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Attorneys for Plaintiff STEVEN T. KIRSCH

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

STEVEN T. KIRSCH,  
  
Plaintiff,  
  
v.  
  
ERIC WILSON, DEENA LUMIA, and Does 1  
to 50, inclusive  
  
Defendants.

Case No.: GC 034577

**NOTICE OF PENDING ACTION (LIS  
PENDENS)**

PIERCE & SHEARER LLP  
2465 E. Bayshore Road, Suite 403, Palo Alto, CA 94303  
PHONE (650) 843-1900 • FAX (650) 843-1999

**PLEASE TAKE NOTICE THAT** the above-captioned action was filed by the Plaintiff,  
STEVEN T. KIRSCH, individually against the Defendants, ERIC WILSON and DEENA  
LUMIA, and unknown defendants identified therein as DOES 1-50, inclusive. The action filed  
by the Plaintiff in the above-named court may affect title to and/or possession of real property in  
that the Plaintiff seek to set aside or annul fraudulent transfer and enjoin disbursement of monies  
from the proceeds of a sale if certain real property.

The real property which is the subject of the Plaintiff's complaint is located in Los  
Angeles County known as 415 North Canon Avenue, Sierra Madre, CA, Assessor's Parcel No.  
5763-025-008.

The names of the parties who may have an interest in the real property are:

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- DEENA LUMIA, individually, and
- ERIC WILSON individually

Dated: December 1, 2004

PIERCE & SHEARER LLP

By: Andrew F. Pierce  
Andrew F. Pierce

PIERCE & SHEARER LLP  
2465 E. Bayshore Road, Suite 403, Palo Alto, CA, 94303  
PHONE (650) 843-1900 • FAX (650) 843-1999

**PROOF OF SERVICE**

I, Linda Dahl declare:

I am employed in the County of Santa Clara, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. My business address is 2465 E. Bayshore Road, Suite 403, Palo Alto, California 94303.

On the date set forth below I served a true and correct copy of:

- **NOTICE OF PENDING ACTION (LIS PENDENS)**

(X) (BY Certified MAIL) -by placing such copy in a sealed envelope postage thereon fully United States Postal Service for collection and mailing this day in accordance with ordinary business practices at PIERCE & SHEARER LLP.

I caused to be served the above document(s) on the following person:

Deena Lumia & Eric Wilson  
415 North Canon Avenue  
Sierra Madre, CA 91024

Eric Wilson  
1770 W. State St. #164  
Boise, ID 83702

Eric Wilson  
3293 S. Capulet Way  
Meridian, ID 83642

Deena C. Wilson  
1573 Coolidge Ave.  
Pasadena, CA 91104-2010

Eric Wilson  
Tech Access Systems  
280 W. Sierra Madre Blvd.  
Sierra Madre, CA 91024

Eric Wilson  
Tech Access Systems  
521 1/2 South Myrtle Avenue, Suite 1  
Monrovia, CA 91016

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on December 1, 2004.

  
Linda Dahl

**PIERCE & SHEARER LLP**  
2465 E. Bayshore Road, Suite 403, Palo Alto, CA 94303  
PHONE (650) 843-1900 • FAX (650) 843-1999