

Cause of action

This is a complaint for civil penalties for knowing and willful violations of the TCPA (action authorized by 47 U.S.C. § 227(b)(3)). See Appendix for a copy of the statute.

Specifically, I claim that Defendant sent me an unsolicited advertisement by fax on July 15, 2004 to my home fax machine without my consent. The fax was entitled Wall Street Stock\$ and promoted TWTN (Twister Networks) and is included in Tab [1] of the evidence binder.

Prayer for Relief

I am seeking \$5,000 plus \$82 costs which includes filing (\$22) and service (\$60 for sheriff to serve the secretary of state).

There were 6 violations on this fax: the fax itself, and no date, no time, no sender name, no sender phone number, no identification of the fax broadcaster. Since there is a \$500 remedy per violation, the minimum statutory remedy for this fax is \$3,000.

Treble remedy is warranted because Bush Ross knowingly and willfully transferred at least \$355,000 in at least 6 different payments that caused these faxes to be sent. This was done in furtherance in the commission of a crime of securities fraud which netted the perpetrators at over \$25 million in illegal profits in just a few months time. Many people lost their live savings. Thousands were defrauded.

Trebling increases the amount to \$9,000 for this fax, but I have voluntarily chosen to limit my claim to \$5,000 for the purposes of availing myself to jurisdiction of the small claims court.

Legal basis for liability of the Defendant

There are at least 3 possible ways the Defendant can be legally liable for sending these faxes. If the court finds that *any* of these is more likely than not, then the Defendant is liable, i.e., I only need one argument to win.

Liability Argument #1: Bush Ross PA is the sender

The evidence [3] unambiguously shows that my fax (sent by fax.com) was paid for by Camelot Promotions LLC [3] who in turn was paid by Bush Ross PA in at least 6 different wire transfers [4]. However, the person at Bush Ross PA who would logically have approved that wire, Jere Ross, denies under oath knowing anything about the payments [12]. Therefore, the “buck” must stop at Bush Ross PA and the court should render a determination as to whether it believe the bank records (the authenticity of which have not been challenged) or whether it believes Ross’s declaration.

I claim that the preponderance of evidence is that the Defendant, through payment to Camelot Promotions [4], enabled those faxes to be sent, and therefore must be considered to be a sender, and thus liable for violations under the TCPA. Based on the evidence

before the court (the money trail “ending” at Bush Ross), there can be no other conclusion.

Liability Argument #2: Bush Ross PA is an agent of the sender

I believe that Jere Ross is lying and that he, in fact, authorized the payments to Camelot Promotions for benefit of his clients, Bryan Kos, Don Oehmke, and Jeremy Jaynes. I believe that Ross knew the purpose of those transfers since that information is required by Florida Bar rules. Therefore, both Jere Ross and his clients are thus liable as senders of the faxes since all knew the purpose of all the payments [8] and those payments were required in order to cause the faxes to be sent.

But since Ross was acting in the scope of his employment with Bush Ross (e.g., Kos and others were clients, phone and email communications were to Ross at his work, Ross provided Kos and Oehmke legal advice consistent with his position at the company, and the firm’s trust account was utilized for the payments), then Bush Ross PA, the Defendant, is liable under the principle of respondeat superior.

Defendant cannot claim it is merely acting like a bank because, unlike a bank, Defendant is legally required to know the purpose of each wire transfer [13].

Liability Argument #3: Bush Ross PA is a co-conspirator in securities fraud

In both civil and criminal conspiracy, each member may be held responsible as a joint tortfeasor for torts committed in furtherance of the conspiracy regardless of whether or not he directly participated in the act (see legal reference section below). In this case, the sending of junk faxes is a tort that was committed by the conspiracy in order to promote the penny stocks they were hyping. Therefore, if we can show that Defendant was a co-conspirator in the securities fraud, it follows that Defendant is liable for sending the junk fax to me.

The evidence indicates that Jere Ross, a prominent securities lawyer, was retained by Bryan Kos (and Don Oehmke and potentially Jeremy Jaynes) to provide legal advice and services. But Kos is engaged in illegal pump and dumps, a fact that surely could not have escaped notice of Ross who is very smart. Ross had to have known what was going on because 1) we have an email where Kos asked him to review the promos of the penny stock site Kos was building 2) about a million dollars was paid out of the Bush Ross trust account on or around July 2004 to pay vendors involved in pumping the stocks and site 3) Bush Ross received over \$5M in trading profits from strangely named offshore entities 4) Ross himself authored a press release on behalf of Concorde America disclaiming the press releases Kos sent, yet Kos knew about the press release (which he had no business knowing).

Most significantly, Ross even sent an advance copy of the press release to Paul Spreadbury, a person, who, according to Ross’s press release, was responsible for the earlier fraudulent press releases. That advance copy was also sent to Bryan Kos. He did this in the same email in which he coached Spreadbury what to say in Spreadbury’s

correction release. What possible reason could there be for such behavior? Jere Ross knew he can't share information about CNDD with others in advance of the public knowing about that. I know that for a fact because he confirmed it in two emails to me just 7 days later on August 17, 2004 entitled "CNDD: additional questions [8]." In short, Jere Ross is talking out of both sides of his mouth and giving the known "bad guys" who he at the time absolutely knew were bad guys, advance information. That's impossible if he isn't a knowing conspirator.

Put all the evidence together (large \$ transfers out to vendors, even larger \$ in from foreign entities, knowledge of Kos's business of penny stock promotion, coaching Spreadbury at the same time writing a release disavowing Spreadbury's release, providing advance material non-public info on CNDD to Kos and Spreadbury) and it's impossible to conclude that Jere Ross was just an honest lawyer doing his job. He had to have known what was going on. You can only conclude that he is "in on it" and that he probably suggested that all the money transfers go through Bush Ross so that he can use attorney client privilege to shield the records. Bush Ross actually tried this approach to protect the records with the SEC when the SEC asked to see them (see [14]).

Therefore, Jere Ross is a co-conspirator in the securities fraud and is thus liable for all torts, including the sending of the junk faxes used to promote the stocks they were hyping, and it follows, by respondeat superior, that the firm is also liable as well for the sending of the junk faxes.

Factual allegations

1. Bryan Kos, Jeremy Jaynes, and Donald Oehmke were the masterminds behind one of the largest penny stock frauds in US history (see SEC complaint [6])
2. Three companies (CNDD, AHFI, and TWTN) were hyped between June 7, 2004 and August 26, 2004. The biggest stock fraud they did was Concorde America (CNDD).
3. The CEO of Concorde is Hartley Lord. Oehmke and Lord have a history of securities fraud. Lord is barred for life from the securities business. See <http://www.junkfax.org/fax/profiles/wsp/wsp.htm> for details.
4. Kos hired Jere Ross at Bush Ross PA to provide legal advice for his business promoting penny stocks.
5. Jere Ross also represented Concorde America. So Ross represents the illegal stock scammers as well as the company being touted. How convenient! This makes sense since if an honest lawyer represented the company, they'd put a stop to what was going on.
6. All the vendors in the promotion were paid from the Bush Ross PA client trust account [4, 5].
7. Bryan Kos directed Jere Ross at Bush Ross PA to disburse the funds to the various contractors involved [8].
8. Almost \$1M was paid out to vendors promoting the stocks/website in July 2004. That is a HUGE sum of money for penny stock promotion. That sort of investment is unheard of if the companies are legally being promoted. What is the

- legal reason that Bush Ross PA participated in these payment? The only reason we know is to launder the money.
9. Over \$5M in trading profits from offshore entities controlled by Oehmke and Kos were wired into the Bush Ross PA trust account. How can they explain a legal reason for that? The only reason we know is to launder the money.
 10. Jere Ross knew he was furthering a fraud due to all the information that was sent to him in email about what Kos was doing as well as the fact Kos was his client [8].
 11. Florida Bar requires an attorney to document the purpose of each client trust account transaction [13]. Therefore, Jere Ross can't claim he didn't know what they money was being used for. He was required by law to know that.
 12. Jere Ross knew that he was facilitating Kos's objectives which even Ross admits were criminal in nature [7].
 13. Ross handled all of Kos's financial affairs [8]. Tom Heysek, for example, admitted to me that Kos told him that Ross handled all of his financial affairs which is why the payments to Heysek came from Bush Ross PA [5].
 14. Jere Ross wrote a press release for his client, Concorde America, which disclaimed the 3 prior press releases that were authored by his other client, Bryan Kos [8,9]. Yet, before Ross released that press release, he sent a copy of it to Paul Spreadbury! How can Ross explain that? The press release Ross sent out says Spreadbury has no relationship with the company. If Spreadbury has no relationship with the company, then why did Ross himself email Spreadbury an advance copy of the press release [8]? And how did Kos know about Concorde's press release in advance of it being sent [8]? **Either of these simply impossible to explain unless Jere Ross is involved in covering up a fraud.**
 15. Bush Ross PA, under the direction of Jere Ross, paid Paul Spreadbury for his activities which included the editing of faxes containing fraudulent information and the issuance of press releases containing fraudulent information [8].
 16. There is absolutely no way you can handle all of Kos's financial affairs, talk to Kos all the time on the phone, be Kos's securities lawyer and handle the securities work, transfer over \$6 million dollars in and out of the Bush Ross PA trust account in a little over a month, issue a press release disclaiming a prior release while coaching the author of the fraudulent press release at the same time (and providing him an advance copy of the press release in direct violation of the company policy that he knows since he told it to me a week later), etc. without knowing that you are participating in a fraud.
 17. Ross represented both the scammers and the company being scammed. That's a fundamental conflict of interest (unless of course everyone is "in" on the scam which I believe to be the case).

There are other factual allegations not summarized above that are included in the evidence binder.

Evidence

Please refer to the evidence binder. Each piece of evidence is annotated to explain the significance of the evidence in support of the factual allegations and legal basis for liability sections above.

Appendix: Legal Reference

Crime-fraud exception to the attorney-client privilege

Jere Ross admitted in an email to me [7] that this stuff that his clients Oehmke, Kos, and Lord were involved in was criminal. So the attorney-client privilege doesn't apply due to the crime fraud exception. You do NOT have to PROVE that a crime occurred.

According to SCOTUS, you merely have to provide "a factual basis adequate to support a good faith belief by a reasonable person." (**United States v. Zolin (1989) 491 US 554, 572, 109 S. Ct. 2619, 2631**). And we have such a factual basis because Jere Ross is a reasonable person and he admitted it in this email. The SEC are reasonable people and they believed a crime had occurred too. Although the SEC isn't allowed to bring criminal cases, securities fraud, which is the basis of their suit, is a crime.

TCPA

[47 USC 153 \(32\)](#)

The term "person" includes an individual, partnership, association, joint-stock company, trust, or corporation.

[47 U.S.C. § 227\(a\)\(2\)](#)

The term "telephone facsimile machine" means equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or

(B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

[47 U.S.C. § 227\(a\)\(4\)](#)

The term "unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

[47 U.S.C. § 227\(b\)\(1\)\(C\)](#)

It shall be unlawful for any person within the United States to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine;

[47 U.S.C. § 227\(b\)\(3\)](#)

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State -

- (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,
- (B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or
- (C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

The regulations prescribed under 47 U.S.C. § 227(b) which were referred to in 47 U.S.C. § 227(b)(3) include:

[47 C.F.R. § 68.318\(d\)](#)

Telephone facsimile machines; Identification of the sender of the message. It shall be unlawful for any person within the United States to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual. If a facsimile broadcaster demonstrates a high degree of involvement in the sender's facsimile messages, such as supplying the numbers to which a message is sent, that broadcaster's name, under which it is registered to conduct business with the State Corporation Commission (or comparable regulatory authority), must be identified on the facsimile, along with the sender's name. Telephone facsimile machines manufactured on and after December 20, 1992, must clearly mark such identifying information on each transmitted page.

[47 CFR 64.1200\(a\)\(3\)\(ii\)](#)

A facsimile broadcaster will be liable for violations of paragraph (a)(3) of this section if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.

[47 CFR 64.1200\(f\)\(4\)](#)

The term facsimile broadcaster means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.

Legal basis for the cause of action

The TCPA is a strict liability statutory tort that provides a statutory remedy for people who receive unsolicited advertisements via fax without their consent.

The law is interpreted liberally because this is a remedial statute (see next section).

It is well established tort law that there is personally liable of the individual actors in a company if they either authorized the illegal conduct or knew of the illegal conduct and were in a position to stop it but chose not to. There are many TCPA cases where the corporate shield has been pierced and individual liability has been assessed in addition to corporate liability. Judgments include the American Blast Fax case, the Covington & Burling case against Katz and Wilson, the California AG case against the fax.com principals, and the FCC Order of Forfeiture against the individuals involved in this case.

My cases were brought within the 4 year statute of limitations standard for federal statutes.

State small claims courts are the preferred forum for such disputes. This has been well established in the legislative history of the TCPA (e.g., remarks made by Senator Hollings).

Definition of terms used in the TCPA

With regards to remedial statutes (such as the TCPA):

A remedial statute "should be liberally construed and interpreted (when that is possible) **in a manner tending to discourage attempted evasions by wrongdoers.**" *Scarborough v. Atlantic Coast Line R. Co.*, 178 F.2d 253, 258 (4th Cir. 1950)

Therefore, we can establish liability to not only to the individual(s) who directed or authorized the faxes to be sent, but also to those who knowingly and meaningfully participated in the process and failed to stop the illegal transmissions.

Regarding "willful or knowingly," the statute uses "or" and not "and": it's "willfully **or** knowingly."

Willful is defined in 47 USC 312: The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, **irrespective of any intent to violate any provision of this Act.** Congress stated that this statutory definition would control "for any other relevant section of the [1934 Communications] Act." The TCPA, as an amendment to the 1934 Communications Act, is such a relevant section since it uses "willful" as the defined term of art. Furthermore, an FCC TCPA clarification letter cites the Sec. 312 definition, as well as case law.

"Knowingly" is a different animal. It would be so much easier if the term was defined (as "willful" is), but it isn't. So the definition usually falls back to "knew or should have known" -- which provides the court with a lot of latitude.

What this means is that if someone has a fax list and sent out unsolicited faxes, then they **willfully** violated the TCPA and are subject to treble damages. **Their knowledge of the TCPA is not material here. The language is not "willfull intent"; the language is just "willfull."**

See [Jemiola v. XYZ Corp](#) which held, among other things:

- The definition of the term "willfully" is merely that the defendant acted voluntarily, under its own free will, and regardless of whether the defendant knew that it was acting in violation of the statute. See, e.g., [47 U.S.C. § 312\(f\)\(1\); Smith v. Wade, 461 U.S. 30, 41 \(1983\)](#)

In [Fenerty v Cedar Mortgage Company](#) (in Los Gatos, CA), the judge wrote:

The law does not require a finding by the court that the defendant maliciously caused the unsolicited advertisement, but only that the act was willful or knowing. The defendant only has to intend to send (or cause to be sent) via fax the unsolicited advertisement.

The FCC states that it has not expressly defined "willfully or knowingly" for this statute, but in other contexts has decided the word "willful" means "the conscious and deliberate commission or omission of [an] act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act." "Willful" has been interpreted simply that "the acts or omissions are committed knowingly. It is not pertinent whether or not the [...] acts or omissions are intended to violate the law."

It is no defense to the Defendant that it hired an outside advertising business. The violation of law is imputed to the person causing and benefiting from the unsolicited advertising.

For more on willful and knowing, see *Biggerstaff v. Computer Products*, 1999 TCPA Rep. 1123 (S.C. Magis. Nov. 17, 1999).

Criminal conspiracy

In *De Vries v. Brumback* (1960) 53 C.2d 643, 2 C.R. 764, 349 P.2d 532, M and B conspired to and did rob a jewelry store of plaintiff's assignor. Then they met with defendant, who joined the conspiracy to dispose of the property. Some of the stolen property was recovered; in this action for conversion defendant was held liable for the value of the unrecovered part--\$21,947.13. On appeal, he contended that, since he was not a member of the prerobbery conspiracy, his tort was a new conversion when the stolen goods were delivered to him, and, since all that he had was recovered from him, he could not be liable in damages. His contention, based on the rule governing criminal conspiracy (*People v. Weiss* (1958) 50 C.2d 535, 327 P.2d 527), was rejected.

The court said: "There is a clear distinction in the law of conspiracy as applied to criminal as differentiated from civil cases. . . . The gist of the crime of conspiracy is the agreement to commit the unlawful act . . . , while the gist of the tort is the damage resulting to the plaintiff from an overt act or acts done pursuant to the common design." (53 C.2d 649.) **Hence, in tort a conspirator is a joint tortfeasor liable for all damages irrespective of whether he was a direct actor. (53 C.2d 650.)**

Civil conspiracy

The only significance of the conspiracy charge is that each member may be held responsible as a joint tortfeasor, regardless of whether or not he directly participated in the act. (See *Revert v. Hesse* (1920) 184 C. 295, 301, 193 P. 943; *Burckhardt v. Woods* (1932) 124 C.A. 345, 351, 12 P.2d 482; *Bowman v. Wohlke* (1913) 166 C. 121, 124, 135 P. 37; *Kinney v. Postal Tel.-Cable Co.* (1932) 123 C.A. 70, 74, 10 P.2d 1043; *Wallace v. Kerr* (1940) 42 C.A.2d 182, 185, 108 P.2d 754; *Orloff v. Metropolitan Trust Co.* (1941) 17 C.2d 484, 488, 110 P.2d 396; *Schwartz v. Schwartz* (1938) 25 C.A.2d 303, 304, 77 P.2d 260; *California v. Day* (1946) 76 C.A.2d 536, 550, 173 P.2d 399; *Abbot Kinney Co. v. Harrah* (1948) 84 C.A.2d 728, 733, 191 P.2d 761; *Lynch v. Rheinschild* (1948) 86 C.A.2d 672, 676, 195 P.2d 448; *Biggs v. Tourtas* (1949) 92 C.A.2d 316, 322, 206 P.2d 871; *Clark v. Leshner* (1951) 106 C.A.2d 403, 409, 235 P.2d 71; *Vargas v. Giacosa* (1953) 121 C.A.2d 521, 524, 263 P.2d 840; *Greenwood v. Mooradian* (1955) 137 C.A.2d 532,

538, 290 P.2d 955; Prince v. Harting (1960) 177 C.A.2d 720, 728, 2 C.R. 545, Partnership; Wetherton v. Growers Farm Labor Assn. (1969) 275 C.A.2d 168, 175, 79 C.R. 543, citing the text; Mayes v. Sturdy Northern Sales (1979) 91 C.A.3d 69, 76, 154 C.R. 43; Younan v. Equifax (1980) 111 C.A.3d 498, 508, 511, 169 C.R. 478 [action lies against agents and employees of insurers who join insurer in conspiracy to defraud insured, even though agents and employees are not parties to insurance contract]; Wolfrich Corp. v. United Services Auto. Assn. (1983) 149 C.A.3d 1206, 1211, 197 C.R. 446 [attorneys liable for participation in tortious acts with their clients]; Sprague v. Equifax (1985) 166 C.A.3d 1012, 1044, 213 C.R. 69 [analyzing and answering criticisms of instructions]; Barney v. Aetna Cas. & Surety Co. (1986) <<* p.108>>185 C.A.3d 966, 983, 230 C.R. 215; 12 Stanf. L. Rev. 476; 8 Loyola L.A. L. Rev. 302 [Civil Conspiracy and Interference With Contractual Relations]; 16 Am.Jur.2d, Conspiracy ?49 et seq.; 26 A.L.R.2d 1031, 1035, 1227, 1284; 5 Cal. Proc., 3d, Pleading, ?869 et seq.)

The requisite concurrence in the tortious scheme with knowledge of its unlawful purpose may be inferred from the nature of the acts done, the relation of the parties, the interests of the alleged conspirators, and other circumstances. (Wyatt v. Union Mortg. Co. (1979) 24 C.3d 773, 784, 785, 157 C.R. 392, 598 P.2d 45, 3 Cal. Proc., 3d, Actions, ?402.)

Kirsch v. Bush Ross P.A.: Plaintiff's Exhibit Summary

#	Item	Significance to this case
1	Unsolicited fax	Unsolicited fax sent without my consent on July 15, 2004. This is a violation of 47 USC 227(b) (the TCPA) and is the basis for the cause of action. The fax lacks any of the identification information required by 47 CFR 68.310(d) (date, time, sender name, sender phone number, broadcaster name). That's 5 violations plus the fact that it was unsolicited is 6 violations. That's \$3,000 minimum and the statute allows the court to treble it since these faxes were sent knowingly to defraud people.
2	Demand e-mail	I sent a demand e-mail on 10/31/05 to all the Bush Ross officers. I offered to drop my contemplated action if they would simply explain the evidence I presented in my federal case against Jere Ross. I never heard back from them which isn't surprising since there is no explanation for how they can not be liable that fits the evidence. Had they responded by attempting to explain the evidence, they'd just dig themselves in deeper.
3	Fax.com's records	I sent a subpoena to fax.com with a fax that was virtually identical to the fax in question and asked them to identify the client on whose behalf the faxes were sent. The response was Camelot Promotions LLC. Also included were dates faxes were sent for this customer and the dollar amount of each billing. The wire transfer data shows the money came from Camelot Promotions account at SunTrust. Secondly, I verified that the fax I received was in the "Camelot Promotions" directory of the archive of fax.com faxes. Thirdly, I called the "fax back" number and verified that that service was paid for by Camelot Promotions LLC (see [11]). So I had 3 independent ways to tie the faxes to Camelot Promotions.
4	Camelot Promotions bank records	The big question is who paid Camelot? My attorney subpoenaed bank records showed that Camelot Promotions was paid from the Bush Ross PA account at Suntrust Account # 41001143506. 6 of the 7 large wires into Camelot came from Bush Ross. A total of \$355,000 from June 8, 2004 to August 3, 2004 that we were able to discover came from Bush Ross. The other \$100,000 came from Don Oehmke's account (Ventana Consultants LTD) who is also a Bush Ross client (of Jere Ross which he admits in [8]). But we know the funds for our fax came from Bush Ross PA because Oehmke's funds were wired to Camelot a month <i>after</i> our fax was sent (and fax.com requires payment in advance). But when we asked Jere Ross about the wire transfer, he denied knowing anything about the transfer (see [12]). So that is where the money trail ends. Since they aren't telling us anything and providing any exculpatory evidence, the preponderance of the evidence is clear: they are liable. Also, we have more confirmation we have the right party since in [8] Spreadbury admitted he was paid by Bush Ross PA to edit the faxes that were sent and we also know in [5] that Tom Heysek, the editor of the website referred to in the faxes, was paid by Bush Ross PA too.
5	Documents	Bush Ross paid at least \$355K to Camelot to send junk faxes in [4]. This

	<p>showing Bush Ross PA paid out over \$1M to at least 3 vendors and accepted >\$5M in trading profits</p>	<p>section shows Bush Ross paid the following amounts in 2004 from the exact same account number (41001143506): \$47K to Tom Heysek for creating the phoney stock writeups (transfers on 7/7/04 and 8/3/04) \$336K to Fry Hammond Bar for TV commercials hyping the website (paid July 16, 2004) \$255K to Bryan Kos for unknown purposes (4 transfers between March 4, 2004 and April 30, 2004) \$62K to Paul Spreadbury (1 transfer on July 8, 2004), but we know there are more [8]) That's over \$1M paid out to vendors involved in helping to illegally hype the stocks via promotion of Heysek's phoney writeups paid mostly in the month July 2004. That is a HUGE amount of cash flow...almost \$1M/month. And that's ONLY the Bush Ross transfers I've been able to uncover. I know there are more that I don't know about (Vault Studios was paid by Bush Ross as well and their numbers aren't included and Spreadbury was paid a lot more than this one invoice).</p> <p>In addition, this section, which was from the SEC lawsuit [6], shows Bush Ross PA also received over \$5.3 million from just two offshore accounts used to launder the profits from the illegal stock trades. \$1,172,876 went to Bush Ross from Ryzcek Investments between June 29 and August 5, 2004. \$4,134,865 was transferred from Chiang Ze Capital, AVV between July 28 and August 11, 2004. Again, the same Bush Ross account number was used for these transactions as well!</p> <p>The bottom line is this: Bush Ross knew Kos was promoting penny stocks and they were paying vendors at the rate of nearly a million dollars month. Jere Ross reviewed the promotions. And the perpetrators all have records of securities fraud. Yet Bush Ross looks the other way and allows it to happen.</p>
6	<p>SEC lawsuit charging 3 of Bush Ross's clients wth securities fraud</p>	<p>What an amazing coincidence! The 3 principal players charged by the SEC for securities fraud, Oehmke, Lord, and Kos, were all clients of Jere Ross! And the other 3 bit players, Heysek, Kline, and Spreadbury, were all paid by Bush Ross! Not only that, but Bush Ross was the attorney for the Company (Concorde America, Inc) as well! Coincidental? How can they be the attorney for the fraudsters AND the company being hyped at the same time and issue the Press Release on behalf of the company that they did? (see [8] and [9]).</p> <p>So in light of the emails in [8] and the million dollars a month out/\$5 million back, do you think that Bush Ross could actually NOT know what is going on here??!?! That's impossible. There is no story that could explain how they can be clueless.</p>
7	<p>Ross email admitting</p>	<p>Jere Ross admits in an email to me that the fraud (done by Kos and his associates as charged by the SEC) is probably criminal. Ross wrote: "If they</p>

	criminal activity	<p>determine the likelihood of criminal activity (which, unfortunately, appears to be present in the current case), ..."</p> <p>This is significant because this busts the attorney-client privilege that Bush Ross wants to hide behind. According to SCOTUS, you merely have to provide "a factual basis adequate to support a good faith belief by a reasonable person." (United States v. Zolin (1989) 491 US 554, 572, 109 S. Ct. 2619, 2631).</p>
8	Emails involving Ross	<p>These e-mails include emails I got as well as those obtained under subpoena from the SEC [15], who in turn obtained them from Paul Spreadbury (one of the contractors used). The emails show (1) Kos told Jere Ross review TV ad material which means Ross clearly knew that Kos was in the penny stock promo business (July 6 email), (2) that Ross personally handled the wires transfers when Kos told him to do so (July 8 email) (3) shows Kos informed Ross of the purpose of the wire transfers (July 8 email Kos tells Ross "the funds that he is waiting for are to cover checks ... for the [TV] shoot"), (4) shows Ross approved Spreadbury's press release correction at the same time that Ross himself wrote a press release on behalf of the company disclaiming the releases that Spreadbury sent out and disavowing any connection to them (August 10 email). In his message to Spreadbury, Ross includes a copy of the press release he's authoring on behalf of CNDD. At this point, even a moron knows what's going on and that Spreadbury is working for the "bad guys." Ross clearly knows Spreadbury is a "bad guy" since it's the subject of the press release he wrote. Yet in the same email where Ross is coaching Spreadbury what to say, he provides both Spreadbury and Kos (the two "bad guys") an ADVANCE copy of that release he's working on!! What business does he have doing that?? This shows that Ross is helping the "bad guys." He therefore isn't innocent at all and is a knowing player in the conspiracy to commit stock fraud. So Ross himself has been authorizing wire transfers from Bush Ross to pay for Spreadbury to send out this phoney stuff and then Bush Ross is issuing a press release disclaiming the phoney press releases they paid to have sent out!</p>
9	Press releases	<p>There were 4 press releases that were published. The first 3 came from Spreadbury and were paid for by Bush Ross [8]. The fourth was written by Ross disclaiming the same press releases he paid Spreadbury to send out. The press release sent on August 10, 2004 essentially says Spreadbury is a bad guy. But the email records show that before Bush Ross sent it out, Jere Ross sent Spreadbury a copy of it. That simply cannot happen unless Jere Ross is a knowing player in the fraud.</p>
10	Bush Ross web pages	<p>Excerpts from web pages I wrote about the involvement of Bush Ross PA. They've clearly read the page. When I called Jere Ross, he said he had read my page and said "you're an asshole and that's probably the end of the conversation." He had no corrections he wanted to make. The page invites them to contact me to correct any errors. "If Bush Ross or Jeremy Ross wants to respond to the evidence I found that they knowingly paid all these</p>

		people to carry out the tasks involved in the stock fraud, I will gladly post it on this page so that you can evaluate both my story and their story and decide for yourself who is telling the truth.” If they were innocent, you’d think they would have contacted me with their side of the story since this page infuriates them. Yet they haven’t, because they can’t. Instead, they spend their time trying to get my case dismissed and trying (without success) to try to discredit me.
11	Excerpts from my federal lawsuit against Jere Ross	<p>These are excerpts from my objection to Ross’s motion to dismiss in my federal case against Jere Ross personally. This contains authentication and foundation for much of the evidence in the other sections. It also contains additional evidence I uncovered.</p> <p>The full filing (all 175 pages) can be found at: http://www.junkfax.org/fax/profiles/wsp/bushross/opposeRossDismiss.pdf</p>
12	Jere Ross affidavit	In this affidavit that Jere Ross wrote for my federal case against him, Jere disavows any knowledge of Camelot Promotions in Paragraph 6 of his Declaration. Yet, this is at odds with the bank records from his own bank which shows the transfers were made. Our evidence in [8] shows: (1) the wires came from Bush Ross most likely from Ross telling Barbara Rowe to direct Jessi Horrnik to disburse the funds (see [8]), (2) the wires were to send out faxes that Spreadbury worked on (Spreadbury was paid by Bush Ross too per [8]), (3) Kos regularly told Ross to wire funds to pay the contractors (per July 8 email [8] and Heysek admission).
13	Florida Bar Rules regarding client trust accounts	<p>These rules require the firm maintain documentation the reason for any transfer of client funds. So for client funds, the law firm has a fiduciary duty to know exactly what the funds are being used for. See Bar Rule 5-1.2(b)(4) and 5-1.2(b)(5)(D) and 5-1.2(b)(6)(D)). I’ve also included the internal policy of a California firm showing the rules are very consistent and documentation such as “client told me to do it” is not a “reason.” Transfers must have the partner’s signature and the invoice must be provided so that they know exactly what the funds are going to be used for.</p> <p>Bush Ross would like you to believe that of the more than \$6M in wire transfers through their account, they haven’t got a clue as to what it was used for or who it went to. Do you believe that?</p>
14	SEC motion to compel production	The SEC argues with authority that client trust fund records are not attorney-client communication and thus are not subject to attorney client privilege. The SEC also points out that Bush Ross had improperly attempted to conceal these records from the court.
15	Miscellaneous correspondence	<p>Letters to the judge from Bush Ross and myself.</p> <p>Courts are supposed to find the truth and administer justice.</p> <p>Bush Ross wants the courts NOT to know the truth. They want to conceal as much evidence as they can.</p>

		<p>I've also included the SEC subpoena and their response which verifies that they got the information they sent me from Paul Spreadbury.</p> <p>Also included is the revised subpoena to Bush Ross for records.</p>
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1

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Wall Street Stock\$

Early Edition

SPECIAL EDITION

****READ THE FULL REPORT - CALL 1-402-951-5501 FILE #872 AND RECEIVE THE FULL REPORT NOW!****

Wall Street Stocks - TWIN STRONG BUY

Featuring: Twister Networks - OTC: TWIN
Ticker Symbol: (OTC Pinksheets) TWIN
Recent Price: \$0.60
Target Price: \$4.00

BUY THIS STOCK!

TWIN Offers Ground Floor Opportunity

In 1999 only 2 million Chinese had web access. By July of 2003, that number had grown to 68 million (second only to the United States).

TWIN sells for \$0.60 a share. Soon, almost 100,000,000 million will be able to use Twister Networks to make long distance phone calls over the Internet. Expect that share price to increase - significantly.

Get in under the radar. Buy OTC: TWIN. The big telecommunications companies are making headlines and paving the way for VoIP. This is keeping the attention off of Twister Networks. Too bad for others but good for you. TWIN is one of those buy low opportunities that may come around just once in a lifetime.

Why Invest in the VoIP

It's the old story of supply and demand. One hundred million Chinese and Vietnamese with Internet access can choose to pay more yuan for long distance calls (by using their cellphones) or less yuan by utilizing Twister Networks VoIP. Add to this the fact that Twister will be marketing it's products here in the States as well. Another very important factor to consider is; AT&T, Sprint and the other giants in the telecommunications industry are getting into VoIP in a big way. One might think this would hinder Twisters ability to gain market share. Truth is, when the big guys within an industry enter into a new technology (like VoIP) it gives the technology acceptance and credibility. From that point, the customer looks for the best deal and that will be TWIN.




TWIN Sets the Standard for VoIP

VoIP stands for *Voice over Internet Protocol*. In other words, it allows people and businesses to make long distance phone calls for up to 60% less by using an Internet connection.

The TWIN Plan...In the late 90's the Chinese government considered the Internet a threat. They restricted its use to the privileged few. Today, the government see's the Internet as a means of economic and cultural growth and it's promoting it's use. Twister Networks is positioned to enter the eastern (most populous) portions of China, as well as Vietnam and the United States. As popular as the Internet is in the West, the growth rate pales in comparison to the Far East. Over the last 5 years alone the number of Internet subscribers in China and Vietnam has risen from about 3 million to close to 100,000,000 and this extraordinary growth rate is expected to continue into the near future. Add to this the vastness of China and the fact that a great percentage of Vietnamese families are spread around the world. You can see why a low price Voice over Internet long distance solution like TWIN is...

A Strong Buy Recommendation!

What's Inside ...

-  **Weather...**
Temperatures are rising and so is Twister Networks - get it while it's HOT!
-  **Money...**
Expect TWIN share price to increase - significantly!
-  **Sports...**
The Running of the Bulls - led by TWIN!

Disclaimer: Wall Street Stocks WSS provides information on selected companies that WSS believes have investment potential. WSS is not a registered investment advisor or broker-dealer. This report is provided for information service only and the statements and opinions in this report should not be construed as an offer or solicitation to buy or sell any security. WSS accepts no liability for any loss arising from and investor's reliance or use of this report. An investment in TWIN is considered to be highly speculative and should not be considered unless a person can afford a complete loss of investment. WSS has been retained to distribute this report on TWIN and has been paid to distribute this report by a third party in the amount of twenty-five thousand dollars. WSS and its officers, directors and affiliates may from time to time buy or sell TWIN shares in the open market without notice. This report contains forward looking statements which involve risks, and uncertainties that may cause actual results to differ materially from those set forth in the forward looking statements. Do your own due diligence.

If you received this fax in error and would like your number removed from our database. call toll free at 1-866-834-1757

Steve Kirsch

From: Steve Kirsch
Sent: Monday, October 31, 2005 9:13 AM
To: 'jwarren@bushross.com'; 'jgiordano@bushross.com'; Jere Ross; 'mbasurto@bushross.com'; 'jbush@bushross.com'; 'sfrench@bushross.com'; 'jfroeschle@bushross.com'
Subject: Potential Kirsch v. Bush Ross P.A. litigation
Importance: High

Gentlemen,

I am writing you in your capacities as officers of Bush Ross PA.

On July 15, 2004, I received a junk fax entitled Wall Street Stock\$ promoting the penny stock TWTN (Twister Networks). I have determined that arrangements for the transmission of the fax were instigated via a wire transfer from your firm, Bush Ross PA. I received 17 other faxes under the same circumstances.

Based on the evidence I've received, some of which you saw in my last filing in federal court, I believe that that wire transfer was done knowingly and willfully to aid your clients in the commission of a crime by someone at your firm.

Despite plenty of opportunities, you have failed to provide any facts whatsoever that explains the evidence I presented in my federal case that would lead me to conclude otherwise.

Most recently, Jere Ross' attorney attempted to intimidate me into dropping my lawsuit.

You guys just don't get it.

Let me be very clear: intimidation tactics will not work. They indicate to me that you don't want anyone to know the truth. Therefore, this is precisely the wrong strategy to take if you want me to drop my legal actions because such a strategy makes you look more culpable.

You clearly would like me to "go away" since that is what your attorney tried to make me do.

I'll tell you precisely how to do that. It's really simple. You need to tell the truth and the truth must fit the facts. That's it. It is no more complicated than that.

All you need to do is explain how it is possible for an ethical law firm that is not violating any state or federal laws to: (1) pay approximately \$1M to virtually all of the contractors involved in one of the biggest penny stock scams in US history, (2) have Jere Ross approve a press release from Bryan Kos hyping CNDD and then only days later writing a press on behalf of CNDD and Hartley Lord disclaiming that prior release, (3) be handling all of Bryan Kos' financial affairs (4) be handling millions of dollars of profits from the sale of the stocks being hyped and (5) do all of that without having any clue that a crime is going on. There are a few other questions I have, but answering those would be good start.

All you have to do is tell the truth. If you are truly not liable, then there is no harm in telling the truth, is there?

Although the judge believed that I could not link Jere Ross personally to those wire transfers, I believe I can make a solid case for liability of your firm for the junk faxes I received. After all, it seems that all of the contractors involved in this securities fraud were paid from your firm. That didn't happen by accident or negligence because the evidence indicates that Jere Ross knew exactly what was going on here. He knew the purpose of those wire transfers was in furtherance of the securities fraud that your clients have been charged with by the SEC.

Why is telling the truth so hard? What's the benefit of withholding the explanation that you will surely need to tell the court later. By telling me now, you save everyone a lot of time and trouble. Telling the truth is the cheapest, simplest, and fastest way to end this.

If you choose to provide no explanation to me now, then I will assume that is because you are culpable. Could there be any other possible explanation?

In summary, if you wish to settle this matter all you have to do is explain the evidence. Alternatively, you may pay me \$3,000 per fax for each of the 18 faxes I received. I'm also open to binding arbitration to settle this.

Please let me know by 5:00 p.m. Eastern Time on Wednesday November 2, 2005 which of the three options (explain, pay, or arbitrate) you would like to take.

I'll even give you a fourth option. You may explain your story under a non-disclosure agreement to a former California Superior Court judge whom I shall select. If in the opinion of the judge it fits the evidence, and indicates you aren't liable, I will cease to pursue my claims against your firm.

So you have four options. If I don't hear from you by Wednesday as to which option you would like to pursue, then I will file a lawsuit against your firm for the faxes I've received.

Also, under California law, now that you are aware of pending litigation, you are required to preserve any documents that are relevant to this litigation, including but not limited to electronic documents such as emails, related to myself, Bryan Kos, Camelot Promotions, Tom Heysek, Paul Spreadbury, Jeremy Jaynes, Vault Studios, Don Oehmke, and Fry Hammond Barr from January 2004 onward. If you have any questions regarding this list, please contact me.

Also, there is no attorney-client privilege involving crime or fraud and I intend to rely on that exception. Please keep that in mind regarding document retention.

I look forward to hearing from you.

- steve

Dear Sir,

I have the pleasure to inform you that your application for the position of [Job Title] has been received and is currently under consideration.

3

Your qualifications and experience appear to be suitable for the position, and we are pleased to have you as a candidate.

We will contact you again once a final decision has been reached. Thank you for your interest in our organization.

Yours faithfully,
[Name]
[Title]

[Company Name]
[Address]
[City, State, Zip]

[Phone Number]
[Email Address]

[Additional Information]

[Additional Information]

[Additional Information]

[Additional Information]

[Additional Information]

[Signature]

SMALL CLAIMS CASE NO. 2-04-SC-001384

PLAINTIFF/DEMANDANTE (Name, address, and telephone number of each):
Kirsch, Steven T.
13930 La Paloma Rd
Los Altos Hills, CA 94022-2628

DEFENDANT/DEMANDADO (Name, address, and telephone number of each):
Heysek, Tom
50 California Street Suite 1500
San Francisco, CA 94111

Telephone No.: 650-279-1008

Telephone No.: (661) 338-9685



Telephone No.:
 See attached sheet for additional plaintiffs and defendants.

Telephone No.:
OCT 28 2004

**SMALL CLAIMS SUBPOENA
FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS
AND THINGS AT TRIAL OR HEARING AND DECLARATION**

KIRI TORRE
Deputy Clerk
of the County of Santa Clara

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of witness, if known):

Tom Roth, in his capacity as CFO, officer, or employee of fax.com, Inc., Impact Marketing Solutions LLC, Access Sales, Inc., 600 Anton, 11th floor, Costa Mesa, CA 92626. Tel: 714-371-4096

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this case at the date, time, and place shown in the box below UNLESS your appearance is excused as indicated in box 4b below or you make an agreement with the person named in item 2 below.

a. Date: November 15, 2004 Time: 1pm Dept.: 86 Div.: Room:
b. Address: 270 Grant Avenue, Palo Alto, CA 94306

2. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name of subpoenaing party: Steven T. Kirsch b. Telephone number: 650-279-1008

3. Witness Fees: You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 2.

PRODUCTION OF DOCUMENTS AND THINGS

(Complete item 4 only if you want the witness to produce documents and things at the trial or hearing.)

4. YOU ARE (item a or b must be checked):
- a. Ordered to appear in person and to produce the records described in the declaration on page two. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
 - b. Not required to appear in person if you produce (i) the records described in the declaration on page two and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number; your name; and the date, time, and place from item 1 in the box above. (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party listed at the top of this form.

5. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

(SEAL)



Date issued: SEP 22 2004

KIRI TORRE
Clerk, by Deputy
Hunter Del

(See reverse for declaration in support of subpoena)

PLAINTIFF/PETITIONER: Kirsch, Steven T.	CASE NUMBER: 2-04-SC-001384
DEFENDANT/RESPONDENT: Heysek, Tom	

**DECLARATION IN SUPPORT OF
SMALL CLAIMS SUBPOENA FOR PERSONAL APPEARANCE
AND PRODUCTION OF DOCUMENT AND THINGS AT TRIAL OR HEARING
(Code Civil Procedure sections 1985, 1987.5)**

1. I, the undersigned, declare I am the plaintiff defendant judgment creditor
 other (specify): _____ in the above entitled action.
2. The witness has possession or control of the following documents or other things and shall produce them at the time and place specified on the *Small Claims Subpoena* on the first page of this form.
- a. For trial or hearing (specify the exact documents or other things to be produced by the witness):
Your personal appearance at trial is excused if you comply with this subpoena within 15 days of service. Provide any and all documents providing IDENTIFICATION INFORMATION of the advertiser associated with the attached fax advertisement touting Twister Networks (TWTN). See attachment 2a for definition of terms and important additional information.
 Continued on Attachment 2a.
- b. After trial to enforce a judgment (specify the exact documents or other things to be produced by the party who is the judgment debtor or other witness possessing records relating to the judgment debtor):
- (1) Payroll receipts, stubs, and other records concerning employment of the party. Receipts, invoices, documents, and other papers or records concerning any and all accounts receivable of the party.
 - (2) Bank account statements, canceled checks, and check registers from any and all bank accounts in which the party has an interest.
 - (3) Savings account passbooks and statements, savings and loan account passbooks and statements, and credit union share account passbooks and statements of the party.
 - (4) Stock certificates, bonds, money market certificates, and any other records, documents, or papers concerning all investments of the party.
 - (5) California registration certificates and ownership certificates for all vehicles registered to the party.
 - (6) Deeds to any and all real property owned or being purchased by the party.
 - (7) Other (specify): _____

3. Good cause exists for the production of the documents or other things described in paragraph 2 for the following reasons:
Winningstockpicks.net (aka Worldwide Picks LTD) used fax.com to send the faxes. By identifying the fax.com (aka Impact Marketing Solutions LLC, aka Access Sales Inc.) customer who placed the order, we can identify the individual(s) responsible for sending the faxes.

Continued on Attachment 3.

4. These documents are material to the issues involved in this case for the following reasons:
The documents will establish who at Worldwide Picks LTD used fax.com to send the faxes. More than one broadcaster was used by Worldwide Picks LTD.

Continued on Attachment 4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 22, 2004

..... Steven T. Kirsch
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY)

Case 2-04-SC-001384

Kirsch v. Heysek

Attachment 2a (SC-107)

The term "IDENTIFICATION INFORMATION" as used in this document includes:

- any and all billing information including name, address, phone, and email
- any and all payment information including cancelled checks, wire transfer, and credit card info showing names, account numbers, addresses or phone
- contact information including name, address, phone, email of each contact
- a copy of any and all faxes transmitted on behalf of the advertiser
- a copy of any and all e-mails received from the advertiser
- a copy of any and all contracts signed by the advertiser
- a copy of any and all orders placed by the advertiser

If no such documents exist, then you are required to supply copies of any and all bank, financial institution, and credit card statements covering the period of June 14 through July 14 which are used for customer receipts for advertising orders placed with any and all firms you are associated with including, but not limited to: Impact Marketing Solutions LLC, Access Sales Inc., Lighthouse Marketing LLC, QBEasy, and fax.com.

Timeframe required for compliance to avoid personal appearance at trial: 15 days from the date of service of the subpoena.

Supply information directly to Plaintiff via fax at (408) 716-2493 or e-mail stk@propel.com. Confirm receipt by calling Plaintiff at 650-279-1008.

If you are unable to fully comply with this subpoena by the indicated date for any reason, or you have any questions about what is being requested, immediately notify Plaintiff at 650-279-1008.

SPECIAL NOTICE TO TOM ROTH

Because your attorney (Jackie Meyer) has advised me that you will not comply with any subpoena for customer information, and in light of fax.com's long "track record" of non-compliance with legal discovery including a complete failure to comply with the FCC and the more than 6 months of dodging of the administrative subpoena from the California Attorney General, you are hereby notified of the following which you should read very carefully:

If you willfully choose not to comply with this subpoena, an Order to Show Cause for Contempt will be issued from Department 87 which will subject you to contempt penalties including imprisonment and fines.

WALL STREET STOCKS

Early Edition

SPECIAL EDITION

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Ticker Symbol: (OTC Pink Sheets) TWTN

Recent Price: \$0.69

Target Price: \$4.00

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To Be Removed From Our Database, Call Toll-Free At 800-658-8133.

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Money...

Expect TWTN share price to increase - significantly!



Sports...

The Running of the Bulls - led by TWTN!

IMS
Customer QuickReport
 January 1 through October 26, 2004

Type	Date	Num	Memo	Account	Clr	Split	Amount
Camelot Promotions							
Invoice	6/7/2004	15748		1200 · Orders/Paym...		Fax Broadcasti...	4,750.00
Payment	6/7/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	4,750.00
Credit Memo	6/7/2004	10037		Running Tickets		Running Ticket...	-4,750.00
Invoice	6/8/2004	15764		1200 · Orders/Paym...		Fax Broadcasti...	4,750.00
Payment	6/8/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	4,750.00
Credit Memo	6/8/2004	10052		Running Tickets		Running Ticket...	-4,750.00
Invoice	6/11/2004	15800		1200 · Orders/Paym...		Fax Broadcasti...	9,500.00
Payment	6/11/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	9,500.00
Credit Memo	6/11/2004	10142		Running Tickets		Running Ticket...	-9,500.00
Invoice	6/12/2004	10157		Running Tickets		-SPLIT-	9,938.70
Invoice	6/14/2004	15806		1200 · Orders/Paym...		Fax Broadcasti...	14,250.00
Payment	6/14/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	14,250.00
Credit Memo	6/14/2004	10296		Running Tickets		Running Ticket...	-14,250.00
Invoice	6/15/2004	15816		1200 · Orders/Paym...		Fax Broadcasti...	8,478.54
Payment	6/15/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	8,478.54
Credit Memo	6/15/2004	10307		Running Tickets		Running Ticket...	-8,478.54
Invoice	6/15/2004	10322		Running Tickets		Running Ticket...	17,540.53
Invoice	6/19/2004	10439		Running Tickets		Running Ticket...	16,777.11
Invoice	6/28/2004	15941		1200 · Orders/Paym...		Fax Broadcasti...	4,500.00
Payment	6/28/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	4,500.00
Credit Memo	6/28/2004	10677		Running Tickets		Running Ticket...	-4,500.00
Invoice	6/30/2004	100064		Running Tickets		Running Ticket...	4,252.91
Credit Memo	6/30/2004	10079		Running Tickets		Returns and All...	-3,606.66
Invoice	7/8/2004	16043		1200 · Orders/Paym...		Fax Broadcasti...	4,500.00
Payment	7/8/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	4,500.00
Credit Memo	7/8/2004	100256		Running Tickets		Running Ticket...	-4,500.00
Invoice	7/9/2004	16078		1200 · Orders/Paym...		Fax Broadcasti...	4,500.00
Payment	7/9/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	4,500.00
Credit Memo	7/9/2004	100407		Running Tickets		Running Ticket...	-4,500.00
Invoice	7/10/2004	100330		Running Tickets		Running Ticket...	2,406.67
Invoice	7/15/2004	16121		1200 · Orders/Paym...		Fax Broadcasti...	1,750.00
Payment	7/15/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	1,750.00
Credit Memo	7/15/2004	10154		Running Tickets		Running Ticket...	-1,750.00
Invoice	7/15/2004	101603		Running Tickets		Running Ticket...	9,240.61
Invoice	7/19/2004	16156		1200 · Orders/Paym...		Fax Broadcasti...	4,500.00
Payment	7/19/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	4,500.00
Credit Memo	7/19/2004	118133		Running Tickets		Running Ticket...	-4,500.00
Invoice	7/21/2004	16180		1200 · Orders/Paym...		Fax Broadcasti...	3,652.90
Payment	7/21/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	3,652.90
Credit Memo	7/21/2004	118162		Running Tickets		Running Ticket...	-3,652.90
Invoice	7/24/2004	115151		Running Tickets		Running Ticket...	7,520.26
Invoice	7/26/2004	118173		1200 · Orders/Paym...		Fax Broadcasti...	4,500.00
Payment	7/26/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	4,500.00
Credit Memo	7/26/2004	115306		Running Tickets		Running Ticket...	-4,500.00
Invoice	7/31/2004	150462		Running Tickets		-SPLIT-	5,400.00
Invoice	8/3/2004	118231		1200 · Orders/Paym...		Fax Broadcasti...	4,500.00
Payment	8/3/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	4,500.00
Credit Memo	8/3/2004	150589		Running Tickets		Running Ticket...	-4,500.00
Credit Memo	8/4/2004	CR-1...		Running Tickets		Returns and All...	-5,606.64
Invoice	8/7/2004	185097		Running Tickets		Running Ticket...	10,330.92
Invoice	8/9/2004	118275		1200 · Orders/Paym...		Fax Broadcasti...	6,000.00
Payment	8/9/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	6,000.00
Credit Memo	8/9/2004	185266		Running Tickets		Running Ticket...	-6,000.00
Invoice	8/12/2004	118309		1200 · Orders/Paym...		Fax Broadcasti...	4,500.00
Payment	8/12/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	4,500.00
Credit Memo	8/12/2004	185327		Running Tickets		Running Ticket...	-4,500.00
Invoice	8/13/2004	118316		1200 · Orders/Paym...		Fax Broadcasti...	4,500.00
Payment	8/13/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	4,500.00
Credit Memo	8/13/2004	185329		Running Tickets		Running Ticket...	-4,500.00
Invoice	8/14/2004	185309		Running Tickets		Running Ticket...	9,857.83
Invoice	8/19/2004	118336		1200 · Orders/Paym...		Fax Broadcasti...	3,200.00
Payment	8/19/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	3,200.00
Credit Memo	8/19/2004	185463		Running Tickets		Running Ticket...	-3,200.00
Invoice	8/21/2004	185471		Running Tickets		-SPLIT-	7,595.19
Invoice	8/24/2004	118358		1200 · Orders/Paym...		Fax Broadcasti...	3,000.00
Payment	8/24/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	3,000.00

2:49 PM

10/26/04

IMS
Customer QuickReport
January 1 through October 26, 2004

Type	Date	Num	Memo	Account	Clr	Split	Amount
Credit Memo	8/24/2004	185594		Running Tickets		Running Ticket...	-3,000.00
Invoice	8/27/2004	118379		1200 · Orders/Paym...		Fax Broadcasti...	1,500.00
Payment	8/27/2004	WF-0...		1499 · Undeposited ...	X	1200 · Orders/...	1,500.00
Credit Memo	8/27/2004	195065		Running Tickets		Running Ticket...	-1,500.00
Invoice	8/28/2004	195030		Running Tickets		-SPLIT-	5,768.44
Credit Memo	9/7/2004	10194		Running Tickets		Returns and All...	-856.31
Credit Memo	9/15/2004	186181		Running Tickets		Running Ticket...	0.00

Daily Billing Report

6/14/04 12:00 am through 6/20/04 11:59 pm

Customer Information:

Customer ID: BC00010732

Company: Camelot Promotions

Contact: Javier Cudara

Sales Rep: Lou Gaudio

Address: 116 W. Mashta Dr.

KEY BISCAYNE, FL 33149

Phone No: 1 305 365-7991

Fax No: 1 305 365-9104

Date	Schedule	Targeted	Attempted	Successful	Price	Charges
06/14/2004	550,000	475,001	549,000	442,792	\$0.0000	\$0.00
06/15/2004	500,000	500,000	590,272	480,394	\$0.0190	\$9,127.49
06/16/2004	730,000	142,810	116,702	90,096	\$0.0190	\$1,711.82
06/16/2004	730,000	585,756	725,008	603,086	\$0.0190	11,458.63
06/17/2004	200,000	200,001	246,637	189,824	\$0.0190	\$3,606.66
Totals:		1,903,568	2,227,619	1,806,192		\$25,904.60

Grand Total Faxes Scheduled: 2,710,000.00

Grand Total Faxes Targeted: 1,903,568.00

Grand Total Faxes Attempted: 2,227,619.00

Grand Total Faxes Successful: 1,806,192.00

Grand Total Charges:

\$25,904.60

WT FED#01088 SUNTRUST BANK	
/ORG=CAMELOT PROMOTIONS LLC SRF#	
8/27/2004 040827003743 TRN#040827014581 RFB#	\$1,500.00
WT FED#02135 SUNTRUST BANK	
/ORG=CAMELOT PROMOTIONS LLC SRF#	
8/24/2004 040824006538 TRN#040824026786 RFB#	\$3,000.00
WT FED#01810 SUNTRUST BANK	
/ORG=CAMELOT PROMOTIONS LLC SRF#	
8/19/2004 040819005533 TRN#040819021971 RFB#	\$3,200.00



WELLS FARGO BANK

Intra Day Wire Notification

Custom

Impact Marketing Sol LLC

Wire Transfer Detail Report

As of 06/07/2004

Note: Intraday information subject to change

Currency: USD

Bank: 121042882

Account: XXXXX18603

WELLS FARGO BANK

Debit Wire Amount	Process Date/Time	Wire Service/Wire Detail	Status
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NO DATA TO REPORT

Credit Wire Amount	Process Date/Time	Wire Service/Wire Detail	Status
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\$4,750.00 06/07/2004 13:43 CT
 From: FedWire COMPLETE

FED REFERENCE: 3233
 061000104 SUNTRUST BANK ATLANTA, GA 040607009369 ORG=CAMELOT
 PROMOTIONS LLC 116 W MASHTA DR KEY BISCAYNE FL 33149-2418 /
 FTR/ BNF=3345518603 IMPACT MARKETING SOLUTIONS
 Wire Service Ref #: 040607038433
 Value Date: 06/07/04

END OF REPORT



WELLS FARGO BANK

Intra Day Wire Notification

Custom

Impact Marketing Sol LLC

Wire Transfer Detail Report

As of 06/08/2004

Note: Intraday information subject to change

Currency: USD

Bank: 121042882

Account: KXXXX18603

WELLS FARGO BANK

Debit Wire Amount	Process Date/Time	Wire Service/Wire Detail	Status
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NO DATA TO REPORT

Credit Wire Amount	Process Date/Time	Wire Service/Wire Detail	Status
--------------------	-------------------	--------------------------	--------

\$4,750.00	06/08/2004 15:11 CT		COMPLETE
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From: FedWire

FED REFERENCE: 3774

061000104 SUNTRUST BANK ATLANTA, GA 040608011024 ORG=CAMELOT

PROMOTIONS LLC 116 W MASHTA DR KEY BISCAYNE FL 33149-2418 /

FTR/BNF=3345518603 IMPACT MARKETING SOLUTIONS

Wire Service Ref #: 040608044988

Value Date: 06/08/04

END OF REPORT



WELLS FARGO BANK

Intra Day Wire Notification

Custom

Impact Marketing Sol LLC

Wire Transfer Detail Report

As of 06/11/2004

Note: Intraday information subject to change

Currency: USD

Bank: 121042882

Account: XXXXX18603

WELLS FARGO BANK

Debit Wire Amount	Process Date/Time	Wire Service/Wire Detail	Status
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NO DATA TO REPORT

Credit Wire Amount	Process Date/Time	Wire Service/Wire Detail	Status
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\$9,500.00	06/11/2004 11:09 CT		COMPLETE
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From: FedWire

FED REFERENCE: 2074

061000104 SUNTRUST BANK ATLANTA, GA 040611006266 ORG=CAMELOT PROMOTIONS LLC 116 W MASHTA DR KEY BISCAYNE FL 33149-2418 /

FTR/ BNF=3345518603 IMPACT MARKETING SOLUTIONS

Wire Service Ref #: 040611023276

Value Date: 06/11/04

END OF REPORT

WELLS
FARGO

WELLS FARGO BANK

Intra Day Wire Notification

Custom

Impact Marketing Sol LLC

Wire Transfer Detail Report

As of 06/14/2004

Note: Intraday information subject
to change

Currency: USD

Bank: 121042882

Account: XXXXX18603

WELLS FARGO BANK

Debit Wire Amount	Process Date/Time	Wire Service/Wire Detail	Status
NO DATA TO REPORT			

Credit Wire Amount	Process Date/Time	Wire Service/Wire Detail	Status
\$14,250.00	06/14/2004 14:52 CT		COMPLETE
	From: FedWire		
	FED REFERENCE: 3968		
	061000104 SUNTRUST BANK ATLANTA, GA 040614011775		
	PROMOTIONS LLC 116 W MASHTA DR KEY BISCAYNE FL 33149-2418 /		
	FTR/ BNF=3345518603 IMPACT MARKETING SOLUTIONS		
	Wire Service Ref #: 040614047131		
	Value Date: 06/14/04		

END OF REPORT



WELLS FARGO BANK

Intra Day Wire Notification

Custom

Impact Marketing Sol LLC

Wire Transfer Detail Report

As of 06/15/2004

Note: Intraday information subject to change

Currency: USD

Bank: 121042882

Account: XXXXX18603

WELLS FARGO BANK

Debit Wire Amount	Process Date/Time	Wire Service/Wire Detail	Status
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NO DATA TO REPORT

Credit Wire Amount	Process Date/Time	Wire Service/Wire Detail	Status
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\$8,478.54	06/15/2004 15:01 CT		COMPLETE
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From: FedWire

FED REFERENCE: 4705

061000104 SUNTRUST BANK ATLANTA, GA 040615013224 ORG=CAMELOT PROMOTIONS LLC 116 W MASHTA DR KEY BISCAYNE FL 33149-2418 O

BI-RE: WELLS FARGO BANK IRVINE CALIFORNIA BRANCH /PTR/ BNF=3 345518603 IMPACDT MARKETING SOLUTIONS

Wire Service Ref #: 040615054608

Value Date: 06/15/04

END OF REPORT



WELLS FARGO BANK

Intra Day Wire Notification

Custom

Impact Marketing Sol LLC

Wire Transfer Detail Report

As of 06/28/2004

Note: Intraday information subject to change

Currency: USD

Bank: 121042882

Account: XXXXX18603

WELLS FARGO BANK

Debit Wire Amount	Process Date/Time	Wire Service/Wire Detail	Status
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NO DATA TO REPORT

Credit Wire Amount	Process Date/Time	Wire Service/Wire Detail	Status
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\$4,500.00	06/28/2004 14:34 CT		COMPLETE
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From: FedWire

FED REFERENCE: 4146

061000104 SUNTRUST BANK ATLANTA, GA 040628012523 ORG=CAMELOT

PROMOTIONS LLC 116 W MASHTA DR KEY BISCAYNE FL 33149-2418 /

FTR/BNF=3345518603 IMPACT MARKETING SOLUTIONS

Wire Service Ref #: 040628049811

Value Date: 06/28/04

END OF REPORT

63.201.144.76 - /stk/Broadcasting/C/Camelot Promo/A H F I/

[To Parent Directory]

Monday, June 14, 2004	3:44 PM	31744	06-14-04 AHFI \$1 10.doc
Tuesday, June 15, 2004	2:59 PM	31744	06-15-04 AHFI \$1 25.doc
Wednesday, June 16, 2004	1:58 PM	184832	06-17-04 AHFI \$1 25.doc
Thursday, July 08, 2004	1:27 PM	36352	07-08-04 AHFI \$1 20.doc
Thursday, August 26, 2004	1:01 PM	36864	08-26-04 AHFI \$1 10.doc

63.201.144.76 - /stk/Broadcasting/C/Camelot Promo/C N D D/

[To Parent Directory]

Wednesday, August 04, 2004 12:49 PM	186368	08-04-04 CNDD \$3 92.doc
Monday, August 09, 2004 1:09 PM	177664	08-09-04 CNDD \$5 25.doc
Thursday, August 19, 2004 12:51 PM	43008	08-19-04 CNDD \$4 20.doc
Tuesday, August 24, 2004 12:50 PM	43008	08-24-04 CNDD \$3 90.doc

63.201.144.76 - /stk/Broadcasting/C/Camelot Promo/T W T N/

[To Parent Directory]

Monday, June 07, 2004 4:14 PM	31232	<u>06-07-04 TWTN \$1 50.doc</u>
Tuesday, June 08, 2004 2:29 PM	31744	<u>06-08-04 TWTN \$1 45.doc</u>
Tuesday, June 08, 2004 1:59 PM	31744	<u>06-08-04 TWTN \$1 55.doc</u>
Friday, June 11, 2004 12:21 PM	31744	<u>06-11-04 TWTN \$1 50.doc</u>
Thursday, July 08, 2004 1:29 PM	39936	<u>07-08-04 TWTN 80cents.doc</u>
Monday, July 12, 2004 1:23 PM	39936	<u>07-12-04 TWTN 75cents.doc</u>
Tuesday, July 13, 2004 1:47 PM	40960	<u>07-13-04 TWTN 69cents.doc</u>
Wednesday, July 14, 2004 2:11 PM	41472	<u>07-14-04 TWTN 60cents.doc</u>
Monday, July 19, 2004 1:05 PM	8431048	<u>07-19-04 TWTN 60cents.tif</u>
Tuesday, July 20, 2004 12:32 PM	8430848	<u>07-20-04 TWTN 62cents.tif</u>
Wednesday, July 21, 2004 12:47 PM	8430772	<u>07-21-04 TWTN 60cents.tif</u>
Tuesday, July 27, 2004 1:16 PM	179200	<u>07-27-04 TWTN 49cents.doc</u>
Monday, August 02, 2004 12:52 PM	49664	<u>08-02-04 Camelot TWTN 35cents.doc</u>

WALL STREET STOCKS

Early Edition

SPECIAL EDITION

****READ THE FULL REPORT - CALL 1-402-951-5501 FILE #872 AND RECEIVE THE FULL REPORT NOW!****

Wall Street Stocks - TWTN STRONG BUY

Featuring: Twister Networks – OTC: TWTN

Ticker Symbol: (OTC Pinksheets) TWTN

Recent Price: \$0.60

Target Price: \$4.00

BUY THIS STOCK!

TWTN Offers Ground Floor Opportunity

In 1999 only 2 million Chinese had web access. By July of 2003, that number had grown to 68 million (second only to the United States).

TWTN sells for **\$0.60 a share**. Soon, almost 100,000,000 million will be able to use Twister Networks to make long distance phone calls over the Internet. Expect that share price to increase – significantly.

Get in under the radar. Buy OTC: TWTN. The big telecommunications companies are making headlines and paving the way for VoIP. This is keeping the attention off of Twister Networks. Too bad for others but good for you. TWTN is one of those buy low opportunities that may come around. **Why Invest in the VoIP**

It's the old story of supply and demand. One hundred million Chinese and Vietnamese with Internet access can choose to pay more yuan for long distance calls (by using their cellphones) or less yuan by utilizing Twister Networks VoIP. Add to this the fact that Twister will be marketing it's products here in the States as well. Another very important factor to consider is; AT&T, Sprint and the other giants in the telecommunications industry are getting into VoIP in a big way. One might think this would hinder Twisters ability to gain market share. Truth is, when the big guys within an industry enter into a new technology (like VoIP) it gives the technology acceptance and credibility. From that point, the customer looks for the best deal and that will be TWTN.

TWTN Sets the Standard for VoIP

VoIP stands for *Voice over Internet Protocol*. In other words, it allows people and businesses to make long distance phone calls for up to 60% less by using an Internet connection.

The TWTN Plan...In the late 90's the Chinese government considered the Internet a threat. They restricted its use to the privileged few. Today, the government see's the Internet as a means of economic and cultural growth and it's promoting it's use. Twister Networks is positioned to enter the eastern (most populous) portions of China, as well as Vietnam and the United States. As popular as the Internet is in the West, the growth rate pales in comparison to the Far East. Over the last 5 years alone the number of Internet subscribers in China and Vietnam has risen from about 3 million to close to 100,000,000 and this extraordinary growth rate is expected to continue into the near future. Add to this the vastness of China and the fact that a great percentage of Vietnamese families are spread around the world. You can see why a low price Voice over Internet long distance solution like TWTN is...

A Strong Buy Recommendation!

What's Inside ...



Weather...

*Temperatures are rising and so is Twister Networks – get it while it's **HOT!***



Money...

Expect TWTN share price to increase - significantly!



Sports...

The Running of the Bulls – led by TWTN!

Disclaimer: Wall Street Stocks WSS provides information on selected companies that WSS believes have investment potential. WSS is not a registered investment advisor or broker-dealer. This report is provided for information service only and the statements and opinions in this report should not be construed as an offer or solicitation to buy or sell any security. WSS accepts no liability for any loss arising from and investor's reliance or use of this report. An investment in TWTN is considered to be highly speculative and should not be considered unless a person can afford a complete loss of investment. WSS has been retained to distribute this report on TWTN and has been paid to distribute this report by a third party in the amount of twenty-five thousand dollars. WSS and its officers, directors and affiliates may from time to time buy or sell TWTN shares in the open market without notice. This report contains forward looking statements which involve risks, and uncertainties that may cause actual results to differ materially from those set forth in the forward looking statements. Do your own due diligence.

To Be Removed From Our Database, Call Toll-Free At 800-658-8133.

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): John C. Brown (195804) REDENBACHER & BROWN, L.L.P. 388 Market Street Suite 500 San Francisco, CA 94111 TELEPHONE NO. 415-409-8600 FAX NO. 415-409-0600 ATTORNEY FOR (Name) Steven T. Kirsch	FOR COURT USE ONLY
NAME OF COURT: Circuit Ct. of the 9th Judicial District STREET ADDRESS: In and for Orange County, Florida MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: STEVEN T. KIRSCH	
DEFENDANT/ RESPONDENT: JAVIER A. CUADRA, et al.	
Amended DEPOSITION SUBPOENA For Production of Business Records	CASE NUMBER:

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):

SUNTRUST BANKS, INC., c/o Lynn Nelson, 200 South Orange Avenue, MC:1093, Orlando, Florida 32801

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): Alan Bryant
 On (date): May 24, 2005 At (time): 10:00 a.m.
 Location (address): 511 East Livingston Street, Orlando, FL, 32803


Do not release the requested records to the deposition officer prior to the date and time stated above.

- a. by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
 - b. by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
 - c. by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows: Statements for any and all bank accounts held with you by Camelot Promotions LLC, whose address is 116 W. Mashta Drive Key Biscayne FL 33149-2418, for the months 6/04-8/04.
- Continued on Attachment 3.
4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: 4/14/05

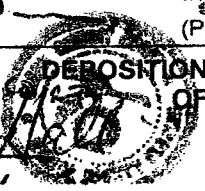
John C. Brown
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PERSON ISSUING SUBPOENA)
 Attorney for Plaintiff
 (TITLE)

(Proof of service on reverse)

ED ON
 LYDIA GARDNER
 CLERK OF THE CIRCUIT

BY: Collette
 DEPUTY CLERK



DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS

Legal Solutions & IT

Code of Civil Procedure, §§ 2020, 2025.

EXHIBIT 1

SUNTRUST

May 9, 2005

John C. Brown
REDENBACHER & BROWN, L.L.P.
388 Market Street, Suite 500
San Francisco, California 94111

SUBPOENA: CAMELOT PROMOTIONS LLC

- Enclosed please find the bank documents responsive to the Subpoena.
- Enclosed please find the bank documents responsive to the Subpoena, except for loan documents that will be sent upon receipt from the various bank loan departments.
- Please provide additional information (social security number, account number, address, AKA's). The designated person cannot be specifically identified from our records.
- Based upon the information provided, we are unable to locate any financial records for the designated person or entity..

SunTrust cannot comply with the Subpoena for the following reason(s):

- The requested information is outside the 7-year records retention period.
- No account / loan information regarding the designated person, entity, account number can be located.
- Wire transfer advices are maintained for a period of 5 years.
- No employment records for the designated person can be located.
- No signature card/Corporate Resolution regarding the designated person and/or entity can be located.
- No safe deposit box in the name of the designated person and /or entity can be located.
- The account(s) was closed during the stated time period(s).
- The account(s) were not open during the stated time period(s).
- An objection to the document production has been received from the designated person and/or entity.
- The records of a non-party cannot be provided without receipt of an original, signed release from the designated person and/or entity and/or a court order.
- The designated account number is invalid.
- SunTrust cannot comply with the subpoena unless the document is domesticated.
- Although available records do not reveal any evidence of a banking/lending relationship during the specific time period, we will renew our search upon receipt of any evidence you may have indicating the existence of such a relationship.

EXHIBIT 2

The Subpoena must be served on the following party which is a separate entity of SunTrust Bank:

- For SunTrust mortgage records, please contact Sam Ikenberry at (804) 291-0159 as a new subpoena has to be issued and properly served upon SunTrust Mortgage, Inc.
- For SunTrust Securities, Inc. 303 Peachtree Street, Suite 2950, Atlanta, GA 30308
- For SunTrust Bankcard N.A. 7455 Chancellor Drive, Orlando, Florida 32809, Attn: Diana Shirley.
- MBNA, 1100 North King Street, Wilmington, DE 19884-0124, Attn: Todd Windson.
- Suntrust Bank cannot comply with the enclosed subpoena/summons; it was served upon the incorrect bank. For Huntington National Bank records prior to February 16, 2002, please use the following address: Huntington National Bank, Court Order Processing, EA4W34, 7 Easton Oval, Columbus, Ohio 43219. (614) 480-8300.
- Incorrect bank served, should be served on _____.

If you have any questions regarding the records produced for the subpoena, please contact the following:

- Richard J. McDonald 407-762-4792
- Terrence Rickson 407-762-4085
- Helen Person 407-762-4082
- Charlotte Morgan 407-762-4646



ACCOUNT STATEMENT

CAMELOT PROMOTIONS LLC
 116 W MASHTA DR
 KEY BISCAYNE FL 33149-2418

QUESTIONS? PLEASE CALL
 (305)591-6000

EFFECTIVE 9/1/04, YOUR INSUFFICIENT/UNAVAILABLE/UNCOLLECTED FUNDS PENALTY,
 EXTENDED OVERDRAFT FEE AND STOP PAYMENT FEE WILL CHANGE TO \$32.

 ACCOUNT SUMMARY
 ACCOUNT TYPE ACCOUNT NUMBER STATEMENT PERIOD TAXPAYER ID
 BASIC BUSINESS CHECKING 1000017715565 06/01/2004 - 06/30/2004 34-1980251

DESCRIPTION	AMOUNT	DESCRIPTION	AMOUNT
BEGINNING BALANCE	\$20,099.55	AVERAGE BALANCE	\$14,291.84
DEPOSITS/CREDITS	\$131,050.00	AVERAGE COLLECTED BALANCE	\$14,291.84
CHECKS	\$21,274.11	NUMBER OF DAYS IN STATEMENT PERIOD	30
WITHDRAWALS/DEBITS	\$129,838.77		
ENDING BALANCE	\$36.67		

DEPOSITS/CREDITS

DATE	AMOUNT	SERIAL #	DATE	AMOUNT	SERIAL #
06/18	1,000.00		06/29	50.00	
06/08	30,000.00				
06/09	50,000.00				
06/23	50,000.00				

DEPOSITS/CREDITS: 5 TOTAL ITEMS DEPOSITED: 2

CHECKS

CHECK NUMBER	AMOUNT	DATE PAID	CHECK NUMBER	AMOUNT	DATE PAID
118	232.20	06/30		800.00	06/16
	3,585.63	06/02		384.77	06/18
	3,000.00	06/03		500.00	06/18
	5,000.00	06/04		500.00	06/22
	185.59	06/09		3,000.00	06/24
	1,000.00	06/09		3,000.00	06/24
	85.92	06/15			

CHECKS: 13

WITHDRAWALS/DEBITS

DATE	AMOUNT	SERIAL #	DESCRIPTION
06/01	50.00		OUTGOING INT'L WIRE TRANSFER FEE TRN #017504
06/01	3,000.00		OUTGOING FEDWIRE DR TRN #017504
06/07	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #009369
06/07	4,750.00		OUTGOING FEDWIRE DR TRN #009369
06/08	5.00		INTERNAL TRANSFER WIRE CR FEE TRN #004002
06/08	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #011024
06/08	4,750.00		OUTGOING FEDWIRE DR TRN #011024
06/09	5.00		INTERNAL TRANSFER WIRE CR FEE TRN #009069
06/09	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #007582
06/09	50.00		OUTGOING INT'L WIRE TRANSFER FEE TRN #007706
06/09	50.00		OUTGOING INT'L WIRE TRANSFER FEE TRN #008011

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CONTINUED ON NEXT PAGE



ACCOUNT
 STATEMENT

			WITHDRAWALS/DEBITS
DATE	AMOUNT	SERIAL #	DESCRIPTION
06/09	3,000.00		OUTGOING FEDWIRE DR TRN #007706
06/09	3,000.00		OUTGOING FEDWIRE DR TRN #008011
06/09	6,000.00		OUTGOING FEDWIRE DR TRN #007582
06/10	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #010136
06/10	5,000.00		OUTGOING FEDWIRE DR TRN #010136
06/11	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #006266
06/11	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #006306
06/11	5,000.00		OUTGOING FEDWIRE DR TRN #006306
06/11	9,500.00		OUTGOING FEDWIRE DR TRN #006266
06/11	3,000.00		MISCELLANEOUS DEBIT
06/11	3,341.23		MISCELLANEOUS DEBIT
06/11	5,000.00		MISCELLANEOUS DEBIT
06/14	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #011775
06/14	14,250.00		OUTGOING FEDWIRE DR TRN #011775
06/15	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #013224
06/15	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #013299
06/15	4,500.00		OUTGOING FEDWIRE DR TRN #013299
06/15	8,478.54		OUTGOING FEDWIRE DR TRN #013224
06/21	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #012285
06/21	3,000.00		OUTGOING FEDWIRE DR TRN #012285
06/23	5.00		INTERNAL TRANSFER WIRE CR FEE TRN #007000
06/23	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #010718
06/23	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #010758
06/23	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #011181
06/23	50.00		OUTGOING INT'L WIRE TRANSFER FEE TRN #010646
06/23	2,000.00		OUTGOING FEDWIRE DR TRN #010646
06/23	4,000.00		OUTGOING FEDWIRE DR TRN #010718
06/23	5,000.00		OUTGOING FEDWIRE DR TRN #010758
06/23	8,942.91		OUTGOING FEDWIRE DR TRN #011181
06/25	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #002967
06/25	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #002989
06/25	5,803.60		OUTGOING FEDWIRE DR TRN #002989
06/25	6,507.49		OUTGOING FEDWIRE DR TRN #002967
06/28	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #012523
06/28	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #012615
06/28	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #012684
06/28	2,850.00		OUTGOING FEDWIRE DR TRN #012615
06/28	4,000.00		OUTGOING FEDWIRE DR TRN #012684
06/28	4,500.00		OUTGOING FEDWIRE DR TRN #012523

WITHDRAWALS/DEBITS: 50

BALANCE ACTIVITY HISTORY					
DATE	BALANCE	COLLECTED BALANCE	DATE	BALANCE	COLLECTED BALANCE
06/01	17,049.55	17,049.55	06/16	3,487.64	3,487.64
06/02	13,463.92	13,463.92	06/18	3,602.87	3,602.87
06/03	10,463.92	10,463.92	06/21	577.87	577.87
06/04	5,463.92	5,463.92	06/22	77.87	77.87
06/07	688.92	688.92	06/23	30,004.96	30,004.96
06/08	25,908.92	25,908.92	06/24	24,004.96	24,004.96
06/09	62,593.33	62,593.33	06/25	11,643.87	11,643.87
06/10	57,568.33	57,568.33	06/28	218.87	218.87
06/11	31,677.10	31,677.10	06/29	268.87	268.87
06/14	17,402.10	17,402.10	06/30	36.67	36.67
06/15	4,287.64	4,287.64			

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SUNTRUST BANK
 P O BOX 622227
 ORLANDO FL 32862-2227

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 1000017715565
 07/31/2004



ACCOUNT
 STATEMENT

CAMELOT PROMOTIONS LLC
 116 W MASHTA DR
 KEY BISCAWAYNE FL 33149-2418

QUESTIONS? PLEASE CALL
 (305)591-6000

WITH SUNTRUST MERCHANT SERVICES, INCREASE REVENUES, IMPROVE YOUR CASH FLOW AND
 SAVE UP TO \$400. SEE STATEMENT INSERT FOR SPECIAL MONEY SAVING OFFER.
 CALL 1-800-615-0056 TO SPEAK WITH A SUNTRUST MERCHANT SERVICES REPRESENTATIVE
 OR CONTACT YOUR LOCAL BUSINESS BANKER. CALL TODAY ... OFFER ENDS SEPTEMBER 30TH!

ACCOUNT SUMMARY

ACCOUNT TYPE	ACCOUNT NUMBER	STATEMENT PERIOD	TAXPAYER ID
BASIC BUSINESS CHECKING	1000017715565	07/01/2004 - 07/31/2004	34-1980251

DESCRIPTION	AMOUNT	DESCRIPTION	AMOUNT
BEGINNING BALANCE	\$36.67	AVERAGE BALANCE	\$12,440.84
DEPOSITS/CREDITS	\$150,020.00	AVERAGE COLLECTED BALANCE	\$12,440.84
CHECKS	\$38,846.33	NUMBER OF DAYS IN STATEMENT PERIOD	31
WITHDRAWALS/DEBITS	\$110,954.58		
ENDING BALANCE	\$255.76		

DEPOSITS/CREDITS

DATE	AMOUNT	SERIAL #	DESCRIPTION
07/07	75,000.00		WIRE TRANSFER CR TRN #007100
07/16	75,000.00		WIRE TRANSFER CR TRN #010041
07/22	20.00		INTERNAL TRANSFER WIRE CR TRN #010541

DEPOSITS/CREDITS: 3 TOTAL ITEMS DEPOSITED: 0

CHECKS

CHECK NUMBER	AMOUNT PAID	DATE	CHECK NUMBER	AMOUNT PAID	DATE
119	5,000.00	07/08		1,400.00	07/15
*121	226.33	07/13		3,925.00	07/16
*127	10,000.00	07/20		5,000.00	07/16
*2004	500.00	07/29		100.00	07/28
	11,000.00	07/08		500.00	07/28
	75.00	07/15		120.00	07/30
	1,000.00	07/15			

CHECKS: 13 *BREAK IN CHECK SEQUENCE

WITHDRAWALS/DEBITS

DATE	AMOUNT	SERIAL #	DESCRIPTION
07/07	5.00		INTERNAL TRANSFER WIRE CR FEE TRN #007100
07/07	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #010467
07/07	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #010521
07/07	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #010597
07/07	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #010889
07/07	4,000.00		OUTGOING FEDWIRE DR TRN #010467
07/07	4,500.00		OUTGOING FEDWIRE DR TRN #010597
07/07	7,500.00		OUTGOING FEDWIRE DR TRN #010521
07/07	17,084.58		OUTGOING FEDWIRE DR TRN #010889
07/09	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #003629
07/09	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #003679
07/09	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #003718
07/09	4,500.00		OUTGOING FEDWIRE DR TRN #003629
07/09	4,500.00		OUTGOING FEDWIRE DR TRN #003679

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ACCOUNT
 STATEMENT

WITHDRAWALS/DEBITS			
DATE	AMOUNT	SERIAL #	DESCRIPTION
07/09	8,000.00		OUTGOING FEDWIRE DR TRN #003718
07/12	25.00		OUTGOING FEDWIRE TRANSFER FEE TRN #010135
07/12	4,000.00		OUTGOING FEDWIRE DR TRN #010135
07/14	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #012128
07/14	1,750.00		OUTGOING FEDWIRE DR TRN #012128
07/16	5.00		INTERNAL TRANSFER WIRE CR FEE TRN #010041
07/16	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #013513
07/16	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #013607
07/16	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #013644
07/16	4,000.00		OUTGOING FEDWIRE DR TRN #013607
07/16	7,500.00		OUTGOING FEDWIRE DR TRN #013644
07/16	12,000.00		OUTGOING FEDWIRE DR TRN #013513
07/16	29.00		CHECK CARD PURCHASE REALTYHOSTING CO 615-3337653 TN
07/16	99.00		CHECK CARD PURCHASE REALTYHOSTING CO 615-3337653 TN
07/19	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #011417
07/19	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #011492
07/19	4,000.00		OUTGOING FEDWIRE DR TRN #011417
07/19	4,500.00		OUTGOING FEDWIRE DR TRN #011492
07/19	23.92		CHECK CARD PURCHASE WAL MART MIAMI AIRPORFL
07/20	37.00		CHECK CARD PURCHASE USPS 1158540137 KEY BISCAYNE FL
07/21	10.00		OUTGOING FEDWIRE EXCEPTION FEE TRN #011570
07/21	10.00		OUTGOING FEDWIRE EXCEPTION FEE TRN #011596
07/21	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #011570
07/21	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #011596
07/21	2,554.62		OUTGOING FEDWIRE DR TRN #011570
07/21	3,652.90		OUTGOING FEDWIRE DR TRN #011596
07/22	180.98		CHECK CARD PURCHASE OFFICE MAX 00 MIAMI FL
07/26	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #007298
07/26	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #007328
07/26	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #011604
07/26	4,000.00		OUTGOING FEDWIRE DR TRN #011604
07/26	4,500.00		OUTGOING FEDWIRE DR TRN #007298
07/26	7,500.00		OUTGOING FEDWIRE DR TRN #007328
07/26	34.58		CHECK CARD PURCHASE SHELL OIL 20945 KEY BISCAYNE FL
07/26	58.00		CHECK CARD PURCHASE REALTYHOSTING CO 615-3337653 TN

WITHDRAWALS/DEBITS: 49

BALANCE ACTIVITY HISTORY					
DATE	BALANCE	COLLECTED	DATE	BALANCE	COLLECTED
		BALANCE			BALANCE
07/01	36.67	36.67	07/19	34,093.84	34,093.84
07/07	41,847.09	41,847.09	07/20	24,056.84	24,056.84
07/08	25,847.09	25,847.09	07/21	17,789.32	17,789.32
07/09	8,772.09	8,772.09	07/22	17,628.34	17,628.34
07/12	4,747.09	4,747.09	07/26	1,475.76	1,475.76
07/13	4,520.76	4,520.76	07/28	875.76	875.76
07/14	2,750.76	2,750.76	07/29	375.76	375.76
07/15	275.76	275.76	07/30	255.76	255.76
07/16	42,657.76	42,657.76			

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ACCOUNT STATEMENT

CAMELOT PROMOTIONS LLC
 116 W MASHTA DR
 KEY BISCAIYNE FL 33149-2418

QUESTIONS? PLEASE CALL
 (305)591-6000

EVERY TIME YOU USE YOUR BUSINESS CHECK CARD AND SIGN FOR YOUR PURCHASE BETWEEN SEPT. 1 AND NOV. 30, 2004, YOU'LL BE AUTOMATICALLY ENTERED FOR A CHANCE TO WIN AN ULTIMATE NASCAR EXPERIENCE. SEE ENCLOSED INSERT FOR FURTHER DETAILS AND OFFICIAL RULES.

ACCOUNT TYPE	ACCOUNT NUMBER	STATEMENT PERIOD	TAXPAYER ID
BASIC BUSINESS CHECKING	1000017715565	08/01/2004 - 08/31/2004	34-1980251

DESCRIPTION	AMOUNT	DESCRIPTION	AMOUNT
BEGINNING BALANCE	\$255.76	AVERAGE BALANCE	\$14,335.53
DEPOSITS/CREDITS	\$183,725.00	AVERAGE COLLECTED BALANCE	\$14,335.53
CHECKS	\$34,985.81	NUMBER OF DAYS IN STATEMENT PERIOD	31
WITHDRAWALS/DEBITS	\$148,975.71		
ENDING BALANCE	\$19.24		

DEPOSITS/CREDITS

DATE	AMOUNT	SERIAL #	DATE	AMOUNT	SERIAL #	DESCRIPTION
08/10	2,350.00		08/27	3,600.00		DEPOSIT
08/17	1,500.00		08/31	1,275.00		DEPOSIT
08/03	75,000.00					WIRE TRANSFER CR TRN #005997
08/12	100,000.00					INCOMING FEDWIRE CR TRN #005543

DEPOSITS/CREDITS: 6 TOTAL ITEMS DEPOSITED: 1

CHECKS

CHECK NUMBER	AMOUNT	DATE PAID	CHECK NUMBER	AMOUNT	DATE PAID
8001	4,500.00	08/06	8001	6,000.00	08/17
8001	10,000.00	08/13	8001	1,000.00	08/24
8001	10,000.00	08/13	8001	600.00	08/27
8001	2,885.81	08/17			

CHECKS: 7

WITHDRAWALS/DEBITS

DATE	AMOUNT	SERIAL #	DESCRIPTION
08/02	30.82		CHECK CARD PURCHASE QUALITY PRINTS A MIAMI FL
08/03	5.00		INTERNAL TRANSFER WIRE CR FEE TRN #005997
08/03	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #008527
08/03	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #008597
08/03	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #008643
08/03	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #008691
08/03	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #008890
08/03	4,000.00		OUTGOING FEDWIRE DR TRN #008597
08/03	4,000.00		OUTGOING FEDWIRE DR TRN #008890
08/03	4,500.00		OUTGOING FEDWIRE DR TRN #008643
08/03	7,500.00		OUTGOING FEDWIRE DR TRN #008691
08/03	15,000.00		OUTGOING FEDWIRE DR TRN #008527
08/04	5,000.00		OVER-THE-COUNTER WITHDRAWAL

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ACCOUNT
STATEMENT

DATE	AMOUNT	SERIAL #	DESCRIPTION
08/04	11,000.00		OVER-THE-COUNTER WITHDRAWAL
08/05	32.10		CHECK CARD PURCHASE ELECTRONICTALK/A KEY BISCAYNE FL
08/06	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #004412
08/06	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #004453
08/06	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #004485
08/06	4,000.00		OUTGOING FEDWIRE DR TRN #004412
08/06	4,000.00		OUTGOING FEDWIRE DR TRN #004485
08/06	5,000.00		OUTGOING FEDWIRE DR TRN #004453
08/09	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #010643
08/09	6,000.00		OUTGOING FEDWIRE DR TRN #010643
08/09	37.00		CHECK CARD PURCHASE USPS 1158540137 KEY BISCAYNE FL
08/10	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #009108
08/10	2,500.00		OUTGOING FEDWIRE DR TRN #009108
08/12	15.00		INCOMING FEDWIRE TRANSFER FEE TRN #005543
08/12	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #006242
08/12	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #006275
08/12	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #006309
08/12	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #006336
08/12	4,000.00		OUTGOING FEDWIRE DR TRN #006242
08/12	4,500.00		OUTGOING FEDWIRE DR TRN #006275
08/12	7,500.00		OUTGOING FEDWIRE DR TRN #006309
08/12	10,000.00		OUTGOING FEDWIRE DR TRN #006336
08/13	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #005382
08/13	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #005458
08/13	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #005499
08/13	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #005532
08/13	4,000.00		OUTGOING FEDWIRE DR TRN #005458
08/13	4,500.00		OUTGOING FEDWIRE DR TRN #005499
08/13	4,500.00		OUTGOING FEDWIRE DR TRN #005532
08/13	10,000.00		OUTGOING FEDWIRE DR TRN #005382
08/19	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #005475
08/19	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #005533
08/19	3,000.00		OUTGOING FEDWIRE DR TRN #005475
08/19	3,200.00		OUTGOING FEDWIRE DR TRN #005533
08/20	40.00		ACCOUNT ANALYSIS FEE
08/23	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #010044
08/23	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #010092
08/23	2,873.10		OUTGOING FEDWIRE DR TRN #010092
08/23	5,137.64		OUTGOING FEDWIRE DR TRN #010044
08/23	14.25		CHECK CARD PURCHASE USPS 1158540137 KEY BISCAYNE FL
08/24	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #006538
08/24	3,000.00		OUTGOING FEDWIRE DR TRN #006538
08/25	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #007977
08/25	4,000.00		OUTGOING FEDWIRE DR TRN #007977
08/25	44.30		CHECK CARD PURCHASE USPS 1158540137 KEY BISCAYNE FL
08/27	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #003719
08/27	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #003743
08/27	1,500.00		OUTGOING FEDWIRE DR TRN #003743
08/27	2,400.00		OUTGOING FEDWIRE DR TRN #003719
08/27	6.50		CHECK CARD PURCHASE POLLO TROPICAL00 MIAMI FL
08/31	20.00		OUTGOING FEDWIRE TRANSFER FEE TRN #008640
08/31	1,600.00		OUTGOING FEDWIRE DR TRN #008640

WITHDRAWALS/DEBITS: 65



ACCOUNT
STATEMENT

BALANCE ACTIVITY HISTORY					
DATE	BALANCE	COLLECTED	DATE	BALANCE	COLLECTED
		BALANCE			BALANCE
08/01	255.76	255.76	08/13	31,125.84	31,125.84
08/02	224.94	224.94	08/17	23,740.03	23,740.03
08/03	40,119.94	40,119.94	08/19	17,500.03	17,500.03
08/04	24,119.94	24,119.94	08/20	17,460.03	17,460.03
08/05	24,087.84	24,087.84	08/23	9,395.04	9,395.04
08/06	6,527.84	6,527.84	08/24	5,375.04	5,375.04
08/09	470.84	470.84	08/25	1,310.74	1,310.74
08/10	300.84	300.84	08/27	364.24	364.24
08/12	74,205.84	74,205.84	08/31	19.24	19.24

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address) John C. Brown (195804) REDENBACHER & BROWN, L.L.P. 388 Market Street Suite 500 San Francisco, CA 94111 TELEPHONE NO: 415-409-8600 FAX NO 415-409-0600 ATTORNEY FOR (Name) Steven T. Kirsch	FOR COURT USE ONLY
NAME OF COURT Circuit Ct. of the 9th Judicial District STREET ADDRESS In and for Orange County, Florida MAILING ADDRESS CITY AND ZIP CODE BRANCH NAME	
PLAINTIFF/ PETITIONER STEVEN T. KIRSCH	
DEFENDANT/ RESPONDENT JAVIER A. CUADRA, et al.	
DEPOSITION SUBPOENA For Production of Business Records	CASE NUMBER

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 SUNTRUST BANKS, INC., c/o Lynn Nelson, 200 South Orange Avenue, MC:1093,
 Orlando, Florida 32801

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): Alan Bryant On (date): June 24, 2005 At (time): 10:00 a.m. Location (address): 511 East Livingston Street, Orlando, FL, 32803	5-26-05 P LNS
Do not release the requested records to the deposition officer prior to the date and time stated above.	

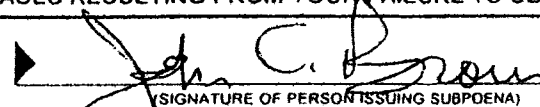
- a. by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
 - b. by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
 - c. by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows: See attachment 3.

Continued on Attachment 3.

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: 5/18/05
 John C. Brown
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PERSON ISSUING SUBPOENA)
 Attorney for Plaintiff
 (TITLE)

ED ONJ
 MAY 25 2005
 MOIRA GARDNER
 CLERK OF THE CIRCUIT COURT
 BY: Alba Garcia

(Proof of service on reverse)
 DEPOSITION SUBPOENA FOR PRODUCTION
 OF BUSINESS RECORDS

Legal Solutions Co. Pl.
 Code of Civil Procedure
 §§ 2020, 2025
 Government Code, § 68097.1

EXHIBIT 3

Attachment 3.

A. With respect to bank account number 1000017715565 belonging to Camelot Promotions, LLC, whose address is 116 W Mashta Dr, Key Biscayne, FL, 33149-2418, all written matter, printed matter, electronic matter, facsimiles, copies, and/or computer data, whether or not they have ever been printed out, that relate to transaction details, including but not limited to, the name of the payor bank and/or payor person or entity, for the following deposits or credits into said account:

DATE	AMOUNT	DESCRIPTION
6/8/04	\$30,000.00	WIRE TRANSFER CR TRN #004002
6/9/04	\$50,000.00	WIRE TRANSFER CR TRN #009069
6/23/04	\$50,000.00	WIRE TRANSFER CR TRN #007000
7/7/04	\$75,000.00	WIRE TRANSFER CR TRN #007100
7/16/04	\$75,000.00	WIRE TRANSFER CR TRN #010041
8/3/04	\$75,000.00	WIRE TRANSFER CR TRN #005997
8/12/04	\$100,000.00	INCOMING FEDWIRE CR TRN #005543

B. The most current statement for every bank account held with you by Camelot Promotions, LLC, whose address is 116 W Mashta Dr, Key Biscayne, FL, 33149-2418.

Run Date: 27-May-05

Run Time: 10:54 AM

Transaction Detail Report

Page: 1

User Name: TRAIL

BNK: 175 SND DATE: 040608

AMT: \$30,000.00

C: EWI

ADV: LTR

TYP: FTR

VAL: 040608

CUR: USD

LOC: MTRANS

TRN: 040608-00004002

FOR AMT: 30,000.00

CHECK NUM:

DBT: D/0041001143506
ACC: D/0041001143506
DEPT: 175
BUSH ROSS GARDNER WARREN AND RUDY
220 S FRANKLIN STREET #0W
TAMPA, FL 33602-5330

ON FILE: Y
CTRY: US

SEND:
SNDR REF NUM: 1 2004160000494

ORIG: /41001143506
Bush, Ross, Garder, Warren, & Rudy,
220 S. Franklin Street
Tampa, FL 22601
REF NUM:

CDT: D/1000017715565
ACC: D/1000017715565
DEPT: 175
Camelot Promotions LLC

ON FILE: N
CTRY:

Run Date: 27-May-05
Run Time: 10:54 AM

BNK: 175 SND DATE: 040609
AMT: \$50,000.00
SRC: EW1 ADV: LTR TYP: FTR

VAL: 040609
CUR: USD
LOC: MTRANS

TRN: 040609-00009069
FOR AMT: 50,000.00
CHECK NUM:

DBT: D/0041001143506
ACC: D/0041001143506
DEPT: 175
BUSH ROSS GARDNER WARREN AND RUDY
220 S FRANKLIN STREET #0W
TAMPA, FL 33602-5330

ON FILE: Y
CTRY: US

CDT: D/1000017715565
ACC: D/1000017715565
DEPT: 175
Camelot Promotions LLC

ON FILE: N
CTRY:

SEND:
SNDR REF NUM: 1 2004161001396

ORIG: /41001143506
Bush, Ross, Garder, Warren, & Rudy,
220 S. Franklin Street
Tampa, FL 22601
REF NUM:

Run Date: 27-May-05
Run Time: 10:54 AM

Case 3:05-cv-03010-MJJ

Document 23 Filed 08/30/2005
Transaction Detail Report

Page 19 of 25

Page: 1
User Name: TRAIL

BNK: 175 **SND DATE:** 040623
AMT: \$50,000.00
ARC: EWI **ADV:** LTR **TYP:** FTR

VAL: 040623
CUR: USD
LOC: MTRANS

TRN: 040623-00007000
FOR AMT: 50,000.00
CHECK NUM:

DBT: D/0041001143506
ACC: D/0041001143506
DEPT: 175
BUSH ROSS GARDNER WARREN AND RUDY
220 S FRANKLIN STREET
TAMPA, FL 33602-5330

ON FILE: Y
CTRY: US

CDT: D/1000017715565
ACC: D/1000017715565
DEPT: 175
Camelot Promotions LLC

ON FILE: N
CTRY:

SEND:
SNDR REF NUM: 1 2004175000925

ORIG: /41001143506
Bush, Ross, Garder, Warren, & Rudy,
220 S. Franklin Street
Tampa, FL 22601
REF NUM:

BNK: 175 SND DATE: 040707

AMT: \$75,000.00

RC: EWI

ADV: LTR

TYP: FTR

VAL: 040707

CUR: USD

LOC: MTRANS

TRN: 040707-00007100

FOR AMT: 75,000.00

CHECK NUM:

DBT: D/0041001143506

ACC: D/0041001143506

DEPT: 175

BUSH ROSS GARDNER WARREN AND RUDY

220 S FRANKLIN STREET

TAMPA, FL 33602-5330

SEND:

SNDR REF NUM: 1 2004189001070

ORIG: /41001143506

Bush, Ross, Garder, Warren, & Rudy,

220 S. Franklin Street

Tampa, FL 22601

REF NUM:

ON FILE: Y

CTRY: US

CDT: D/1000017715565

ACC: D/1000017715565

DEPT: 175

CAMELOT PROMOTIONS LLC

116 W MASHTA

KEY BISCA YNE, FL 33149

ON FILE: Y

CTRY:

BNK: 175 SND DATE: 040716
AMT: \$75,000.00
RC: EWI ADV: LTR TYP: FTR

VAL: 040716
CUR: USD
LOC: MTRANS

TRN: 040716-00010041
FOR AMT: 75,000.00
CHECK NUM:

DBT: D/0041001143506
ACC: D/0041001143506
DEPT: 175
BUSH ROSS GARDNER WARREN AND RUDY
220 S FRANKLIN STREET
TAMPA, FL 33602-5330

ON FILE: Y
CTRY: US

CDT: D/1000017715565
ACC: D/1000017715565
DEPT: 175
CAMELOT PROMOTIONS LLC
116 W MASHTA
KEY BISCAVNE, FL 33149

ON FILE: Y
CTRY:

SEND:
SNDR REF NUM: 1 2004198001759

ORIG: /41001143506
Bush, Ross, Garder, Warren, & Rudy,
220 S. Franklin Street
Tampa, FL 22601
REF NUM:

BNK: 175 SND DATE: 040803
AMT: \$75,000.00
RC: EWI ADV: LTR TYP: FTR

VAL: 040803
CUR: USD
LOC: MTRANS

TRN: 040803-00005997
FOR AMT: 75,000.00
CHECK NUM:

DBT: D/0041001143506
ACC: D/0041001143506
DEPT: 175
BUSH ROSS GARDNER WARREN AND RUDY
220 S FRANKLIN STREET
TAMPA, FL 33602-5330

ON FILE: Y
CTRY: US

SEND:
SNDR REF NUM: 1 2004216000943

ORIG: /41001143506
Bush, Ross, Garder, Warren, & Rudy,
220 S. Franklin Street
Tampa, FL 22601
REF NUM:

CDT: D/1000017715565
ACC: D/1000017715565
DEPT: 175
CAMELOT PROMOTIONS LLC
116 W MASHTA
KEY BISCAVNE, FL 33149

ON FILE: Y
CTRY:

BNK: 175 SND DATE: 040812
AMT: \$100,000.00
RC: FED ADV: LTR TYP: FTR

VAL: 040812
CUR: USD
LOC:

TRN: 040812-00005543
FOR AMT: 100,000.00
CHECK NUM:

DBT: A/072000096
ACC: G/9088171050
DEPT: 175
COMERICA BANK
LIVONIA, MI

ON FILE: N
CTRY:

SEND:
SNDR REF NUM: 040812003380

ORIG: /002001840406407
VENTANA CONSULTANTS LTD
8145 WATERWOOD DR
KALAMAZOO, MI 490489260
REF NUM:

CDT: D/1000017715565
ACC: D/1000017715565
DEPT: 175
CAMELOT PROMOTIONS LLC
116 W MASHTA
KEY BISCA YNE, FL 33149

ON FILE: Y
CTRY:

BNF BNK: /1000017715565
CAMELOT PROMOTIONS LLC

BK: N

ORIG TO BNF INFO:
FOR FAXING & CONSULTING

The Department of Health and Human Services is pleased to announce the results of the 1987-1988 fiscal year. The Department has achieved significant milestones in its mission to improve the health and well-being of the American people. A large handwritten number '5' is visible on the right side of this section.

The Department has successfully implemented a comprehensive program of health care reform, ensuring that all Americans have access to affordable and quality care. This includes the expansion of Medicaid and the creation of new health insurance options for low-income families.

In addition, the Department has focused on strengthening the public health system and promoting disease prevention. Through a series of targeted campaigns and initiatives, we have been able to reduce the incidence of several major chronic diseases, including heart disease and cancer.

The Department has also made significant investments in research and development, particularly in the areas of infectious diseases and mental health. These efforts have led to the discovery of new treatments and vaccines, as well as improved diagnostic tools. Furthermore, we have expanded our commitment to addressing the health needs of underserved communities, ensuring that no one is left behind.

As we look ahead to the future, the Department remains committed to our core mission and to the well-being of the American people. We will continue to work tirelessly to advance the health and welfare of all citizens, ensuring a brighter and healthier future for everyone.

The Department of Health and Human Services is proud to have achieved these accomplishments and to have the support of the American people. We will continue to strive for excellence in all that we do, ensuring that the health and well-being of every citizen remains our top priority.

For more information on the Department's activities and programs, please contact the Office of Public Affairs. We are committed to transparency and to keeping the public informed about our work. Your feedback and input are invaluable to us as we continue to improve our services and programs.

The Department of Health and Human Services is a leading agency in the federal government, dedicated to improving the health and well-being of the American people. Through our various programs and initiatives, we work to address the most pressing health issues of our time, from infectious diseases to mental health and substance abuse. Our commitment to excellence and to the well-being of all Americans is unwavering.

We are proud to be part of a team that is dedicated to making a difference in the lives of the American people. Together, we can build a healthier and more vibrant future for all.

INTERBRANCH
SC-107

Name and Address of Court Superior Court - Palo Alto Courthouse
270 Grant Avenue, Palo Alto, CA 94306
650-462-3800 x3820

1099

PLAINTIFF/DEMANDANTE (Name, address, and telephone number of each)
Kirsch, Steven T.
13930 La Paloma Rd
Los Altos Hills, CA 94022-2628

SMALL CLAIMS CASE NO. 2-04-SC-001384
DEFENDANT/EMANDADO (Name, address, and telephone number of each).
Heysek, Thomas Milton
PO Box 2515
San Francisco, CA 94126

05 MAR 23 AM 10:13

FILED
MAR 23 2005
Clerk

Telephone No.: 650-279-1008

Telephone No.: (415) 596-2200

Telephone No.:
 See attached sheet for additional plaintiffs and defendants.

Telephone No.:

**SMALL CLAIMS SUBPOENA
FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS
AND THINGS AT TRIAL OR HEARING AND DECLARATION**

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of witness, if known):
Bank of America Corporation, 227 S San Antonio Rd., Los Altos, CA 94022 c/o Gloria or Bonnie at
415-436-4811; fax: 415-436-4827

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this case at the date, time, and place shown in the box below UNLESS your appearance is excused as indicated in box 4b below or you make an agreement with the person named in item 2 below.

a. Date: April 7, 2005 Time: 1pm Dept.: 86 Div.: Room:
b. Address: 270 Grant Avenue, Palo Alto, CA 94306

2. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name of subpoenaing party: Steven T. Kirsch b. Telephone number: 650-279-1008

3. Witness Fees: You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 2.

PRODUCTION OF DOCUMENTS AND THINGS

(Complete item 4 only if you want the witness to produce documents and things at the trial or hearing.)

4. YOU ARE (item a or b must be checked):
a. Ordered to appear in person and to produce the records described in the declaration on page two. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
b. Not required to appear in person if you produce (i) the records described in the declaration on page two and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number, your name, and the date, time, and place from item 1 in the box above. (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party listed at the top of this form.

5. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.



Date issued: MAR 22 2005

KIRI TORRE
Clerk, by Deputy

(See reverse for declaration in support of subpoena)

PLAINTIFF/PETITIONER: Kirsch, Steven T.	CASE NUMBER:
DEFENDANT/RESPONDENT: Haysek, Thomas Milton	2-04-SC-001384

**DECLARATION IN SUPPORT OF
SMALL CLAIMS SUBPOENA FOR PERSONAL APPEARANCE
AND PRODUCTION OF DOCUMENT AND THINGS AT TRIAL OR HEARING
(Code Civil Procedure sections 1985, 1987.5)**

- 1 I, the undersigned, declare I am the plaintiff defendant judgment creditor
 other (specify): in the above entitled action.
2. The witness has possession or control of the following documents or other things and shall produce them at the time and place specified on the *Small Claims Subpoena* on the first page of this form.
- a. For trial or hearing (specify the exact documents or other things to be produced by the witness):
- Continued on Attachment 2a.
- b. After trial to enforce a judgment (specify the exact documents or other things to be produced by the party who is the judgment debtor or other witness possessing records relating to the judgment debtor):
- (1) Payroll receipts, stubs, and other records concerning employment of the party. Receipts, invoices, documents, and other papers or records concerning any and all accounts receivable of the party.
 - (2) Bank account statements, canceled checks, and check registers from any and all bank accounts in which the party has an interest.
 - (3) Savings account passbooks and statements, savings and loan account passbooks and statements, and credit union share account passbooks and statements of the party.
 - (4) Stock certificates, bonds, money market certificates, and any other records, documents, or papers concerning all investments of the party.
 - (5) California registration certificates and ownership certificates for all vehicles registered to the party.
 - (6) Deeds to any and all real property owned or being purchased by the party.
 - (7) Other (specify): see attachment 2b

3. Good cause exists for the production of the documents or other things described in paragraph 2 for the following reasons:
Defendant hasn't paid the judgment so all his financial records are now available for inspection.

Continued on Attachment 3.

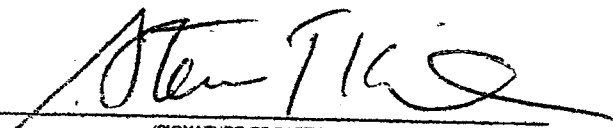
4. These documents are material to the issues involved in this case for the following reasons:
Defendant hasn't paid the judgment so this is necessary to collect the judgment.

Continued on Attachment 4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 21, 2005

Steven T. Kirsch
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY)

(See proof of service on page three)

**SMALL CLAIMS SUBPOENA
AND DECLARATION**

Case 2-04-SC-001384 Kirsch v. Heysek

Case 2-04-SC-001384

Kirsch v. Heysek

Attachment 2b (SC-107)

Monthly statements for June through September 2004 as well as for the most recent 3 months that are available for Asian American Capital (account # AC-004968382976; ABA# 026 009 593 which is the NY city branch).

Also, provide the same set of information for any other accounts in which the Defendant, Thomas M. Heysek, has a beneficial interest. These accounts may be entitled "Thomas Heysek Associates" or be directly in the name of the Defendant.

No redactions are permitted.

Instead of mailing these documents to the court and complying with the requirements listed in 4(b) on page 1 of the subpoena, you may satisfy the requirements of this subpoena by mailing the requested documents directly to the judgment creditor prior April 7, 2005 at:

Steven T. Kirsch
13930 La Paloma Rd
Los Altos Hills, CA 94022

Note that this subpoena requests the BUSINESS records of the Defendant and are not subject to the conditions listed in #5 on Page 1.

Bank of America



Bank of America
Southwest Legal Order Processing
NM1-101-03-06
PO Box 25500
Albuquerque, NM 87125-0500

April 6, 2005

Steven T Kirsch
13930 La Paloma Road
Los Altos Hills, CA 94022

RE:

Court Case Name: Asian American Capital
Court Case Number: 2-04-SC-001384
Our Case Number: 0329050127Penc

Enclosed are the documents that were requested by the Summons/Subpoena issued in the above referenced case.

Please contact me if I can be of further assistance to you in this matter.

Sincerely,

Linda Chavez
Banking Group Support
505.282.4477



Recycled Paper

LTSTemp

EXHIBIT 11

CERTIFICATION OF RECORDS

**RE: ASIAN AMERICAN CAPITAL MANAGEMENT LLC
dba ORIGINAL RESEARCH & ANALYSIS**

COMES NOW, Kathy Fragua, Custodian of Records of Bank of America, NA, certifies that the attached is a true and correct copy of all the records in the files of this Corporation, compiled during the normal course of business as requested by the Subpoena served upon Bank of America, NA Custodian of Records.

DATED this 6th day of April, 2005.

BANK OF AMERICA, NA

Kathy Fragua
Custodian of Records

STATE OF NEW MEXICO)
)
County of BERNALILLO)

Before me this 6th day of April, 2005 personally appeared before me, Kathy Fragua, Custodian of Records of the above named Corporation, who signed the above for the purposes therein contained.

SUBSCRIBED AND SWORN TO BEFORE ME this 6th day of April, 2005.



Diane R. Apodaca-Arviso
Notary Public

(Notary Seal)

Bank of America

Bank of America, N.A.
 P.O. Box 25118
 Tampa, FL 33622-5118



1.800.432.1000
 www.bankofamerica.com

H

Page 1 of 2
 Account Number: 0049 6838 2976
 EO P 0A Enclosures 0 50
 Statement Period
 08/01/04 through 08/31/04 0168348



01336 001 SCM999 I12 0

ASIAN AMERICAN CAPITAL MANAGEMENT LLC
 50 CALIFORNIA ST STE 1500
 SAN FRANCISCO CA 94111-4612

Our free Online Banking service allows you to check account balances, track account activity, pay bills and more. With Online Banking you can also view up to 18 months of this statement online. Enroll at www.bankofamerica.com/smallbusiness.

Your Bank of America Business Advantage Summary

Account Name	Account Number	Qualifying Balance*	Type of Balance	Date	Total
Deposit Accounts					
Business Advantage Checking	0049 6838 2976	15,140.80	Average	08-30	
Business Economy Checking	0049 6840 2953	90.00	Average**	08-30	
Total Deposit Account Balance					\$15,230.80

* Balances in your linked accounts that are used to avoid a monthly maintenance fee are listed here. These balances reflect the average or principal balance in your account - for your actual ending account balance, please see the "Account Summary Information" section of your statement.
 ** Detailed information about this account is not included in this statement.

Business Advantage Checking

Account Summary Information

Statement Period	08/01/04 through 08/31/04	Statement Beginning Balance	7,865.00
Number of Deposits/Credits	1	Amount of Deposits/Credits	24,000.00
Number of Withdrawals/Debits	19	Amount of Withdrawals/Debits	25,773.14
Number of Deposited Items	0	Statement Ending Balance	6,091.86
Number of Enclosures	0	Average Ledger Balance	15,183.60
Number of Days in Cycle	31	Service Charge	0.00

Deposits and Credits

Deposits and Credits

Date	Amount	Description	Bank Reference
08/03	24,000.00	Wire Type:Wire IN Date: 040803 Time:1214 Et Trn:2004080300017724 Seq:040803005926/002029 Orig: Bush Ross Gardner Warren ID:0041001143506 Snd Bk:Suntrust Bank ID:061000104 Pmt Det:1 200421 6000931	903708030017724

Bank of America
 Bank of America, N.A.
 P.O. Box 25118
 Tampa, FL 33622-5118
 1.800.432.1000
 www.bankofamerica.com

H
 Page 1 of 2
 Account Number: 0049 6838 2976
 EO P 0A Enclosures 0 50
 Statement Period
 07/01/04 through 07/31/04 0185459



02336 001 SCM999 11234 0

ASIAN AMERICAN CAPITAL MANAGEMENT LLC
 50 CALIFORNIA ST STE 1500
 SAN FRANCISCO CA 94111-4612

Our free Online Banking service allows you to check account balances, transfer funds, pay bills and more. Enroll at www.bankofamerica.com.

Your Bank of America Business Advantage Summary

Account Name	Account Number	Qualifying Balance*	Type of Balance	Date	Total
Deposit Accounts					
Business Advantage Checking	0049 6838 2976	17,889.06	Average	07-29	
Business Economy Checking	0049 6840 2953	100.00	Average**	07-29	
Total Deposit Account Balance					\$17,989.06

* Balances in your linked accounts that are used to avoid a monthly maintenance fee are listed here. These balances reflect the average or principal balance in your account - for your actual ending account balance, please see the "Account Summary Information" section of your statement.
 ** Detailed information about this account is not included in this statement.

Business Advantage Checking

Account Summary Information

Statement Period	07/01/04 through 07/31/04	Statement Beginning Balance	11,345.00
Number of Deposits/Credits	1	Amount of Deposits/Credits	23,000.00
Number of Withdrawals/Debits	11	Amount of Withdrawals/Debits	26,480.00
Number of Deposited Items	0	Statement Ending Balance	7,865.00
Number of Enclosures	0	Average Ledger Balance	17,453.45
Number of Days in Cycle	31	Service Charge	0.00

Deposits and Credits

Deposits and Credits

Date Entered	Amount	Description	Tran ID
07/07	23,000.00	Wire Type:Wire IN Date: 040707 Time:1257 Et Trn:2004070700021275 Seq:040707007207/002372 Orig: Bush-Ross-Gardner Warren ID:0041001143506 Snd Bk:Suntrust Bank ID:061000104 Pmt Det:1 200418 9001094	903707070021275

Name and Address of Court: Superior Court - Palo Alto Courthouse
270 Grant Avenue, Palo Alto, CA 94306
650-462-3800 x3820

SMALL CLAIMS CASE NO. 2-04-SC-001384

PLAINTIFF/DEMANDANTE (Name, address, and telephone number of each):
Kirsch, Steven T.
13930 La Paloma Rd
Los Altos Hills, CA 94022-2628

DEFENDANT/DEMANDADO (Name, address, and telephone number of each):
Heysek, Tom
50 California Street Suite 1500
San Francisco, CA 94111

Telephone No.: 650-279-1008

Telephone No.: (661) 338-9685

Telephone No.:

Telephone No.:

See attached sheet for additional plaintiffs and defendants.

**SMALL CLAIMS SUBPOENA
FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS
AND THINGS AT TRIAL OR HEARING AND DECLARATION**

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of witness, if known):
Fry Hammond Barr, c/o Pete Barr Jr, President/CEO, 600 East Washington Str, Orlando, FL 32801
Phone: (407) 849-0100

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this case at the date, time, and place shown in the box below UNLESS your appearance is excused as indicated in box 4b below or you make an agreement with the person named in item 2 below.

a. Date: September 20, 2004 Time: 1pm Dept.: 86 Div.: Room:
b. Address: 270 Grant Avenue, Palo Alto, CA 94306

2. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name of subpoenaing party: Steven T. Kirsch b. Telephone number: 650-279-1008

3. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 2.

PRODUCTION OF DOCUMENTS AND THINGS

(Complete item 4 only if you want the witness to produce documents and things at the trial or hearing.)

4. YOU ARE (item a or b must be checked):

- a. Ordered to appear in person and to produce the records described in the declaration on page two. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
- b. Not required to appear in person if you produce (i) the records described in the declaration on page two and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number; your name; and the date, time, and place from item 1 in the box above. (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party listed at the top of this form.

5. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.



Date issued: AUG 09 2004

KIRSCHE
Clerk, by Deputy

(See reverse for declaration in support of subpoena)

Page one of three

PLAINTIFF/PETITIONER: Kirsch, Steven T.	CASE NUMBER: 2-04-SC-001384
DEFENDANT/RESPONDENT: Heysek, Tom	

**DECLARATION IN SUPPORT OF
SMALL CLAIMS SUBPOENA FOR PERSONAL APPEARANCE
AND PRODUCTION OF DOCUMENT AND THINGS AT TRIAL OR HEARING
(Code Civil Procedure sections 1985, 1987.5)**

1. I, the undersigned, declare I am the plaintiff defendant judgment creditor
 other (specify): _____ in the above entitled action.
2. The witness has possession or control of the following documents or other things and shall produce them at the time and place specified on the *Small Claims Subpoena* on the first page of this form.
- a. For trial or hearing (specify the exact documents or other things to be produced by the witness):
Provide all information directly to the Plaintiff via FAX at (408) 716-2493 or email at stk@propel.com. Billing, payment, contact, and account application information for entities associated with USPennyStocks.com including John Rooney, Tom Heysek, Brian Koss. If you are paid via wire transfer, provide any emails or other documents identifying the entities involved and all identifying information on the wire transfers
- Continued on Attachment 2a.
- b. After trial to enforce a judgment (specify the exact documents or other things to be produced by the party who is the judgment debtor or other witness possessing records relating to the judgment debtor):
- (1) Payroll receipts, stubs, and other records concerning employment of the party. Receipts, invoices, documents, and other papers or records concerning any and all accounts receivable of the party.
 - (2) Bank account statements, canceled checks, and check registers from any and all bank accounts in which the party has an interest.
 - (3) Savings account passbooks and statements, savings and loan account passbooks and statements, and credit union share account passbooks and statements of the party.
 - (4) Stock certificates, bonds, money market certificates, and any other records, documents, or papers concerning all investments of the party.
 - (5) California registration certificates and ownership certificates for all vehicles registered to the party.
 - (6) Deeds to any and all real property owned or being purchased by the party.
 - (7) Other (specify): _____
3. Good cause exists for the production of the documents or other things described in paragraph 2 for the following reasons:
These documents are required to identify the entities who control Worldwide Picks LTD aka Winningstockpicks.net aka USPennyStocks.com.

Continued on Attachment 3.

4. These documents are material to the issues involved in this case for the following reasons:
The entities who control Worldwide Picks LTD are liable for sending the faxes. This information is required in order to help identify who they are.

Continued on Attachment 4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 9, 2004

Steven T. Kirsch
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY)

(See proof of service on page three)

Internal Bank Transfer 175
<MESSAGE ADVISOR> PH: APLS FAX: MIS FAX: IXT SLO: 01897 IOC: QUEUE: FAX 0
TRN: 040716-009901 <<< Intranet Money Transfer System >>> 16-JUL-2004 14:16:01.82

100000014811 20041080017401000NRF US0000000336000.00SF TRM 175NN
RTR 040716040716040716
3FTR

ORIG= /41001143506
-Bush, Ross, Gardner, Warren, & Rudy,
-220 S. Franklin Street
-Tampa, FL 33601
DBT=D/41001143506
-Bush, Ross, Gardner, Warren, & Rudy,
-220 S. Franklin Street
-Tampa, FL 33601

BBK=A/061000100
-SUNSHINE ORLANDO
-ORLANDO
-FL
BNF=D/6215215031180
-Fry Hammond Barr Inc

ON ACCOUNT
01-1100-001

pd
Inv#
1508 283,207.00
1509 25,730.00
1510 26,866.00
335,803.00

335,803.00
336,000.00

on acct. >197.00

RPT: AMT: \$336,000.00 CUR: USDTEST ##### VAL:07/16/04
TYP:FTR MT: ENDS:S CHG:D A C:A COM:N CCL:N

DBT D/004100143506/ CDT D/6215215031180/ ADV:LTR
DEPT:175 DEPT:175
BUSH ROSS GARDNER WARREN AND RUDY FRY HAMMOND BARR INC
220 S FRANKLIN STREET 600 E WASHINGTON ST
TAMPA, FL 33602-5330 ORLANDO, FL 32801-2938
SPECIAL INSTRUCTIONS
PCO

SEND:
SNDR REF NUM:1 2004108001740
ORIG:/41001143506
Bush, Ross, Gardner, Warren, & Rudy,
220 S. Franklin Street
Tampa, FL 33601

pd inv#

PAID
JUL 16 2004

On July 16, 2004
\$336K wired from
Bush Ross PA to pay for
the TV commercials
produced by Fry Hammond Barr
(3 invoices)

The following three pages provides the details / back up to the one-page grid sheet---

SUMMARY:	Cash-In	Cash-Out	Estimated Bank Balance
Jan-Mar:	\$128,523	\$ 93,087	\$35,436
April	\$215,000	\$166,267	\$48,733
	\$343,523	\$223,521	\$84,169

\$84,169 (THIS SHOULD BE THE CASH BALANCE at 4/30)

<u>April</u>	<u>Cash In</u>	<u>CashOut</u>	
1-Apr		5,000	Kazaa / sebastian
1-Apr		89	no description payee
2-Apr		87	VZ Wireless (Johnny)
2-Apr		87	VZ Wireless (Lauren)
2-Apr		172	J&L Cell Phone Bill
5-Apr		5,000	John gets \$5K of 15K
5-Apr		1,000	RICH Media
5-Apr		385	Airfare American Air
5-Apr		45	no description payee
6-Apr		22	Metro-TV
6-Apr		6	Post Office
7-Apr		167	no description payee
7-Apr		50	Valero (Fishkill)
8-Apr	65,000		Bush Ross Dep't
9-Apr		172	Bank Service Chg
12th		2,750	To J&L 2.75/5.5 em's
13th		11,537	"J&L Taxes"
16th		155	no description payee
19th		6,500	Axis / Brian, 3.28
19th		2,335	faxes
19th		18	Pd-to-Lorraine S.
19th		18	FedEx
19th		18	FedEx
20th		2,000	DoublePlay/CoreyFax
20th		81	"Torches on the Hud"
20th		70	"Fairytale Brownies"
21st		15,000	Axis/Brian 2mm em's
21st		158	no description payee
22nd		87	VZ Wireless (Johnny)
22nd		87	VZ Wireless (Lauren)
23rd		5,000	Mara / Sunshine
23rd		1,500	Mara / Sunshine
23rd		98	no description payee
23rd		89	no description payee
26th	100,000		Bush Ross Dep't

26th		12,001	no description payee
26th		47	FedEx
26th		18	FedEx
26th		12	FedEx
26th		12	FedEx
26th		8	FedEx
27th		2	Post Office
29th		40,000	Overture/WILCOX
29th		1,900	Overture/WILCOX
29th		500	It's the Fax
29th		50	no description payee
30th	50,000		Bush Ross Dep't
30th		50,000	no description payee
30th		1950	Overture/WILCOX
30th		2	Post Office
AprTotal	215,000	166,267	

<u>January</u>	<u>Cash-In</u>	<u>Csh-Out</u>	<u>Est'</u>	<u>Bal'nce</u>	
29	\$40,100		40,100		Inv Prof wire + \$100
30		15,000	25,100		IMAX - Direct
		23,160	1,940		Cashier's ck / Cash
5-Feb		518.05	1,422		no description payee
5-Feb		1,421.95	0		477 Overture Clicks
12-Feb		431.01	-431		no description payee
12-Feb		87.00	-519		Bank Service Chg
13-Feb		306.01	-824		no description payee
13-Feb		125.00	-949		no description payee
17-Feb	14,992		14,043		Lucky 123 wire transf
18-Feb		5,000	9,043		\$5K of 14,992 is JL's
18-Feb	6,923		15,966		NTK Nature-Deposit
20-Feb		2,335	13,631		Pd-to-Lorraine S.
2-Mar		10.77	13,620		Home Depot
2-Mar		41.38	13,579		Post Office
3-Mar		22.00	13,557		Metro-TV
3-Mar		38.66	13,518		Ruby Tuesday
4-Mar		61.75	13,456		New York Attitude
4-Mar		101.50	13,355		Cash Withdrawal
4-Mar	40,000		53,335		Bush Ross Dep't
9-Mar		1,250.00	52,085		to JL for 6 mm e'ns
9-Mar		194.78	51,890		no description payee
9-Mar		14.00	51,876		Bank Service Chg
10-Mar		13.65	51,862		Post Office
10-Mar		33.02	51,829		Valero (Fishkill)
10-Mar		85.62	51,743		Coyote Grill
10-Mar	16,160		67,903		From Corp Fin'l

10-Mar		3,000.00	64,903	RICH Media
11-Mar		4.55	64,898	Post Office
11-Mar		63.90	64,834	Sam's Club
12-Mar		6.50	64,828	Post Office
15-Mar		3.18	64,825	Post Office
15-Mar		3.85	64,821	Post Office
15-Mar		4,000.00	60,821	\$4K of 16,160 is JL's
15-Mar		3,350.00	57,471	KAZAA
15-Mar		2,993.00	54,478	no description payee
15-Mar		2,400.00	52,078	IMAX - Direct
15-Mar		2,335.00	49,552	Pd-to-Lorraine S.
15-Mar		190.53	49,361	no description payee
15-Mar		119.20	49,242	no description payee
16-Mar		11,000.00	38,242	no description payee
16-Mar		1,000.00	37,242	Fax Vantage
16-Mar		1,000.00	36,242	no description payee
17-Mar		300.00	35,942	9 G Communications
18-Mar		2,500.00	33,442	MaxMedia 2mm e/ms
18-Mar		2,000.00	31,442	RICH mMedia
18-Mar		501.58	30,940	It's the Fax
19-Mar		2,500.00	28,440	Cateye/Rapp5mm es
19-Mar		22.00	28,418	Metro-TV
22-Mar		45.00	28,373	Valero (Fishkill)
22-Mar		145.97	28,227	Michael Jordans
23-Mar		200.00	28,027	Cash Withdrawal
25-Mar		35.00	27,992	Valero (Fishkill)
		7.59	27,984	Stationery Store
29-Mar		27.00	27,957	ExxonMobil
29-Mar	10,348.68		38,306	Lycos refund
30-Mar		45.30	38,261	Valero (Fishkill)
30-Mar		3,000.00	35,261	RICH Media
31-Mar		37.03	35,224	Stationery Store
	128,523	93,087	\$35,436	

Steve Kirsch

From: <spre5451@bellsouth.net>
To: "Bryan Kos" <bkos@i-ops.com>
Sent: Thursday, July 08, 2004 8:28 AM
Subject: Re: Could be an emergency

It's okay Bryan - long as the dough gets in by tomorrow AM we'll be cool (he said with a certain degree of confidence). Okay... back to dealing with my Abes... does Schmelvis know an Scrnabe?

Paul

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

From: Bryan Kos
To: Paul Spreadbury
Sent: Thursday, July 08, 2004 11:21 AM
Subject: FW: Could be an emergency

Stand by, I know he'll get this done for you, I just tried IMing you but got no answer, I'll check in with you tonight when I get back from my meetings. Sorry about all this shit!

B

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

From: Bryan Kos [mailto:bkos@i-ops.com]
Sent: Thursday, July 08, 2004 12:21 PM
To: Jere Ross
Subject: RE: Could be an emergency

Thanks Jere, please deal directly to Paul as I'm going out for dinner with clients here in Prague and won't be available. Paul is working on the new TV & Radio commercials and the funds that he is waiting for are to cover checks that he has written for the shoot which takes place next Tuesday and Wednesday in Orlando. Please also review the scripts so that he doesn't shoot something we could not air.

If you need the scripts re-emailed to you Paul can do that.

BTW, Don and I were flying to Prague last night so it wasn't us who broke in and stole your stuff.

Bryan :)

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

From: Jere Ross [mailto:jross@bushross.com]
Sent: Thursday, July 08, 2004 11:45 AM
To: Bryan Kos
Subject: RE: Could be an emergency

Bryan: sorry for the hangup in wiring funds out - for the first time in 23 years we were broken into last night (clearly an inside job because no forcible entry) and one of the major items stoloen was Jessi's computer which had the software that allows for automatic funds transfer. We are trying to solve the issue and I should be able to report status within an hour. One way or another we will send all currently requested wires today. I assume the money being requested by Mr. Spreadbury is covered by one of the wire requests. If so, you may forward this message to him and state that if he needs confirmation he may call me. Conversely, if you want me to call him and advise of the above, I'll be happy to do so. Let me know, and enjoy Prague. It's an interesting city. Regards, jere. P.S. I will try to get to the other matter today.

Jeremy P. Ross
 BUSH ROSS GARDNER WARREN & RUDY, P.A.
 P. O. Box 3913
 220 South Franklin Street
 Tampa, FL 33601

813.224.9255 Phone
813.223.9620 Fax
jross@bushross.com

Unless otherwise indicated or obvious from the nature of the transmittal, the information contained in this message is attorney privileged and/or confidential information intended solely for the use of the addressee. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication or any of the information in it is strictly prohibited. If you have received this communication in error, please advise the sender by reply e-mail and then delete the message. Thank you.

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

From: Bryan Kos [mailto:bkos@i-ops.com]
Sent: Thursday, July 08, 2004 11:02 AM
To: Jere Ross; Barbara Rowe
Cc: Paul Spreadbury; Caroline Archambault
Subject: FW: Could be an emergency

Hi Jere, is this possible? LMK, I am in Prague now at the Hotel Intercontinental Tel: +420 2 96 63 11 11, Fax: +420 2 24 81 12 16

Thanks for anything you can do for Paul Spreadbury would be great. Paul's phone number is 850-723-3663.

Bryan Kos

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

From: spre5451@bellsouth.net [mailto:spre5451@bellsouth.net]
Sent: Thursday, July 08, 2004 10:52 AM
To: Caroline Archambault; Bryan Kos
Subject: Could be an emergency

Hi Caroline and Bryan

I suppose you've heard that your bank is having technical "system problems" with their transfer of funds system and they tell me that they "hope" to have it fixed by tomorrow. Hope is a good thing but, in this case, a scary thing. If it goes through tomorrow morning we "may" be okay. If it goes through tomorrow afternoon, it will "probably" cause problems. If it doesn't go through for whatever reason at all tomorrow, we're screwed - big time. I've learned the hard way (no aspersions meant against the best intentions of all) that just because people "say" something is going to be fixed or is going to happen tomorrow it doesn't mean it will.

Would it be possible for you to FEDEX a check for \$62,500 made out to NOSOONERSAID, LLC. If the wire goes through **before** I get the check then I will not deposit the check and give it back to you when I see you in Orlando. If the wire goes through **after** I deposit the check then I will write a check for \$62,500 against my account for a refund of the over payment and give it to you when I see you in Orlando.

The address is: Paul Spreadbury 7975 La Nain Drive Pensacola, FL 32514

Please let me know as soon as you can on this. Thank you.

Paul

12/17/2005

DECLARATION OF TIMOTHY J. GALDENCIO

Pursuant to 28 U.S.C. § 1746, the undersigned states as follows:

1. My name is Timothy J. Galdencio. I am over twenty-one years of age and have personal knowledge of the matters set forth herein.

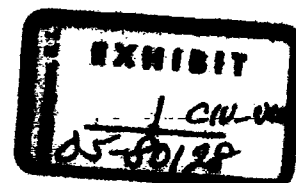
2. I am a certified public accountant in the State of Florida and am employed as a staff accountant with the Southeast Regional Office of the United States Securities and Exchange Commission ("Commission").

Documents Reviewed – Transfer Agent Records

3. I personally reviewed records of Interwest Transfer Company, Inc. ("Interwest"), a stock transfer company located in Salt Lake City, Utah. A true and correct copy is attached hereto as Composite Exhibit A.

4. I reviewed offering documents, stock certificates, and transfer records relating to the purchase of 10 million shares of Concorde America, Inc. ("Concorde") stock for \$1 million by Ventana Consultants of Pennsylvania, LLC ("Ventana of PA"), and the subsequent transfer of Concorde stock certificate number 2109 issued to Ventana of PA (see attached Composite Exhibit A), in the following manner:

- a. 1 million shares issued to Barranquilla Holdings, SA ("Barranquilla"), certificate numbers 2128 and 2129. A true and correct copy is attached hereto as Exhibit B.
- b. 2 million shares issued to Vanderlip Holdings, NV ("Vanderlip"), certificate numbers 2110, 2111, 2112, and 2113. A true and correct copy is attached hereto as Exhibit C;



- c. 1 million shares issued to Chiang Ze Capital, AVV ("Chiang Ze"), certificate numbers 2126 and 2127. A true and correct copy is attached hereto as Exhibit D;
 - d. 2 million shares issued to Da Silva, SA, ("Da Silva"), certificate numbers 2114, 2115, 2116, and 2117. A true and correct copy is attached hereto as Exhibit E;
 - e. 2 million shares issued to Stromberti Esse GHBH, certificate numbers 2122, 2123, 2124, 2125. See attached Composite Exhibit A;
 - f. 2 million shares issued to Jonti Warburg, Ltd., certificate numbers 2118, 2119, 2120, and 2121. See attached Composite Exhibit A.
5. Based on my review of the foregoing records, I established a basis price of \$0.10 per share of Concorde stock. See attached Composite Exhibit A.

Documents Reviewed – Brokerage Account Records

6. This declaration is further based upon my personal review of records of Newbridge Securities Corp. ("Newbridge"), Sunstate Equity Trading, Inc. ("Sunstate) and Electronic Access Direct, Inc. ("Electronic Access"), including documents that were obtained through electronic requests for trading information to broker dealers trading in the securities of Concorde and Absolute Health and Fitness, Inc. ("Absolute Health"). These requests were forwarded through the Securities Industry Automation Corporation ("SIAC") to brokerage firms who responded electronically to SIAC, providing date, time, price, and other data relating to each purchase and sale of Concorde and Absolute Health stock. I reviewed the data for the following brokerage accounts:

- a. **Barranquilla, an Anguillan International Business Company ("IBC"), account number 0101-LC-395443(0)8, produced by Newbridge (a true and correct copy is attached hereto as Exhibit F) and account number 14302137, produced by Electronic Access (a true and correct copy is attached hereto as Exhibit G);**
 - b. **Vanderlip, an Anguillan IBC, account number 42021907, produced by Sunstate. A true and correct copy is attached hereto as Exhibit H;**
 - c. **Chiang Ze, a Trinidadian corporation, account number 07-42020347, produced by Sunstate (a true and correct copy is attached hereto as Exhibit I) and account number 14300867, produced by Electronic Access (a true and correct copy is attached hereto as Exhibit J);**
 - d. **Da Silva, an Anguillan IBC, account number 07-42021915, produced by Sunstate. A true and correct copy is attached hereto as Exhibit K; and**
 - e. **Ventana Consultants, Ltd. ("Ventana"), a Michigan corporation, account number LC30000095402(2) produced by Newbridge (a true and correct copy is attached hereto as Exhibit L).**
7. **My review of trades of Concorde revealed the following:**
- a. **Barranquilla - Approximately 1,540,360 shares of Concorde were sold from August 5 to August 11, 2004 and approximately 1,540,360 shares (including shares issued under stock certificate numbers 2128 and 2129) were purchased through the Pink Sheets market ("Pink Sheets") during that same period. Assuming a basis price of \$0.10 per share, Barranquilla realized a net gain of approximately \$5,233,753 from sales and purchases**

of Concorde from August 5 to August 11, 2004. A true and correct copy of my analysis is attached hereto as Exhibit M.

- b. Vanderlip - Approximately 1,647,530 shares of Concorde were sold from August 5 to August 11, 2004, and approximately 1,647,530 shares (including shares issued under stock certificate numbers 2110, 2111, 2112, and 2113) were purchased over the Pink Sheets during that same period. Assuming a basis price of \$0.10 per share, Vanderlip realized a net gain of approximately \$4,330,038 from sales and purchases of Concorde from August 5 to August 11, 2004. A true and correct copy of my analysis is attached hereto as Exhibit N.
- c. Chiang Ze - Approximately 522,835 shares of Concorde were sold from July 28 to August 10, 2004, and approximately 522,835 shares (including shares issued under stock certificate numbers 2126 and 2127) were purchased over the Pink Sheets during that same period. Assuming a basis price of \$0.10 per share Chiang Ze realized a net gain of approximately \$1,696,611 from sales and purchases of Concorde from July 28 to August 10, 2004. A true and correct copy of my analysis is attached hereto as Exhibit O.
- d. Da Silva - Approximately 499,495 shares of Concorde were sold from July 27 to August 5, 2004, and approximately 499,495 shares (including shares issued under stock certificate numbers 2114, 2115, 2116, and 2117) were purchased over the Pink Sheets during that same period. Assuming a basis price of \$0.10 per share, Da Silva realized a net gain of

approximately \$1,794,910 from sales and purchases of Concorde from July 27 to August 5, 2004. A true and correct copy of my analysis is attached hereto as Exhibit P.

- e. Ventana – purchased 10,500 shares of Concorde on July 27; which were then sold on August 3, 2004. Ventana realized a net gain of approximately \$5,265 from sales and purchases of Concorde from July 27 to August 3, 2004. A true and correct copy of my analysis is attached hereto as Exhibit Q.

8. I also reviewed offering documents, stock certificates, and transfer records relating to the purchase of 14.5 million shares of Absolute Health stock for \$85,000 by Victoria Management Ltd., IMA Advisors, Inc. and Brazos Partners. True and correct copies of Interwest documents related to these transactions are attached hereto as Composite Exhibit R. The certificates numbered 3074 to 3078, 3081, 3084 - 3098 issued to these entities were subsequently transferred in the following manner:

- a. 6.0 million shares issued to Ryzcek Investments (“Ryzcek”), certificate numbers 3099 - 3107, 3110. True and correct copies of certificates are attached hereto as Exhibit S;
- b. 4.5 million shares issued to Barranquilla, certificate numbers 3109, 3111. True and correct copies of these certificates are attached hereto as Exhibit T;
- c. 3.5 million shares issued to Chiang Ze, certificate number 3108. A true and correct copy of this certificate is attached hereto as Exhibit U;

- d. 100,000 shares issued to Ventana certificate number 3116. A true and correct copy of this certificate is attached hereto as Exhibit V;
 - e. 400,000 shares issued to Corporate Financial Consultants Ltd. ("CFC"), certificate numbers 3112 – 3115. True and correct copies of these certificates are attached as Exhibit W;
9. Based on my review of the foregoing records, I established a basis price of \$0.01 per share of Absolute Health stock. See Composite Exhibit R.
10. My review of trades of Absolute Health revealed the following:
- a. Barranquilla – Newbridge account - Approximately 25,300 shares of Absolute Health were sold from August 5 to August 16, 2004, and approximately 25,300 shares were purchased and sold during that same period (including shares issued under stock certificate numbers 3109 and 3111), Barranquilla realized a net gain of approximately \$10,990 from August 5 to August 16, 2004. A true and correct copy of my analysis is attached hereto as Exhibit X.
 - b. Barranquilla – Electronic Access account - Approximately 4,533,819 shares of Absolute Health were sold from November 15 to December 3, 2004 and approximately 4,533,819 shares were purchased during that same period (including shares issued under stock certificate numbers 3109 and 3111), Barranquilla realized a net gain of approximately \$9,394,156 from sales and purchases of Absolute Health from November 15 to December 3, 2004. See attached Exhibit X.

c. **Chiang Ze – Sunstate account –** Approximately 521,655 shares of Absolute Health were sold from June 14 to August 24, 2004, and approximately 521,655 shares were purchased during that same period (including shares issued under stock certificate number 3108), Chiang Ze realized a net gain of approximately \$623,757 from sales and purchases of Absolute Health from June 14 to August 24, 2004. A true and correct copy of my analysis is attached hereto as Exhibit Y.

d. **Chiang Ze – Electronic Access account –** Approximately 3,211,743 shares of Absolute Health were sold from October 13 to December 10, 2004, and approximately 3,211,743 shares were purchased during that same period (including shares issued under stock certificate number 3108), Chiang Ze realized a net gain of approximately \$4,427,965 from sales and purchases of Absolute Health from October 13 to December 12, 2004. See attached Exhibit Y.

11. In addition, Ventana sold approximately 100,000 shares of Absolute Health between June 14 and June 18, 2004 (including shares issued under stock certificate number 3116), Ventana realized a net gain of approximately \$81,000 from sales and purchases of Absolute Health from July 27 to August 3, 2004. A true and correct copy of my analysis is attached hereto as Exhibit Z.

Documents Reviewed – Wire Transfer Records

12. I also reviewed records of wire transfers received from Newbridge, Sunstate, Electronic Access, and Penson Financial Services Inc., the clearing firm for each of these stock brokerage firms. My review revealed the following:

- a. Ryzcek – \$1,172,876 was transferred from Ryzcek’s account to Sun Trust Bank account number 41001143506 between June 29 and August 5, 2004, for the benefit of Ryzcek.
- b. Chiang Ze - \$4,134,865 was transferred from Chiang Ze’s account to Sun Trust Bank Bank account number 41001143506 between July 28 and August 11, 2004. Also, \$4,858,712 was transferred from Chiang Ze’s account to First Curacao International Bank, N.V., (“First Curacao”), for the benefit of Chiang Ze account number 01-801-200455-01.
- c. Barranquilla - \$9,213,425 was transferred from Barranquilla’s account to Barclay’s Bank, for the benefit of First Curacao for further credit to Barranquilla’s account number SA 01-801-200637-01.
- d. Da Silva – \$1,769,005 was transferred from Da Silva’s account to an unknown destination.

Bush
← Ross
account

← Bush
Ross
account

Documents Reviewed – Trading History

13. I also have reviewed the 52-week high and low stock prices for Concorde as reported by Yahoo! Finance, which demonstrate that the stock price declined from a 52-week high of \$8.90 on August 12, 2004, to \$2.51 the next day then climbing to \$5.40 on August 18 followed by a steady decline to a low of \$0.16 on November 2, 2004.

14. I also have reviewed the 52-week high and low stock prices for Absolute Health as reported by Yahoo! Finance which demonstrate that the stock price declined from a 52-week high of \$2.75 on August 12, 2004, to a 52-week low of \$0.55 on October 20 before achieving new 52-week highs of \$2.86 on November 30 and then \$5.09 the next day, December 1, 2004.


Timothy J. Galdencio

Executed on February 11, 2005

The Department of Health and Human Services is pleased to announce the results of the 1988-1989 fiscal year. The Department has achieved significant milestones in its mission to improve the health and well-being of the American people. This report details the accomplishments and challenges faced during this period.

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- 1. The Department has successfully implemented the new health care reform legislation, ensuring that all Americans have access to affordable and quality health care.
- 2. Significant progress has been made in reducing the national deficit through a combination of spending cuts and revenue increases.
- 3. The Department has prioritized the improvement of the Medicare and Medicaid programs, ensuring that vulnerable populations continue to receive necessary services.
- 4. Efforts have been made to streamline government operations, reducing waste and increasing efficiency in the delivery of public services.
- 5. The Department has supported research and development in key areas of public health, leading to the discovery of new treatments and preventive measures.
- 6. A major focus has been on addressing the needs of underserved communities, including the expansion of the safety net and the implementation of targeted health care programs.
- 7. The Department has worked closely with state and local governments to coordinate health care services and address regional health disparities.
- 8. Significant attention has been paid to the issue of health care financing, exploring innovative models to ensure the long-term sustainability of the system.
- 9. The Department has strengthened its commitment to transparency and accountability, providing regular updates on program performance and financial status.
- 10. Finally, the Department has continued to foster a culture of innovation and excellence, encouraging staff to seek out new solutions to complex health care challenges.

The Department of Health and Human Services remains committed to its mission and will continue to work tirelessly to improve the health and well-being of the American people in the years ahead.

- 11. The Department has established a robust system of oversight and evaluation to ensure that all programs are effectively managed and that resources are used wisely.
- 12. Significant progress has been made in addressing the issue of health care workforce shortages, particularly in primary care and rural areas.
- 13. The Department has supported the development of new health care delivery models, such as telemedicine and patient-centered medical homes.
- 14. Efforts have been made to improve the quality of health care services through the implementation of accreditation standards and the promotion of evidence-based practice.
- 15. The Department has worked to address the issue of health care equity, ensuring that all Americans, regardless of race, ethnicity, or socioeconomic status, have access to the same high-quality care.
- 16. Significant attention has been paid to the issue of health care access, particularly for the underserved and underserved populations.
- 17. The Department has supported the development of new health care financing models, including the implementation of capitated payments and value-based care arrangements.
- 18. Efforts have been made to improve the health care system's ability to respond to public health emergencies and disasters.
- 19. The Department has continued to work closely with the private sector to address health care challenges and promote innovation.
- 20. Finally, the Department has remained committed to the principles of transparency and accountability, providing regular updates on program performance and financial status.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.

SECURITIES AND EXCHANGE COMMISSION,)

Plaintiff,)

v.)

CONCORDE AMERICA, INC.,)
ABSOLUTE HEALTH AND FITNESS, INC.,)
HARTLEY LORD, DONALD E. OEHMKE,)
BRYAN KOS, THOMAS M. HEYSEK,)
ANDREW M. KLINE, AND PAUL A. SPREADBURY)

Defendants,)

DASILVA, SA, VANDERLIP HOLDINGS, NV,)
CHIANG ZE CAPITAL, AVV,)
RYZCEK INVESTMENTS, GMBH,)
BARRANQUILLA HOLDINGS, SA,)

Relief Defendants.)

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) alleges and states as follows:

1. This Complaint arises out of two classic “pump and dump” schemes that have defrauded investors. The Commission brings this action to permanently restrain and enjoin Defendants Concorde America, Inc., Absolute Health and Fitness, Inc., Hartley Lord, Donald E. Oehmke, Bryan Kos, Thomas M. Heysek, Andrew Kline and Paul A. Spreadbury (collectively “Defendants”) from perpetrating these fraudulent stock manipulation schemes.

2. From approximately June through August 2004, Defendants participated in the fraudulent promotion and dumping of Concorde stock. At approximately the same time, from June through December 2004, Oehmke, Kos, Heysek, Kline and Spreadbury engaged in the market manipulation of Absolute Health's stock.

3. Oehmke and Kos instigated both schemes, artificially creating demand for Concorde and Absolute Health stock by falsely promoting the companies and then dumping their shares before investors discovered that neither company had any business or revenues. As a result, Defendants defrauded investors through material misrepresentations and omissions relating to both Concorde's and Absolute Health's operations and profitability.

4. Concorde, the subject of the first scheme, is a publicly held company quoted on the Over-The-Counter Pink Sheets ("Pink Sheets"). From July through August 2004, Defendants Oehmke and Kos, through Heysek, Kline and Spreadbury, flooded the market with unauthorized and false press releases, facsimile and e-mail spams, internet websites, and automatic voice-mail messages all endorsing Concorde as a desirable investment. At least Oehmke and Kos profited from this scheme by selling Concorde shares.

5. At the same time they were manipulating Concorde's stock, Oehmke, Kos, Heysek, Kline and Spreadbury also engaged in the fraudulent promotion and sale of Absolute Health's stock. Absolute Health is a publicly held company also quoted on the Pink Sheets. As planned, Oehmke and Kos reaped illegal profits after dumping their stock on the market.

DEFENDANTS

6. Concorde is a Nevada corporation, with its principal place of business in Boca Raton, Florida. In June 2004, Concorde purchased a publicly traded shell corporation, MBC Food Corporation, which Oehmke controlled, and changed its name and ticker symbol to

Concorde America, Inc., CNDD. Concorde claimed to recruit Latin American workers for employment in Europe; however Concorde had no business operations prior to June 2004 and never placed any workers there.

7. Absolute Health is a Nevada corporation with its purported principal place of business in Greensboro, North Carolina. In September 2004, Nevada revoked Absolute Health's corporate status; however, Oehmke reinstated it in December. On December 15, 2004, the Commission suspended trading of this stock.

8. Lord is a resident of Boca Raton, Florida. He participates in Concorde's day-to-day operations and has authority over all of its activities. In 1981, Lord consented to a permanent injunction against future violations of the anti-fraud provisions of the federal securities laws based on his involvement in a stock manipulation scheme. In addition, Lord was barred from the securities industry in the early 1970s.

9. Oehmke is a resident of Kalamazoo, Michigan. Through various entities, including the Relief Defendants, he bought and sold Concorde and Absolute Health stock during the touting of both companies. In addition, Oehmke controlled a shell corporation that masqueraded as Absolute Health. In 1991, the NASD barred Oehmke from association with any member of the NASD for: participating in a fraudulent scheme to make improper use of customer funds, disseminating misleading sales literature, and failing to maintain adequate supervisory procedures, among other things. Oehmke was also fined \$150,000.

10. Kos is a resident of Montreal, Quebec, Canada. Kos hired Heysek and Kline to prepare analyst reports, to promote Concorde and Absolute Health. He also hired Spreadbury to prepare press releases, tout sheets and voice-mail scripts about both companies. In addition, Kos hired Heysek to conduct a video interview touting Absolute Health.

11. Heysek is a resident of San Francisco, California. Heysek prepared an analyst report for Kos concerning Concorde and participated in a promotional video for Absolute Health. Heysek has been associated with three broker-dealers that terminated him for misconduct ranging from unauthorized trading to improper handling of customer funds.

12. Kline is a resident of San Francisco, California. Between May and September of 2004, Kos retained Kline to prepare analyst reports on Concorde and Absolute Health. Kline previously served a five-year sentence in a Bolivian jail for a drug offense.

13. Spreadbury is a resident of Pensacola, Florida. Kos retained Spreadbury in April 2004 to prepare press releases, tout sheets and websites promoting Concorde and Absolute Health.

RELIEF DEFENDANTS

14. DaSilva, SA, is a company incorporated in Anguilla in June 2004. DaSilva maintains a brokerage account at Sunstate Equity Trading, Inc. in Tampa, Florida. Oehmke has trading authority over this account. On June 29, 2004, Oehmke acquired ten million shares of Concorde stock through a reverse merger with Concorde. He transferred two million shares to an account at Sunstate in DaSilva's name. From July through August 2004, Oehmke sold the Concorde stock during the promotional campaign, netting DaSilva approximately \$1.8 million in illegal profits.

15. Vanderlip Holdings, NV, is a company incorporated in Anguilla in June 2004. Oehmke has trading authority over Vanderlip's brokerage account at Sunstate. In July 2004, Oehmke transferred approximately two million shares of Concorde stock for the benefit of the Vanderlip account. In August 2004, Oehmke ordered the sale of the stock, netting Vanderlip more than \$4,330,000 in illegal profits.

16. Chiang Ze Capital, AVV, is a Trinidadian corporation which held accounts at Sunstate as well as Electronic Access Direct, Inc. in Sarasota, Florida. Oehmke and Kos had trading authority over the Chiang Ze accounts. In July 2004, Oehmke transferred one million shares of Concorde stock for the benefit of the Chiang Ze's account at Sunstate. In August 2004, Oehmke and Kos sold Chiang Ze's shares of Concorde, netting it more than \$1,696,600 in profits. In May 2004, Kos acquired 3.5 million shares of Absolute Health stock for the benefit of Chiang Ze's account at Sunstate and sold more than 500,000 shares, netting approximately \$623,000 in profits. In October 2004, Kos transferred the remaining Absolute Health shares to a Chiang Ze account at Electronic Access and then sold the shares, netting approximately \$4.5 million. In total, Kos sold nearly 3.5 million shares of Absolute Health for a profit of approximately \$5.1 million.

17. Ryzcek Investments, GMBH is a Trinidadian corporation which held accounts at Sunstate, Electronic Access and Newbridge Securities Corporation, a brokerage house in Ft. Lauderdale, Florida. Oehmke had trading authority for the Ryzcek accounts at Sunstate, Electronic Access and Newbridge. In addition, Oehmke is listed as the contact person for Ryzcek at Sunstate. From May to July 2004, Oehmke acquired 6,055,000 shares of Absolute Health stock for the benefit of the Ryzcek account. Ryzcek still holds more than six million of these shares.

18. Barranquilla Holdings, SA is a company incorporated in Anguilla which held accounts at Newbridge and Electronic Access. Oehmke had trading authority for both Barranquilla accounts. In July 2004, Oehmke transferred one million shares of Concorde stock into the Barranquilla account at Newbridge. In August 2004, Barranquilla netted approximately \$5,233,700 in profits from the sale of Concorde stock. In addition, Oehmke acquired 4.5 million

shares of Absolute Health stock in May 2004 for the benefit of the Barranquilla account at Newbridge. In August 2004, Oehmke bought and sold more than 20,000 shares of Absolute Health stock through the Barranquilla account at Newbridge for a profit of approximately \$11,000. Oehmke then transferred the remaining shares to a new Barranquilla account at Electronic Access, selling nearly 4.5 million shares of Absolute Health stock in mid-November to early December 2004. Through these sales, Oehmke realized a net profit of approximately \$9.5 million.

JURISDICTION AND VENUE

19. The Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

20. This Court has personal jurisdiction over Defendants and venue is proper in the Southern District of Florida because Defendants’ acts and transactions constituting violations of the Exchange Act occurred in the Southern District of Florida.

21. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

THE FRAUDULENT SCHEME

A. Concorde’s Reverse Merger

22. In mid-June 2004, Lord met with Oehmke and Kos to discuss a proposed reverse merger between Concorde and MBC, a publicly traded shell corporation Oehmke owned.

Concorde was purportedly in the business of sending Latin American agricultural workers to Europe.

23. During that meeting, Oehmke and Kos revealed their plans to promote Concorde, which included a videotaped interview with Lord. Lord told Oehmke and Kos these plans were premature because Concorde had no business operations and had not yet sent any workers to Europe.

24. During that same meeting, after Kos signed a confidentiality agreement with Concorde, Lord provided Kos with portions of an agreement he claimed obligated Concorde to provide 150,000 workers in 2004, and 50,000 workers in 2005, to a Spanish company by the name of Almerimar, S.A. ("Almerimar Agreement"). Lord also showed Kos charts depicting Concorde's projected gross income and placement of workers under the Almerimar Agreement for 2004 and 2005.

25. A few days later, Oehmke and Lord entered into an agreement under which Oehmke, through his consulting company, offered Lord \$1 million for 10 million shares of Concorde stock. Oehmke received all the shares but initially paid Lord only a portion of the \$1 million.

B. Pumping the Stock

1. The Analysts' Reports

26. Even before the June meeting with Lord, Kos retained Heysek and Kline to prepare analyst reports about Concorde. Despite Lord's misgivings about promoting Concorde, Oehmke and Kos proceeded to coordinate the promotional campaign.

27. In the course of preparing their analyst reports, Heysek and Kline communicated by phone and e-mail with Lord five to ten times about Concorde's operations and future

business. For example, in a June 18, 2004 e-mail to Heysek, Lord cautioned him not to “deviate from the party line,” of Concorde providing Spanish-speaking workers to European businesses.

28. Heysek finished a draft of his report in late June, and sent it to Oehmke, Kos, and Lord for approval. The draft report made baseless share price and revenue projections. For example, Heysek predicted Concorde’s share price would rise from \$3 per share to a \$6.69 “near-term target price” and between \$25 to \$30 within 12 months. He also estimated revenue and net income for Concorde of \$630 million and \$399 million, respectively, for 2004, \$673 million and \$465 million, respectively, for 2005, and \$421 million and \$289 million, respectively, for 2006. Heysek based these projections on information Kos provided and the charts Lord gave him. The Heysek report projected significant revenues in 2006, even though the Almerimar Agreement, Concorde’s only actual or purported contract, contemplated the placement of workers only in 2004 and 2005.

29. Heysek knew or was reckless in not knowing his Concorde projections were false and misleading. After reviewing Heysek’s report, Lord told Heysek his projections were “ridiculous,” and that Concorde had not sent any workers to Spain. Although Heysek had never seen the Almerimar Agreement, he told Lord he put the numbers in the report to support selling the stock at \$3 per share. Heysek also knew the charts Lord gave him did not provide any projected revenues or placement of workers for 2006. Although Lord told Heysek his numbers were ridiculous, Heysek did not change his report.

30. Lord, even though he knew the projections in Heysek’s report were impossible for Concorde to achieve and were not based on realistic numbers, still tacitly approved of the contents of Heysek’s report. He knew Kos and Heysek intended to disseminate the report to the

investing public and allowed that to occur even though he knew the report was full of false and misleading information.

31. Oehmke and Kos reviewed and approved Heysek's report, even though they also knew or were reckless in not knowing the information in it was false and misleading. Both Oehmke and Kos met with Lord and knew Concorde could not achieve the spectacular results Heysek's report touted.

32. Heysek's reports appeared on two websites, WinningStockPicks.net and USPennyStocks.com. Kos controlled the websites, with Heysek and Kline providing some content. The website featured Concorde as a "winning pick" and a "Strong Buy Recommendation," with a projected price of \$30 per share.

33. The WinningStockPicks.net website contained the same baseless information as did the Heysek report, including the statement that Concorde stock will "see a price of \$38.00 per share over the next 6 months." The website also repeated Heysek's revenue projections.

34. In addition, the website boasted that Concorde had entered into a three-year contract with the Spanish *government* that would "result in \$2.6 billion in revenue and earnings aggregating \$9.23 a share."

35. The USPennyStocks.com, website, which listed Heysek as a Senior Analyst and Editor, repeated virtually every false statement about Concorde found on WinningStockPicks.net, including claiming that Concorde had contracts with European countries and companies to provide a Latin American workforce. It also projected a \$38 per-share price for Concorde stock in six months.

36. Heysek knew or was reckless in not knowing the information he provided for publication about Concorde on both websites was factually baseless and misleading for the same

reasons he knew or was reckless in not knowing his report was false and misleading – Lord had told him his revenue projections were “ridiculous” and Concorde itself had not projected any 2006 revenue.

37. WinningStockPicks.net hyped Heysek as a “financial guru” and “professional financial analyst” with a “thirty-year career” and “extensive experience in stock investment analysis and financial forecasts.” USPennyStocks.com contained similar information about Heysek’s purported qualifications. However, Heysek failed to disclose on both websites that he was fired from three broker-dealers for unauthorized trading and improper handling of customer funds. In addition, he did not disclose in his report or on the websites that Kos paid him between \$15,000 and \$20,000 monthly for his services.

38. Kline also prepared a report he sent to Kos and Lord for approval in June 2004. It made outlandish projections similar to those in the Heysek report. For example, Kline said he expected Concorde’s share price to rise from \$3 to \$38 in six months, and to \$84 in 12 to 18 months. Kline used the highest possible number of workers Concorde could have placed with Almerimar to compute these projections. However, these figures were not realistic because Concorde had yet to place a single worker anywhere or generate any revenue in 2004.

39. Kline knew or was reckless in not knowing his projections were unrealistic because Lord reviewed the report and told Kline the projections were “ridiculous” because Concorde had not yet placed any workers. Lord also told Kline, who had never even seen the Almerimar Agreement, he was falsely assuming Concorde would be able to provide the maximum number of workers specified in the agreement.

40. Just as with Heysek’s report, Lord knew the statements in Kline’s report were false and the projections were baseless. Yet, to assure that Oehmke paid Concorde the balance

of the \$1 million he had promised to pay for Concorde's stock, Lord initialed and approved the draft of Kline's report. Oehmke and Kos received the initialed report and authorized the dissemination of its contents despite knowing or being reckless in not knowing Concorde's prospects were misrepresented because they knew Concorde had no revenues and had not placed any workers anywhere.

41. Kline then prepared a final version of his report that repeated the misrepresentations and omissions discussed above, and added new false and misleading statements. For example, Kline predicted Concorde's share price would be \$84 in 2006, with estimated revenues of more than \$2 billion and a profit margin of 75.3%. Kline's report falsely told investors that Concorde "is Cash Flow positive now," and "will offer strong profits in its first year of operation." Finally, like Heysek, Kline failed to disclose that the Almerimar Agreement only contemplated the placement of workers in 2004 and 2005, and therefore his revenue and income projections for 2006 were baseless. Oehmke and Kos received this version of Kline's report for dissemination to the public.

42. Kline's report was posted on WinningStockPicks.net and USPennyStocks.com. Both websites touted him as having 20 years of experience in finance, and as a humanitarian whose world experience included "a 5-year stay in South America, where he built and administered rural clinics for the poor and indigenous people of the region." They neglected to disclose one minute detail – his "5-year stay" was in a Bolivian jail, where he was serving a prison sentence on a drug conviction. Kline also did not disclose Kos compensated him for his work on the report and websites.

2. Unauthorized Press Releases

43. Kos hired Spreadbury to write press releases, tout sheets and content for two websites as well as scripts for a voice-mail campaign to promote Concorde.

44. On July 28, 2004, Spreadbury issued his first press release via PR Newswire. The Pink Sheets website and other media outlets also circulated this release. Spreadbury used the Heysek and Kline reports Kos provided him to prepare the press release.

45. The release, entitled “First Global ‘Monster’ Employment Placement Service Launched – Concorde America to Place approximately 200,000 Workers in Spain,” announced Concorde had developed a “unique solution” to the lack of workers in Spain to “perform duties in agriculture, hospitality, sanitation, security and other jobs,” and touted a “new agreement with the Spanish government.” The press release quoted Lord as stating “[t]he recent agreement with Spain is the tip of the proverbial iceberg . . . [o]nce this first contract is underway and others can see for themselves our global solution in action, we anticipate the floodgates to open.”

46. The press release also quoted Julio Aspe, a purported employee of Concorde, claiming that Concorde afforded workers great opportunities. Aspe explained that while Latin Americans earned about \$60 a month in their own countries for domestic or service work “for doing the same work in Spain, Italy or Germany, they can earn over \$1000 a month . . . they can provide their families back home with health and dental insurance and even be part of a pension plan.”

47. Virtually every major fact in this press release was a lie. First, it stated that Concorde had a contract with the Spanish *government*, rather than a Spanish *company*. Second, Spreadbury manufactured the quote from Aspe, who is in fact an associate of Lord’s, but not employed by Concorde. Aspe never made the statement attributed to him. Third, Spreadbury

made up the quote from Lord. In fact, Spreadbury never even spoke to Aspe or Lord before issuing the release, purportedly on behalf of Concorde.

48. Spreadbury knew or was reckless in not knowing the information he published about Concorde was baseless because for starters, he made up the quotes. In addition, he recited facts for which he had no basis or source other than Kos. Even a quick review of the Almerimar Agreement or a brief conversation with anyone at Concorde would have revealed Concorde had no agreement with the Spanish government.

49. Oehmke and Kos reviewed and approved the press release. For the same reasons as Spreadbury, they also knew or were reckless in not knowing it was false and misleading.

50. Lord eventually saw the press release and telephoned Spreadbury to ask how it had come to be issued without his approval, and to inform him of the false statements in it. Spreadbury then called Kos, and the two agreed to publish a second press release, ostensibly to correct the errors in the first. Twelve days after the first release, Spreadbury published the second one. He deleted the quotes attributed to Lord and Aspe, and substituted the reference to the government of Spain with "one of Spain's largest agricultural firms." He also changed Concorde's contact person to John Richey.

51. The second release, however, was no more truthful than the first. For example, John Richey did not exist. The release also omitted disclosing the fact that Concorde had no revenues and had not placed a single worker anywhere.

52. Spreadbury knew or was reckless in not knowing the information in the second press release was false and misleading. His second release was almost identical to the first release, and even included the substance of one of the quotes he made up. In addition, he recited facts about Concorde based on information Kos provided without conducting any due diligence.

53. Kos knew or was reckless in not knowing the contents of the second press release were false and misleading. He received and approved the release before Spreadbury published it, and knew Concorde had no revenues and had yet to send any workers to Spain.

54. In response to Spreadbury's two press releases, Concorde issued a press release of its own on August 11, 2004, disclaiming them. Distributed after the market closed that day, Concorde's press release indicated that: no one had contacted Concorde about the information in the first two releases; Spreadbury did not have any relationship with Concorde; Concorde did not have a contract with the Spanish government; Concorde had not made an announcement about its future earnings; and it had not specified the number of workers it could supply under any contract.

55. On August 12, 2004, Concorde's stock plummeted, closing at \$2.51 per share. Although the stock's price and volume later fluctuated due to further touting, it has since declined in price and volume, and presently trades at approximately \$0.20 per share. However before this precipitous drop in price, Oehmke and Kos had dumped their shares.

3. Tout Sheets and Voice Mails

56. Concurrently with the unauthorized press releases, Kos coordinated a massive tout sheet and voice-mail campaign to promote Concorde. Kos paid Spreadbury to prepare the tout sheets, published under the banner of "The Best Penny Stock Picks!"

57. Spreadbury used the false and misleading information from the Heysek and Kline reports and his press releases to create the tout sheets. They contained extraordinary predictions concerning Concorde's revenues and stock price potential. One tout sheet projected Concorde's price to rise from \$4.50 per share to \$38 in 6 months and \$84 in 12 months. That same tout sheet

declared that its projections “seem almost conservative” with Concorde having a “market value” of \$1.2 billion.

58. Spreadbury also authored the script for the voice-mail campaign promoting Concorde as a “hot stock pick,” with contracts valued at “over \$1 billion,” and a projected price of \$30 per share. Kos coordinated the voice-mail campaign, suggesting language such as “Winning Stock Picks Presents ‘Concorde’ 1000% Profit Potential!” Kos hired a production company to record the voice messages and disseminate them.

59. Spreadbury knew or was reckless in not knowing the content of the voice messages was false and misleading. He knew or was reckless in not knowing Concorde had no revenues and had yet to send any workers anywhere. Spreadbury based his scripts on the same baseless information he used to promote Concorde through the press releases and tout sheets.

60. Kos knew or was reckless in not knowing the voice-mail scripts were false because Lord had told him Concorde had no revenues and had yet to place any workers. Kos nevertheless reviewed and approved the scripts.

4. Effect on the Market

61. Investors responded to the unauthorized press releases, tout sheets, faxes, e-mail spams, and voice-mail advertising campaign. In just one week in early August 2004, Concorde’s stock price rose from \$3.70 to \$8.90 per share.

5. Dumping the Stock

62. Oehmke, through his consulting company, paid Concorde \$1 million for 10 million shares of its common stock. Concorde’s transfer agent issued the company the 10 million shares without a restrictive legend through six third-party nominee entities Oehmke and Kos controlled. These third parties are the Relief Defendants.

63. Between late July and mid-August 2004, Oehmke and Kos sold those shares to the public over the Pink Sheets. Oehmke reaped profits of approximately \$7.5 million. Kos received approximately \$1.5 million by dumping his shares of Concorde.

64. Kos paid Kline approximately \$17,000 for promoting Concorde.

65. Kos paid Spreadbury approximately \$25,000 to \$30,000 for his promotion of Concorde through false press releases, tout sheets, websites and voice mail spamming.

66. Kos paid Heysek approximately \$80,000 for promoting Concorde and Absolute Health.

C. The Absolute Health Scheme

67. In early 2004, Kos and a business associate, Jeremy Jaynes, met with Randall Rohm, the majority owner of two holding companies that own and operate several fitness centers in North Carolina. Jaynes proposed that Rohm merge his business with a shell company. They also discussed initiating a public offering of the proposed new company's stock.

68. Rohm, however, never agreed to the merger and ceased discussions with Kos and Jaynes. But that did not deter Kos and Oehmke from perpetrating their next fraudulent scheme. They began acting as if the merger had occurred, changing the name of the shell company to Absolute Health, and listing it on the Pink Sheets.

69. Furthermore, while a signature appears under Rohm's name on this supposed agreement, Rohm never executed any agreement to merge either of his holding companies with Absolute Health.

1. Pumping the Stock

70. Oehmke and Kos engaged Heysek, Kline and Spreadbury to promote Absolute Health's stock by creating tout sheets, faxes, websites, voice mail spams and a promotional video.

71. At Kos' direction, Spreadbury promoted Absolute Health through tout sheets titled "The Best Penny Stock Picks!" Spreadbury claimed Absolute Health was a "strong buy recommendation" because Absolute Health owned several fitness centers in the Southeast and was a regional leader in the health and fitness industry. This was false because Absolute Health did not own any fitness centers and had no business operations or revenues.

72. Spreadbury also made outrageous statements about Absolute Health's growth and financial picture, claiming it would be expanding its operations by 300% and tripling in size from four to twelve fitness centers. In addition, he projected Absolute Health's stock would "jump almost 300%" in price and that its revenues would double within a year.

73. Spreadbury sent the proposed tout sheets to Kos, who approved them and arranged to disseminate them to the public through unsolicited mass faxing campaigns.

74. In addition, Kos orchestrated a voice-mail spam campaign to promote Absolute Health. Spreadbury created the scripts for the voice messages and Kos approved them. The scripts contained the same false and misleading information about Absolute Health's operations as the tout sheets. For example, one message said Absolute Health's stock price would rise to \$4 a share and urged investors to consult the WinningStockPicks.net website Kos controlled. That website featured Spreadbury's tout sheets promoting Absolute Health.

75. Spreadbury knew or was reckless in not knowing his statements about Absolute Health were false and misleading because he made unfounded growth and revenue projections

based on tout sheet and fax templates that Kos provided him from other, unrelated promotional campaigns. He did not conduct any due diligence on the operations or financial condition of Absolute Health.

76. Kos simultaneously engaged Heysek and Kline to promote Absolute Health on WinningStockPicks.net and USPennyStocks.com. Information about the company also appeared on two other websites, Pennystockpro.com and Hotstockfinder.com.

77. Heysek claimed on WinningStockPicks.net that Absolute Health's "revenues and earnings are expected to at least double every year through 2006," and touted a 12-month target stock price of \$5 per share. In addition, the website stated Absolute Health was in the process of acquiring and consolidating health clubs, and expected to generate revenue of \$10 million per year.

78. Pennystockpro.com contained similar outrageous claims about Absolute Health. The website trumpets a "600% Profit Potential in 6 Months," with incredible revenue predictions of \$1.6 million for 2004, \$4.9 million for 2005, and \$13.5 million for 2006. Similarly, it touted a stock price increase from \$1.30 per share to \$10 in six months. Hotstockfinder.com repeated the same baseless assertions, stating that "revenues and earnings are expected to double every year through 2006." Kline echoed these extraordinary numbers on USPennyStocks.com.

79. Heysek and Kline knew or were reckless in not knowing their website statements about Absolute Health were false and misleading. They both relied principally on information Kos provided them, and did not conduct any due diligence concerning Absolute Health's financial condition or viability.

80. Finally, Kos retained Heysek to conduct an internet video broadcast about Absolute Health. Heysek provided a script to two of Rohm's fitness center employees whom

Jaynes selected to appear in the video. The employees, following Heysek's script, falsely said Absolute Health owned and operated three fitness centers and was considering buying eight more. The video also claimed Absolute Health would generate more than \$23 million in revenue in 2004 and possibly \$100 million in three years. This projection was baseless because Absolute Health owned no fitness centers. It had no revenue, no clients, no employees and no prospects.

81. Heysek was at least reckless in not knowing the script he provided for the promotional video was completely false and misleading because it made baseless projections about Absolute Health's viability and growth potential.

82. Oehmke and Kos knew or were reckless in not knowing the entire promotional campaign they orchestrated was false and misleading. They knew the Absolute Health tout sheets, faxes, websites and video were factually baseless because Absolute Health did not own any fitness centers or generate any revenues. They knew Rohm never agreed to the proposed merger and that Absolute Health was merely a successor to a shell corporation controlled by Oehmke.

2. Effect on the Market

83. Investors responded to Absolute Health's tout sheets, website, spam voice mails and video promotion. From early June to December 2004, the stock price rose from 55 cents to more than \$5 per share with heavy fluctuation during the time periods when Oehmke and Kos traded. For example, Absolute Health's stock sank to a 52-week low of 55 cents on October 21, 2004, then spiked to a high of \$5.09 during trading on December 1, 2004.

3. Dumping the Stock

84. Oehmke and Kos sold their Absolute Health stock during the fraudulent touting, reaping approximately \$14.4 million in illegal profits. Both Oehmke and Kos funneled the proceeds of their fraud to offshore bank accounts in the name of third-party nominees.

COUNT I

FRAUD IN VIOLATION OF SECTION 10(B) OF THE EXCHANGE ACT AND RULE 10B-5 PROMULGATED THEREUNDER

85. The Commission repeats and realleges Paragraphs 1 through 84 of this Complaint as if fully set forth herein.

86. Since a date unknown but at least since June 2004, Defendants, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, have been knowingly, willfully or recklessly: (a) employing devices, schemes or artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaging in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities. By reason of the foregoing, Defendants, directly or indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Declaratory Relief

Declare, determine and find that Defendants committed the violations of the federal securities laws alleged in this Complaint.

II.

Permanent Injunctive Relief

Issue a Permanent Injunction, restraining and enjoining Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

III.

Asset Freeze, Accounting and Prevention of Document Destruction

Issue an Order: temporarily freezing the assets of Oehmke and Kos and all Relief Defendants, preventing the destruction or alteration of documents, and requiring Oehmke and Kos to file with this Court, within twenty days, sworn written accountings of all funds received as a result of the conduct complained of.

IV.

Repatriation

Issue an Order requiring Oehmke and Kos to take such steps as are necessary to repatriate to the territory of the United States all funds and assets described in the Commission's Complaint in this action which are held by each of them or are under their direct or indirect control, and deposit such funds into the registry of the United States District Court for the

Southern District of Florida, and provide the Commission and the Court a written description of the funds and assets so repatriated.

V.

Disgorgement

Issue an Order requiring Defendants and Relief Defendants to disgorge all ill-gotten profits or proceeds they have received as a result of the acts and/or courses of conduct complained of, with prejudgment interest.

VI.

Penalties

Issue an Order directing Defendants to pay civil money penalties pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3).

VII.

Penny Stock Bar

Issue an Order, pursuant to Section 603 of the Sarbanes-Oxley Act of 2002 [Public Law No. 107 - 204, 116 Stat. 745 (July 30, 2002)], and Section 21(d)(6) of the Exchange Act, 15 U.S.C. § 78u(d)(6), permanently barring Oehmke, Kos, Lord, Heysek, Kline and Spreadbury from participating in an offering of penny stock.

VIII.

Officer & Director Bar

Issue an Order pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), barring Lord from serving as an officer or director of any issuer required to file reports with the Commission pursuant to Sections 12(b), 12(d) or 15(d) of the Exchange Act, 15 U.S.C. §§ 78l(b) and (g), and § 78o(d).

IX.

Offering Bans

Issue an Order pursuant to Section 305(b) of the Sarbanes-Oxley Act of 2002 [Public Law No. 107 - 204, 116 Stat. 745 (July 30, 2002)] to permanently enjoin Oehmke and Kos from participating in an unregistered offering of securities while acting as, or on behalf of, or in association with an issuer, underwriter, broker or dealer of securities.

X.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

XI.

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

February 14, 2005

By:

Linda S. Schmidt
Senior Trial Counsel
Florida Bar No. 0156337
Direct Dial: (305) 982-6315

Chih-Pin Lu
Senior Counsel
Florida Bar No. 0983322
Direct Dial: (305) 982-6340

Attorneys for Plaintiff
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800

Miami, Florida 33131
Telephone: (305) 982-6300
Facsimile: (305) 536-4154

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Steve Kirsch

From: Jere Ross [Jross@bushross.com]
Sent: Sunday, August 15, 2004 2:50 PM
To: Steve Kirsch
Subject: RE: Bryan Kos: I need your help!!!

Follow Up Flag: Follow up
Flag Status: Red

Crime-fraud exception
to attorney client
privilege. Even Ross admits
it.

Steve: sorry to delay my response; we were under a hurricane watch on Friday, and as a consequence our office was closed and our computer system deactivated. On Saturday, I cleaned up debris, so only turned on my computer today to read my e-mail (along with 1253 spam messages that had piled up from 10:00 p.m. Friday forward). As to your final thought concerning involvement by the U. S. Attorney's Office, that's not the usual way a securities fraud case is developed. Generally the SEC staff conducts an informal or, with Commission approval (which won't be difficult to obtain in this case), formal investigation. If they determine the likelihood of criminal activity (which, unfortunately, appears to be present in the current case), they will refer the case to the Department of Justice (because as you may know the SEC does not have authority to bring a criminal action in its own name). The DOJ will then either investigate and prosecute on its own, or will refer the matter to the appropriate USAO. To the extent that you have contact with the Enforcement Division, your efforts will likely not go unnoticed.

As to your inquiry concerning BK's whereabouts or contact information, I do have email addresses, but since, in the March - June timeframe, I have provided legal services to two corporations in which he has involvement, I do not believe it appropriate to provide the same. I trust you will be able to find such information through other means. As an aside, I give you credit for your efforts and hope that they are successful. There are few worse actions than market manipulation of the sort being practiced by whomever is behind the recent activity. They prey on the small investor who looks for the big hit. Good luck.

-----Original Message-----
From: Steve Kirsch [mailto:steve.kirsch@propel.com]
Sent: Saturday, August 14, 2004 2:05 AM
To: Jere Ross
Subject: RE: Bryan Kos: I need your help!!!
Importance: High

one more thing...

my wife is pissed off with all the hours I've put into this case. She is giving me to the end of this weekend to wrap things up or else she is going to kill me. the people at work aren't too happy with me right now either.

so please...can you reply asap!?? I have to wrap this up this weekend and finish putting together my case for the court.

Thank you!!!

also, is this something you think a US Attorney would be interested in pursuing? unfortunately, i have to hand this over to someone to pursue. any ideas? i know you'd like to have these people brought to justice as much as I would.

-steve

> -----Original Message-----

Notes:

- ① Even Ross admits this stuff is criminal
- ② He conveniently neglects to mention he's currently providing legal services to Kos as shown in Aug 10 email (see next section)

> From: Steve Kirsch
> Sent: Friday, August 13, 2004 10:25 PM
> To: 'Jere Ross'
> Subject: Bryan Kos: I need your help!!!
> Importance: High

>
>
> Jere,

>
> I'm almost positive now that Bryan Kos is one of the ring
> leaders behind those phoney press releases that were sent
> that injured your client. His pysch profile is one of a guy
> who gives orders, not takes orders. He's also one of the
> world's top spammers!!

>
> I haven't been able to get a fix on his current location yet,
> but I think it is somewhere in Quebec.

>
> Do you have any contact info on him at all??

>
> An email or phone or an address???

>
> I know he is 40 years old.

>
> Interestingly, in 1993, I found a record of him being in
> Sunnyvale CA which is where I lived at that time!!! I found a
> record of him being in Scottsdale AZ after that. I don't know
> if that would help you...

>
> Anything you have or can recall would be really helpful.

>
> I'm sure you and Hartley would like to talk to him as much as
> I would so maybe we can work together on this.

>
> Thank you!!!!

>
> -steve
>

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Steve Kirsch

From: "Bryan Kos" <bkos@i-ops.com>
To: "Paul Spreadbury" <spre5451@bellsouth.net>
Sent: Tuesday, July 06, 2004 8:17 AM
Attach: Abe TV.doc
Subject: FW: Abe TV for Legal

Paul, please send me the scripts for radio and newspaper ads as well ASAP.

B

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

From: Bryan Kos [mailto:bkos@i-ops.com]
Sent: Tuesday, July 06, 2004 11:11 AM
To: Jere Ross
Subject: FW: Abe TV for Legal

Hi Jere, we are planning a major TV, Radio, Newspaper & Internet assault for a new brand of web site called US PennyStocks.com. I wanted to get your approval of the TV spots prior to shooting. I will forward you the radio spots and the newspaper ads as well. All will have disclaimers & disclosure. Please give me your opinion ASAP. It won't take much of your time.

Thanks,

B

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

From: spre5451@bellsouth.net [mailto:spre5451@bellsouth.net]
Sent: Tuesday, July 06, 2004 11:05 AM
To: Bryan Kos
Subject: Abe TV for Legal

Hello Bryan

Nice conversation today. Excellent. Moving forward. I've attached the TV Scripts for USPennystocks that we are proceeding with. I think it might be a good idea if I had a line of communication with your SEC Attorney so that I can make sure he signs off on all copy (print, radio, direct mail, web, etc.)

Thanks

Paul

When you combine the huge \$ transfers Ross made, he should have figured this out — especially since his clients all have a public history of securities fraud.

✓ This is what Fry Hammond Barr did. Kos told Ross to review the scripts. That

means that Ross absolutely knew that Kos was in the penny stock promo business!

That alone should raise giant suspicions for anyone who knows anything about securities and that's Ross' specialty.

12/17/2005

Steve Kirsch

From: <spre5451@bellsouth.net>
To: "Bryan Kos" <bkos@i-ops.com>; <jross@bushross.com>
Sent: Thursday, July 08, 2004 7:55 AM
Subject: Re: Could be an emergency

Thanks Bryan and Jere

Keeping my fingers crossed - sorry for what happened Jere.

Paul

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

From: Bryan Kos
To: Paul Spreadbury
Cc: Caroline Archambault
Sent: Thursday, July 08, 2004 10:50 AM
Subject: FW: Could be an emergency

Paul, here is the answer from the attorney, this guy is on it!

B

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

From: Jere Ross [mailto:jross@bushross.com]
Sent: Thursday, July 08, 2004 11:45 AM
To: Bryan Kos
Subject: RE: Could be an emergency

Ross takes personal responsibility for the wiring of funds, clearly, Kos is directing the wiring of funds.

Bryan: sorry for the hangup in wiring funds out - for the first time in 23 years we were broken into last night (clearly an inside job because no forcible entry) and one of the major items stolen was Jessi's computer which had the software that allows for automatic funds transfer. We are trying to solve the issue and I should be able to report status within an hour. One way or another we will send all currently requested wires today. I assume the money being requested by Mr. Spreadbury is covered by one of the wire requests. If so, you may forward this message to him and state that if he needs confirmation he may call me. Conversely, if you want me to call him and advise of the above, I'll be happy to do so. Let me know, and enjoy Prague. It's an interesting city. Regards, jere. P.S. I will try to get to the other matter today.

Jeremy P. Ross
BUSH ROSS GARDNER WARREN & RUDY, P.A.
P. O. Box 3913
220 South Franklin Street
Tampa, FL 33601
813.224.9255 Phone
813.223.9620 Fax
jross@bushross.com

But Ross knows the reasons for the transfer so he's an agent for Kos and is also liable. By respondent superior, Bush Ross PA is liable as well.

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

From: Bryan Kos [mailto:bkos@i-ops.com]
Sent: Thursday, July 08, 2004 11:02 AM
To: Jere Ross; Barbara Rowe
Cc: Paul Spreadbury; Caroline Archambault
Subject: FW: Could be an emergency

Barbara Rowe is
 Jere Ross' assistant

Hi Jere, is this possible? LMK, I am in Prague now at the Hotel Intercontinental Tel: +420 2 96 63 11 11, Fax: +420 2 24 81 12 16

Thanks for anything you can do for Paul Spreadbury would be great. Paul's phone number is 850-723-3663.

Bryan Kos

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

From: spre5451@bellsouth.net [mailto:spre5451@bellsouth.net]
Sent: Thursday, July 08, 2004 10:52 AM
To: Caroline Archambault; Bryan Kos
Subject: Could be an emergency

Hi Caroline and Bryan

I suppose you've heard that your bank is having technical "system problems" with their transfer of funds system and they tell me that they "hope" to have it fixed by tomorrow. Hope is a good thing but, in this case, a scary thing. If it goes through tomorrow morning we "may" be okay. If it goes through tomorrow afternoon, it will "probably" cause problems. If it doesn't go through for whatever reason at all tomorrow, we're screwed - big time. I've learned the hard way (no aspersions meant against the best intentions of all) that just because people "say" something is going to be fixed or is going to happen tomorrow it doesn't mean it will.

Would it be possible for you to FEDEX a check for \$62,500 made out to NOSOONERSAID, LLC. If the wire goes through **before** I get the check then I will not deposit the check and give it back to you when I see you in Orlando. If the wire goes through **after** I deposit the check then I will write a check for \$62,500 against my account for a refund of the over payment and give it to you when I see you in Orlando.

The address is: Paul Spreadbury 7975 La Nain Drive Pensacola, FL 32514

Please let me know as soon as you can on this. Thank you.

Paul

This shows that Jere Ross had Paul Spreadbury's phone & address in July.

Yet one month later, in an email to me (included later in this section), Jere Ross deliberately tries to throw me off the trail by telling me Spreadbury is in New York.

12/17/2005

Steve Kirsch

From: "Bryan Kos" <bkos@i-ops.com>
To: "Paul Spreadbury" <spre5451@bellsouth.net>
Sent: Thursday, July 08, 2004 8:21 AM
Subject: FW: Could be an emergency

Stand by, I know he'll get this done for you, I just tried IMing you but got no answer, I'll check in with you tonight when I get back from my meetings. Sorry about all this shit!

B

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

From: Bryan Kos [mailto:bkos@i-ops.com]
Sent: Thursday, July 08, 2004 12:21 PM
To: Jere Ross
Subject: RE: Could be an emergency

More evidence that
 Kos told Ross what
 the wires are for. Ross knows
 the purpose.

Thanks Jere, please deal directly to Paul as I'm going out for dinner with clients here in Prague and won't be available. Paul is working on the new TV & Radio commercials and the funds that he is waiting for are to cover checks that he has written for the shoot which takes place next Tuesday and Wednesday in Orlando. Please also review the scripts so that he doesn't shoot something we could not air.
If you need the scripts re-emailed to you Paul can do that.

BTW, Don and I were flying to Prague last night so it wasn't us who broke in and stole your stuff.

Bryan :)

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

From: Jere Ross [mailto:jross@bushross.com]
Sent: Thursday, July 08, 2004 11:45 AM
To: Bryan Kos
Subject: RE: Could be an emergency

Ross even knows the
 scripts so he is not
 just peripherally involved.

Bryan: sorry for the hangup in wiring funds out - for the first time in 23 years we were broken into last night (clearly an inside job because no forcible entry) and one of the major items stoloen was Jessi's computer which had the software that allows for automatic funds transfer. We are trying to solve the issue and I should be able to report status within an hour. One way or another we will send all currently requested wires today. I assume the money being requested by Mr. Spreadbury is covered by one of the wire requests. If so, you may forward this message to him and state that if he needs confirmation he may call me. Conversely, if you want me to call him and advise of the above, I'll be happy to do so. Let me know, and enjoy Prague. It's an interesting city. Regards, jere. P.S. I will try to get to the other matter today.

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distribution or copying of this communication or any of the information in it is strictly prohibited. If you have received this communication in error, please advise the sender by reply e-mail and then delete the message. Thank you.

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

From: Bryan Kos [mailto:bkos@i-ops.com]
Sent: Thursday, July 08, 2004 11:02 AM
To: Jere Ross; Barbara Rowe
Cc: Paul Spreadbury; Caroline Archambault
Subject: FW: Could be an emergency

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Thanks for anything you can do for Paul Spreadbury would be great. Paul's phone number is 850-723-3663.

Bryan Kos

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

From: spre5451@bellsouth.net [mailto:spre5451@bellsouth.net]
Sent: Thursday, July 08, 2004 10:52 AM
To: Caroline Archambault; Bryan Kos
Subject: Could be an emergency

Hi Caroline and Bryan

I suppose you've heard that your bank is having technical "system problems" with their transfer of funds system and they tell me that they "hope" to have it fixed by tomorrow. Hope is a good thing but, in this case, a scary thing. If it goes through tomorrow morning we "may" be okay. If it goes through tomorrow afternoon, it will "probably" cause problems. If it doesn't go through for whatever reason at all tomorrow, we're screwed - big time. I've learned the hard way (no aspersion meant against the best intentions of all) that just because people "say" something is going to be fixed or is going to happen tomorrow it doesn't mean it will.

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The address is: Paul Spreadbury 7975 La Nain Drive Pensacola, FL 32514

Please let me know as soon as you can on this. Thank you.

Paul

Steve Kirsch

From: <spre5451@bellsouth.net>
To: "Bryan Kos" <bkos@i-ops.com>; "Jere Ross" <Jross@bushross.com>; "Barbara Rowe" <Browe@bushross.com>
Cc: "Caroline Archambault" <caro@i-ops.com>
Sent: Friday, July 09, 2004 3:25 AM
Subject: Disclaimer Man Page

Hi all

First of all, thanks Jere, Barbara, Caroline and Bryan for getting the wire through. I can sweep up all the hair I lost now and try to stick it back on. On to the subject of this mailer - disclaimers and legalese!

Jere, we're about to launch a new brand for Bryan - USPennyStocks.com. Obviously our goal is to sell stocks. At the same time we want to make sure that we do it in a way that puts us above reproach. Since this campaign is being launched in mass media (TV, Radio, Print, etc) we are speaking to the everyday Joe's and Jane's - many (even most) of whom are not as market savvy as folks who buy stocks on a regular basis.

Sooo... we have created a character "Disclaimer Man" and put him in the advertising and on the website. He's this mousey, pastey, wouldn't-know-how-to-have-fun guy who only appears within the confines of a PC screen. His entire lot in life is to warn people of the risks of investing in penny stocks. This guy has never so much as run a yellow light so he is anti-risks of any kind. You get the idea.

At any time, from any web page, a person can click to visit the Disclaimer Man Page or click to see a video of Disclaimer Man reading the Disclaimer Statement. Also, before a person can even become a member and participate in purchasing the stocks featured on USPennyStocks they must "agree" to the Disclaimer Man statement.

We need you to look at the Disclaimer Man page, read the disclaimer statement and let us know if you think it covers the bases well enough and - if not - offer suggestions. Click here to see the page:
<http://www.intentcreative.com/clients/USPennyStocks/DisclaimerMan.asp>

Keep in mind that we wrote this to be more lay-speak than legalese but please let us know whatcha think.

Thanks and I hope you bagged the scoundrel who ripped you off.

Paul

He Spreadbury, who was duped by these people, also tells Jere Ross that they are promoting Penny Stocks. Any one with any sophistication, like Ross, is going to know this is illegal at this point due to the size of the '03 transfers being done - too big to be legal.

12/17/2005

Steve Kirsch

From: "Jere Ross" <Jross@bushross.com>
To: <spre5451@bellsouth.net>
Cc: "Bryan Kos" <bkos@i-ops.com>
Sent: Friday, July 09, 2004 5:52 AM
Subject: RE: Disclaimer Man Page

Paul: I acknowledge receipt of your note - glad you received your funds and I too hope we are able to wreak vengeance upon the miscreant that ripped us off. I am stuck in the midst of several complicated matters which will keep me occupied throughout the day, so will not be able to give consideration to the substance of your question until the weekend. I trust this will not create a problem. Regards, Jere

Jeremy P. Ross
 BUSH ROSS GARDNER WARREN & RUDY, P.A.
 P. O. Box 3913
 220 South Franklin Street
 Tampa, FL 33601
 813.224.9255 Phone
 813.223.9620 Fax
jross@bushross.com

Jere Ross acknowledge
 receipt of Paul's note.
 He clearly knows what is
 going on - Penny Stock promotion

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

From: spre5451@bellsouth.net [mailto:spre5451@bellsouth.net]
Sent: Friday, July 09, 2004 7:25 AM
To: Bryan Kos; Jere Ross; Barbara Rowe
Cc: Caroline Archambault
Subject: Disclaimer Man Page

Hi all

First of all, thanks Jere, Barbara, Caroline and Bryan for getting the wire through. I can sweep up all the hair I lost now and try to stick it back on. On to the subject of this mailer - disclaimers and legalese!

Jere, we're about to launch a new brand for Bryan - USPennyStocks.com. Obviously our goal is to sell stocks. At the same time we want to make sure that we do it in a way that puts us above reproach. Since this campaign is being launched in mass media (TV, Radio, Print, etc) we are speaking to the everyday Joe's and Jane's - many (even most) of whom are not as market savvy as folks who buy stocks on a regular basis.

Sooo... we have created a character "Disclaimer Man" and put him in the advertising and on the website. He's this mousey, pastey, wouldn't-know-how-to-have-fun guy who only appears within the confines of a PC screen. His entire lot in life is to warn people of the risks of investing in penny stocks. This guy has never so much as run a yellow light so he is anti-risks of any kind. You get the idea.

At any time, from any web page, a person can click to visit the Disclaimer Man Page or click to see a video of Disclaimer Man reading the Disclaimer Statement. Also, before a person can even become a member and participate in purchasing the stocks featured on USPennyStocks they must "agree" to the Disclaimer Man statement.

12/17/2005

We need you to look at the Disclaimer Man page, read the disclaimer statement and let us know if you think it covers the bases well enough and - if not - offer suggestions. Click here to see the page:

<http://www.intentcreative.com/clients/USPennyStocks/DisclaimerMan.asp>

Keep in mind that we wrote this to be more lay-speak than legalese but please let us know whatcha think.

Thanks and I hope you bagged the scoundrel who ripped you off.

Paul

Steve Kirsch

From: <spre5451@bellsouth.net>
To: "Jere Ross" <Jross@bushross.com>
Sent: Tuesday, August 10, 2004 10:02 AM
Attach: Retraction Release.doc
Subject: Per BKos Instructions

Hello Mr. Ross

Attached is a "retraction" release on the Concorde America story. Bryan asked me to run it by you for revisions, rewording, whatever it takes. Also, who would be the contact for this release?

Thanks

Paul

This email was sent after the ^{first 3} press releases in [9] were sent out & there is trouble.

Note: Kos told Spreadbury to "run it by" Ross for approval. So Ross is approving Kos' phony press releases at the same time Ross is writing the official release for the company disclaiming all this! (see next email)

FOR IMMEDIATE RELEASE

**Previous Press Releases Issued Regarding Concorde
America Done So Without Company's Consent**

(Orlando, FL) Press releases dated July 28 and August 9 regarding Concorde America (OTC:CDNN) were issued without the direct consent of the company and or any of it's officers. Both press releases, one issued by Paul Spreadbury and the other by John Richey were issued without prior consent or knowledge of Concorde America or it's management. We apologize for any inconvenience or confusion this may have caused.

Contact (name & phone number)

Steve Kirsch

From: "Jere Ross" <Jross@bushross.com>
To: <spre5451@bellsouth.net>
Cc: "Bryan Kos" <bkos@i-ops.com>
Sent: Tuesday, August 10, 2004 11:35 AM
Attach: BRDOCS-#324604-v1-conc_amer_pr_rel_8_10_04.DOC
Subject: RE: Per BKos Instructions

*Spreadbury and Kos get advance copy of CNDD release
CNDD press release
(advance copy)*

Mr. Spreadbury: thanks for your message. I think your statement will suffice when issued in a relatively concurrent time frame with the Company's release, a copy of which I attach for your file. We expect that release to be effected later today. Regards

Jeremy P. Ross
BUSH ROSS GARDNER WARREN & RUDY, P.A.
P. O. Box 3913
220 South Franklin Street
Tampa, FL 33601
813.224.9255 Phone
813.223.9620 Fax
jross@bushross.com

STOP

THIS IS A KEY EMAIL.

Unless otherwise indicated or obvious from the nature of the transmittal, the information contained in this message is attorney privileged and/or confidential information intended solely for the use of the addressee. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication or any of the information in it is strictly prohibited. If you have received this communication in error, please advise the sender by reply e-mail and then delete the message. Thank you.

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

From: spre5451@bellsouth.net [mailto:spre5451@bellsouth.net]
Sent: Tuesday, August 10, 2004 2:02 PM
To: Jere Ross
Subject: Per BKos Instructions

Hello Mr. Ross

THIS E-MAIL PROVES THAT ROSS is a conspirator

because only a conspirator would give Spreadbury an advance copy of the

Attached is a "retraction" release on the Concorde America story. Bryan asked me to run it by you for revisions, rewording, whatever it takes. Also, who would be the contact for this release?

Thanks

Paul

NOTE THE FOLLOWING:

- ① Ross is coaching the bad guy (as he points out in his alleged release) what to say
- ② Ross is providing Paul Spreadbury & Kos with a copy of the CNDD release BEFORE IT IS PUBLIC!!!

this is the attachment

**For: CONCORDE AMERICA, INC.
7205 Mandarin Drive
Boca Raton, Florida 33433
Hartley Lord, President**

**Contact: Hartley Lord
Tel: (561) 488-6107
Fax: (561) 488-6108**

*It was
authored
by Jere
Ross*

For Immediate Release

**CONCORDE AMERICA, INC. DISCLAIMS
PRIOR INFORMATION RELEASES**

BOCA RATON, FLORIDA, August XX, 2004 – Concorde America, Inc. (The Pick Sheets - CNDD), today disclaimed any involvement in the composition or public dissemination of statements, dated July 28 and August 9, 2004, respectively, which appeared as "PR Newswires" in Bloomberg.com and possibly other media services.

EXCEPT THAT Ross paid Spreadbury to send out the phoney press releases! and approved the content!

The first such release, entitled "First Global 'Monster' Employment Placement Service Launched", stated that the Company had developed a "unique solution" to the labor shortage problems purportedly facing European nations as a result of a lack of population growth, had entered into a "new agreement with the Spanish government", and expected to "place over 200,000 workers in Spain". The release purported to quote Company officials in a manner which reflected extremely high business and earnings expectations, stated that any contact concerning the release was to be made "for Concorde America" to "Paul Spreadbury, Wall St2MainSt, Inc.", and provided contact information..

In fact, (a) no Company official was interviewed or otherwise contacted in connection with the release, (b) Mr. Spreadbury is not employed by nor has any other relationship with the Company, and (c) the Company has never identified its business plan as being "unique", has not entered into any contractual arrangement with the Spanish government, has made no public announcement concerning possible future earnings, earnings growth or profitability, and has not specified the number of workers that it may be able to supply to any European country under any existing or future contract.

Because of inquiries made by the Company of Mr. Spreadbury and others as to the source of the first release, the second release, entitled "Correction", was disseminated as of Monday, August 9. While it stated that the quoted material present in the first release was to be eliminated, it incorrectly identified the Company as being the source of the new content, Boca Raton, Florida as being the physical site of issuance, and "John Richey of Concorde America" as being the Company representative to contact. The Company has had no contact with the author of the new statement, did not authorize its release, does not employ Mr. Richey, has no other relationship with him and no has knowledge as to his existence or involvement with the release.

The new statement incorrectly implied that the Company had directed how the original statement was to be revised to render it accurate, when, in fact, no contact was made by the author of the second statement with any Company representative. Finally, the statement again attributes a specific number of workers to be placed in Spain, now refers to a Company agreement "with one of Spain's largest agricultural firms" when the Company has no information as to the comparative size of the entity with which it has contracted, and makes

Really?! Then why did the author of this release (Jere Ross) give Spreadbury and Ross an advance copy?

extremely aggressive predictions about how the Company's business model may be received in Europe.

Hartley Lord, the Company's President, stated that:

“While we recognize that analysts and others interested in the European labor market have the right to publish whatever statements they choose about the Company's business model, we wish to make clear to the investing public that the statements made in the referenced releases have not been authorized by Concorde America, Inc., nor has any Company official provided any of the information contained therein. While we have faith in the plans that are being developed, the Company is in its formative stage, and will need to develop substantial experience in the European marketplace before we are prepared to provide any public information concerning our operational results or expectations. At such time, we will clearly identify any release authorized or issued by the Company.”

Concorde America, Inc. and its subsidiary entities are in the business of recruiting and supplying unskilled but documented immigrant workers, to be drawn largely from Central and South America, for employment in European countries in industries related to agriculture, construction, domestic help, industrial and commercial maintenance and cleaning, and security. The Company's stock is traded over-the-counter under the symbol CNDD.

***** end *****

Steve Kirsch

From: "Jere Ross" <Jross@bushross.com>
To: <spre5451@bellsouth.net>
Cc: "Bryan Kos" <bkos@i-ops.com>
Sent: Tuesday, August 10, 2004 11:37 AM
Subject: RE: Per BKos Instructions

Forgot to mention that the contact should not be anyone at the Company. I am unclear as to who is responsible for the issuance of the original and amended releases (7.28. and 8.9), but as neither emanated from the Company your proposed retraction is not coming from that source either. Regards

Jeremy P. Ross
 BUSH ROSS GARDNER WARREN & RUDY, P.A.
 P. O. Box 3913
 220 South Franklin Street
 Tampa, FL 33601
 813.224.9255 Phone
 813.223.9620 Fax
jross@bushross.com

IF Ross were an honest attorney, he would not be giving legal advice to Spreadbury at this time since according to Ross' own press release,

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

From: spre5451@bellsouth.net [mailto:spre5451@bellsouth.net]
Sent: Tuesday, August 10, 2004 2:02 PM
To: Jere Ross
Subject: Per BKos Instructions

Hello Mr. Ross

Attached is a "retraction" release on the Concorde America story. Bryan asked me to run it by you for revisions, rewording, whatever it takes. Also, who would be the contact for this release?

Thanks

Paul

Spreadbury is a bad guy (and not a client!).

Yet, here is Ross coaching Spreadbury on how to handle this situation and improperly giving him an advance copy of the company's press release!!!

12/17/2005

Steve Kirsch

From: <spre5451@bellsouth.net>
To: "Jere Ross" <Jross@bushross.com>
Cc: "Bryan Kos" <bkos@i-ops.com>
Sent: Tuesday, August 10, 2004 11:49 AM
Subject: Re: Per BKos Instructions

Thanks Jere and Bryan

They won't issue a press release without a contact

Paul

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

From: Jere Ross
To: spre5451@bellsouth.net
Cc: Bryan Kos
Sent: Tuesday, August 10, 2004 2:37 PM
Subject: RE: Per BKos Instructions

Forgot to mention that the contact should not be anyone at the Company. I am unclear as to who is responsible for the issuance of the original and amended releases (7.28. and 8.9), but as neither emanated from the Company your proposed retraction is not coming from that source either. Regards

Jeremy P. Ross
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jross@bushross.com

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From: spre5451@bellsouth.net [mailto:spre5451@bellsouth.net]
Sent: Tuesday, August 10, 2004 2:02 PM
To: Jere Ross
Subject: Per BKos Instructions

Hello Mr. Ross

Attached is a "retraction" release on the Concorde America story. Bryan asked me to run it by you for revisions, rewording, whatever it takes. Also, who would be the contact for this release?

Thanks

Paul

This email is key.
It shows Kos & Ross call the shots.

Steve Kirsch

From: "Bryan Kos" <bkos@i-ops.com>
To: <spre5451@bellsouth.net>
Sent: Tuesday, August 10, 2004 12:49 PM
Subject: RE: Per BKos Instructions

Paul, don't issue anything. We are going to let them do theres, hopefully it won't fuck everything up. On another note, how is the site doing today?

B

"We" => Kos + Ross

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

From: spre5451@bellsouth.net [mailto:spre5451@bellsouth.net]
Sent: Tuesday, August 10, 2004 3:50 PM
To: Jere Ross
Cc: Bryan Kos
Subject: Re: Per BKos Instructions

Thanks Jere and Bryan

They won't issue a press release without a contact

Paul

"let them" => Kos + Ross
are the
masterminds/
controlling minds
in this fraud.

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

From: Jere Ross
To: spre5451@bellsouth.net
Cc: Bryan Kos
Sent: Tuesday, August 10, 2004 2:37 PM
Subject: RE: Per BKos Instructions

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220 South Franklin Street
Tampa, FL 33601
813.224.9255 Phone
813.223.9620 Fax
jross@bushross.com

There is no other explanation
for this statement since
"let them" means they have
control over CNDD.

Also, how does Kos
know about CNDD's
press release ??! He can't unless
Ross told him. Ross would only
tell Kos if Ross is corrupt.

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Thanks

Paul

Steve Kirsch

From: Jere Ross [Jross@bushross.com]
Sent: Thursday, August 12, 2004 1:13 PM
To: Steve Kirsch
Subject: RE: represent me in Florida?

Ross is deliberately misleading me. See email of July 8th which shows he knows Spreadbury's location. He's

Follow Up Flag: Follow up
Flag Status: Red

Steve: glad to have spoken with you. Given your residency in California, I'm unclear why you would want to initiate a law suit in Florida against an individual who apparently has residency in New York.

I do not believe you could establish jurisdictional requirements. If I'm missing something here, please advise. As to your other questions, I do provide representation to a corporation owned by Don Oehmke; I know of Bryan Kos through Mr. Oehmke; J. P. Boegner has been a client for 18 years and has no relationship to Concorde America; I know of none of the other individuals identified on your sheet, nor have I heard of Worldwide Picks, Ltd. Coincidentally, however, today I did receive a spam message from Investoreport.com which had a spread on the company.

Regards

Jeremy P. Ross
BUSH ROSS GARDNER WARREN & RUDY, P.A.
P. O. Box 3913
220 South Franklin Street
Tampa, FL 33601
813.224.9255 Phone
813.223.9620 Fax
jross@bushross.com

even wired Spreadbury funds. Here he admits that Oehmke is a client. But he misleads again by not admitting that Kos is a client. He knows

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

From: Steve Kirsch [mailto:steve.kirsch@propel.com]
Sent: Thursday, August 12, 2004 3:20 PM
To: Jere Ross
Subject: represent me in Florida?

what is being done is illegal so he's trying to cover it up.

Jeremy,

Thanks for talking with me today.

I'd like to pursue the possibility of filing a case against Paul Spreadbury regarding the junk faxes I got. I need a good lawyer in Florida to do this. Would you be willing to represent me on this or could you recommend someone who is really good. I should talk to?

At the same time, a staff person in his office admitted that Ross & Kos talk "all the time."

Also, FrontPage crashed on me while saving the page with my notes... (I think it's the vx2 virus I got)....so now I'm trying to re-construct from memory...

I think I remember this....is this right?

You said Don Emke is a client and Hartly Lord is a client and that you have heard the name Brian Koss through Emke, but otherwise don't have any relationship with Koss. JP Bogner is a client of yours but on a totally separate matter.

The following people are unknown to you:

Richard Rutkowski

John Rooney

Chad DeGroot

John Richey (other than being on the press release from Spreadbury)

Howell Woltz

Is that right?

This is really helpful to me so I don't spend my time chasing down blind alleys since lots of time (like the Bogner case) I get data from database searches that are completely bogus. I don't have much time I can afford to spend on this.

Also, one other question...have you ever heard of Worldwide Picks LTD or know who is behind it? Heysek's not talking to me anymore and he's basically the only guy I've found that would know this.

Thank you for your help and I look forward to working with you on this.

-steve

← here's what he told me on the phone - that he merely has "heard" of Kos.

Steve Kirsch

From: Jere Ross [Jross@bushross.com]
Sent: Thursday, August 12, 2004 2:54 PM
To: Steve Kirsch
Subject: RE: represent me in Florida?

Well, candidly, I never looked to determine the whereabouts of Spreadbury's phone contact #. The 850 designation would put him in the Tallahassee vicinity. My suggestion is that you keep trying to reach him at that # or check some data base to see if he shows up as a resident of that area. If so, I can give you the name of a lawyer to contact there.

Jeremy P. Ross
BUSH ROSS GARDNER WARREN & RUDY, P.A.
P. O. Box 3913
220 South Franklin Street
Tampa, FL 33601
813.224.9255 Phone
813.223.9620 Fax
jross@bushross.com

*Well, Ross has
Spreadbury's address.
Spreadbury isn't a client. If
Ross was honest, he'd have given*

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me the info

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From: Steve Kirsch [mailto:steve.kirsch@propel.com]
Sent: Thursday, August 12, 2004 5:36 PM
To: Jere Ross
Subject: RE: represent me in Florida?

*rather than
pretending*

The number on the "Monster" press release for Spreadbury was 850 areacode.

he didn't

So I had assumed Spreadbury was in Florida so there would be jurisdiction.

know.

Do you have a New York address for him? That would save me a lot of time.

Thanks for your help!

-steve

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Sent: Thursday, August 12, 2004 1:13 PM
To: Steve Kirsch
Subject: RE: represent me in Florida?

Steve: glad to have spoken with you. Given your residency in California, I'm unclear why you would want to initiate a law suit in

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Regards

← we shall see.

I think he knows Woltz.

Jeremy P. Ross
BUSH ROSS GARDNER WARREN & RUDY, P.A.
P. O. Box 3913
220 South Franklin Street
Tampa, FL 33601
813.224.9255 Phone
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Chad DeGroot

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Howell Woltz

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Thank you for your help and I look forward to working with you on this.

-steve

Steve Kirsch

From: Paul [spre5451@bellsouth.net]
Sent: Tuesday, November 08, 2005 10:59 AM
To: Steve Kirsch
Subject: RE: Kirsch v. Bush Ross

Steve,

Correct me if I'm wrong please. This seems to be about the fee directly paid for sending a fax. Just to be perfectly clear. I have no information, direct or otherwise, that supports the claim that Bush Ross paid to have faxes sent. Just to be absolutely clear, the monies that I was paid were to produce TV, radio, develop creative/copy for websites, faxes, press releases, issue press releases, pay designers, programmers, actors, film crews, etc. This is something that I have tried to make absolutely, perfectly clear to all parties since day one.

The actual FEES paid for the actual SENDING and DISBURSEMENT of faxes were not paid to me or by me. I was not provided with funds by anyone to pay a third party or subcontractor to transmit faxes or emails. I have never received an email from ROSS or anyone else instructing me to SEND A FAX or SEND AN EMAIL nor was I ever paid by ROSS or anyone else to do these things.

I have no direct knowledge as to who specifically and directly paid the subcontractor(s) who sent mass fax and email solicitations. The key differential here is: I was paid to re-write them, not to send them. I don't know WHO was paid to send them, HOW MUCH they were paid and WHO made the payment. I really don't.

I can swear to the fact that Ross sent me an email approving a press release during the time in question and another email telling me to not send the press release. I can swear to the fact that payments made to me - which did not include payments for the issuance of fax's or emails - we wired into my business account from the account of the ROSS law firm. K

I'm not trying to be difficult. It's just that the following statement, to my knowledge, which appears in your document is not accurate: "Bank records show that Bush Ross PA paid nearly \$500,000 to have the fax sent and was a key conspirator in the pump and dump securities fraud." You may have information that relates to 'bank records' other than those which were wired to me. But as far as those specific funds go, I had never been assigned or paid by anyone to perform the functions of the actual sending of faxes or distribution of email solicitations. *Spreadbury just "massaged" the content.*

If I'm not being clear please feel free to respond with questions to help clarify.

Paul

Bush Ross paid Camelot directly, not via Spreadbury. The point of this

-----Original Message-----
From: Steve Kirsch [mailto:steve.kirsch@propel.com]
Sent: Tuesday, November 08, 2005 12:37 PM
To: spre5451@bellsouth.net
Subject: Kirsch v. Bush Ross

email is that Spreadbury was always paid by Bush Ross PA

I have filed a case for \$5,000 against Bush Ross.

See attached order to serve them signed by the judge.

There are 137 members of the CNDD stock fraud group; people who were defrauded.

So Ross essentially paid Spreadbury to send out the phoney

If I win, I will make any information I learn available to every single one of them so they can file suit.

I offered to hire a lawyer to represent them. I ran a poll on that group and 87% said they would join that suit.

press releases.

But I need your help to win this case.

All I ask is that you sign a document with truthful statements on it to the best of your knowledge.

OK?

-steve

December 18, 2005

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SO IF THE PRESS
CAN FIGURE OUT ROSS' CLIENTS
ARE CROOKS WHY CANT ROSS?

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Man used "pump and dump" to defraud investors of millions, feds say

February 23, 2005 - 6:41PM



(NEWS 3) - Federal investigators say a West Michigan man made millions of dollars by defrauding investors in what is described as a "pump and dump" stock scheme.

The Securities and Exchange Commission has filed suit against eight people, including Donald Oehmke of Kalamazoo.

A federal district court judge ordered that Oehmke's assets be frozen while an investigation is underway.

Oehmke is accused of misleading investors using the internet, the telephone, and phony news releases. The two companies involved are Concorde America and Absolute Health.

"At the time this pump and dump started, the company was in business for weeks and had no business, had no revenues, had no money," said one internet publisher who has been following Concorde America for stockpatrol.com. "Is it a real company? Probably not.

The second company, Absolute Health, was merely a shell corporation according to the Securities and Exchange Commission.

The pump and dump operations happen quickly. Hyped stocks shoot up within a matter of days and insiders dump them before they fall. Other investors are left with worthless stocks.

The SEC alleges Oehmke saw a net profit of \$11.3 million from his dealings with Concorde America and \$9.4 million from his sales of Absolute Health stock.

Federal officials say the proceeds from the alleged fraud have been funneled to offshore bank accounts. It is unlikely that investors will get any money back.

Federal officials say they don't know how many investors may have lost money in the alleged scheme.

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Steve Kirsch

This email shows how Ross refused to give me (whom he wished ~~me~~ look in tracking down the bad guy) info, but

From: Steve Kirsch
Sent: Tuesday, December 20, 2005 11:13 AM
To: Alise Johnson (johnsona@sec.gov); Linda Schmidt (schmidtls@sec.gov); Robert Levenson (levensonr@sec.gov); Soto, Patricia S.
Subject: proof that Jere Ross was a co-conspirator

as we saw before in his email to Spreadbury, he had no trouble giving Spreadbury non-public info!

Read through this email (read from the bottom up). When I tried to get Hartley Lord to answer a few questions about inconsistencies in his testimony, Jere Ross stepped in and told Hartley not to answer.

He wrote me:

because it has a class of securities which are available for active trading in the public marketplace (roughly the 10MM shares made the subject of its recently completed Rule 504 offering), **it may not provide on a piecemeal basis, to select investors or others having an interest in the company, information concerning the company which the average investor would reasonably wish to have in order to be able to make an informed investment decision concerning those shares**

Well, don't you find that interesting? I sure do. Because from Spreadbury's disk, in the "Lawyer to me" folder, there is this email from Jere Ross to Paul Spreadbury (dated august 10, 2004 I believe) which approves Spreadbury's correction, and provides Spreadbury an ADVANCE copy of the press release the company is about to issue as an attachment. You can see that Jere Ross is that author of that attachment when you look at the "File Properties" in Word. Furthermore, there is an email from Bryan Kos which indicates Kos knows about the press release from CNDD too (the one about him hoping they don't fuck things up).

Well, why did Jere Ross give Spreadbury that Press Release that Ross drafted which in essence, disclaims the Spreadbury releases and states that the company has no connection with Spreadbury? That's clearly in violation of the Company's policy which Ross knows since he articulated it to me!!!

an advance copy of a key

There is only one possible explanation I know of. Jere Ross is part of the conspiracy. No honest lawyer would do this.

Ross made a mistake in that email to Spreadbury. He goofed. Crooks always goof.

He's part of the conspiracy. He reviewed their promos so he knew what business they were in. He laundered all the funds used to pay over \$1M in promotion expense (over a little over 1 month!) and then got the offshore profits. He's not some clueless lawyer. His email to Spreadbury proves he's in cahoots. Plus representing the scammers and the "innocent" Hartley Lord at the same time. How can that not be a conflict of interest, clearly known to him when he is drafting the press release.

You should add Ross personally to your suit and by respondeat superior, the firm is also liable for his actions.

In criminal conspiracy, all conspirators are liable for the torts committed in furtherance of the conspiracy. It will be a nice way to recover the funds and pay back the investors who lost money.

In *De Vries v. Brumback* (1960) 53 C.2d 643, 2 C.R. 764, 349 P.2d 532, M and B conspired to and did rob a jewelry store of plaintiff's assignor. Then they met with defendant, who joined the conspiracy to dispose of the property. Some of the stolen property was recovered; in this action for conversion defendant was held liable for the value of the unrecovered part--\$21,947.13. On appeal, he contended that, since he was not a member of the prerobbery conspiracy, his tort was a new conversion when the stolen goods were delivered to him, and, since all that he had was recovered from him, he could not be liable in damages. His contention, based on the rule governing criminal conspiracy (*People v. Weiss* (1958) 50 C.2d 535, 327 P.2d 527), was

rejected.

The court said: "There is a clear distinction in the law of conspiracy as applied to criminal as differentiated from civil cases. . . . The gist of the crime of conspiracy is the agreement to commit the unlawful act . . . , while the gist of the tort is the damage resulting to the plaintiff from an overt act or acts done pursuant to the common design." (53 C.2d 649.) **Hence, in tort a conspirator is a joint tortfeasor liable for all damages irrespective of whether he was a direct actor. (53 C.2d 650.)**

From: Jere Ross [mailto:Jross@bushross.com]
Sent: Tuesday, August 17, 2004 10:07 AM
To: Steve Kirsch
Subject: RE: CNDD: additional questions

Steve: I did not mean to imply that you are seeking this information in connection with any purchase or sale that you might be making, rather only that the Company is not in a position to provide any information about its operations selectively. What the Company may choose to say to a reporter of a nationally circulated newspaper or periodical journal is up to the Company, but whatever it may choose to say about operations should also be made the subject of a press release containing the same disclosure.

Jeremy P. Ross
BUSH ROSS GARDNER WARREN & RUDY, P.A.
P. O. Box 3913
220 South Franklin Street
Tampa, FL 33601
813.224.9255 Phone
813.223.9620 Fax
jross@bushross.com

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

From: Steve Kirsch [mailto:steve.kirsch@propel.com]
Sent: Tuesday, August 17, 2004 12:57 PM
To: Jere Ross
Subject: CNDD: additional questions

I'm not an investor in CNDD nor have I purchased (or shorted) any shares, nor do I currently plan to purchase any shares. I only asked my broker if it was possible as part of collecting the data.

The information is strictly for completing the story on the website, not for personal economic or commercial gain and would be posted to the website so that Hartley can refer people there for clarification.

There are a couple of other options to provide clarification too:

1) can you have the company post the answers to these questions on the company website?
and/or

2) would Hartley answer these questions if it came from a reporter from the NY Times or Wall Street Journal or Barrons?

thanks!

-steve

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

From: Jere Ross [mailto:Jross@bushross.com]

Sent: Tuesday, August 17, 2004 8:19 AM

To: Steve Kirsch

Subject:

Steve: Mr. Lord has forwarded to me your latest inquiry for information. I have advised him not to respond. Although Concorde America is not subject to the reporting requirements of the 1934 Securities Exchange Act (Section 12(g)), has not chosen to effect a voluntary registration thereunder, and is therefore not subject to the requirements of Regulation F-D, because it has a class of securities which are available for active trading in the public marketplace (roughly the 10MM shares made the subject of its recently completed Rule 504 offering), it may not provide on a piecemeal basis, to select investors or others having an interest in the company, information concerning the company which the average investor would reasonably wish to have in order to be able to make an informed investment decision concerning those shares. Federal and state securities laws are intended to force even handed disclosure of such information so that everyone will have access thereto at the same time. The mechanism by which an entity with the company's characteristics complies with that requirement is the news release, and the timing of such a disclosure is dependent upon the occurrence of material events in the company's operations that it believes should be reported. As was reported last week, the company is in its initial operational stage and has no current information that it believes would be of particular benefit to investors. Last week's release was effected only because of the unauthorized and misleading releases that had preceded it. The company recognizes that you are performing a public service, but I trust you will acknowledge that it is not being undertaken solely for a public purpose. There is a commercial or economic foundation to your activity, and while you have every right to pursue the story as you have, the company is not in a position to assist you in that endeavor. Should the SEC initiate an investigation and seek information of the sort you have requested, the company will cooperate fully, but it cannot respond to a private inquiry of the sort you are mounting. I trust you understand this position, but if you have further questions, please let me know. Regards, Jere

Jeremy P. Ross
BUSH ROSS GARDNER WARREN & RUDY, P.A.
P. O. Box 3913
220 South Franklin Street
Tampa, FL 33601
813.224.9255 Phone
813.223.9620 Fax
jross@bushross.com

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1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the specific procedures and protocols that must be followed when recording transactions. It details the steps from initial entry to final review and approval, ensuring that all necessary checks and balances are in place.

3. The third part of the document addresses the role of technology in streamlining the record-keeping process. It discusses the benefits of using specialized software and digital tools to reduce errors and improve efficiency.

4. The fourth part of the document focuses on the importance of regular audits and reviews. It explains how these processes help identify discrepancies, prevent fraud, and ensure that the organization remains compliant with all relevant regulations.

5. The fifth part of the document discusses the need for ongoing training and education for all staff involved in the record-keeping process. It highlights the importance of staying up-to-date on the latest industry practices and technological advancements.

6. The sixth part of the document provides a detailed overview of the reporting requirements for the organization. It outlines the frequency, format, and content of all reports, ensuring that all necessary information is provided to the relevant stakeholders.

7. The seventh part of the document discusses the importance of maintaining a secure and reliable system for storing and accessing records. It outlines the necessary security measures and backup procedures to protect the organization's data from loss or theft.

8. The eighth part of the document provides a summary of the key points discussed throughout the document. It reiterates the importance of accurate record-keeping and the role of each department in ensuring the integrity of the organization's data.

9



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CNDD -- Concorde America, Inc.
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COMPANY NEWS AND PRESS RELEASES FROM OTHER SOURCES:

First Global 'Monster' Employment Placement Service Launched

Concorde America to Place Over 200,000 Workers in Spain.

BOCA RATON, Fla., Jul 28, 2004 /PRNewswire-FirstCall via COMTEX/ -- Nations of the European Union are currently faced with a crisis of global proportions that can be summed up in three words: zero population growth. One of the most critical and immediate side effects of this is the strain it puts on the individual and collective economies of each nation as a result of the lack of workers available to perform duties in agriculture, hospitality, sanitation, security and other jobs.

Enter Concorde America (OTC Pink Sheets: CNDD), a Boca Raton, Florida-based corporation that has developed a unique solution to this problem by offering to recruit, screen, secure the services of and transport qualified workers from Latin American nations to fill the needs of European countries and companies. Concorde America President Hartley Lord elaborates on the importance of the new agreement with the Spanish government: "The recent agreement with Spain is the tip of the proverbial iceberg. The need for qualified labor is rampant throughout almost all the nations of the European continent. Once this first contract is underway and others can see for themselves our global solution in action, we anticipate the floodgates to open."

Management of Concorde America is quick to point out the irony in how the problems of one area of the world can become the solution to the other; Concorde America's Julio Aspe explains, "Workers in many Latin American countries can expect to earn about the equivalent of \$60 a month working the fields or as domestics or security guards. For doing the same work in Spain, Italy or Germany, they can earn over \$1000 a month. In addition, they can provide their families back home with health and dental insurance and even be a part of a pension plan."

Tom Heysek, noted financial advisor, has conducted extensive research on the management team, financial report and the opportunity. "Concorde America has no real direct competitors in the category of labor that they focus on providing, yet the need for this labor is by far greater than for that of more skilled professional help. It's a classic case of supply and demand. Concorde has access to the supply via their arrangements and agreements with Latin American countries and labor pools. Conversely, they have done an excellent job in opening up direct pipelines an cutting through the red tape on the demand side. I would recommend Concorde America to any investor as a strong buying opportunity." Mr. Heysek's full report can be found at <http://www.winningstockpicks.net>.

Concorde America represents an awesome earnings opportunity as a result of an enterprise that offers a practical solution to significant problems affecting different parts of the world: poverty and unemployment in Latin America and zero population growth in Europe. In the words of Concorde America spokesperson Julio Aspe, "No matter how you look at it, Concorde America is a win for all who participate."

Concorde America is traded Over-the-Counter with the symbol CNDD.

SOURCE Concorde America

CONTACT: Paul Spreadbury, WallSt2MainSt Inc., +1-850-475-0477, or
pspreadbury@wallst2mainst.com, for Concorde America
(CNDD)

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KEYWORD: Florida; Spain
INDUSTRY KEYWORD: OTC
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Press Release #2
Aug 9, 2004 3:34pm ET



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/CORRECTION -- Concorde America/ 9 Aug 2004

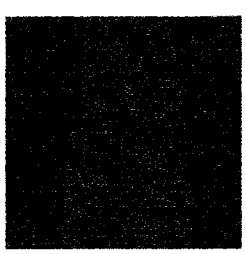
In the news release, First Global 'Monster' Employment Placement Service Launched; Concorde America (OTC Pink Sheets: CNDD) to Place Over 200,000 Workers in Spain, issued Wednesday, July 28, by Concorde America over PR Newswire, we are advised by the company that from the second paragraph, second sentence, through to the end of the third paragraph, the original text should be replaced with "Concorde America has entered into an agreement with one of Spain's largest agricultural firms. The need for qualified labor is rampant throughout almost all the European nations. Once this first contract is underway and others throughout Europe see Concorde America's global solution in action, the floodgates will open. "The Concorde America solution demonstrates how the problems of one area of the world can become the solution to another. Workers in many Latin American countries can expect to earn about the equivalent of \$60 a month working the fields or as domestics or security guards. For doing the same work in Spain or Italy or Germany, they can earn over \$1,000 a month. In addition, they can provide their families back home with health and dental insurance and even be a part of a pension plan." In addition, the entire fifth paragraph of the original text should be eliminated, and the contact should read "John Richey of Concorde America, +1-850-723-3663," rather than "Paul Spreadbury, WallSt2MainSt Inc., +1-850-475-0477, or pspreadbury@wallst2mainst.com, for Concorde America." Complete, corrected release follows:

First Global 'Monster' Employment Placement Service Launched

Concorde America to Place Over 200,000 Workers in Spain

BOCA RATON, Fla., July 28 /PRNewswire-FirstCall/ -- Nations of the European Union are currently faced with a crisis of global proportions that can be summed up in three words: zero population growth. One of the most critical and immediate side effects of this is the strain it puts on the individual and collective economies of each nation as a result of the lack of workers available to

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perform duties in agriculture, hospitality, sanitation, security and other jobs.

Enter Concorde America (OTC Pink Sheets: CNDD), a Boca Raton, Florida- based corporation that has developed a unique solution to this problem by offering to recruit, screen, secure the services of and transport qualified workers from Latin American nations to fill the needs of European countries and companies. Concorde America has entered into an agreement with one of Spain's largest agricultural firms. The need for qualified labor is rampant throughout almost all the European nations. Once this first contract is underway and others throughout Europe see Concorde America's global solution in action, the floodgates will open.

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Help Rebuild
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Communities in
Hurricane
Affected States.

The Concorde America solution demonstrates how the problems of one area of the world can become the solution to another. Workers in many Latin American countries can expect to earn about the equivalent of \$60 a month working the fields or as domestics or security guards. For doing the same work in Spain or Italy or Germany, they can earn over \$1,000 a month. In addition, they can provide their families back home with health and dental insurance and even be a part of a pension plan.

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Tom Heysek, noted financial advisor, has conducted extensive research on the management team, financial reports and the opportunity. "Concorde America has no real direct competitors in the category of labor that they focus on providing, yet the need for this labor is by far greater than for that of more skilled professional help. It's a classic case of supply and demand. Concorde has access to the supply via their arrangements and agreements with Latin American countries and labor pools. Conversely, they have done an excellent job in opening up direct pipelines and cutting through the red tape on the demand side. I would recommend Concorde America to any investor as a strong buying opportunity." Mr. Heysek's full report can be found at <http://www.winningstockpicks.net/>.

Concorde America is traded Over-the-Counter with the symbol CNDD.

Source: Concorde America

CONTACT: John Richey of Concorde America, +1-850-723-3663

Concorde America Revises Press Release

BOCA RATON, Fla., Aug. 9 /PRNewswire-FirstCall/ -- The following is a revision of a July 28 release:

Nations of the European Union are currently faced with a crisis of global proportions that can be summed up in three words: zero population growth. One of the most critical and immediate side effects of this is the strain it puts on the individual and collective economies of each nation as a result of the lack of workers available to perform duties in agriculture, hospitality, sanitation, security and other jobs.

Enter Concorde America (OTC Pink Sheets: CNDD), a Boca Raton, Florida-based corporation that has developed a unique solution to this problem by offering to recruit, screen, secure the services of and transport qualified workers from Latin American nations to fill the needs of European countries and companies. Concorde America has entered into an agreement with one of Spain's largest agricultural firms. The need for qualified labor is rampant throughout almost all the European nations.

The Concorde America solution demonstrates how the problems of one area of the world can become the solution to another. Workers in many Latin American countries can expect to earn about the equivalent of \$60 a month working the fields or as domestics or security guards. For doing the same work in Spain or Italy or Germany, they can earn over \$1,000 a month. In addition, they can provide their families back home with health and dental insurance and even be a part of a pension plan.

Tom Heysek, noted financial advisor, has conducted extensive research on the management team, financial reports and the opportunity. "Concorde America has no real direct competitors in the category of labor that they focus on providing, yet the need for this labor is by far greater than for that of more skilled professional help. It's a classic case of supply and demand. Concorde has access to the supply via their arrangements and agreements with Latin American countries and labor pools. Conversely, they have done an excellent job in opening up direct pipelines and cutting through the red tape on the demand side. I would recommend Concorde America to any investor as a strong buying opportunity." Mr. Heysek's full report can be found at <http://www.winningstockpicks.net>.

SOURCE Concorde America

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Press Release # 4
Aug 11, 2004 5:09 PM ET

For Immediate Release

**CONCORDE AMERICA, INC. DISCLAIMS
PRIOR INFORMATION RELEASES**

BOCA RATON, FLORIDA, AUGUST 10, 2004 – CONCORDE AMERICA INC. (The Pink Sheets - CNDD), today disclaimed any involvement in the composition or public dissemination of statements, dated July 28 and August 9, 2004, respectively, which appeared as “PR Newswires” in Bloomberg.com and other media services.

The first such release, entitled “First Global ‘Monster’ Employment Placement Service Launched”, stated that the Company had developed a “unique solution” to the labor shortage problems purportedly facing European nations as a result of a lack of population growth. Furthermore the company had entered into a “new agreement with the Spanish government”, and expected to “place over 200,000 workers in Spain”. The release purported to quote Company officials in a manner which reflected extremely high business and earnings expectations. It stated that any contact concerning the release was to be made “for Concorde America” to “Paul Spreadbury, Wall St2MainSt, Inc.”, and provided contact information...

In fact, (a) no Company official was interviewed or otherwise contacted in connection with the release, (b) Mr. Spreadbury is not employed by nor has any other relationship with the Company, and (c) the Company has never identified its business plan as being “unique”, has not entered into any contractual arrangement with the Spanish government, has made no public announcement concerning possible future earnings, earnings growth or profitability, and has not specified the number of workers that it may be able to supply to any European country under any existing or future contract.

Because of inquiries made by the Company of Mr. Spreadbury and others as to the source of the first release, the second release, entitled “Correction”, was disseminated as of Monday, August 9. While it stated that the quoted material present in the first release was to be eliminated, it incorrectly identified the Company as being the source of the new content, Boca Raton, Florida as being the physical site of issuance, and “John Richey of Concorde America” as being the Company representative to contact. The Company has had no contact with the author of the new statement, did not authorize its release, does not employ Mr. Richey, has no relationship with him and no has knowledge as to his existence or involvement with the release.

The new statement incorrectly implied that the Company had directed how the original statement was to be revised to render it accurate, when, in fact, no contact was made by the author of the second statement with any Company representative. Finally, the statement again attributes a specific number of workers to be placed in Spain, now refers to a Company agreement "with one of Spain's largest agricultural firms" when the Company has no information as to the comparative size of the entity with which it has contracted, and makes extremely aggressive predictions about how the Company's business model may be received in Europe.

Hartley Lord, the Company's President, stated that:

"While we recognize that analysts and others interested in the European labor market have the right to publish whatever statements they choose about the Company's business model, we wish to make clear to the investing public that the statements made in the referenced releases have not been authorized by Concorde America, Inc., nor has any Company official provided any of the information contained therein. While we have faith in the plans that are being developed, the Company is in its formative stage, and will need to develop substantial experience in the European marketplace before we are prepared to provide any public information concerning our operational results or expectations. At such time, we will clearly identify any release authorized or issued by the Company."

Concorde America, Inc. and its subsidiary entities are in the business of recruiting and supplying unskilled documented immigrant workers, to be drawn largely from Central and South America, for employment in European countries in industries related to agriculture, construction, domestic help, industrial and commercial maintenance, cleaning, and security. The Company's stock is traded over-the-counter under the symbol CNDD.

CONCORDE AMERICA, INC.
7205 Mandarin Drive
Boca Raton, Florida 33433
Hartley Lord, President

Contact: Hartley Lord
Tel: (561) 488-6107
Fax: (561) 488-6108

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Jere Ross aka Jeremy Ross (Tampa, FL)

Co-founder and partner at Bush Ross Bush Ross Gardner Warren & Rudy PA in Tampa Florida (see [Bush Ross Gardner Warren & Rudy, P.A. - Jeremy P. Ross Bio](#)). Ross provides legal counsel for Kos, Oehmke, and Lord. Both Lord and Oehmke are heads of companies featured in WSP. Lord says he didn't have a current lawyer when Oehmke contacted him. Yeah right...and if you believe that I have this bridge I'd like to sell you..

Ross is representing Lord and Concorde in the SEC suit and admitted to me that Oehmke/Ventana and Lord/CNDD were his clients.

The Bush Ross website says that they have become one of central Florida's leading [law] firms because they "adhere to the long term philosophy that clients want caring, insightful, ethical, and qualified problem solvers who will add value to their businesses and lives. Thanks to the standards set by the founders of Bush Ross, our mid-sized firm has been recognized as providing the highest levels of excellence in legal advice and service to our clients."

Well, let's just say that when all the evidence comes out, I think they will have to re-write certain parts of that. [Money laundering](#) is a crime the last time I checked. But the worse part is by knowingly doing this, they are a co-conspirator in a crime and thus liable for all torts committed in furtherance of the conspiracy. It is just too hard to believe that Ross didn't know exactly what was going on due to his close ties to Kos and his payment of all the vendors.

I know from an admission of someone who works at Bush Ross that Ross and Kos talk all the time. In the SEC depo of Rohm, Rohm mentioned that the reverse merger contract was prepared by Jere Ross and Rohm's lawyer advised him not to do it and it was "substandard."

All of the vendors I talked to were paid out of the Bush Ross bank account (Spreadbury admitted it in the SEC depo, Vault Studios admitted it to me, and Fry Hammond Barr provided evidence under subpoena of the transfer, and Tom Heysek's bank records show he was paid from the same account. In addition, the funds to pay Camelot Promotions were mostly provided from the Bush Ross account, with some funds coming directly from Ventana Consultants (Oehmke).

Even better is that over \$5M of illegal trading profits from the Ryzcek and Chiang Ze accounts set up by Woltz were laundered through the same Bush Ross Sun Trust Banks Account # 41001143506 according to documents the SEC got (page 11 of the [ExhibitWitnessList.pdf](#) which is Docket #35 in the SEC case). \$1,172,876 went to Bush Ross from Ryzcek Investments between June 29 and August 5, 2004. \$4,134,865 was transferred from Chiang Ze Capital, AVV between July 28 and August 11, 2004.

Heysek's Asian American Capital Management LLC account at B of A was paid by Bush Ross too. I subpoenaed these records from B of A and found out that Heysek got \$24K on 8/03/04 and \$23K on 7/7/04 from the Bush Ross account.

Also, Ross paid Spreadbury to send out the phony press release, then Ross authored a retraction which was sent out under CNDD's name. Talk about playing both sides of the fence! And when I asked Ross for Spreadbury's address, Ross played dumb and pretended not to know and in an email he sent me on August 12, he tried to make me think Spreadbury was in New York despite the fact that Kos sent him (and Barbara Rowe) an email on July 08, 2004 containing Paul's full address in Florida. An honest person with nothing to hide wouldn't do that.

In fact, Jere Ross himself wrote me in an email on August 15, 2004 at 2:50pm which included the following (emphasis is mine):

"Generally the SEC staff conducts an informal or, with Commission approval (which won't be difficult to obtain in this case), formal investigation. If they determine the **likelihood of criminal activity (which, unfortunately, appears to be present in the current case)**, they will refer..."

"As an aside, I give you credit for your efforts and hope that they are successful. There are few worse actions than market manipulation of the sort being practiced by whomever is behind the recent activity. They prey on the small investor who looks for the big hit. Good luck."

We agree on that! And both Jere and I knew exactly who was behind it at the time he wrote the e-mail.

At first I was surprised that they would use a law firm's trust account instead of creating some bogus bank account somewhere. But after I tried subpoenaing the Bush Ross bank account records at SunTrust, Bush Ross hired local counsel in California to file a 5 page objection citing 14 reasons why my request should be denied. None of the arguments had any merit that I was worried about. But I believe they wouldn't have gone to that length if they weren't trying to hide something very important. So I am led to believe that they probably used the Bush Ross account for three reasons:

- **Hide behind attorney-client privilege:** The SEC tried asking for their records. Bush Ross objected citing attorney-client privilege. So there you go. That's why they used the attorney. So anyone tracing them runs into a brick wall. There are two ways around that. 1) There is no attorney-client privilege for trust account funds (which these were) as the SEC pointed out to the court in [their motion to compel](#) and 2) you can invoke the

crime-fraud exemption if there is a reasonable basis for a reasonable man to conclude a crime has occurred (which they admit) and 3) Only attorney-client communications are exempted, not the transactions with third party vendors. Bottom line: unlike what they thought, they can't protect the transaction history at all from discovery.

- **Hide behind the mass of transactions:** Since Bush Ross is a big firm there are a LOT of transactions and most people wouldn't have the time to investigate every one and even if you did, you'd probably find nothing without Bush Ross's cooperation. Unless you knew specifically what you were looking for, it would be like trying to find a needle in a haystack. For example, instead of hiring of the fax broadcasters directly, they paid a third party (Camelot Promotions) to do that. Therefore, transactions with Camelot Promotions would appear in their account and most Plaintiff's wouldn't know what it is for. Bush Ross would claim attorney client privilege and Javier (at Camelot) would probably "not remember" who paid him and probably is so bad at record keeping that he wouldn't be able to find anything. Therefore, unless you are really good at detective work, they look clean.

We also know from reading the SEC case that there are other people at Bush Ross (not attorneys) who have knowledge about what was going on including:

- Barbara Rowe: she handled the wire transfers when Kos made a request to Jere
- Jessi Horrnik: her computer has the software that was used for the automatic funds transfer. This computer was stolen from the Bush Ross office in early July 2004.

For more information on Bush Ross, see [Is Bush Ross co-founder Jere Ross a crook?](#)

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Is Bush Ross co-founder Jere Ross (aka Jeremy Ross) a crook?



That's Jere Ross on the left. I sure believe he is a crook despite the fact that he was named one of the top 1,000 lawyers in Florida by being named to the "Legal Elite" list in Florida Trend Magazine in 2005.

I'm posting my research on this web site in the hopes that someone will see this and come forward with additional evidence that will help to implicate Jeremy Ross as a principal player in one of the largest penny stock "pump and dump" scams in US history.

If you lost money on CNDD, AHFI, TWTN, BDYS, SGNJ, BHLL, register your loss here: [Stock loss registration for CNDD, AHFI, and other "winningstockpicks.net" losses](#). If I win against Bush Ross and/or Jere Ross, chances are very good you'll be able to collect your losses since these folks appear to be co-conspirators in the stock fraud so each of them is liable for all torts that the conspiracy committed.

The stuff below is based on evidence I've obtained and contains my personal conclusions and beliefs based upon that evidence.

I've repeatedly asked Jere Ross (and his attorney) to explain how my evidence is incorrect or my conclusions are wrong and they just dismiss my requests without explanation. In fact, on November 1, 2005, I spoke with Jere and after I confirmed he received a demand letter I sent to Bush Ross with 4 simple suggestions for settling my claims and he said that he had read my web pages regarding him and then said, "You're an asshole and that's probably the end of the conversation."

That sure is a big switcheroo from what he wrote me in an email on August 15, 2004 at 2:50pm (emphasis mine):

"Generally the SEC staff conducts an informal or, with Commission approval (which won't be difficult to obtain in this case), formal investigation. If they determine the **likelihood of criminal activity (which, unfortunately, appears to be present in the current case)**, they will refer..."

"As an aside, **I give you credit for your efforts and hope that they are successful**. There are few worse actions than market manipulation of the sort being practiced by whomever is behind the recent activity. They prey on the small investor who looks for the big hit. **Good luck.**"

Look, I'm just an honest guy doing what Jere Ross told me to do. So now I'm an asshole? Because I figured out that Ross himself was at the very center of this scheme? My reputation has been tarnished! I guess the only way to clear my name is to expose the truth. And the funny thing is that his law firm, which wished me luck in going after the bad guys, isn't cooperating at all in my search for the truth! They are NOT TALKING AT ALL. Not to me, not to the SEC.

There's a reason for that. They laundered the money (paying vendors and receiving the illegal profits) through the Bush Ross client trust account. Jere probably figured that by laundering the funds through the law firm, he could conceal who's behind it. Anyone trying to find Kos and his pals would get stopped out at Bush Ross's front door via attorney-client privilege. Even if they got the bank records directly from the bank, the transactions of interest would be obfuscated in the huge number of transactions.

But there is a slight problem with their strategy. Unlike bank transactions, all client trust fund transactions require extensive documentation (see Florida Bar Rule 5-1.2(b)(4) and 5-1.2(b)(5)(D) and 5-1.2(b)(6)(D)). So my pal Jere has to know the reasons for the wires that Kos asks him to make. And Jere is real familiar with what Kos is doing because Kos has him regularly approve all the promotion, e.g., Kos told Jere to approve the TV spots before they were shot. So you have a guy who totally is "in the know" about what is going on approving all these transactions to perpetrate a stock fraud. That makes them a co-conspirator. **That's why they are all clamming up. Because they are in deep doo-doo. We're talking really deep doo-doo.**

But it's even worse. Bush Ross claimed attorney-client privilege when the SEC tried to subpoena their records. Problem is that they didn't do their homework and client trust funds aren't subject to attorney-client privilege. Uh oh. Big boo-boo. To make matters worse, the SEC figured that out and made a motion to compel production of the Bush Ross client trust fund records citing the US Supreme Court rulings that they can't hide the stuff.

Here's what I found about them in more detail...

BushRoss aka Bush Ross, P.A. is a law firm in Tampa, Florida.

However, based on extensive research I did on 18 "pump and dump" junk faxes I received, they appear to provide more than just "legal advice" to their clients.

At least four of their clients (Bryan Kos, Jeremy Jaynes, Donald Oehmke, Hartley Lord) have been charged by the SEC for securities fraud in the connection with illegal "pump and dump" securities fraud. A federal lawsuit has been filed against those clients (see links below). Note: I believe all four are clients since Bush Ross handles transactions with them but thus far, Ross has admitted that only Lord and Oehmke are clients and has not specified whether Jaynes and Kos are. However, Ross admitted to the SEC that Bush Ross handled transactions involving Jaynes and Kos. Therefore, when I refer to clients in this page, I'm including these 4 people.

So riddle me this...**if the SEC can figure it out from clues from the outside, how come their own high powered attorney, who has access to everything, can't determine that there is a fraud going on?** Well, it's impossible that he can't. That doesn't pass the duck test. Plus we have the email from Ross himself acknowledging that his clients are crooks (see above) and we have his firm's bank records showing they played a central role in all this (filed in federal court).

When I did my investigation on the faxes I received, I found that all of the principal "contractors" used in the perpetration of the fraud were being paid by Bush Ross, P.A. including Tom Heysek, Bryan Kos, Fry Hammond Barr, Vault Studios, and Paul Spreadbury. See Anatomy of a stock fraud.

Camelot Promotions was paid \$464,795.00 in seven wire transfers (six totaling \$355,000 were from Bush Ross PA. The other was from Oehmke/Ventana). The contractors (Fry Hammond Barr, Spreadbury, Heysek, Kos, Camelot) in total were paid almost \$1M, maybe more since I don't have all the invoices, but the ones I have total nearly a million bucks.

Not only that, but millions of dollars from the illegal stock trades were wired into the exact same Bush Ross bank account! All from funny sounding names. Now if you had half a brain, you'd figure this one out. I believe Jere did the wire authorizations (normally, it's the partner associated with the client) so he knew what was going in and out. He can't say he didn't know. So he's a co-conspirator and responsible for all torts of the conspiracy.

Now I've heard of lawyers paying settlement funds through their bank account for their clients. But frankly, I've never heard of a law firm paying almost a million bucks over just a few months for fraudulent press releases, TV ad campaigns promoting a stock "pump and dump" website, junk faxes to be sent hyping worthless stocks, and more and then accepting millions of dollars in profits from the scam into the same account. That's pretty amazing.

And the same lawyer approves a press release from Paul Spreadbury, even coaching him on the content, while at the very same time he writes a press release on behalf of the company being touted totally disclaiming the fraudulent ones that Spreadbury sent out? This guy is working both sides of the issue. He even gives the supposed bad guys (both Spreadbury and Kos) an advance copy of the release!

Check out these emails from my small claims case against Bush Ross PA (which Spreadbury turned over to the SEC):

- [ConcordeProject.eml](#): Oemke forwards to Bryan Kos revenue and profit projections he admits he got from Mauricio Madero, who is an associate of Hartley at Concorde. This is important since it disputes the statements Ross wrote in his press release that no company official was contacted in connection with the release ([PerBKosInstructions2.eml](#)).
- [ConcordeReworked Numbers.eml](#): Kos asks Mauricio to approve Andrew Kline's adjustments to the the projections. Kline refers to the numbers that were "given by Hartley." So these two emails show that Concorde's officers are providing information on a selective basis to Kos and Oehmke. Why are they doing that? It's contrary to their policy articulated by Jere Ross below. And it's also contrary to Jere Ross's press release saying the company hasn't provided any information
- [PerBKosInstructions1.eml](#): this is the retraction release Kos instructed Spreadbury to generate and get Ross's approval before it is sent. Note that there is no contact info.
- [PerBKosInstructions2.eml](#): this is the killer e-mail. Ross says Spreadbury's release is fine. So Ross is HELPING the bad guys!! And to make matters even worse, he's including an ADVANCE copy of the press release he's drafting that will be released later that day. In that release, Spreadbury and gang are painted as bad guys. So if they are bad guys, then why is Ross giving both Spreadbury and Kos an advance copy of the release (see To: and Cc: line of the email)? That gives them an unfair chance to short the stock. Clearly, Jere Ross knows Spreadbury is a bad guy since that's what his press release he's writing is all about. No honest attorney would then give the bad guys ANY advice whatsoever to help them and he certainly would NEVER given them an advance copy of any company press release since it violates company policy that he articulated to me a week later (see CNDD questions1 and 2 below). Also, Ross knows that "John Richey" doesn't exist (which he acknowledges in Ross's press release), yet makes no mention to Paul about correcting that mistake.
- [PerBKosInstructions3.eml](#): Jere Ross sends another email to Spreadbury again giving him advice to cover his tracks, i.e., make sure it isn't coming from the company. Question: why is Jere Ross helping the bad guys yet again? Only possible answer: he's a co-conspirator.
- [PerBKosInstructions4.eml](#): This email is also very telling since it

indicates that Kos is orchestrating things in conjunction with Ross. Kos says "we are going to let them do theres [sic]." We can only mean Ross and Kos since only Ross has "control" over what Concorde issues. So Kos and Ross are going to permit Concorde to issue a press release!! Basically, it means Kos and Ross are conspiring with each other and controlling how Ross's other client (Lord / Concorde) should act.

- [CNDDquestions1.msg](#): When I tried asking Hartley some hard questions on what he told me, Jere Ross shoots back an email saying that they can't tell me anything: "it may not provide on a piecemeal basis, to select investors or others having an interest in the company, information concerning the company which the average investor would reasonably wish to have in order to be able to make an informed investment decision concerning those shares." Well, gee, if that's the policy then why did you give Paul Spreadbury and advance copy of the company's press release?
- [CNDDquestions2.msg](#). He again confirms "the Company is not in a position to provide any information about its operations selectively." So he clearly knows it's improper to do so, yet he gave Spreadbury that advance copy. Pretty hard to explain that if you are in cahoots.

Here are some other docs from my small claims case:

- [BushRossLetterToMadden.PDF](#): they ask for dismissal and attack my credibility
- [Kirsch reply to Bush Ross letter.doc](#): I point out the holes in their letter
- [SubpoenaBushRoss.PDF](#): the subpoena I served on them for documents. If they fail to produce the docs, they'll lose the case.

Why did Jere Ross do it? Perhaps he wasn't making enough money in his day job and needed some extra spending money.

My attorney John C. Brown sent Ross' attorney an e-mail with the following offer:

if your client is indeed innocent (meaning we would be wasting our time should we appeal or pursue him in Florida), why won't he answer a couple questions? For example, his refusal to tell us why the payments were going to Cuadra (a non-client, so there is no atty-client privilege issue) simply raises the suspicions.

If we come up with a reasonable explanation for those payments and maybe a couple other issues, Kirsch would be much more inclined to drop his case. Regardless, I don't see what your client has to lose in giving us information that could help us understand why he wasn't behind this.

Ross' attorney, Jeffrey A. Snyder, sent the following reply to my attorney:

John,

And, as you might guess, we think the claims are meritless and frivolous. This has been a complete waste of time. My prior admonition stands.

Regards,
Jeff

Pretty compelling answer, isn't it? I could not believe it. Are YOU convinced by his explanation of the facts? I sure wasn't!

In short, they claim they are innocent, but refuse to provide any explanation whatsoever for the evidence I obtained. **Their complete unwillingness to supply any explanation that fits the facts makes their argument completely unconvincing.** If they are so concerned about this being a waste of time, then all they had to do was simply explain to me how it's possible for Jere to be making all the payments to everyone (where Florida Bar rules require him to know the purpose of each transaction) and getting all the stock trading profits (again, he has to know the purpose) and talking with Kos all the time and approving all the promotions, and providing the bad guys advanced copies of the CNDD press release, and not have a clue what the hell was going on. Simple. Just explain that and I'm gone. No more wasting their precious time. I'm a reasonable guy. I'd even publicly post their explanation on my site. Our readers could vote on it. A majority vote thinks they are honest guys, I'm outta here and off the case. But they refused to do that since of course there is no explanation. Rather than taking a few minutes to explain the evidence and be done with it, they'd rather spend days and thousands of dollars of legal fees in denying they are liable in court. If they are innocent, their actions make no sense.

My contention is that Ross conspired with his clients and others (Kos, Oehmke, Lord, Jaynes) to commit securities fraud. He did this knowingly; for example, he handled all of Kos's financial affairs and approved a press release from Kos then wrote a press release on behalf of CNDD disclaiming Kos's press release that he had just approved. That is a civil conspiracy and there is lots of case law saying the conspirators are individually liable for all torts committed by the conspiracy.

I believe Jere Ross is liable as a co-conspirator based on the following allegations and evidence:

- He approved a fraudulent press release hyping CNDD and then a few days later wrote a press release that disclaims the prior one. In short, he pretended he didn't know who was involved in the illegal press release. As counsel to CNDD, it would have been IMPOSSIBLE for him to have approved the fraudulent press release without getting approval from the company. The only possible explanation is that he's knowingly "in on it."
- Two of the other co-conspirators in the securities fraud will testify that is is not some clueless lawyer who was simply duped by his clients and thought he was doing something legal.
- All of the contractors employed by the conspiracy were paid from Bush Ross; how could Ross have approved so many transactions without asking a few questions about where this money was going. Lawyers don't transfer large sums of money like this without knowing what the purpose is. It is simply pretty hard to believe that a lawyer who was integral to the securities transactions going on would approve all this multi-hundred thousand dollar transactions related to the penny stocks without asking questions. It doesn't pass the reasonable man test.
- Millions of dollars of illegal profits came into the law firm from offshore trading accounts. Anyone with half a brain would start asking questions at this point.
- An employee at Bush Ross admitted to me that Ross talked to Bryan Kos all the time. Yet he wouldn't acknowledge whether Bryan Kos is a client. He just said to me in an email that "he knew him." He talking to one of the world's most prolific pump and dump promoters (and email spammers) all the time and doesn't know that what Kos is doing is illegal? Gimme a break.
- When I asked him how to locate Spreadbury, he tried to mislead me by making me think Spreadbury was in New York. That's pretty hard to believe since he would have known by reading the press release that he responded to that Spreadbury was in Florida. Why did he deliberately try to mislead me if he's really an honest guy?
- Ross admitted in an email to me on August 15, 2004 that he was

- involved with two companies associated with Bryan Kos
- Ross is a VERY smart guy
- Ross handled all the finances for Kos. How could he do that and be clueless as to what is going on?
- Lawyers, in general, are super precise people. Jere was named one of the 200 best lawyers in Florida. He's a real smart guy and he even admitted it in his affidavit in my case. There is NO possible way that he's going to be "duped" into making LOTS of payments of LOTS of dollars to LOTS of people to do illegal things and not know about it. That is simply HIGHLY unlikely.
- I offered to drop my suit if he could explain away the facts and he refused even to provide this. Now, if he's such an innocent guy, what is his INCENTIVE to completely avoid that question? None whatsoever!

In addition, Jere Ross is also a two-faced liar which should cast doubt on the believability of his testimony. Here are three examples:

- In an email, he told me the people responsible were bad guys and he hoped I get them. Yet at the same time he made that statement he knew his firm was the one who paid all the people to do all the dirty work.
- In an email, he told me Paul Spreadbury was in New York. Yet he knew at the same time he made that statement that Spreadbury's phone number from the press release he disputed was in Florida. In fact, he even had received an email from Spreadbury a few days earlier with Spreadbury's address on it.
- He paid for Kos' press release hyping CNDD, then he wrote a press release a few days later on behalf of the company disavowing the prior release. How could he be counsel for Lord and have approved Kos' press release? That's simply impossible unless he's knowingly committing a fraud.

In addition, I believe that Bush Ross, the law firm, is also liable as a co-conspirator (and thus liable for any torts committed in furtherance of the conspiracy regardless of who actually committed the tort) based on the following allegations and evidence:

- Ross is an employee of Bush Ross and was at all times acting in the scope of his employment so his firm is liable due to respondeat superior. It is no more complicated than that.
- Ross was an officer of the law firm at the time of the activities.
- Ross was a key player in the conspiracy to commit securities fraud including handling the finances, making the payments, approving fraudulent press releases, etc. (see above)
- Because Ross knew he was facilitating a tort, and Ross is an officer of the law firm, it follows that the firm itself had knowledge of what was going on.
- Bush Ross corporate assets were used in the conspiracy, e.g., the bank account was used, communication was done by calling the law firm, other co-conspirators were clients of the firm, etc.
- Ross was acting as an agent of Bush Ross in the performance of illegal acts in furtherance of the conspiracy
- Ross was, at all times, acting inside his duties in the course and scope of his employment with Bush Ross, e.g., the co-conspirators were clients, they would call him at work, he would use the corporate trust fund to launder their funds, he would use the corporate email and phone system to communicate with them, he was working on the legal matter required to pull off the fraud, he billed his clients through the law firm for services rendered and the clients paid their bills and the company accepted payment
- The law firm can't claim that "illegal activities" were outside the scope of his employment and therefore they aren't liable because they ratified the actions by 1) accepting their money, 2) allowing them to

continue after the company (i.e., Ross himself qualifies since he was an officer) was made fully aware of the actions.

- Even after most everyone in the law firm was aware of the evidence against Ross, Ross was not fired. Therefore, his actions were de facto considered by the firm to be within the scope of his employment.
- The faxes were paid for by Bush Ross P.A. Payment is required in advance of the faxes being sent so this caused the event to occur (it was not a bill payment after the fact).
- The firm made the transfer of funds with full knowledge it was being used for an illegal purpose

Therefore, the law firm, which paid the perpetrators and their consultants to commit the fraud, is liable as well as Ross. A law firm cannot knowingly aid in the commission of a crime and then claim it is legal because they ran it through an account number which is normally used for transferring customer funds for legal purposes. It doesn't matter what account they used. The fact that the law firm KNOWINGLY transferred money (even if it was client money) to facilitate an ILLEGAL PURPOSE makes them liable in the conspiracy and liable for all the torts arising from that conspiracy, including the sending of the junk faxes and also the securities fraud as well.

Put it another way.... suppose the FBI found from bank records that every hijacker in the 911 terrorist attacks were being paid from the bank account of person X. And suppose they also found that the hijackers admitted that they had evidence that Person X was involved in both designing and approving the hijacking plan. The FBI then goes to Person X for an explanation and Person X says "those claims are meritless and frivolous." Would you be convinced by that argument? I sure wasn't.

The point is pretty simple: if you (person or company) are a knowing agent of a principal to commit a tort, you and the principal are jointly and severally liable for the tort. Similarly if you and a principal conspire to commit a tort, you are both liable for all torts committed to achieve the purpose of the conspiracy, regardless of whether you are a direct actor.

To get an objective viewpoint, I showed a former California Superior Court judge my pleadings and he told me that he found my case "very convincing and well argued."

On August 15, 2004, Jere Ross wrote me an e-mail:

There are few worse actions than market manipulation of the sort being practiced by whomever is behind the recent activity. They prey on the small investor who looks for the big hit. Good luck.

I agree with his statement. The only problem is that the evidence shows he's one of the perpetrators! I intend to pursue the truth and expose the people behind this and make Jere Ross proud of me. It is a shame nobody at his law firm will help me do this. After all, if they are really an ethical law firm and just got unlucky with all these clients charged by the SEC with securities fraud, you'd think they would want to do the right thing and help bring the partners in the firm who knowingly participated in the fraud to justice. But they do not because their professional obligation is to their clients first, then their own firm, and lastly to the public interest. So therefore, they will do whatever they can to stop me so that nobody will ever find out the truth of their involvement. That is how the system works.

I sent John Bush, the co-founder of Bush Ross, an e-mail asking for a rational explanation for the evidence I had obtained. **Mr. Bush ignored my e-mail and all other attempts to reach him by voice mail.** As pointed out in the previous paragraph, I believe that this is because they don't want

people to learn the truth about their firm including the involvement of Jere Ross.

Read this email (below) I sent to a number of attorneys at Bush Ross (I edited out the judge's name in the version below) and my federal court filing and decide for yourself whether the people and companies involved in this fraud are crooks. I think they are and I plan to continue my lawsuit against them so that people will know the truth about their involvement.

All the facts I've uncovered are consistent with my belief that Jere Ross is a crook and his firm is also liable. If Jere Ross is an innocent guy, then I'd sure like to hear the Bush Ross explanation of how that is possible and still fit all the facts. If Bush Ross or Jeremy Ross wants to respond to the evidence I found that they knowingly paid all these people to carry out the tasks involved in the stock fraud, I will gladly post it on this page so that you can evaluate both my story and their story and decide for yourself who is telling the truth. Of course, I believe they aren't going to do that because they can't. Instead, they will either remain silent or try to bring a legal action against me for defamation to get me to remove this page (which will be hard since it's not illegal to tell the truth).

Date: September 16, 2005
Subject: Is Jere Ross a crook?

I am writing you to ask for your help in the following matter.

I obtained evidence, including bank records and admissions of two of the perpetrators, that Bush Ross co-founder Jere Ross was a central figure in one of the largest penny stock "pump and dump" stock scams in US history.

I confronted Mr. Ross with my evidence in an email on February 27, 2005 and asked him for an explanation. He never responded. Instead, his attorney did not deny the allegations but simply responded that I would never be able to prove it in a court of law.

Therefore, I brought suit against Mr. Ross in federal court. My most recent filing was 174 pages long.

In his response filed in federal court, Mr. Ross' attorney denied my allegations, but he did not discredit any of the evidence I presented. More importantly, he offered no explanation whatsoever as to how Mr. Ross could not be involved given the weight of the evidence against him.

Both the courts and I are interested in finding the truth here.

Since Mr. Ross has been unresponsive in providing any rational explanation for the evidence I obtained, I contacted Mr. Bush by both e-mail and phone and asked him for his help. I have included that email below. I received no response.

I would like to resolve this matter and determine the truth of what really happened.

For example, how could at least \$5 million dollars of illegal trading profits in stocks associated with Mr. Ross's clients be wired into the Bush Ross bank account without anyone knowing what was going on? And where were those funds disbursed to? And if it wasn't Jere Ross, then who at Bush Ross authorized those transactions? And who at Bush Ross profited from those transactions?

You are an ethical firm and surely someone at your firm must know something about what went on. It is unreasonable to believe that millions of dollars of illegal trading profits can flow into your bank account without someone knowing what exactly is going on.

I believe that the SEC has asked the same questions and received no explanation either.

Will you help me uncover the truth?

- steve

=====
===== E-mail to John Bush follows
=====

Date: September 16, 2005
Subject: my federal lawsuit against your co-founder Jere Ross

Dear John,

I'm writing to ask for your assistance in a federal lawsuit that I filed against your partner and co-founder Jere Ross (Case C 05-03010 MJJ UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA).

You can view my most recent filing in that case here:
<http://www.junkfax.org/fax/profiles/wsp/bushross/opposeRossDismiss.pdf>

As you can see from this 174 page filing, the evidence I have obtained indicates that, in my opinion, Mr. Ross is a crook. The bank records of the Bush Ross bank account and testimony of your own employees implicate Mr. Ross as a central figure in one of the largest "pump and dump" stock scams in US history.

I confronted Jere with the evidence I had obtained and asked him for exculpatory evidence before I filed suit. He did not answer. Instead, I heard from his attorney who, in effect, told me "you absolutely will never be able to prove that." That was not a very satisfying response from someone who is supposedly innocent.

Mr. Ross is badly mistaken if he thinks I won't prove it. I've brought over 50 lawsuits against people who violate federal law and I've never lost a case. Tom Heysek (the guy who wrote the phoney company profiles in this scam) thought I couldn't prove he was liable either. He was wrong too. He lost all his cases.

Just to make sure, I had my filings reviewed by an extremely well respected retired California Superior Court judge. He said "I find it very convincing and well argued."

It sure appears that Jere Ross's attorney thought so too. I read his reply to my filing that he just filed and you know what? He didn't challenge any of the evidence I presented!

He also had NO RATIONAL explanation whatsoever for any of the evidence. He didn't even attempt to explain away the evidence. And then he went on to misquote the junk fax law claiming that agency doesn't apply yet amazingly he couldn't cite a single case where agency was disallowed by a court! That's not surprising since I'm not aware of any such case either. That's pretty weak.

I am interested in finding the truth. The purpose of our justice system is to find the truth as well. I want to know whether you will do the right thing and

help me.

Are you aware of the SEC lawsuit against two of Jere's clients: Don Oehmke and Hartley Lord? Jere assisted these clients (and Bryan Kos) in perpetrating their penny stock pump and dump schemes, which I'd estimate netted them over \$20 million in less than a month. At least \$5M of those illegal profits were funneled through your law firm.

Oehmke ran a brokerage business that was expelled from the NASD in 1991 and involved in selling unregistered securities to the public at manipulated prices. Lord has been barred for life from association with any member of the NASD in any capacity.

For more information on these individuals, and an explanation of how the fraud worked, see:

<http://www.junkfax.org/fax/profiles/wsp/wsp.htm>

Here's the SEC complaint against Jere's clients/associates (Oehmke, Kos, Lord):

<http://www.junkfax.org/fax/profiles/wsp/SEC/SECcomplaint19085.pdf>

Here's the docket in the SEC case:

http://www.junkfax.org/fax/profiles/wsp/SEC/05-CV-80128_DocketSummary.htm

Take a look at page 11 in Docket #35 in that case:

http://www.junkfax.org/fax/profiles/wsp/SEC/35_ExhibitWitnessList.pdf

Do you recognize the Sun Trust account number in 12a and 12b? You should. It belongs to your law firm!

So why is your law firm apparently laundering over \$5M in illegal stock profits from the trades that were done by Jere Ross's client (Oehmke dba Ventana Consultants)?

And why did your law firm pay Camelot Promotions over \$200,000 to send out illegal junk faxes promoting the very same stocks? Jere Ross's attorney claims this wire transfer was not done at Jere Ross's direction. Oh really? If that is the case, then at whose direction was it done at?

And why did your law firm pay a lot of other vendors (Fry Hammond Barr, Vault Studios, Paul Spreadbury, and Tom Heysek) to perform tasks to hype these worthless stocks?

In fact, just about every major player involved in this fraud was either a client of Jere Ross or paid from Bush Ross.

I want to know why Jere Ross paid Paul Spreadbury to issue phony press releases on July 28, 2004 and August 9, 2004 purportedly coming from Concorde America containing false and misleading information and then, just two days later, Jere Ross wrote a press release disclaiming everything about the two prior releases. How is that possible? Ross paid Spreadbury to send the prior releases and just 2 days later wrote a new release that claims the company knows nothing about the prior releases? Give me a break.

Jere Ross can't claim he didn't know what was going on. Check around your law firm and I'm certain you'll find that Jere Ross talked with Bryan Kos all the time. One call might be explainable. But you can't be talking to one of the most successful penny stock scam promoters in the country "all the time" without knowing what is going on.

Kos is infamous. He has been promoting penny stocks for years and was also named in the SEC suit. For more about Bryan Kos, see:
<http://www.junkfax.org/fax/profiles/wsp/wsp.htm>

Kos is also one of the top 200 spammers in the world according to spamhaus.org. That's probably how he hooked up with Jeremy Jaynes, the spammer who recently was sentenced to 9 years in prison for spamming, to promote AHFI (a promotion also paid for with funds from the Bush Ross account).

Knowingly conspiring with these people to steal money is illegal. It's criminal conspiracy. I believe that Ross knowingly assisted these people by paying the vendors to commit the illegal promotion and then laundering the illegal profits through the Bush Ross Trust account so that he could hide behind the attorney-client privilege. Unfortunately for Jere, there is a crime-fraud exception to that privilege.

How could he not know what was going on? For example, the incident cited above where he paid Spreadbury to send out two phoney press releases (approving at least one of them), then he wrote a press release for Lord disclaiming the press release he just sent out two days earlier as fraudulent. He's playing both sides of the fence...dueling press releases and he's involved on both sides. He's representing Lord who he portrays as a "good guy" victim while at the same time representing Oehmke who perpetrated the fraud using the stock Ross had Lord transfer to Oemke. In addition, millions of dollars flowed through the Bush Ross account. That doesn't happen without someone knowing what is going on.

In conclusion, I am interested in finding the truth. Bush Ross is, according to your website, an ethical law firm. If that is truly the case, you should be as outraged as I am at what is going on at your firm.

Jere told me that the perpetrators were criminals. Shouldn't your firm be responding with, "yes, you're right...all of the payments to the key outside contractors came from the Bush Ross account at SunTrust and over \$5M of illegal profits were also laundered through our firm. As an ethical firm, we are going to help you find out who was responsible for those transfers and help you prosecute them." Mr. Ross's attorney's response of "you absolutely will never be able to prove that" is hardly consistent with your ethical standards.

I would like to know...will you help me to discover the truth and expose the perpetrator(s)? Or will you look the other way and ignore this email?

-steve

Disclaimer

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JOHN C. BROWN (State Bar # 195804)
Redenbacher & Brown, LLP
388 Market Street, Suite 500
San Francisco, California 94111
Phone: (415) 409-8600
Facsimile: (415) 409-0600

Attorneys for Plaintiff, STEVEN T. KIRSCH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

STEVEN T. KIRSCH,
Plaintiff,

vs.

JAVIER A. CUADRA;
JAVIER A. CUADRA dba CAMELOT
PROMOTIONS;
CAMELOT PROMOTIONS, LLC; and,
DOES 1 through 20, inclusive,
Defendants.

Case No.: C 05-03010 MJJ

**PLAINTIFF'S OPPOSITION TO
MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION**

Date: 9/20/05
Time: 9:30 a.m.
Courtroom: 11, 19th Floor
Judge: Hon. Martin J. Jenkins

*Excerpts from my
federal lawsuit against
Jere Ross personally.*

1 Plaintiff Steven Kirsch, through undersigned counsel, hereby opposes the motion of
2 defendant Jeremy Ross to dismiss the action against him. Kirsch has pled that Ross committed an
3 intentional tort directed at him in California, and his facts support this theory. If there's any issue
4 as to whether Kirsch has proven his *prima facie* case of personal jurisdiction, he should be allowed
5 to conduct discovery relevant to the issue of personal jurisdiction before the Court rules on this
6 Motion.

7 **I. ISSUE TO BE DECIDED IN MOTION TO DISMISS**

8 Can an experienced attorney who admittedly represents persons who directed a junk fax
9 campaign aimed at Californians as part of an illegal "pump and dump" penny stock scheme, and
10 who has paid out of his firm's trust account at least \$738,000.00 to at least 4 different entities in
11 furtherance of the scheme, and who has received over \$5,000,000 in penny stock trading profits in
12 his firm's trust account from the scheme, avoid personal jurisdiction in California by simply
13 disavowing his involvement with the scheme and some of the persons who perpetrated it?
14

15 **II. RELEVANT FACTS**

16 **A. Introduction**

17 Steven Kirsch brings this legal action against Jeremy Ross and his co-conspirators in a
18 fraudulent "pump and dump" scheme ("the scheme") perpetrated in part by the sending of
19 unlawful fax advertisements, or junk faxes. To accomplish their scheme, defendants seized
20 Kirsch's fax machine and shifted their advertising costs to him. In doing so, they committed a
21 statutory tort--violating the federal Telephone Consumer Protection Act, which prohibits the
22 sending of junk faxes. Kirsch added Ross as a "Doe" defendant when this action was pending in
23 the San Francisco Superior Court based on documents he received pursuant to subpoena, which
24 documents show that Ross paid for the junk faxes at issue. Now Ross contests Kirsch's basis for
25 personal jurisdiction by submitting false testimony that he had no involvement with the scheme.
26
27
28

1 **B. Factual Background**

2 *Defendants' "Pump and Dump" Scheme*

3 Kirsch alleges that, from approximately April 4, 2004 and over the next couple months,
4 defendants engaged in a campaign to send fax advertisements in the State of California.

5 Complaint, par. 9. The Complaint names as defendants Javier Cuadra, Camelot Promotions, LLC,
6 and Jeremy Ross. Kirsch obtained defaults against Cuadra (owner of Camelot) and Camelot in the
7 San Francisco Superior Court. Kirsch substituted Ross into the Complaint for "Doe 1" after
8 obtaining documentary evidence of his direct involvement in the campaign. Ross then removed
9 the action to federal court.
10

11 Kirsch received in California 18 advertisements promoting certain penny stocks. *See*
12 Declaration of Steven T. Kirsch, filed and served herewith, par. 3. Kirsch never gave permission
13 to anyone to send these faxes. *Id.* The faxes promoted the stocks TWTN ("Twister Networks,
14 Inc."), BDYS ("Body Scan Technologies"), AHFI ("Absolute Health & Fitness, Inc."), and CNDD
15 ("Concorde America, Inc."). *Id.*
16

17 Each one of the eighteen faxes was apparently a fraudulent stock tout, and, as set forth
18 below, Kirsch later obtained information indicating that each was sent as part of a "pump and
19 dump" scheme ("the scheme"). Kirsch decl., par. 4. In a "pump and dump" scheme, holders of
20 stocks in small cap companies whose shares are traded "over the counter" send out junk faxes
21 touting the companies to as many as millions of people. If even a small percentage of these
22 persons purchases the small cap stocks, the stock value goes up by a significant percentage. The
23 touter then sells his stock at an artificially inflated price, thereby devaluing the stock belonging to
24 the new purchasers. The stocks that defendants touted went up during the promotional period and
25 dropped like a rock after the promotion ended. For example, Concorde America, Inc.,
26 ("Concorde") a company with little to no revenue, had a market capitalization of nearly \$2 billion
27 during the promotion period—the period when Kirsch received 5 junk faxes it. It was
28

1 trading for several dollars during the promotion period, but it was trading for only a few cents soon
2 after the promotion ceased. *Id.*

3 *The First Camelot Link--Linking Camelot to the Scheme By the "Fax Back" Number*

4 Two of the eighteen faxes Kirsch received listed a "fax back" phone number to call for
5 more information about the stocks promoted in the faxes:

6 ****READ THE FULL REPORT – CALL 1-402-951-5501 FILE #872 AND RECEIVE
7 THE FULL REPORT NOW!****

8 Kirsch decl., par. 5. In or about August 2004, shortly after Kirsch received these faxes, Kirsch
9 called this number and found out that the name of the service that took the calls and provided the
10 "full report" was "MyFaxOnDemand." The "MyFaxOnDemand" owner told Kirsch that Javier
11 Cuadra of Camelot Promotions, LLC paid for "File #872." This was the *first* way that Kirsch was
12 able to establish a direct link between Camelot and some of the faxes. *Id.*

13
14 *The Second Camelot Link--Linking Camelot to www.winningstockpicks.net and The Scheme*

15 Seven of the eighteen faxes Kirsch had received referred to a website,
16 www.winningstockpicks.net. Kirsch Decl., par. 6. One fax, for example, said that one should "Go
17 to www.winningstockpicks.net to read the full report on Twister Networks!," the stock that was
18 being touted in that particular junk fax. *Id.*

19
20 Kirsch called Cuadra and asked him if he had ever heard of [winningstockpicks.net](http://www.winningstockpicks.net). Kirsch
21 Decl., par. 7. Cuadra said that he had heard of [winningstockpicks.net](http://www.winningstockpicks.net), and when Kirsch asked him
22 how he knew of [winningstockpicks.net](http://www.winningstockpicks.net), he said "everyone knows about [winningstockpicks.net](http://www.winningstockpicks.net)."
23 Given that Kirsch believed this website to be fairly obscure, Kirsch considered this a second link
24 between Camelot and the faxes. *Id.*

25 *Linking Tom Heysek to the Website Listed on the Faxes and to The Scheme*

26 Tom Heysek is the "Editor" of "Winning Stock Picks." Kirsch Decl., par. 8. Kirsch
27 brought 18 different Small Claims Court cases in the Santa Clara Superior Court against him for
28

1 the sending of the junk faxes that are at issue in the instant action. Kirsch obtained a judgment in
2 each case, establishing that Heysek wrote fraudulent stock writeups for every one of the touted
3 stocks and participated in the sending of the junk faxes at issue. *Id.*

4 *The First Ross Law Firm Link--Paul Spreadbury Links A "Law Firm," and Later "Bush, Ross,*
5 *Gardner, Warren & Rudy" to Videos Touting the Stocks, and, Therefore, To the Scheme*

6 The www.winningstockpicks.net website listed Vault Studios as the creator of a video of
7 Heysek interviewing a person purporting to be the C.E.O. of Absolute Health & Fitness, Inc.,
8 ("Absolute Health"), one of the touted companies. Kirsch Decl., par. 9. Kirsch called Vault
9 Studios and found out that Tom Heysek, Bryan Kos, and Paul Spreadbury had been pumping the
10 stocks listed on www.winningstockpicks.net. The Vault Studios' contact also told Kirsch that a
11 "law firm" had paid for videos touting the stocks. *Id.*

12 Kirsch then called Spreadbury, who told him that he had done some work for
13 www.winningstockpicks.net. Kirsch Decl., par. 10. Spreadbury told Kirsch that he had been paid
14 by a law firm, but he didn't recall the name. *Id.*

15 Spreadbury also said that he had worked on the USPennyStocks.com website, which was
16 essentially the same website as www.winningstockpicks.net, with a different format. Kirsch Decl.,
17 par. 12.

18 Spreadbury later told Kirsch that the law firm that was paying him for a video publicizing
19 Absolute Health, one of the touted stocks, was "Bush, Ross, Gardner, Warren & Rudy." Kirsch
20 Decl., par. 13.

21 Spreadbury also told Kirsch that he did some work on the junk faxes that Kirsch had
22 received, including "tweaking" them and "jazzing them up." Kirsch Decl., par. 14.

23 *The Second Ross Law Firm Link--Advertising firm Fry/Hammond/Barr Was Paid By "Ross*
24 *Account 41001143506"*

25 Kirsch later found out that Fry/Hammond/Barr had done television advertisements for
26 www.uspennystocks.com, which was essentially the same as www.winningstockpicks.net. Kirsch
27 Decl., par. 15.

28 Kirsch called Fry/Hammond/Barr ("FHB") to inquire as to who paid it to produce

1 the television advertisements for “USPennyStocks.com” Kirsch Decl., par. 16. Because FHB
2 would not voluntarily divulge the information, Kirsch issued a subpoena to it. Kirsch Decl., pars.
3 16, 18. The subpoena requested, among other things, billing information for entities associated
4 with USPennyStocks.com including John Rooney, Tom Heysek, Brian Koss [sic]. Kirsch Decl.,
5 par. 18. The business record indicated that FHB was paid \$336,000.00 by “Bush, Ross, Garder
6 [sic], Warren, & Rudy” Suntrust bank account #41001143506 (“Ross account 41001143506”) for
7 their work on the television ads. Kirsch Decl., par. 19.

8
9 *The First Jeremy Ross Link--Linking Ross to Concorde, One of the Touted Companies*

10 On August 11, 2004, Kirsch did an Internet search and obtained information that a man
11 named Hartley Lord was the founder and President of Concorde America, one of the touted
12 companies. Kirsch Decl., par. 20. Lord told Kirsch during this conversation that he was
13 represented by Jerry Ross. Kirsch Decl., par. 21. Lord told Kirsch that a man named Donald
14 Oehmke was the owner of Ventana Consultants, and that he had come to Lord and said “I want to
15 buy your stock, here’s \$1,000,000, I want to buy 10,000,000 shares.” Lord told Kirsch that Lord
16 had told Oehmke that he didn’t “have an attorney and [he] wanted an attorney to do the
17 transaction.” Lord told Kirsch that Oehmke recommended Jeremy Ross, saying that Ross was his
18 attorney. Lord told Kirsch that he did sell 10 million shares of Concorde’s stock to Oehmke for \$1
19 million so that he would have money to fund Concorde. *Id.*

20
21 *Jeremy Ross Links 2, 3, and 4—Ross Admissions of His Links to Kos, Ventana/Oehmke,
and Concorde*

22 As of August 12, 2004, Kirsch had obtained information that Ross was involved with the
23 scheme, as set forth above. Kirsch Decl., par. 22. On August 12, 2004, Kirsch determined to
24 contact Ross by calling him, and Kirsch determined to get more information about the scheme. *Id.*

25
26 Kirsch called Ross to tell him that he was calling for information about the stocks and what
27 he believed to be a “pump and dump” scheme. Kirsch Decl., par. 23. During these conversations,
28 during most of which Ross led Kirsch to believe that he was seriously interested in helping Kirsch

1 find out who was sending the fraudulent stock touts, Ross stated that he was associated with Bryan
2 Kos. Kirsch Decl., par. 24. Ross also stated that Ventana Consultants, which Lord had said was
3 run by Oehmke, was a client of his. Ross also told Kirsch that Concorde, one of the touted faxes,
4 was a client of his. *Id.*

5 Ross agreed with Kirsch's statement that the stock touts were part of a "pump and dump"
6 scheme to defraud investors. Kirsch Decl., par. 25. Indeed, Ross told Kirsch that he had written a
7 press release for Concorde, which stated that two prior "pumping" press releases hyping the
8 Concorde stock were fraudulent. *Id.* But Spreadbury had already told Kirsch that Bush, Ross,
9 Gardner, Warren & Rudy had paid for his work on www.winningstockpicks.net touting the
10 companies! Kirsch Decl., par. 10, par. 13.

12 Kirsch also confirmed that Ross was the point person at his firm who represented Bryan
13 Kos. Kirsch Decl., par. 26. Ross later stated in writing to Kirsch that he had provided legal
14 services to 2 corporations in which Kos was involved and Ross that he provided representation to a
15 corporation owned by Don Oehmke. Kirsch Decl., par. 27.

17 *The Third Camelot Link--Linking Camelot to All of the Faxes By the Fax.com Records*

18 During the time that his cases against Heysek were pending, Kirsch conducted further
19 investigation. Kirsch Decl., par. 28. Kirsch was sure that a California company named Fax.com,
20 Inc. had sent to Kirsch at least two of the faxes. Kirsch therefore suspected that Fax.com had
21 information regarding who participated in the scheme. Kirsch therefore subpoenaed Fax.com's
22 records requesting from Fax.com records relating to the person or entity that had retained Fax.com
23 to send the faxes. *Id.* The records confirmed that Fax.com had, indeed, sent faxes touting Twister.
24 Kirsch Decl., par. 29. The Fax.com records also showed that the entity which sent the Twister
25 touts was Camelot and that the contact person was Cuadra. Specifically, of the 21 responsive
26 pages Kirsch received, every single page had either "Camelot Promotions," "Javier Cuadra,"
27 "Camelot Promotions LLC" on it. *Id.*

1 Kirsch had a computer disk containing information regarding all faxes that Fax.com had
2 ever sent. Kirsch Decl., par. 30. Kirsch searched the "Camelot Promotions" folder on the disk.
3 Kirsch Decl., par. 31. Kirsch searched the source files related to all junk faxes Camelot had sent
4 through Fax.com. Significantly, Kirsch found files that were virtually identical in appearance to
5 every single one of the 18 faxes Kirsch had received. *Id.* Although Kirsch did not believe that
6 Kirsch had received all 18 of the faxes from Fax.com, Kirsch surmised that Camelot had
7 contracted with other fax-sending services to send the other faxes, because the "pump and dump"
8 faxes that Kirsch had received were either virtually identical to those that were described in the
9 original Fax.com source files. *Id.*

11 Dass also told Kirsch that Fax.com had a business practice of requiring payments in
12 advance of sending out fax advertisements for its clients. Kirsch Decl., par. 32. This indicated to
13 Kirsch that any person who was paying Fax.com for the sending of the junk faxes instructed them
14 prior to payment as to what to do. *Id.*

16 *The S.E.C. Action Against the "Pumpers and Dumpers" and Jeremy Ross Links 5 and 6*

17 On February 15, 2005, the Securities and Exchange Commission filed a Complaint in the
18 United States District Court for the Southern District of Florida against persons and entities it
19 alleged were involved with the "pump and dump" scheme that Kirsch believe was perpetrated in
20 part by the faxes sent to Kirsch. Kirsch Decl., par. 33. The S.E.C. sued Concorde, Absolute
21 Health, Hartley Lord, Donald E. Oehmke, Bryan Kos, Thomas M. Heysek, and Paul Spreadbury.
22 The S.E.C. specifically alleged that each of the defendants participated in fraudulent promotion
23 and dumping of Concorde stock. The S.E.C. further alleged that each of the individual defendants
24 engaged in the manipulation of the stock of Absolute Health, the company touted in several of
25 Kirsch's faxes. The S.E.C. further alleged that Oehmke and Kos instigated both the scheme
26 regarding Concorde and the scheme regarding Absolute Health. *Id.*

27 According to a May 31, 2005 Joint Scheduling Report, Ross represents Lord and Concorde
28 in the S.E.C. action. Kirsch Decl., par. 34.

1
2 *The Third Ross Law Firm Link—Linking the Ross Firm to the Scheme Based on the Transfer of the*
3 *Profits Into Ross Account 41001143506*

4 As established by evidence submitted by the S.E.C. accountant, profits from some of the
5 stock trades that the S.E.C. was investigating, which trades were of the *very same stock* that was
6 advertised in the 18 faxes sent to Kirsch, went into Ross account 41001143506. Kirsch Decl., par.
7 35. The total profits that hit the Ross account were \$5,307,741. *Id.*

8
9 *The Fourth Ross Law Firm Link--Linking Ross Account 41001143506 to Heysek and to the Scheme*

10 Heysek had told Kirsch that he was paid approximately \$20,000 a month for his writeups in
11 an apparent attempt to contradict Kirsch's impression that he was making millions of dollars.

12 Kirsch Decl., par. 36.

13 Regardless, Kirsch subpoenaed the bank records of Heysek and the company that he
14 controlled to facilitate his collection. Kirsch Decl., par. 37. A review of those records showed
15 Kirsch that Heysek's Asian American Capital received payments from Ross account 41001143506.
16 Kirsch Decl., par. 38. Specifically, the records state Heysek got \$24,000 on 8/03/04 and \$23,000
17 on 7/7/04 from Ross account 41001143506. Kirsch immediately suspected that these payments
18 were for Heysek's writeups of the touted stocks, because Heysek had previously told Kirsch that
19 he was being paid about \$20,000 a month for the writeups. In addition, there were no other wire
20 transfers of comparable magnitude in the account during the period when the stocks were being
21 touted. *Id.*

22 *Ross' Payment to Camelot For the Sending of The Junk Faxes*

23 Kirsch had abundant evidence of Ross' involvement in the pumping scheme, but he did not
24 initially name Ross as a defendant in the instant action. Rather, he decided to wait until he had
25 copies of Camelot's bank records, which he believed would show deposits from the Ross account
26 41001143506. Kirsch issued a subpoena to Camelot's bank, Sun Trust Banks, Inc. ("Sun Trust"),
27 for statements for bank accounts held with it by Camelot for the months 6/04 – 8/04. *See*
28

1 Declaration of John C. Brown, served and filed herewith, par. 4. The total deposits into Camelot's
2 account during this period were \$464,795.00, and the seven largest deposits made up \$455,000.00
3 of this amount. Brown decl., par. 5. This indicated to Kirsch that the seven large deposits would
4 show that the Camelot account was being used to launder money and would help identify the
5 person or entity that was laundering money through Camelot to send the junk faxes. *Id.*

6 Kirsch issued to Sun Trust a second subpoena for records relating to the seven largest
7 deposits into the bank account of Camelot during this time period. Brown decl., par. 6. Sun
8 Trust's records showed that six of the seven largest dollar figure wire transfers as to which Kirsch
9 requested information came from Ross account 41001143506". Brown decl., par. 7. According to
10 the records, during the period from June 8, 2004 through August 3, 2004, Ross' firm wire
11 transferred \$355,000.00 into the Camelot account. The documents indicate that the seventh
12 transfer came from a "Ventana Consultants," which Kirsch knows is a client of Jeremy Ross and a
13 principal player in the "pump and dump" scheme. *Id.* It appeared that Camelot, a penny-ante
14 company with little cashflow, was laundering very large amounts of money to fund a junk faxing
15 operation directed by the persons that were paying it for the faxes, including Ross. Brown decl.,
16 par. 8.

17
18
19 *Ross Refuses to Provide Information or Disavow Involvement*

20 Following receipt of the records indicating payment of \$355,000 from the Ross account
21 41001143506 to Camelot, Kirsch's attorney tried to contact Ross. Brown decl., par. 9. Brown
22 advised Ross' attorneys of his involvement in the scheme and made several requests for any
23 information indicating that Ross was not involved with this scheme to send fraudulent fax touts
24 and to launder money through Camelot. Brown Decl., par. 9. Ross refused to provide any
25 information in response to these requests, simply stating that California did not have personal
26 jurisdiction over him. Brown Decl., par. 10.
27
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1 **III. LEGAL ARGUMENT**

2 For all of the reasons set forth below, Ross has the requisite “minimum contacts” to provide
3 a basis for California to exercise specific jurisdiction over him. *International Shoe Co. v.*
4 *Washington* (1945) 326 U.S. 310, 316, 66 S.Ct. 154, 158.

5 **A. Kirsch Need Only Allege a Valid Jurisdictional Theory and Make Out a *Prima Facie***
6 **Case Regarding Jurisdiction to Defeat Ross’ Motion to Dismiss**

7 Ross’ Motion to Dismiss apparently tests both Kirsch’s personal jurisdiction theory—that
8 Ross knowingly participated in a conspiracy to send unlawful junk faxes directed to California
9 residents—and Kirsch’s facts supporting this theory.

10 **1. The Court Does Not Review the Evidence to Determine the Validity of Kirsch’s Theory Of**
11 **Jurisdiction, and Kirsch’s Theory, Based on Ross’ Statutory Torts and/or Participation in a**
12 **Civil Conspiracy to Commit Such Torts, is Valid**

13 In evaluating Kirsch’s jurisdictional *theory*, the court need only determine whether the facts
14 alleged, if true, are sufficient to establish jurisdiction. *Credit Lyonnais Securities (USA), Inc. v.*
15 *Alcantara* (2nd Cir. 1999) 183 F.3d 151, 153. Kirsch’s theory of jurisdiction is that Ross
16 knowingly participated in a plan to send unlawful facsimiles to California and violate the T.C.P.A.
17 in perpetrating his “pump and dump” scheme. *See* Complaint, pars. 9 and 17.

18 ***a. Ross is Liable Based on His Participation in the Scheme***

19 It is unlawful for any person to send an unsolicited advertisement to a telephone facsimile
20 machine. 47 U.S.C. § 227(b)(1)(C). Under the TCPA, the party on whose behalf a solicitation is
21 made bears ultimate responsibility for any violations. *See* Release Number 95-310 of the Federal
22 Communications Commission, CC Docket No. 92-90, 10 FCC Rcd 12391 (1995), pars. 34-35.
23 Calls placed by an agent of the telemarketer are treated as if the telemarketer itself placed the call.
24 *Id.* Based on this authority, one like Ross who directed the actual fax sender to press the button to
25 send the fax is ultimately responsible for the legal violations.
26
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1 California common law provides a further basis for holding Ross responsible based on his
2 involvement in the scheme. Kirsch effectively alleges that defendants engaged in a civil
3 conspiracy. If a civil conspiracy is proved, each member may be held responsible as a joint
4 tortfeasor, regardless of whether or not he directly participated in the act. *See Wolfrich Corp. v.*
5 *United Services Auto. Assn.* (1983) 149 C.A.3d 1206, 1211 (attorneys liable for participation in
6 tortious acts with their clients); *De Vries v. Brumback* (1960) 53 C.2d 643, 650.

7
8 Further, the requisite concurrence in the tortious scheme with knowledge of its unlawful
9 purpose may be inferred from the nature of the acts done, the relation of the parties, the interests of
10 the alleged conspirators, and other circumstances. *Wyatt v. Union Mortg. Co.* (1979) 24 C.3d 773,
11 784, 785. Kirsch has, of course, produced overwhelming evidence that Ross concurred in the
12 scheme. Ross paid at least 4 people who “pumped” the stocks. Ross paid Camelot, who retained
13 entities to send the faxes, directly. Ross received profits from the scheme. Ross’ inexplicable
14 refusal to provide any explanation other than to say that he doesn’t know the persons who paid him
15 over \$700,000 is the nail in the coffin.

16
17 By participating in the scheme, Ross reached out to California, and it has specific
18 jurisdiction over him. Ross can’t seriously contest that personal jurisdiction would be appropriate
19 if Kirsch proves he knowingly participated in the plan to send unlawful facsimiles to California.

20 2. Kirsch Need Only Make a *Prima Facie* Showing of Facts to Defeat the Motion to Dismiss
21 to The Extent That It Contests Kirsch’s Facts

22
23 To the extent that the instant motion challenges Kirsch’s alleged facts, Kirsch need only
24 make a *prima facie* showing of facts establishing a basis for personal jurisdiction over defendant to
25 defeat it. *See Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements Ltd.* (9th Cir. 2003) 328
26 F.3d 1122, 1129. In deciding whether Kirsch has made a *prima facie* case, the Court must accept
27 uncontroverted allegations in the Complaint and resolve factual conflicts in the parties’
28 declarations in Kirsch’s favor. *WNS, Inc. v. Farron* (5th Cir. 1989) 884 F.2d 200, 204.

1 Of course, where the jurisdictional facts are “intertwined with the merits of the action,”
2 determination of the jurisdictional issue may determine the merits of the action. *Data Discovery,*
3 *Inc. v. Systems Technology Associates, Inc.* (9th Cir. 1977) 557 F.2d, 1285-1286, fn. 2. In such a
4 case, it is *preferable* that this determination be made at trial where a plaintiff may present his case
5 in a coherent, orderly fashion, and without the risk of prejudicing his case on the merits. *Id.*

6 For the many reasons forth in this Memorandum, Kirsch makes a *prima facie* showing of
7 facts establishing a basis for jurisdiction over Ross. Ross doesn’t even contend that the unlawful
8 faxes were not directed to Kirsch in California. Ross simply contends that he wasn’t involved with
9 the bad acts, but he is not credible on this point. At the least, there is a factual conflict as to Ross’
10 involvement, and this conflict is decided in Kirsch’s favor.

11
12 Regardless, the jurisdictional facts are so intertwined with the merits that the Court should
13 postpone determination of the jurisdictional issue until trial, where Kirsch will prove that Ross
14 knowingly and actively participated in the scheme.

15
16 **B. Because Kirsch’s Claims Arise Out of Ross’ Participation in a Plan to Send Unlawful**
17 **Faxes to California, California Has Specific Jurisdiction Over Ross**

18 Kirsch’s claim arises out of Ross’ forum-related activities that Ross purposefully directed
19 towards Kirsch in California, so this court’s exercise of personal jurisdiction over Ross is
20 reasonable, and it comports with “fair play and substantial justice.”

21 1. Ross’ Contacts Resulted From His Own Actions That Created a “Substantial Connection”
22 Between Him and California and Thereby Enabled California to Exercise Personal
23 Jurisdiction Over Him

24
25 a. *Acts Committed Outside California “Causing Effect” Within California Suffice to*
26 *Establish “Purposeful Direction”*

27 If a nonresident, acting outside the state, intentionally causes injuries within the state, then
28 he must “reasonably anticipate” being haled into court in the forum state. *Calder v. Jones*

1 (1984) 465 U.S. 783, 790, 104 S.Ct. 1482, 1487. All that matters is that the nonresident's liability-
2 producing acts have foreseeable consequences in the forum state. *Burger King Corp. v.*
3 *Rudzewicz* (1985) 471 U.S. 462, 479-480, 105 S.Ct. 2174, 2186.

4 In *Calder v. Jones, supra*, the intentional and allegedly tortious actions of Florida residents
5 who wrote and published a defamatory article in Florida for publication in a national magazine
6 were expressly aimed at California, because the article targeted a California resident. Similarly,
7 here, Kirsch shows that Ross' fax was expressly aimed at Kirsch (the sending of a fax is an
8 intentional act), a California resident. As in the *Calder* case, where a writer was deemed to have
9 directed his actions at California notwithstanding the fact that there was no showing that he
10 actually distributed the magazine, Ross is deemed to have personally directed his actions at
11 California. Although Ross alleges he had no involvement with the scheme to send unlawful faxes,
12 Kirsch has certainly made out a *prima facie* showing that Ross is not forthright in this regard.

14 In *Schlusel v. Schlusel*, the court held that obscene phone calls from New York to
15 California subjected the caller to California's jurisdiction. *Schlusel v. Schlusel* (1983) 141
16 Cal.App.3d 194, 198-199. Analogously to the *Schlusel* case, Ross' out-of-state conduct, whether
17 it's his actual sending of the faxes or the direction to his agent to send faxes to Kirsch in
18 California, subject him to jurisdiction in California.

20 Ross cites *Douglas Furniture Co. v. Wood Dimensions*, 963 F.Supp. 899, in which an
21 Arizona company was not subject to California jurisdiction because it sent letters to California.
22 [Defendant's Memorandum, p. 6, line 23 - p. 7, line 5.] *Douglas Furniture* is inapposite. The
23 *Douglas Furniture* case only stands for the proposition that communications would not in
24 themselves confer jurisdiction. In that case, the Court found that California did not have
25 jurisdiction over an out-of-state defendant with no California contacts other than a couple letters
26 related to the legal dispute. Kirsch alleges that the act of sending the communications constituted
27 the wrong, and that the wrongful act was thereby consummated in California. Kirsch does
28

1 not allege that Ross subjected himself to California personal jurisdiction simply because he sent
2 emails or letters to Kirsch in California.

3 i. Even A Single Tortious Act May Create Jurisdiction

4 Even a single act may support limited personal jurisdiction over a nonresident. *McGee v.*
5 *International Life Insurance Co.* (1957) 355 U.S. 220, 78 S.Ct. 199. For example, a single tortious
6 fax to a forum state resident may support the exercise of specific jurisdiction over the nonresident
7 sender. See Schwarzer, *et al. Cal. Prac. Guide: Federal Civil Procedure Before Trial* (The Rutter
8 Group 2005), 3:208.90 citing *Internet Doorway, Inc. v. Parks* (SD MS 2001) 138 F.Supp.2d 773,
9 774 (email messages are always the result of active, purposeful communications, so a single
10 tortious email message to a forum state resident may support the exercise of specific jurisdiction).
11

12 ii. Out-of-State Electronic Transmissions May Be a Basis for
13 Jurisdiction

14 Personal jurisdiction may be based on electronic transmissions intentionally directed to
15 residents of the forum state and causing harm in the forum state. See *Cody v. Ward* (D Ct 1997)
16 954 F.Supp. 43, 47 (fraudulent representations via email and telephone to forum resident). The
17 electronic transmission of solicitations is commonplace and the courts are recognizing that such
18 solicitations subject the sender to jurisdiction in the forum where injury results from the receipt of
19 those missives. *Internet Doorway, Inc. v. Parks* (S.D. Miss. 2001) 138 F.Supp.2d 773, 779;
20 *Verizon Online Services, Inc. v. Ralsky* (ED VA 2002) 203 F.Supp.2d 601, 610 (nonresident's
21 sending millions of unsolicited email advertisements through plaintiff's Internet server in forum
22 state constituted trespass to chattels, subjecting sender to local jurisdiction). "By sending an email
23 solicitation to the far reaches of the earth for pecuniary gain, one does so at his own peril, and
24 cannot then claim that it is not reasonably foreseeable that he will be haled into court in a distant
25 jurisdiction to answer for the ramifications of that solicitation." *Internet Doorway, Inc. v. Parks*
26 (S.D. Miss. 2001) 138 F.Supp.2d 773, 779. An advertiser should not be permitted to take
27
28

1 advantage of modern technology via electronic means to engage in a tortious act with
2 consequences in California and which harms a citizen in California, and escape traditional notions
3 of jurisdiction because he used electronic means to carry out a long-distance tort. *See EDIAS*
4 *Software Int'l, L.L.C. v. BASIS Int'l Ltd.* (D.Ariz.1996) 947 F.Supp. 413.

5 Of course, the sending of a fax from outside the forum is analogous to the sending of an
6 email, or any other electronic transmission, from outside the forum, and the sending creates
7 jurisdiction.

8
9 iii. Courts Will More Likely Find Minimum Contacts Based on a Commercial
10 Transaction

11 The faxes sent by Ross were sent for commercial gain, which further militates in favor of
12 finding that minimum contacts are satisfied. *Reliance Nat'l Indem. Co. v. Pinnacle Cas.*
13 *Assurance Corp.*, (M.D. Ala. 2001) 160 F.Supp.2d 1327, 1333 (holding that "E-mails, like letters
14 and phone calls, can constitute minimum contacts, at least if the defendant or his agents send the
15 message for pecuniary gain rather than substantially personal purposes.").

16
17 b. *Ross Need Not Have Even Directed His Own Activities at California to Create*
18 *Jurisdiction*

19 i. The Acts of Ross' Local Agent Suffice to Create Jurisdiction Even Without
20 Ross' Specific Direction

21 A nonresident defendant may be subject to specific jurisdiction in California based on local
22 acts by an authorized agent. *Mitrano v. Hawes* (4th Cir. 2004) 377 F.3d 402, 407.

23
24 Ross is liable for the damages caused by the unlawful faxes even if he did not personally
25 send them, because his authorized agent sent them. In other words, Kirsch need only show that
26 Ross retained someone who had his authority to send faxes, and he has done so. It's preposterous
27 to assume that Ross paid someone to perpetrate a mass junk fax campaign, but that he specifically
28 told them to direct faxes or the other campaign materials outside of California. Further,

1 Ross, or Camelot on behalf of Ross, retained a California firm, Fax.com, to deliver the faxes, so
2 Ross is subject to California jurisdiction for that reason alone.

3 Further, it appears that money was laundered through the Camelot account before paying
4 the junk fax sender. It makes no sense that Ross should be insulated from liability, or afforded a
5 jurisdictional defense, based on such a subterfuge.

6 ii. Ross is Subject to Jurisdiction in California Simply Because He Placed the
7 Fax in the Stream of Commerce
8

9 The requisite "substantial connection" for personal jurisdiction purposes will also usually
10 be found where a nonresident manufacturer sells goods or services in the forum state, even if it
11 doesn't have an office, plant or personnel locally, as long as it has "placed products in the stream
12 of interstate commerce with the expectation that they will be sold to consumers in the forum state."
13 *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297-298, 100 S.Ct. 559, 567; *see*
14 *also Schwarzer, et al., Cal. Prac. Guide: Fed. Civ. Pro. Before Trial* (TRG 2005), 3:156-3:157. (a
15 nonresident engaging in commercial activities in the forum state may be subject to jurisdiction if it
16 purposefully availed itself of the benefits and protections of state law, for example by sales
17 solicitation). "It is only reasonable for companies that distribute . . . products through regional
18 distributors in this country to anticipate being haled into court by plaintiffs in their home states."
19 *Barone Brothers v. Interstate Display Fireworks* (8th Cir. 1994) 25 F.3d 610, 614. Indeed, if an
20 adequate basis for jurisdiction exists, a non-resident may be haled into court anywhere in the
21 United States, because courts generally conclude that it would be unfair to allow him to remain
22 subject to personal jurisdiction only in his home state, requiring those with claims against him to
23 go to that state in order to litigate such claims. *See CoolSavings.com, Inc. v. IQ Commerce Corp.*
24 (ND IL 1999) 53 F.Supp.2d 1000,1003 (nonresident website owner may be haled into court
25 anywhere in the United States).
26
27

28 So, even if Ross did not purposefully aim his fax at California, through agent or

1 otherwise, as long as he participated in the plan to bombard United States citizens with millions of
2 unlawful faxes, he is subject to personal jurisdiction in California. For, by participating in the plan
3 to bombard the country, he placed the faxes in the stream of commerce, and he had to expect that
4 some of the unlawful faxes would end up in California, the largest state.

5 If California can't exercise jurisdiction over Ross, then no state could exercise jurisdiction
6 over him other than that of his residence. But, it defies common sense that Ross could order the
7 commission millions of torts all over the country and then turn around and complain about having
8 to litigate in the forum where he caused injury. Under this rationale, one could close his eyes and
9 randomly dial a number to send a junk fax and then avoid jurisdiction by arguing that he did not
10 know whose paper and toner he was stealing. Like this hypothetical person, Ross placed his ad in
11 the stream of commerce, and he's subject to jurisdiction everywhere it ends up.

13 iii. Even Mere Advertising Suffices to Create Specific Jurisdiction if the Action
14 Stems from the Advertising
15

16 Indeed, no more than advertising calculated to reach California is required to constitute
17 purposeful availment of the privileges of doing business in California. *See United States SEC v.*
18 *Carrillo* (11th Cir. 1997) 115 F.3d 1540, 1545.

19 Ross distorts the Court's finding in *Federated Rural Elec. Ins. Corp. v. Kootenai Elec. Co-*
20 *Op* (10th Cir. 1994) 17 F.3d 1302, 1305 to support his argument that nationwide advertising is
21 insufficient to establish "purposeful availment." *Federal Rural Elec.* has no relevance to the issue
22 of whether the sending of advertising constitutes "purposeful availment" as an element of "*specific*
23 *jurisdiction*," as opposed to "*general jurisdiction*." *Federal Rural Elec.* simply states that
24 "nationwide advertising" does not constitute the type of continuous and systematic activity
25 necessary for a finding of "purposeful contact" to support "*general jurisdiction*."
26

27 If advertisements in a nationally circulating publication suffice in themselves to establish
28 jurisdiction, then certainly the directed sending of junk faxes suffices. Moreover, Ross not

1 only advertised, but he converted the property of Kirsch and other Californians in order to do his
2 advertising!

3 2. This Litigation Arises From Ross' Contacts

4 Kirsch meets this prerequisite for the establishment of personal jurisdiction.

5 3. Ross Fails to Meet His Burden of Showing That California's Exercise of Personal
6 Jurisdiction Over Him Is Unreasonable

7 The burden is on the nonresident to prove that the forum's exercise of jurisdiction would
8 not comport with "fair play and substantial justice." *Amoco Egypt Oil Co. v. Leonis Navigation*
9 *Co.* (9th Cir. 1993) 1 F.3d 848, 851.

11 Ross suggested that the Court consider a number of factors in determining the
12 reasonableness of the exercise of personal jurisdiction:

13 a. *The extent of defendant's purposeful interjection.*

14 "Where a defendant who purposefully has directed his activities at forum residents seeks to
15 defeat jurisdiction, he must present a compelling case that the presence of some other
16 considerations would render jurisdiction unreasonable." *Burger King*, 471 U.S. at 477.

18 As set forth above, Ross, through his agents, purposefully directed the sending of the faxes
19 across the country and into California. Ross' purposeful interjection is particularly offensive,
20 because he electronically entered Kirsch's California home. Senator Hollings called automated
21 calls "telephone terrorism." 137 Cong.Rec. S16,205 (daily ed. Nov. 7, 1991) (statement of Sen.
22 Hollings) ("It is telephone terrorism, and it has got to stop.") Ross' unilaterally initiated
23 interjection is a form of electronic trespass, invasion of privacy, and theft, much different than
24 merely sending letters or documents into a mailbox.

26 This factor weighs in favor of jurisdiction.

27 b. *The burden on defendant in defending in the forum*

28 In the context of the "fair play" analysis, the U.S. Supreme Court has noted that

1 "modern transportation and communication have made it much less burdensome for a party sued to
2 defend himself in a State where he engages in economic activity." *McGee v. International Life*
3 *Insurance Co.*, 355 U.S. 220, 223 (1957). Progress in communications and transportation has
4 made the defense of a suit in a foreign tribunal less burdensome. *Hanson v. Denckla*, 357 U.S.
5 235, 250-251 (1958).

6 Further, Ross must demonstrate that litigating this dispute in California would be so
7 "gravely difficult and inconvenient" that he would be at a severe disadvantage in comparison to"
8 Kirsch. *Burger King* 471 U.S. at 477. Ross has not even attempted to do so.

9
10 Ross does not argue that California litigation would be more inconvenient than litigation
11 elsewhere. Ross doesn't suggest that the burden on him would be substantially different for him in
12 California as opposed to Florida. In the absence of an expected trial of some length, there seems to
13 be little difference whether Ross retains counsel in California (which he had done even *prior* to
14 Kirsch's initial contact in which it was suggested that he would be substituted in to this litigation)
15 or in Florida to appear on his behalf. Regardless, Ross can not be heard to complain of
16 inconvenience when it was he that made the decision to send unlawful advertising into California
17 rather than limit them to his home state of Florida.

18
19 Further, Kirsch expects to prove that Ross and the other defendants made a lot of money
20 from their illegal activities and that the cost of defending this lawsuit is a relatively small
21 percentage of that profit. The bank records show Ross payments of \$336,000.00 (to
22 Fry/Hammond/Barr), \$47,000.00 (to Heysek), and \$355,000.00 (to Camelot) for the touting of the
23 stocks in the junk faxes. The bank records show a deposit of over \$5,000,000 related to the stock
24 tout scheme into the Ross firm account. Kirsch seeks only \$123,000.00 in damages.

25
26 This factor weighs in favor of jurisdiction.

27 *c. The extent of conflict with the sovereignty of the defendant's state.*

28 One aspect of "fair play and substantial justice" is the possible unfairness of

1 subjecting a nonresident to the state's law. However, in this case, Kirsch has brought one cause of
2 action, for violation of the federal Telephone Consumer Protection Act. As this federal law applies
3 everywhere, this factor is irrelevant. Ross gives no indication that this case would proceed any
4 differently in Florida than in California.

5 This factor weighs in favor of jurisdiction.

6 *d. The forum state's interest in adjudicating the dispute*

7 A state generally has a "manifest interest" in providing its residents with a convenient
8 forum for redressing injuries inflicted by out-of-state actors. *Burger King*, 471 U.S. at 473.

9 When the T.C.P.A.'s prohibitions are violated, the injury is visited upon the recipient of the
10 call in California, and California has an interest in protecting its citizens from such harms in an
11 efficient and meaningful manner. The effectiveness of the T.C.P.A., in particular, would be
12 severely undercut if defendants could control the choice of forum to the detriment of their victims.
13 Virtually no T.C.P.A. cases would be prosecuted if the defendants were not liable where they
14 caused their damage. Creative defendants could safely avoid responsibility by secreting their
15 operations far away from the locations to which they are bombarding persons with illegal faxes
16 and phone calls. California has a strong interest in protecting its citizens from such machinations.

17 Therefore, both the state's and Kirsch's interest in this forum is substantial, and the
18 "interstate judicial system's interest" in enforcing the uniform federal law is furthered by finding
19 proper jurisdiction over a T.C.P.A. cause of action where the call to the consumer was received.

20 Ross does not even argue that California has no interest in protecting its citizens from his
21 unlawful conduct.

22 This factor weighs in favor of jurisdiction.

23 *e. The most efficient judicial resolution of the controversy*

24 The most efficient judicial resolution of this controversy would be for California courts to
25 try this matter rather than having the parties go through the routine of re-filing in Florida.
26
27
28

1 f. *The importance of the forum to plaintiff's interest in convenient and effective relief.*

2 For the same reasons that the forum has an interest in adjudicating the dispute, it has an
3 interest in providing convenient and effective relief.

4 For all of the above reasons, the exercise of personal jurisdiction would be fair and
5 reasonable under the circumstances of this case.

6 4. Fewer Minimum Contacts Are Required When Reasonableness Dictates

7 Personal jurisdiction may be established with a lesser showing of minimum contacts if
8 considerations of reasonableness dictate. *Ochoa v. J.B. Martin & Sons Farms, Inc.* (9th Cir. 2002)
9 287 F.3d 1182, 1188, fn. 2.

10 Kirsch has demonstrated that six of the seven factors courts consider in determining
11 “reasonableness” weigh in favor of California’s exercise of jurisdiction. So, although Ross’
12 purposeful aiming of his fax at Kirsch suffices for the exercise of jurisdiction, even an attenuated
13 showing of “purposeful availment” would suffice given the reasonableness of California exercising
14 jurisdiction.
15

16 There is an additional reason in this case that “reasonableness” dictate that California
17 exercise jurisdiction. Prior to Kirsch’s substitution of Ross as a “Doe” defendant in the state court
18 action, his attorney practically begged Ross’ local counsel to offer some reason why Ross was not
19 involved with the faxing scheme so that he could avoid legal action if it was inappropriate.
20

21 Kirsch’s attorney suggested in a June 14, 2005 email to Ross’ counsel:

22 If there is, indeed, an innocent explanation regarding the Bush/Ross payments to Camelot,
23 then all involved parties can save time and money sooner rather than later.

24 But, Ross and his attorneys only suggested generally that personal jurisdiction was inappropriate in
25 California, practically telling Kirsch to go ahead and bring this legal action. Ross cannot now very
26 well complain that California’s jurisdiction over him is unreasonable, or that Kirsch should not at
27 least be entitled to conduct discovery, when he previously refused to provide any of the
28

1 information that would defeat jurisdiction.

2 **C. If Kirsch Has Failed To Make a Showing of Personal Jurisdiction, The Court May**
3 **Postpone Its Ruling on the Instant Motion to Allow Him to Conduct Jurisdictional**
4 **Discovery**

5 If Kirsch's evidence does not suffice to convince the Court that the instant Motion should
6 be denied, Kirsch requests permission to conduct limited discovery of jurisdictional facts. Where
7 the motion to dismiss is made at the outset of the case, the court may continue the hearing in order
8 to permit such discovery. See *Orchid Biosciences, Inc. v. St. Louis University* (SD CA 2001) 198
9 F.R.D. 670, 672-673.
10

11 Kirsch is entitled to this discovery by making a "*prima facie* showing of personal
12 jurisdiction." *Central States, Southeast & Southwest Areas Pension Fund v. Reimer Express*
13 *World Corp.* (7th Cir. 2000) 230 F.3d 934, 946. In this case, if the Court is inclined to deny the
14 Motion to Dismiss, Kirsch requests that the Court order a reasonable period of time for
15 jurisdictional discovery to continue.
16

17 **IV. CONCLUSION**

18 Kirsch has more than made out a *prima facie* case that Ross was involved with the illegal
19 faxing scheme. Now Ross cannot complain that he has been sued in California--he targeted his
20 illegal marketing scheme at California, he caused actionable harms to California residents, and he
21 is responsible for his own actions. Ross' Motion must therefore be denied.
22

23
24 Date: 8/30/05

REDENBACHER & BROWN, LLP

25 By _____\s\
26 JOHN C. BROWN
27 Attorneys for Plaintiff
28 STEVEN T. KIRSCH

1 JOHN C. BROWN (State Bar # 195804)
2 Redenbacher & Brown, LLP
3 388 Market Street, Suite 500
4 San Francisco, California 94111
5 Phone: (415) 409-8600
6 Facsimile: (415) 409-0600

7 Attorneys for Plaintiff, STEVEN T. KIRSCH

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 STEVEN T. KIRSCH,
12 Plaintiff,

13 vs.

14 JAVIER A. CUADRA;
15 JAVIER A. CUADRA dba CAMELOT
16 PROMOTIONS, LLC; and,
17 DOES 1 through 20, inclusive,
18 Defendants.

Case No.: C 05-03010 MJJ

**DECLARATION OF JOHN C. BROWN
IN SUPPORT OF OPPOSITION TO
MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION**

Date: 9/20/05
Time: 9:30 a.m.
Courtroom: 11, 19th Floor
Judge: The Hon. Martin J. Jenkins

19
20
21 1. I am an attorney at law licensed to practice before all the Courts of the State of
22 California. I currently practice as a partner with Redenbacher & Brown, LLP, the law firm that
23 represents plaintiff STEVEN T. KIRSCH.

24 2. I make this declaration of my own personal knowledge and, if called upon to testify,
25 could and would testify competently as stated herein.

26 3. I filed the Complaint initiating the instant legal action in the San Francisco Superior
27 Court on January 25, 2005. The Complaint alleged that defendants, including Camelot Promotions,
28 L.L.C. ("Camelot"), participated in a plan to send unlawful junk fax advertisements to Kirsch. As of

1 the filing of the Complaint, Kirsch had proof that Camelot had hired a California company, Fax.com,
2 to send the junk faxes, and he filed the Complaint in part to find out who hired Camelot. Kirsch has
3 for some time had evidence that Camelot is a penny-ante company that simply laundered the
4 payments for the junk faxes he received to help insulate the fax advertisers. Kirsch has for some time
5 had further evidence that Ross retained Camelot to retain a California company, Fax.com, to send
6 some of the junk faxes.

7 4. On or about April 14, 2005, I caused to be issued to Sun Trust Banks, Inc. ("Sun
8 Trust"), where Kirsch knew that Camelot held a bank account, a subpoena for "statements for any and
9 all bank accounts held with you by Camelot Promotions, LLC . . . for the months 6/04 – 8/04." A true
10 and correct copy of the subpoena is attached hereto as Exhibit 1. Kirsch issued this subpoena to find
11 out who was depositing monies into Camelot's account during the period when the faxes were sent,
12 believing that this would lead him to the identity of the person or persons that hired Camelot to send
13 the subpoenas.

14 5. On or about May 9, 2005, I received from Sun Trust a cover letter stating that
15 documents responsive to the subpoena were enclosed, along with computer-generated reports of
16 activity from 6/04 – 8/04 for a bank account belonging to Camelot. The reports included statements
17 of "deposits/credits" into the account for those months. A true and correct copy of the Sun Trust
18 cover letter and reports received by me is attached hereto as Exhibit 2. Notably, the total deposits into
19 Camelot's account during this period were \$464,795.00, but the seven largest deposits made up
20 \$455,000.00 of this amount, and the few other deposits into the account were just a few thousand
21 dollars apiece. Kirsch and I believed that information regarding the seven large deposits would show
22 that the Camelot account was being used to launder money and would help identify the person or
23 entity that was laundering money through Camelot to send the junk faxes.

24 6. On or about May 18, 2005, I caused to be issued to Sun Trust a second subpoena for
25 records relating to the seven largest deposits into the bank account of Camelot, as shown on the
26 reports received pursuant to the first subpoena. A true and correct copy of this second subpoena is
27 attached hereto and labeled Exhibit 3. Specifically, the second subpoena sought information relating
28 to the seven largest dollar figure wire transfers into the Camelot account between the dates of

1 June 8, 2004 and August 12, 2004, the period when Kirsch claims unlawful junk faxes were sent to
2 him.

3 7. On or about May 31, 2005, I received from Sun Trust documents responsive to the
4 second subpoena. A true and correct copy of this Sun Trust production is attached hereto and labeled
5 Exhibit 4. Sun Trust's records showed that six of the seven largest dollar figure wire transfers as to
6 which Kirsch requested information came from the Bush, Ross, Gardner, Warren & Rudy ("Ross'
7 firm") bank account, the firm in which Jeremy Ross is a partner. As indicated on the produced
8 documents, these transfers came from "bush, Ross, Garder, Warren & Rudy" and account number
9 "/41001143506." ("Ross account 41001143506") According to the records, *during the period from*
10 *June 8, 2004 through August 3, 2004, Ross' firm wire transferred \$355,000.00 into the Camelot*
11 *account.* The documents indicate that the seventh transfer came from a "Ventana Consultants," which
12 Kirsch knows is a client of Jeremy Ross and a principal player in the "pump and dump" scheme.

13 8. My review of the records led me to the conclusion that Camelot, a penny-ante
14 company with little cashflow, was laundering very large amounts of money to fund a junk faxing
15 operation directed by the persons that were paying it for the faxes, including Jeremy Ross.

16 9. Following receipt of the records indicating payment of \$355,000 from the Ross
17 account 41001143506 to Camelot, I tried to contact Ross. Apparently expecting this litigation, Ross
18 already had California counsel, and I was directed to the law firm that represents Ross in this
19 litigation. I then initiated several contacts with Daisy Nishigaya of Ross' law firm to attempt to get
20 further information regarding the transfers. I advised that Ross was involved in a scheme to send
21 unlawful junk faxes, that some of these faxes included "pump and dump" stock-touting faxes, that
22 Ross account 41001143506 made payment to Camelot, and that Ross directed Camelot to pay these
23 monies for the sending of junk faxes. I also requested any information indicating that Ross was *not*
24 involved with this scheme to send fraudulent fax touts and to launder money through Camelot. I
25 made at least three requests (two written) in which I specifically asked for offer an explanation as to
26 why Ross was paying such large amounts of money from the firm's attorney-client retainer account to
27 Camelot. I specifically asked for Ross' instructions to Camelot, which Ross never claimed was a
28 client of his. Attached hereto as Exhibit 5 are two of the email communications to Nishigaya

1 by which I requested information from Ross.

2 10. Ross refused to provide *any* information in response to these requests, simply stating
3 that California did not have personal jurisdiction over him and generally stating that he wasn't
4 involved.

5

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct and executed this 30th day of August in San Francisco, California.

8

9

10

/s/
JOHN C. BROWN

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Date 6/14/05:

Dear Ms. Nishigaya:

Thank you for contacting me today regarding the above-referenced legal matter in which I represent Steven Kirsch based on his receipt of junk faxes. Please communicate with me regarding this matter in the future. Rest assured that I have no problem with your communicating with Mr. Kirsch prior to our conversation earlier today.

As we discussed, Mr. Kirsch has evidence that your clients, Jeremy Ross and/or the Bush, Ross, *et al.* law firm ("Bush/Ross"), were involved in a scheme to send junk faxes in violation of the federal T.C.P.A. As we understand, some of these faxes included "pump and dump" stock-touting faxes. We have evidence that Bush/Ross made payment to Camelot Promotions and/or Javier Cuadra and directed Camelot to pay monies to fax.com for the sending of the faxes.

In our conversation, I invited your clients to offer an explanation as to why they were paying large amounts of money from their attorney-client retainer account to Camelot. At a minimum, we would like to know what Bush/Ross' instructions to Camelot were. I understand that your client claims that the explanation may impact attorney-client privilege issues. I would appreciate any non-privileged information that your clients can provide so that we can get to the root of this matter sooner rather than later.

Your clients' failure to provide any explanation, even if the failure is based on a claim that any information would be "privileged," would further indicate participation in the unlawful conspiracy Mr. Kirsch believes existed. This is particularly true given that, from our vantage point, it does not appear that any communications between your clients and Camelot would be privileged. We believe that Camelot was a "vendor," not a "client."

If there is, indeed, an innocent explanation regarding the Bush/Ross payments to Camelot, then all involved parties can save time and money sooner rather than later. If your clients will not provide us the requested information, Mr. Kirsch will pursue his claims against your clients for violations of the T.C.P.A.

I look forward to your response.

John C. Brown
REDENBACHER & BROWN, LLP
388 Market Street, Suite 500
San Francisco, California 94111
Writer's Direct Dial: (415) 409-8600
Facsimile: (415) 409-0600
Website: www.redbrownlaw.com
Email: jbrown@redbrownlaw.com

Date 6/22/05:

Dear Ms. Nishigaya:

I expect to be in court tomorrow and will file the Doe Amendment then—probably first thing a.m. If Jere Ross wants to talk, please call me today. If I do not hear from him through you, it will certainly raise my suspicions further.

Thank you.

John C. Brown
REDENBACHER & BROWN, LLP
388 Market Street, Suite 500
San Francisco, California 94111
Writer's Direct Dial: (415) 409-8600
Facsimile: (415) 409-0600
Website: www.redbrownlaw.com
Email: jbrown@redbrownlaw.com

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1 JOHN C. BROWN (State Bar # 195804)
2 Redenbacher & Brown, LLP
3 388 Market Street, Suite 500
4 San Francisco, California 94111
5 Phone: (415) 409-8600
6 Facsimile: (415) 409-0600

7 Attorneys for Plaintiff, STEVEN T. KIRSCH

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 STEVEN T. KIRSCH,
12 Plaintiff,

13 vs.

14 JAVIER A. CUADRA;
15 JAVIER A. CUADRA dba CAMELOT
16 PROMOTIONS;
17 CAMELOT PROMOTIONS, LLC; and,
18 DOES 1 through 20, inclusive,
19 Defendants.

Case No.: C 05-03010 MJJ

**DECLARATION OF STEVEN T.
KIRSCH IN SUPPORT OF
OPPOSITION TO MOTION TO
DISMISS FOR LACK OF PERSONAL
JURISDICTION**

Date: 9/20/05
Time: 9:30 a.m.
Courtroom: 11, 19th Floor
Judge: The Hon. Martin J. Jenkins

20
21 1. I am an adult individual resident of the State of California and the plaintiff in this
22 action. I make this declaration of my own personal knowledge and, if called upon to testify, could
23 and would testify competently as stated herein.

24 *Defendants' "Pump and Dump" Scheme*

25 2. My Complaint alleges that, from approximately April 4, 2004 and over the next couple
26 months, defendants engaged in a campaign to send fax advertisements in the State of California.
27 The Complaint names as defendants Javier Cuadra, Camelot Promotions, LLC, and Jeremy
28

1 Ross. I obtained defaults against Cuadra (owner of Camelot) and Camelot in the San Francisco
2 Superior Court. I substituted Ross into the Complaint for "Doe 1" after obtaining documentary
3 evidence of his direct involvement in the campaign. Ross then removed the action to federal court.

4 3. I received at my facsimile machine in California 18 advertisements promoting certain
5 penny stocks. I never gave permission to anyone to send these faxes. Attached hereto as Exhibits
6 1a - 1r are copies of each of the 18 facsimiles I received on fax numbers registered to me: 650-
7 941-0248, 650-941-1752, 650-941-1260 and 650-941-3101. The attached fax copies are true and
8 correct, except that I have written on some of the faxes the date of my receipt. The faxes promoted
9 the stocks TWTN ("Twister Networks, Inc.") (see Exhibits 1a, 1b, 1d, 1e, 1f, 1k, 1i, 1l, and 1m),
10 BDYS ("Body Scan Technologies") (see Exhibit 1c), AHFI ("Absolute Health & Fitness, Inc."),
11 (see Exhibits 1g, 1h, and 1j) and CNDD ("Concorde America, Inc.") (see Exhibits 1n, 1o, 1p, 1q,
12 and 1r).

14 4. Each one of the eighteen faxes was apparently a fraudulent stock tout, and, as set forth
15 below, I later obtained information indicating that each was sent as part of a "pump and dump"
16 scheme ("the scheme"). I am informed and believe that such schemes have become commonplace
17 over the last few years. Holders of stocks in small cap companies whose shares are traded "over
18 the counter" send out junk faxes touting the companies to as many as millions of people. If even a
19 small fraction of these persons purchases the small cap stocks, the stock value goes up by a
20 significant percentage. The touter then sells his stock at an artificially inflated price, thereby
21 devaluing the stock belonging to the new purchasers. I am informed and believe that the prices of
22 the stocks that defendants touted went up during the promotional period and dropped like a rock
23 after the promotion ended. I am informed and believe, for example, that Concorde America, Inc.,
24 ("Concorde") a company with little to no revenue, had a market capitalization of nearly \$2 billion
25 during the promotion period—the period when I received 5 junk faxes it. According to
26
27
28

1 pinksheets.com and yahoo.com, during the promotion period, it was trading for several dollars, but
2 it was trading for only a few cents soon after the promotion ceased.

3 *The First Camelot Link--Linking Camelot to the Scheme By the "Fax Back" Number*

4 5. Exhibits 1k and 1l, two of the eighteen faxes I received, listed a "fax back" phone
5 number to call for more information about the stocks promoted in the faxes:
6

7 ****READ THE FULL REPORT – CALL 1-402-951-5501 FILE #872 AND RECEIVE
8 THE FULL REPORT NOW!****

9 In or about August 2004, shortly after I received these faxes, I called this number and found out
10 that the name of the service that took the calls and provided the "full report" was
11 "MyFaxOnDemand." I asked to speak to the owner when I called, and I was advised that the
12 person I should speak to was named Shawn Hackett. When I was transferred to a man who
13 identified himself as Shawn Hackett, I asked him how I could find out who was "paying for File
14 #872." Mr. Hackett told me that it was Javier Cuadra of Camelot Promotions, LLC. This was the
15 *first* way that I was able to establish a direct link between Camelot and some of the faxes.
16

17 *The Second Camelot Link--Linking Camelot to www.winningstockpicks.net and The Scheme*

18 6. Seven of the eighteen faxes I had received referred to a website,
19 www.winningstockpicks.net. See Exhibits 1a, 1b, 1d, 1e, 1f, 1g, and 1h. For example, Exhibit 1a
20 says that one should "Go to www.winningstockpicks.net to read the full report on Twister
21 Networks!," the stock that was being touted in that particular junk fax.
22

23 7. Following my conversation with Hackett, I obtained what I believed to be the telephone
24 number for Cuadra from public records. In or about September 2004, I called this telephone
25 number and said "Is this Javier?," and the man who answered responded in the affirmative. During
26 this conversation, I asked him if he had ever heard of winningstockpicks.net. Cuadra said that he
27 had heard of winningstockpicks.net, and when I asked him how he knew of
28

1 winningstockpicks.net, he said "everyone knows about winningstockpicks.net." Given that I
2 believed this website to be fairly obscure, I considered this a second link between Camelot and the
3 faxes.

4
5 *Linking Tom Heysek to the Website Listed on the Faxes and to The Scheme*

6 8. Attached hereto as Exhibit 2 is a true and correct copy of a page that I viewed when I
7 clicked on the link www.winningstockpicks.net and followed links to information regarding the
8 persons involved with the site. The page in Exhibit 2 states that "Tom Heysek" is the "Editor" of
9 "Winning Stock Picks." I subsequently located Mr. Heysek through public records and, on July
10 16, 2004, I brought 8 different Small Claims Court cases in the Santa Clara Superior Court against
11 him for the sending of 8 of the junk faxes that are at issue in the instant action and that I linked at
12 the time to Heysek. On October 15, 2004, I filed 10 cases against Heysek for my receipt of the
13 remaining 10 faxes after I linked him to those faxes. I was put on evidence at trial linking Heysek
14 to all 18 faxes, and I obtained a judgment in each case, establishing that Heysek wrote fraudulent
15 stock writeups for every one of the touted stocks and participated in the sending of the junk faxes
16 at issue. Attached hereto as Exhibit 3 are copies of all 18 judgments.

17
18
19 *The First Ross Law Firm Link--Paul Spreadbury Links A "Law Firm," and Later "Bush, Ross,
20 Gardner, Warren & Rudy" to Videos Touting the Stocks, and, Therefore, To the Scheme*

21 9. The www.winningstockpicks.net website listed Vault Studios as the creator of a video
22 of Heysek interviewing a person purporting to be the C.E.O. of Absolute Health & Fitness, Inc.,
23 ("Absolute Health") the company touted in Exhibits 1g, 1h, and 1j. I looked up the phone number
24 of Vault Studios by doing a search on the Internet. I called the phone number and I spoke to a man
25 who identified himself as Jon Paulson. During this conversation, he told me that his video work
26 for www.winningstockpicks.net was directed by three persons: Tom Heysek, Bryan Kos, and Paul
27 Spreadbury. Further, in this conversation, Paulson told me that Vault Studios was paid by a law
28 firm for this work. I asked him what the name of the firm was, and he refused to tell me.

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10. In or about August 2004, I did a Google search on the Internet to find Spreadbury's phone number, and I found what I believed to be his number. I called the number, and I asked for "Paul Spreadbury," and the man who answered the telephone identified himself as "Paul Spreadbury." I talked to him for a while about his association with www.winningstockpicks.net, and he told me that he had done some work for the website. I asked him how he was paid for the work that he did for www.winningstockpicks.net. Spreadbury told me that he had been paid by a law firm, but he didn't recall the name.

11. Spreadbury also said that he had done work for Bryan Kos and for Tom Heysek.

12. Spreadbury also said that he had worked on the USPennyStocks.com website, and he indicated to me that there was an affiliation between that website and www.winningstockpicks.net. I subsequently looked at www.USPennyStocks.com and compared it to winningstockpicks.net. I concluded that www.uspennystocks.com was an affiliate of www.winningstockpicks.net, because Heysek was the editor, it had much of the same content as www.winningstockpicks.net, the same stocks were promoted, the same stock writeups were used, and it was substantially similar in all respects other than graphical appearance.

13. On or about August 10, 2004, I made a second call to the number that I had previously used to contact Spreadbury. I spoke with a man who identified himself as Paul Spreadbury. During this conversation, I talked to him some more about who paid him for the video publicizing Absolute Health, and he told me that the law firm that was paying him was "Bush, Ross, Gardner, Warren & Rudy."

14. Around July 2005, I made a third call to the number that I had previously used to contact Spreadbury. In this conversation, we discussed the junk faxes that I had received. Spreadbury told me that he did some work on the faxes as well. Specifically, he said that he had "tweaked" the faxes. He said that he was given all the information and page layout and that he "did his magic on the faxes," which he explained meant that he "jazzed" them up.

The Second Ross Law Firm Link—Advertising firm Fry/Hammond/Barr Was Paid By “Ross Account 41001143506”

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3 15. On or before August 9, 2004, in the course of my investigation as to who else was
4 involved with www.winningstockpicks.net, I saw a press release issued on August 2, 2004 by
5 www.uspennystocks.com over PR Newswire entitled “Abe Goes Tommy in New Campaign.” The
6 press release said that uspennystocks.com had engaged NoSoonerSaid.com to create a multi-media
7 campaign and Fry/Hammond/Barr to purchase the media for the multi-media campaign.

8 16. I did an Internet search on “Fry Hammond Barr” in Florida and I found a number (407)
9 849-0100 that I believed to be its telephone number. On or about August 8, 2004, I called the
10 number and a receptionist answered, indicating to me that I had reached “Fry/Hammond/Barr.” I
11 asked to speak to the person who handled legal issues, and I was referred to Janette Estep. I was
12 transferred to a woman who identified herself as “Janette Estep.” She told me in this conversation
13 that Fry/Hammond/Barr had been hired to produce television advertisements for
14 “USPennyStocks.com” I told Estep that I had read the August 2, 2004 press release, and I asked
15 Estep who paid Fry/Hammond/Barr for the television advertisements. Estep told me that she
16 couldn't give this information to me unless I sent to her a subpoena.

17 17. During this conversation, Estep also told me that “Paul Spreadbury used to work for
18 Fry/Hammond/Barr.”

19 18. On or about August 9, 2004, I issued a subpoena to Fry/Hammond/Barr, requesting the
20 following:

21 Billing, payment, contact, and account application information for entities associated with
22 USPennyStocks.com including John Rooney, Tom Heysek, Brian Koss [sic]. If you are
23 paid via wire transfer, provide any emails or other documents identifying the entities
involved and all identifying information on the wire transfers.

24 Attached hereto as Exhibit 4 is a true and correct copy of the subpoena.

25 19. On or about August 19, 2004, I received documents from Fry/Hammond/Barr
26 responsive to the subpoena. Attached hereto as Exhibit 5 are a true and correct copy of a facsimile
27 cover sheet I received from an entity purporting to be Fry/Hammond/Barr and one document that
28 appears to be a Fry/Hammond/Barr business record responsive to the subpoena. The business

1 record indicated that Fry/Hammond/Barr was paid \$336,000.00 by “Bush, Ross, Garder [sic],
2 Warren, & Rudy” Suntrust bank account #41001143506 (“Ross account 41001143506”) for their
3 work on the television ads.

4
5 *The First Jeremy Ross Link--Linking Ross to Concorde, One of the Touted Companies*

6 20. On August 11, 2004, I did an Internet search and obtained information that a man
7 named Hartley Lord was the founder and President of Concorde America, one of the touted
8 companies. I did further searches and obtained a phone number 1-561-488-6107 that I believed to
9 be Lord’s, and I called the number. I asked if I was speaking to Hartley Lord, and the man on the
10 other end responded that I was speaking to him. I told him that I was calling about Concorde’s
11 stock promotion.

12 21. Lord told me during this conversation that he was represented by Jerry Ross. I asked
13 him how he had become affiliated with Ross. In response, Lord told me that a man named Donald
14 Oehmke was the owner of Ventana Consultants, and that he had come to Lord and said “I want to
15 buy your stock, here’s \$1,000,000, I want to buy 10,000,000 shares.” Lord told me that he told
16 Oehmke that he didn’t have an attorney, and he wanted an attorney to do the transaction. Lord told
17 me that Oehmke recommended Jeremy Ross, saying that Ross was his attorney. Lord told me that
18 he did sell 10 million shares of Concorde’s stock to Oehmke for \$1 million so that he would have
19 money to fund Concorde.

20 *Jeremy Ross Links 2, 3, and 4—Ross Admissions of His Links to Kos, Ventana/Oehmke,*
21 *and Concorde*

22 22. As of August 12, 2004, I had obtained information that Ross was involved with the
23 scheme, as set forth above. On August 12, 2004, I determined to contact Ross by calling him, and
24 I determined to get more information about the scheme.

25 23. I obtained a telephone number from a website for a Florida law firm, Bush, Ross,
26 Gardner, Warren & Rudy, in which a Jeremy Ross was a partner. I continued to try to reach Ross
27 personally by dialing the number listed on his law firm’s website and reaching a person
28

1 who was identified by telephone operator or himself as "Jere Ross." When I first spoke with Ross,
2 I introduced myself and I told him that I was calling for information about the stocks and what I
3 believed to be a "pump and dump" scheme.

4 24. I do not clearly recall what Ross said in every conversation. However, during these
5 conversations, during most of which Ross led me to believe that he was seriously interested in
6 helping me find out who was sending the fraudulent stock touts, Ross stated that he was associated
7 with Bryan Kos. Ross also stated that Ventana Consultants, which Lord had said was run by
8 Oehmke, was a client of his. Ross also told me that Concorde, one of the touted faxes, was a client
9 of his.

10 25. During these conversations, I expressed to Ross my opinion that the stock touts were
11 part of a "pump and dump" scheme to defraud investors. Ross agreed with me. In or about
12 August 12, 2004, Ross told me in a telephone conversation that he had written a press release for
13 Concorde dated August 10. He told me that the press release he had written stated that the two
14 prior press releases on July 28 and August 9 hyping the Concorde stock (which release Spreadbury
15 told me he prepared, and which Spreadbury told me that Bush, Ross, Gardner, Warren & Rudy had
16 paid for) were fraudulent. Ross further told me that that the press release disclaimed any
17 involvement by Concorde in the composition or dissemination of the earlier press releases.

18 26. I called the phone number by which I had previously reached Ross several times
19 during August 2004. During one of the calls, on a date I cannot remember, I asked the person who
20 answered the phone whether any of the law firm partners represented Bryan Kos, whose name I
21 had been given as one of the persons involved with the "pump and dump" scheme. The
22 receptionist told me that Ross was the point person to contact at the law firm regarding Bryan Kos.

23 27. From August 12, 2004 through August 15, 2004, I communicated several times with
24 Ross by email. Specifically, I sent emails to Jross@bushross.com and I received emails from
25 Jross@bushross.com. I believe this email address to be that of Jeremy Ross based on his
26 referenced to our phone conversations. Attached hereto as Exhibit 6 are true and correct copies of
27 emails between Ross and me. I have underlined pertinent portions of those emails, where Ross
28 states that he has provided legal services to 2 corporations in which Kos have involvement, 8

1 and Ross states that he provides representation to a corporation owned by Don Oehmke.

2
3 *The Third Camelot Link--Linking Camelot to All of the Faxes By the Fax.com Records*

4 28. During the time that my cases against Heysek were pending, I conducted further
5 investigation. Based on my prior experience in identifying junk fax senders from fax header
6 information, I was sure that a California company named Fax.com, Inc. had sent to me at least two
7 of the faxes, faxes 1e and 1f. Because I suspected that Fax.com sent these two faxes, I suspected
8 that Fax.com had information regarding the who participated in the scheme. I therefore
9 subpoenaed Fax.com's records in one of the Heysek actions, sending Fax.com a copy of a fax
10 touting Twister Networks, Inc. ("Twister"). This fax that I sent to Fax.com was nearly identical to
11 Exhibit 1k. I specifically requested from Fax.com records relating to the person or entity that had
12 retained Fax.com to send this fax. Attached hereto as Exhibit 7 is a true and correct copy of the
13 subpoena I caused to be served on Fax.com.
14

15 29. Fax.com sent to the court the responsive records, which were handed to me by
16 Commissioner Madden in Palo Alto. The records confirmed that Fax.com had, indeed, sent faxes
17 touting Twister. Attached hereto as Exhibit 8 is a true and correct copy of the production made by
18 Fax.com in response to my subpoena request. The Fax.com records I received showed that the
19 entity which sent the Twister touts was Camelot and that the contact person was Cuadra.
20 Specifically, of the 21 responsive pages I received, every single page had either "Camelot
21 Promotions," "Javier Cuadra," "Camelot Promotions LLC" on it. Included among the business
22 records were records appearing to be:
23

24
25 A "QuickReport" statement of Camelot's account with Fax.com;
26 "Daily Billing Reports" to Camelot showing faxes scheduled, targeted, attempted, and
27 successful and charges for same;
28 Information regarding Camelot payments from SunTrust Bank;
Credit requests from Camelot;
Faxing order forms;
Invoices; and,

1 Business records indicating numerous wire transfers from Camelot to Fax.com.

2 30. Now that I had specific evidence that Camelot had retained Fax.com to send faxes
3 touting Twister, I had other resources to find out more about whether Camelot was responsible for
4 the 18 faxes I had received. Fax.com had gone out of business in October 2004, because it signed
5 an injunction with the California Attorney General in which it agreed not to do any further faxing.
6 At the time, I was the plaintiff in a class action against Fax.com. After Fax.com went out of
7 business, a man contacted me and identified himself as Erwin Dass, whom I knew to be formerly
8 in charge of the graphics department of Fax.com. Mr. Dass offered to provide me some
9 information regarding Fax.com.
10

11 31. Among other things, Mr. Dass gave to me a disk that he told me contained a separate
12 directory of files with information for all of the faxes that every Fax.com client had ever sent
13 through Fax.com. In order to get corroborating evidence that Camelot had contracted with
14 Fax.com to send the faxes that I had received from Fax.com, and that it was tied to the faxes I
15 received from other fax broadcasters, I looked up "Camelot Promotions" on this disk. I found a
16 directory that I believed to be related to "Camelot Promotions." This directory was titled
17 "Broadcasting\C\Camelot Promo." I viewed files in this directory related to faxes that Camelot
18 sent through Fax.com. I found files that appeared to me to be copies of the source files for faxes
19 that Camelot sent through Fax.com. Significantly, I found files that were virtually identical in
20 appearance to *every* single one of the 18 faxes I had received. Although I did not believe that I had
21 received all 18 of the faxes from Fax.com, I surmised that Camelot had contracted with other fax-
22 sending services to send the other faxes, because the "pump and dump" faxes that I had received
23 were either identical to or extremely similar to those that were described in the original Fax.com
24 source files.
25
26
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1 32. Finally, in or about November 2004, I had several conversations with Dass regarding
2 Fax.com's business practices regarding payment. Dass told me that Fax.com has always had a
3 business practice of requiring payments in advance of sending out fax advertisements for its
4 clients. This indicated to me that any person who was paying Fax.com for the sending of the junk
5 faxes instructed them prior to payment as to what to do.
6

7 *The S.E.C. Action Against the "Pumpers and Dumpers" and Jeremy Ross Links 5 and 6*

8
9 33. On February 15, 2005, the Securities and Exchange Commission filed a Complaint in
10 the United States District Court for the Southern District of Florida against persons and entities it
11 alleged were involved with the "pump and dump" scheme that I believe was perpetrated in part by
12 the faxes sent to me. I am informed and believe, based on my review of records through the
13 PACER service, that the document attached hereto as Exhibit 9 is a copy of the body of the
14 Complaint filed by the S.E.C. along with the first Exhibit to the Complaint. Named defendants in
15 that litigation are Concorde, Absolute Health, Hartley Lord, Donald E. Oehmke, Bryan Kos,
16 Thomas M. Heysek, Andrew M. Kline, and Paul A. Spreadbury. The S.E.C. specifically alleged
17 that each of the defendants participated in fraudulent promotion and dumping of Concorde stock.
18 See Exh. 8, S.E.C. Complaint, par. 2. The S.E.C. further alleged that each of the individual
19 defendants engaged in the manipulation of the stock of Absolute Health, the company touted in
20 Exhibits 1g, 1h, and 1j. See Exh. 8, S.E.C. Complaint, par. 2. The S.E.C. further alleged that
21 Oehmke and Kos instigated both the scheme regarding Concorde and the scheme regarding
22 Absolute Health. Exh. 8, S.E.C. Complaint, par. 3.

23 34. According to a May 31, 2005 Joint Scheduling Report, Ross represents Lord and
24 Concorde in the S.E.C. action.

25 *The Third Ross Law Firm Link—Linking the Ross Firm to the Scheme Based on the Transfer of the*
26 *Profits Into Ross Account 41001143506*

27 35. Exhibit 1 to the S.E.C. Complaint purports to be a February 11, 2005 Declaration from
28 a Timothy J. Galdencio, who represents himself to be a staff accountant with the S.E.C. In the
Declaration, Galdencio lays a foundation for conclusions he drew regarding the transfers of

1 profits from the scheme. In paragraphs 12.a and 12.b of the Declaration, Galdencio states that the
2 profits from some of the stock trades that the S.E.C. was investigating, which trades were of the
3 very same stock that was advertised in the 18 faxes sent to me, went into Ross account
4 41001143506. Galdencio testified that the total profits that hit the Ross account were \$5,307,741.
5 *The Fourth Ross Law Firm Link--Linking Ross Account 41001143506 to Heysek and to the Scheme*

6 36. While I was attempting to collect on the judgments against Heysek, I had a
7 conversation with him in which we discussed how he was paid for the writeups of the stocks that
8 were touted in the faxes I had received from him. Heysek told me that he was paid approximately
9 \$20,000 a month for his writeups in an apparent attempt to contradict my impression that he was
10 making millions of dollars.
11

12 37. Heysek didn't pay the judgments I obtained against him, so I determined to subpoena
13 bank records to facilitate my collection. I knew that Heysek was affiliated with Asian American
14 Capital. I knew this because the page on the winningstockpicks.net website that stated Heysek was
15 the editor also stated that Heysek "is currently the Director of Research for Asian American
16 Capital, a San Francisco based investment management and securities research company." See
17 Exhibit 2. So, I also subpoenaed the records of Asian American Capital Management, LLC
18 ("AACM") to facilitate my collection. Attached hereto as Exhibit 10 is a true and correct copy of
19 the subpoena, by which I requested records from Heysek's and AACM's bank, including "monthly
20 statements for June through September 2004" and other records.
21

22 38. Attached hereto as Exhibit 11 is a true and correct copy of true and correct copy of the
23 Bank of America records I received pursuant to the subpoena. A review of those records showed
24 me that Heysek's Asian American Capital received payments from Ross account 41001143506.
25 Specifically, the records state Heysek got \$24,000 on 8/03/04 and \$23,000 on 7/7/04 from Ross
26 account 41001143506. I immediately suspected that these payments were for Heysek's writeups
27
28

1 of the touted stocks, because Heysek had previously told me that he was being paid about \$20,000
2 a month for the writeups. In addition, there were no other wire transfers of comparable magnitude
3 in the account during the period when the stocks were being touted.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct and executed this 18 day of August, 2005, in
6 Los Altos Hills, California.

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8 
9 STEVEN T. KIRSCH

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1 **Jeffrey A. Snyder/Bar No. 148217**
Daisy M. Nishigaya/Bar No. 186614
2 **THOITS, LOVE, HERSHBERGER & McLEAN**
A Professional Corporation
3 245 Lytton Avenue, Suite 300
Palo Alto, California 94301
4 Telephone: (650) 327-4200
Facsimile: (650) 325-5572

5 **Attorneys for Defendant**
6 **Jere Ross a/k/a Jeremy Ross sued as DOE 1**

7
8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 **STEVEN T. KIRSCH,**
13
Plaintiff,

14 v.

15 **JAVIER A. CUADRA;**
16 **JAVIER A. CUADRA dba CAMELOT**
PROMOTIONS;
17 **CAMELOT PROMOTIONS, LLC; and,**
DOES 1 through 20, inclusive,
18
Defendants.

No. C 05-03010 BZ

DECLARATION OF JEREMY P. ROSS
IN SUPPORT OF MOTION TO
DISMISS FOR LACK OF PERSONAL
JURISDICTION

Date:
Time:
Courtroom:
Judge:

19
20 I, Jeremy P. Ross, declare:

21 1. I am a defendant in the above-entitled case, having been named as "DOE 1." I was
22 served with summons and complaint on July 12, 2005. I have personal knowledge of all matters
23 stated below and am competent to so testify if called as a witness.

24 2. I am a United States citizen and a resident of the State of Florida. I am an attorney
25 licensed to practice in Florida and a shareholder in the Tampa, Florida law firm of Bush Ross,
26 P.A. Our only office is located at 220 South Franklin Street, Tampa, Florida 33602. Such firm,

THOITS, LOVE, HERSHBERGER & McLEAN
A PROFESSIONAL CORPORATION
245 LYTTON AVENUE, SUITE 300
PALO ALTO, CALIFORNIA 94301-1426
(650) 327-4200

1 organized in 1981, has never maintained an office in California.

2 3. I was born in Indianapolis, Indiana, received my undergraduate degree from Yale
3 University, and my Juris Doctorate degree from the University of Florida. I received an LL.M.
4 degree in the law of federal taxation from New York University. I have more than 39 years of
5 active experience as an attorney, primarily in the fields of securities and business transactions
6 representing public and privately held companies and their owners.

7 4. Neither I nor any other member of the Bush Ross firm is licensed to practice law in
8 the State of California. I have never represented a client with primary business interests in
9 California, have not had any personal business interests in California, nor have ever owned any
10 real property in California.

11 5. The last time I was in California was for six or seven days in 1998, exclusively for
12 recreational purposes. Prior to that trip, I had been to California several times for depositions in a
13 federal securities case in the 1980's, a vacation in the 1970's, several recreational trips in the
14 1960's and a three month stay at Camp Pendleton (near San Diego) in 1962. I served as a
15 Lieutenant in the United States Marine Corps in 1961-1963.

16 6. From reading the complaint, I understand that plaintiff alleges a violation of the
17 Federal Telephone Consumer Protection Act, 47 U.S.C. Section 227. The named defendants are
18 Javier A. Cuadra and Camelot Promotions, LLC. Cuadra is alleged to be a resident of Florida and
19 Camelot is alleged to be a Florida limited liability company that is not authorized to do business in
20 California. I have no acquaintance or affiliation with either defendant nor any knowledge of their
21 existence other than in connection with this legal action by plaintiff. Neither Cuadra nor Camelot
22 is a client of Bush Ross, we have never had contact with either, and neither I nor any other
23 member or employee of the firm has ever served as agent or employee of or principal to, for or
24 with either such defendant.

25 7. In his complaint, plaintiff alleges that he received 18 unsolicited facsimiles from
26 defendants directed to a facsimile line owned by plaintiff. Neither I nor any member or employee

Really?!? Then how do you explain the
6 wives for 2 \$355,000 in [4]?

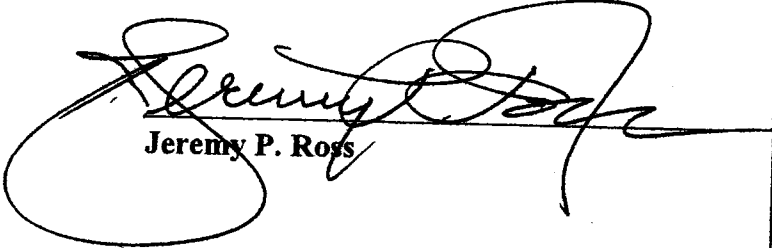
22041.001/198833

1 of my law firm sent any of the alleged facsimiles to plaintiff, participated in or discussed with
2 anyone the sending of the alleged facsimiles, nor was aware that any of the alleged faxes was to be
3 or was sent.

4 8. I have never met plaintiff, either in California or elsewhere. My only
5 communications with plaintiff have been by telephone and e-mail, with each such contact having
6 been initiated by plaintiff and directed to me at my Tampa, Florida office. Each such contact
7 involved plaintiff's inquiries as to my knowledge of Concorde America, Inc., certain persons
8 appearing to have a relationship to that entity, and its and their responses to unusual volume in the
9 public trading of shares of its capital stock in August 2004. Neither I nor the firm has ever
10 marketed, offered for sale or sold any product or service in California via facsimile transmission.

11 9. I am subject to the jurisdiction of the state and federal courts of Florida having
12 proper venue and jurisdiction with respect to this action and would voluntarily appear in the
13 appropriate court in Florida should this case be dismissed and refiled in Florida.

14 I declare under penalty of perjury that the foregoing is true and correct and that this
15 declaration is executed this 1st day of August 2005.

16
17 
18 Jeremy P. Ross
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Lawyer Regulation

Rules Regulating The Florida Bar

5 RULES REGULATING TRUST ACCOUNTS

5-1 GENERALLY

RULE 5-1.2 TRUST ACCOUNTING RECORDS AND PROCEDURES

(a) **Applicability.** The provisions of these rules apply to all trust funds received or disbursed by members of The Florida Bar in the course of their professional practice of law as members of The Florida Bar except special trust funds received or disbursed by an attorney as guardian, personal representative, receiver, or in a similar capacity such as trustee under a specific trust document where the trust funds are maintained in a segregated special trust account and not the general trust account and wherein this special trust position has been created, approved, or sanctioned by law or an order of a court that has authority or duty to issue orders pertaining to maintenance of such special trust account. These rules shall apply to matters wherein a choice of laws analysis indicates that such matters are governed by the laws of Florida.

Therefore,
since the
trust account
is the general
law firm trust
account, these
rules apply

(b) **Minimum Trust Accounting Records.** The following are the minimum trust accounting records that shall be maintained:

(1) A separate bank or savings and loan association account or accounts in the name of the lawyer or law firm and clearly labeled and designated as a "trust account."

(2) Original or duplicate deposit slips and, in the case of currency or coin, an additional cash receipts book, clearly identifying:

(A) the date and source of all trust funds received; and

(B) the client or matter for which the funds were received.

(3) Original canceled checks, all of which must be numbered consecutively, or, if the financial institution wherein the trust account is maintained does not return the original checks, copies that include all endorsements, as provided by the financial institution.

(4) Other documentary support for all disbursements and transfers from the trust account.

(5) A separate cash receipts and disbursements journal, including columns for receipts, disbursements, transfers, and the account balance, and containing at least:

(A) the identification of the client or matter for which the funds were received, disbursed, or transferred;

(B) the date on which all trust funds were received, disbursed, or transferred;

(C) the check number for all disbursements; and

(D) the reason for which all trust funds were received, disbursed, or transferred.

(6) A separate file or ledger with an individual card or page for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balance, and containing:

(A) the identification of the client or matter for which trust funds were received, disbursed, or transferred;

(B) the date on which all trust funds were received, disbursed, or transferred;

(C) the check number for all disbursements; and

(D) the reason for which all trust funds were received, disbursed, or transferred.

(7) All bank or savings and loan association statements for all trust accounts.

(c) Minimum Trust Accounting Procedures. The minimum trust accounting procedures that shall be followed by all members of The Florida Bar (when a choice of laws analysis indicates that the laws of Florida apply) who receive or disburse trust money or property are as follows:

(1) The lawyer shall cause to be made monthly:

(A) reconciliations of all trust bank or savings and loan association accounts, disclosing the balance per bank, deposits in transit, outstanding checks identified by date and check number, and any other items necessary to reconcile the balance per bank with the balance per the checkbook and the cash receipts and disbursements journal; and

(B) a comparison between the total of the reconciled balances of all trust accounts and the total of the trust ledger cards or pages, together with specific descriptions of any differences between the 2 totals and reasons therefor.

(2) At least annually, the lawyer shall prepare a detailed listing identifying the balance of the unexpended trust money held for each client or matter.

(3) The above reconciliations, comparisons, and listing shall be retained for at least 6 years.

(4) The lawyer or law firm shall authorize and request any bank or savings and loan association where the lawyer is a signatory on a trust account to notify Staff Counsel, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, in the event any trust check is returned due to insufficient funds or uncollected funds, absent bank error.

(5) The lawyer shall file with The Florida Bar between June 1 and August 15 of each year a trust accounting certificate showing compliance with these rules on a form approved by the board of governors.

(d) Record Retention. A lawyer or law firm that receives and disburses client or third party funds or property shall maintain the records required by this chapter for 6 years subsequent to the final conclusion of each representation in which the trust funds or property were received.

← They can't claim there are no records

(e) Audits. Any of the following shall be cause for The Florida Bar to order an audit of a trust account:

- (1) failure to file the trust account certificate required by rule 5-1.2(c)
- (5);

- (2) return of a trust account check for insufficient funds or for uncollected funds, absent bank error;
- (3) filing of a petition for creditor relief on behalf of an attorney;
- (4) filing of felony charges against an attorney;
- (5) adjudication of insanity or incompetence or hospitalization of the attorney under The Florida Mental Health Act;
- (6) filing of a claim against the attorney with the Clients' Security Fund;
- (7) when requested by a grievance committee or the board of governors; or
- (8) upon court order.

(f) Cost of Audit. Audits conducted in any of the circumstances enumerated in this rule shall be at the cost of the attorney audited only when the audit reveals that the attorney was not in substantial compliance with the trust accounting requirements. It shall be the obligation of any attorney who is being audited to produce all records and papers concerning property and funds held in trust and to provide such explanations as may be required for the audit. Records of general accounts are not required to be produced except to verify that trust money has not been deposited thereto. If it has been determined that trust money has been deposited into a general account, all of the transactions pertaining to any firm account will be subject to audit.

(g) Failure to Comply With Subpoena.

- (1) Members of the bar are under an obligation to maintain trust accounting records as required by these rules and, as a condition of the privilege of practicing law in Florida, may not assert any privilege personal to the lawyer that may be applicable to production of same in these disciplinary proceedings.
- (2) Notice of noncompliance with a subpoena may be filed with the Supreme Court of Florida only if a grievance committee or a referee shall first find that no good cause exists for failure to comply. A grievance committee or referee shall hear the issue of noncompliance

and issue findings thereon within 30 days of the request for issuance of the notice of noncompliance.

(3) After notice is filed with the Supreme Court of Florida by The Florida Bar that a member of the bar has failed to fully comply with a properly issued subpoena directing the production of any trust accounting records that are required by these rules, unless good cause for the failure to comply is shown, the member may be suspended from the practice of law in Florida, by order of the Supreme Court of Florida, until such time as the member fully complies with the subpoena and/or until further order of the court.

(4) Any member subject to suspension under this rule may petition the court, within 10 days of the filing of the notice, to withhold entry of the order of suspension or at any time after entry of an order of suspension may petition the court to terminate or modify the order of suspension. If the court determines it necessary to refer the petition to terminate or modify the suspension to a referee for receipt of evidence, the referee proceedings shall be conducted in the same manner as proceedings before a referee on a petition to withhold, terminate, or modify an order of emergency suspension, as elsewhere provided in these rules.

[Updated: 06-29-2004]

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CALIF FIRM'S INTERNAL POLICY

Accountant of the amount of the wire and when to expect the wire. Sometimes, critical information to identify the wire is omitted on the wire confirmation. Consequently, it takes days to contact the sender bank to identify.

TRUST ACCOUNT TRANSACTION REQUEST

Form located in Form Bank under "Finance" or at the Finance Department Website

<http://universe/i2k/frameset.asp?P=3601&R=1024x768>

1. **ADD FUNDS TO AN EXISTING TRUST ACCOUNT** - Complete the shaded section of "Trust Account Transaction Request".

a. **DEPOSIT CHECK(S)**: Complete the shaded section of "Transaction Request", then forward it with the check to Mandy Matta 466. You do not need the partner's signature. However, clearly state the client/matter # and the person who requested the deposit.

b. **WIRE TRANSFER IN**: Please respond to the incoming wire e-mail notice by confirming where to apply the funds. No need to complete the form for an incoming wire if there's an existing trust account already established.

2. **TO DISBURSE TRUST FUNDS** - Please complete "Trust Account Transaction Request". The basic requirements to dispense the funds from a trust account are: appropriate supporting documentation, authorizing partner's signature who signed to open the trust account, as well as availability of funds - see under "Most often asked questions".

a. **CHECK REQUESTED**:

(1) Payment of Pillsbury Winthrop LLP invoice - Attach a copy of the outstanding invoice or CMS print screen which shows the outstanding A/R balance and the allocation of the funds to each invoice.

(2) Payment to vendors - Attach the original copy of the invoice with the Tax Id. Number.

(3) Refund trust balance - Attach if there's any requesting letter from the client or disengagement letter, etc.

(4) Settlement check - Attach a copy of the agreement. If the settlement check is for fees, provide the Tax Id. # or Form W-9.

(5) Stock Purchase Plan - Attach a copy of the purchase agreement (attach to e-mail) along with the investor's signature page.

c. **WIRE TRANSFER OUT**: **The cutoff time to send the wire is 12pm PST.** The basic information to send the wire is as follows:

⇒ Bush Ross PA would know purpose of the wire.

This is typical of the documentation required.

TRUST ACCOUNT TRANSACTION REQUEST

(① ADD FUNDS TO AN EXISTING TRUST A/C OR ② TO DISBURSE TRUST FUNDS)

TRUST NAME: _____ Requested By: _____
Date: _____
CLIENT/MATTER NAME: _____ Extension: _____
CLIENT/MATTER NUMBER: _____ Location: _____

1. ADD FUNDS TO AN EXISTING TRUST ACCOUNT

- DEPOSIT (Attach Check Payable To Trust)
- WIRE TRANSFER IN

Amount: \$ _____ Payor: _____

2. DISBURSE TRUST FUNDS (Attach Supporting Documentation e.g., Invoices, Settlement Agreements, etc.)

- CHECK REQUESTED Amount: \$

Payee: _____

Date Required: _____ Return Check To: _____

- WIRE TRANSFER OUT Amount: \$ _____

Recipient's Bank Name (Required): _____
Bank Address: _____
ABA/Routing # (Required - 9 Digits): _____
Recipient's Acct. Name (Required): _____
Acct. # (Required - must be accurate): _____
Additional info. for recipient's bank (such as sub acct. # and name): _____

Note: Attach a separate sheet for international wires.

- CLOSE ACCOUNT (Applies Only to Interest-Bearing A/C)

Special Instructions: _____

Authorizing Partner Signature: _____

For Use By National Finance Only
Check Number/Date: _____

Trust A/C #: _____
A/C Balance: _____
Request #: _____

14

Nov 17 2005

CLARENCE MADDOX
CLERK U.S. DIST. CT.
S. D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(FORT LAUDERDALE DIVISION)

Case No. 05-80128-CIV-ZLOCH/SNOW

SECURITIES AND EXCHANGE COMMISSION,)

Plaintiff,)

v.)

CONCORDE AMERICA, INC.,)
ABSOLUTE HEALTH AND FITNESS, INC.,)
HARTLEY LORD, DONALD E. OEHMKE,)
BRYAN KOS, THOMAS M. HEYSEK,)
ANDREW M. KLINE, AND PAUL A. SPREADBURY,)

Defendants,)

DASILVA, SA, VANDERLIP HOLDINGS, NV,)
CHIANG ZE CAPITAL, AVV,)
RYZCEK INVESTMENTS, GMBH,)
BARRANQUILLA HOLDINGS, SA,)

Relief Defendants.)

**PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS
IN COMPLIANCE WITH NON-PARTY SUBPOENA**

I. Introduction

The Securities and Exchange Commission moves to compel non-party law firm Bush Ross, P.A., to produce documents responsive to a validly issued subpoena for records of the firm's trust account. Bush Ross acknowledges it has documents responsive to the subpoena, but improperly asserts they are subject to the attorney-client privilege and is therefore not producing them.

In fact, the records the Commission seeks are not privileged because they are not communications between an attorney and a client created or maintained for the purpose of securing or rendering legal advice. The documents in question are wire transfer records showing Bush Ross' receipt of funds from clients and disbursements to clients and non-clients alike. Under well settled case law in the Eleventh Circuit and elsewhere, records documenting receipt and transfer of funds by a law firm are not privileged. The Commission therefore asks the Court to compel Bush Ross to comply with the subpoena and produce responsive documents.

II. Factual Background

The Court is well aware of the facts of this lawsuit from the Commission's motions for a temporary asset freeze and a preliminary injunction, so it is not necessary to repeat the facts in detail here. In summary, the Commission alleges several Defendants orchestrated fraudulent promotional campaigns that artificially inflated the price of two thinly-traded startup companies, Concorde America, Inc. ("Concorde") and Absolute Health and Fitness, Inc. ("Absolute Health"), both of which had no assets, no revenues, and no business. The result of the campaigns, which featured false and misleading news releases, analyst reports, videos, and spam telephone and email campaigns, was to drive the price of both companies' stock up so that some of the Defendants could sell it, transfer the proceeds offshore, and make huge profits.

The Commission sought an emergency, *ex parte*, temporary asset freeze when it filed the complaint in February 2005 to stop the flow of investors' funds offshore. The Court granted the motion and entered an order freezing the assets of the relief defendants and Defendants Donald Oehmke and Bryan Kos, which remains in effect pending the Court's ruling on the Commission's motion for a preliminary injunction.

The Commission's motion for an asset freeze was supported by the Declaration of Timothy Galdencio, a Commission accountant. The declaration is attached to this motion for the Court's convenience as Exhibit 1. In the declaration, Galdencio reviewed certain brokerage account, bank account, and wire transfer records and documented trading in Concorde and Absolute Health stock and disbursement of the proceeds during the promotional campaign. *See* Ex. 1. Several of the transfers are relevant to this motion. As set forth in Paragraphs 12(a) and (b) to his declaration, Galdencio documented the transfer of more than \$5.3 million in proceeds from brokerage accounts where two of the Relief Defendants traded in Concorde and Absolute Health stock to a specific SunTrust Bank account during the fraudulent promotion. Ex. 1 at ¶¶12(a) and (b). That account turned out to be Bush Ross' IOTA trust account (which the Florida Bar requires all law firms to keep).

Accordingly, to determine what happened to the \$5.3 million in trading proceeds that Bush Ross received, the Commission issued a subpoena pursuant to Federal Rule of Civil Procedure 45 to Bush Ross on August 2, 2005 for records related to the receipt and transfer of funds in and out of the account.¹ The subpoena is attached as Exhibit 2 to this motion.² Bush Ross responded to the subpoena, both orally and in writing. As discussed in the firm's August 17, 2005 letter to the Commission, Bush Ross acknowledges having documents responsive to subpoena, which consist of wire transfer confirmation sheets, written instructions to disburse

¹ Other records the Commission has obtained in discovery suggest that additional transfers in and out of the Bush Ross account may have come from trading proceeds. For example, records produced by the First Curacao International Bank – where the Relief Defendants transferred the majority of their trading proceeds – show hundreds of thousands of dollars being sent from that bank back to the Bush Ross trust account. Thus, tracking the \$5.3 million is not the only reason the Commission issued the subpoena.

² The Commission simultaneously issued a subpoena to SunTrust Bank for the account records. SunTrust is in the process of producing records, but the law firm has more complete and detailed records than the bank. Therefore, the Commission still needs the Bush Ross records to determine how the Defendants and the Relief Defendants disposed of the proceeds of the fraud alleged in this case.

funds from the trust account, and written inquiries as to account balances. Jeremy P. Ross Letter of August 17, 2005, attached as Exhibit 3, at 1.

However, as further set forth in the August 17 letter and as discussed in several follow-up telephone conversations between counsel for the Commission and Mr. Ross (the most recent of which occurred on November 3, 2005), Bush Ross will not produce the vast majority of the documents because former clients of the firm, on whose behalf the transactions in question were undertaken, have asserted the records are subject to the attorney-client privilege.³ However, as explained in the next section, the types of records the Commission seeks are not privileged, and the Court should order Bush Ross to produce them.

III. Memorandum of Law

It is well settled that the attorney-client privilege protects only communications between an attorney and his client made for the purpose of securing legal advice. *In re Grand Jury Subpoena (Lipnack)*, 831 F.2d 225, 227-28 (11th Cir. 1987); *United States v. McQuillan*, 1994 WL 692851 at *2 (M.D. Fla. Dec. 12, 1994). It is equally well established that attorney-client communications related to areas other than legal counseling, such as business advice or financial transactions on behalf of a client, are not privileged. *Lipnack*, 831 F.2d at 227-28; *In re Grand Jury Subpoena Duces Tecum*, 732 F.2d 1032, 1037 (2nd Cir. 1984); *McQuillan*, 1994 WL 692851 at *2.

Here, Bush Ross asserts that trust account records consisting of confirmations of wire transfers in and out of its trust account, written instructions to disburse funds from its trust

³ As set forth in the August 17 letter, Bush Ross has records relating to the following entities: Concorde; DaSilva; Chiang Ze Capital; and Ryzcek Investments (all of whom are parties to the case); and non-parties Jeremy Jaynes; Ventana Consultants; BK Ventures; and Corporate Financial Consultants. The latter three entities were set up by or have direct connections to Defendants Oehmke and Kos. Concorde has waived its attorney-client privilege (to the extent one exists) and Bush Ross is producing responsive documents related to Concorde. The remaining people and entities have not waived the privilege, and so Bush Ross will not produce records pertaining to those entities absent a court order.

account, and written inquiries as to account balances, are privileged. But it is plain from the face of Bush Ross' description of these documents that they are not communications between attorney and client for the purpose of securing legal advice, and thus are not privileged. Rather, they are run-of-the-mill financial records and related documents reflecting business transactions. Such records are not privileged. *Lipnack*, 831 F.2d at 227-28 (“an attorney who acts as his client’s agent for receipt or disbursement of money or property to or from third parties is not acting in a legal capacity, and records of such transactions are not privileged”).

Numerous courts, both in this circuit and elsewhere, have held in virtually identical situations that an attorney’s trust account records, and in particular those documenting receipt and disbursement of funds on behalf of a client, are not privileged. For example, in *In re Grand Jury Investigation (Heller)*, 921 F.2d 1184 (11th Cir. 1991), a grand jury subpoenaed trust account records of attorney Heller during an investigation of whether his clients were laundering money through the firm. Heller, objected, but the District Court judge upheld the subpoena, concluding that because the Florida Bar required the attorney to keep the trust account records, they were not privileged. *Id.* at 1185. The Eleventh Circuit affirmed. *Id.* See also *McQuillan*, 1994 WL 692851 at *2 (the fact that the Florida Bar requires attorneys to keep trust account records and produce them for inspection by the Bar indicates the lack of confidentiality in attorney trust accounts).

The situation is the same here. The Florida Bar requires Bush Ross to keep trust account records documenting receipt of and disbursement of client and other funds. See Rule 5-1.2(b) of the Rules Regulating the Florida Bar. The records the Commission seeks through its subpoena are records documenting receipt and disbursement of client and other funds. Because the Florida

Bar requires the firm to keep the records, they are not privileged under *Heller*, and the Court should compel the firm to produce them.

Similarly, other courts have denied attorneys' assertion of privilege over financial and trust account records. In *SEC v. First Sec. Bank of Utah*, 447 F.2d 166 (10th Cir. 1971), two lawyers objected to Commission subpoenas seeking their trust account records. Both the District Court and the Tenth Circuit overruled the objections and ordered the lawyers to produce records. In so doing, the Circuit Court repeated the well known proposition that the attorney-client privilege applies only to communications related to legal advice, then stated that "the deposit and disbursement of money in a commercial checking account are not confidential communications." *Id.* at 167. The court reasoned that "a client may not immunize his business transactions from discovery by the device of a lawyer's commercial checking account." *Id.* See also *United States v. Leventhal*, 961 F.2d 936 (11th Cir. 1992) (records documenting receipt of funds from client into trust account could not be withheld from IRS summons on the grounds they were privileged because receipt of fees are not normally within the attorney-client privilege); *In re Grand Jury Proceedings (Rabin)*, 896 F.2d 1267 (11th Cir. 1990) (per curiam) (records related to money received from client were not privileged and had to be produced to grand jury); *United States v. Davis*, 636 F.2d 1028, 1044 and n.19 (5th Cir. Unit A 1981) (documents relating to trust funds are not privileged because attorney merely acts as a scrivener); *Gannett v. First Nat'l Bank of N.J.*, 546 F.2d 1072 (3rd Cir. 1976) (attorney-client privilege does not cover bank records derived from an attorney's trust account; therefore IRS was entitled to see cashier's checks deposited in attorney's trust account because they were not privileged); *Pollock v. United States*, 202 F.2d 281 (5th Cir. 1953) (information showing client gave cash to attorney, who then purchased real

estate on client's behalf, was not privileged because the attorney was not rendering legal advice in his professional capacity).

The records Bush Ross refuses to produce are those reflecting receipt and disbursement of funds both to and from clients and third parties through its trust account. These records have nothing to do with the rendering of legal advice, and thus the Court should compel the firm to produce records responsive to the subpoena.

As a final matter, the manner in which Bush Ross has asserted the privilege is improper. The firm has asserted a wholesale privilege over all the documents in question. This does not satisfy their burden under the law. They cannot simply claim the entire group of documents are privileged. They must assert the privilege on a document-by-document basis. *Lipnack*, 831 F.2d at 227 (attorney seeking to quash a subpoena must assert the attorney-client privilege on a document-by-document basis); *McQuillan*, 1994 WL 692851 at *2 (blanket assertion of privilege over "a large amount of material" is usually unacceptable).

IV. Conclusion

Because the firm has not shown on a document-by-document basis that any of the material the Commission seeks is privileged, and indeed *cannot* under the authorities discussed above, the Court should issue an order compelling Bush Ross to produce documents responsive to the Commission's subpoena.

Respectfully submitted,

November 17, 2005

By: s/Robert K. Levenson
Robert K. Levenson
Florida Bar No. 0089771
Regional Trial Counsel

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 982-6341
Facsimile: (305) 536-4154
Email: levensonr@sec.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by U.S. Mail this
17th day of November, 2005 on the following:

Sotiris Planzos, Esq.
Patton Boggs, LLP
2550 M Street, N.W.
Washington, D.C. 20037-1350
Counsel for Defendant Donald Oehmke
Telephone: (202) 457-6457
Facsimile: (202) 457-6315

Richard Serafini, Esq.
Greenberg Traurig, et al.
401 E. Las Olas Blvd., Suite 2000
Fort Lauderdale, FL 33301
Counsel for Defendant Donald Oehmke
Telephone: (954) 768-8256
Facsimile: (954) 765-1477

Jeremy Ross, Esq.
Bush Ross Gardner Warren & Rudy, P.A.
220 S. Franklin Street
Tampa, FL 33602
*Counsel for Defendants Hartley Lord
and Concorde America, Inc. and non-party Bush Ross, P.A.*
Telephone: (813) 224-9255
Facsimile: (813) 223-9620

Steven Gourley, Esq.
Malek & Malek
3625 Del Amo Boulevard, Suite 350
Torrance, CA 90503
Counsel for Andrew Kline
Telephone: (310) 540-5100
Facsimile: (310) 542-4654

William Nortman, Esq.
Akerman Senterfitt
350 Las Olas Blvd., Suite 1600
Fort Lauderdale, FL 33301-4217
Co-Counsel for Defendant Bryan Kos
Telephone: (954) 463-2700
Facsimile: (954) 463-2224

David J. Levenson, Esq.
7947 Turnquest Dr.
Potomac, MD 20854
Co-Counsel for Defendant Bryan Kos
Telephone: (301) 299-8092
Facsimile: (301) 299-8093

Paul A. Spreadbury, *pro se*
8652 Bellemeadow Blvd.
Pensacola, FL 32514
Telephone: (850) 478-1725
Facsimile: (707) 982-1873

Thomas Heysek, *pro se*
P.O. Box 2515
San Francisco, CA 94126

s/Robert K. Levenson
Robert K. Levenson, Esq.

EXHIBIT 1

DECLARATION OF TIMOTHY J. GALDENCIO

Pursuant to 28 U.S.C. § 1746, the undersigned states as follows:

1. My name is Timothy J. Galdencio. I am over twenty-one years of age and have personal knowledge of the matters set forth herein.

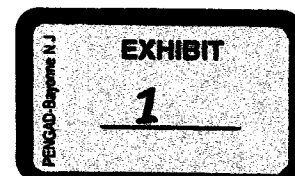
2. I am a certified public accountant in the State of Florida and am employed as a staff accountant with the Southeast Regional Office of the United States Securities and Exchange Commission ("Commission").

Documents Reviewed – Transfer Agent Records

3. I personally reviewed records of Interwest Transfer Company, Inc. ("Interwest"), a stock transfer company located in Salt Lake City, Utah. A true and correct copy is attached hereto as Composite Exhibit A.

4. I reviewed offering documents, stock certificates, and transfer records relating to the purchase of 10 million shares of Concorde America, Inc. ("Concorde") stock for \$1 million by Ventana Consultants of Pennsylvania, LLC ("Ventana of PA"), and the subsequent transfer of Concorde stock certificate number 2109 issued to Ventana of PA (see attached Composite Exhibit A), in the following manner:

- a. 1 million shares issued to Barranquilla Holdings, SA ("Barranquilla"), certificate numbers 2128 and 2129. A true and correct copy is attached hereto as Exhibit B.
- b. 2 million shares issued to Vanderlip Holdings, NV ("Vanderlip"), certificate numbers 2110, 2111, 2112, and 2113. A true and correct copy is attached hereto as Exhibit C;



- c. 1 million shares issued to Chiang Ze Capital, AVV ("Chiang Ze"), certificate numbers 2126 and 2127. A true and correct copy is attached hereto as Exhibit D;
 - d. 2 million shares issued to Da Silva, SA, ("Da Silva"), certificate numbers 2114, 2115, 2116, and 2117. A true and correct copy is attached hereto as Exhibit E;
 - e. 2 million shares issued to Stromberti Esse GHBH, certificate numbers 2122, 2123, 2124, 2125. See attached Composite Exhibit A;
 - f. 2 million shares issued to Jonti Warburg, Ltd., certificate numbers 2118, 2119, 2120, and 2121. See attached Composite Exhibit A.
5. Based on my review of the foregoing records, I established a basis price of \$0.10 per share of Concorde stock. See attached Composite Exhibit A.

Documents Reviewed – Brokerage Account Records

6. This declaration is further based upon my personal review of records of Newbridge Securities Corp. ("Newbridge"), Sunstate Equity Trading, Inc. ("Sunstate) and Electronic Access Direct, Inc. ("Electronic Access"), including documents that were obtained through electronic requests for trading information to broker dealers trading in the securities of Concorde and Absolute Health and Fitness, Inc. ("Absolute Health"). These requests were forwarded through the Securities Industry Automation Corporation ("SIAC") to brokerage firms who responded electronically to SIAC, providing date, time, price, and other data relating to each purchase and sale of Concorde and Absolute Health stock. I reviewed the data for the following brokerage accounts:

- a. Barranquilla, an Anguillan International Business Company (“IBC”), account number 0101-LC-395443(0)8, produced by Newbridge (a true and correct copy is attached hereto as Exhibit F) and account number 14302137, produced by Electronic Access (a true and correct copy is attached hereto as Exhibit G);
 - b. Vanderlip, an Anguillan IBC, account number 42021907, produced by Sunstate. A true and correct copy is attached hereto as Exhibit H;
 - c. Chiang Ze, a Trinidadian corporation, account number 07-42020347, produced by Sunstate (a true and correct copy is attached hereto as Exhibit I) and account number 14300867, produced by Electronic Access (a true and correct copy is attached hereto as Exhibit J);
 - d. Da Silva, an Anguillan IBC, account number 07-42021915, produced by Sunstate. A true and correct copy is attached hereto as Exhibit K; and
 - e. Ventana Consultants, Ltd. (“Ventana”), a Michigan corporation, account number LC30000095402(2) produced by Newbridge (a true and correct copy is attached hereto as Exhibit L).
7. My review of trades of Concorde revealed the following:
- a. Barranquilla – Approximately 1,540,360 shares of Concorde were sold from August 5 to August 11, 2004 and approximately 1,540,360 shares (including shares issued under stock certificate numbers 2128 and 2129) were purchased through the Pink Sheets market (“Pink Sheets”) during that same period. Assuming a basis price of \$0.10 per share, Barranquilla realized a net gain of approximately \$5,233,753 from sales and purchases

of Concorde from August 5 to August 11, 2004. A true and correct copy of my analysis is attached hereto as Exhibit M.

- b. Vanderlip - Approximately 1,647,530 shares of Concorde were sold from August 5 to August 11, 2004, and approximately 1,647,530 shares (including shares issued under stock certificate numbers 2110, 2111, 2112, and 2113) were purchased over the Pink Sheets during that same period. Assuming a basis price of \$0.10 per share, Vanderlip realized a net gain of approximately \$4,330,038 from sales and purchases of Concorde from August 5 to August 11, 2004. A true and correct copy of my analysis is attached hereto as Exhibit N.
- c. Chiang Ze - Approximately 522,835 shares of Concorde were sold from July 28 to August 10, 2004, and approximately 522,835 shares (including shares issued under stock certificate numbers 2126 and 2127) were purchased over the Pink Sheets during that same period. Assuming a basis price of \$0.10 per share Chiang Ze realized a net gain of approximately \$1,696,611 from sales and purchases of Concorde from July 28 to August 10, 2004. A true and correct copy of my analysis is attached hereto as Exhibit O.
- d. Da Silva - Approximately 499,495 shares of Concorde were sold from July 27 to August 5, 2004, and approximately 499,495 shares (including shares issued under stock certificate numbers 2114, 2115, 2116, and 2117) were purchased over the Pink Sheets during that same period. Assuming a basis price of \$0.10 per share, Da Silva realized a net gain of

approximately \$1,794,910 from sales and purchases of Concorde from July 27 to August 5, 2004. A true and correct copy of my analysis is attached hereto as Exhibit P.

- e. Ventana – purchased 10,500 shares of Concorde on July 27, which were then sold on August 3, 2004. Ventana realized a net gain of approximately \$5,265 from sales and purchases of Concorde from July 27 to August 3, 2004. A true and correct copy of my analysis is attached hereto as Exhibit Q.

8. I also reviewed offering documents, stock certificates, and transfer records relating to the purchase of 14.5 million shares of Absolute Health stock for \$85,000 by Victoria Management Ltd., IMA Advisors, Inc. and Brazos Partners. True and correct copies of Interwest documents related to these transactions are attached hereto as Composite Exhibit R. The certificates numbered 3074 to 3078, 3081, 3084 - 3098 issued to these entities were subsequently transferred in the following manner:

- a. 6.0 million shares issued to Ryzcek Investments (“Ryzcek”), certificate numbers 3099 - 3107, 3110. True and correct copies of certificates are attached hereto as Exhibit S;
- b. 4.5 million shares issued to Barranquilla, certificate numbers 3109, 3111. True and correct copies of these certificates are attached hereto as Exhibit T;
- c. 3.5 million shares issued to Chiang Ze, certificate number 3108. A true and correct copy of this certificate is attached hereto as Exhibit U;

- d. 100,000 shares issued to Ventana certificate number 3116. A true and correct copy of this certificate is attached hereto as Exhibit V;
 - e. 400,000 shares issued to Corporate Financial Consultants Ltd. ("CFC"), certificate numbers 3112 – 3115. True and correct copies of these certificates are attached as Exhibit W;
9. Based on my review of the foregoing records, I established a basis price of \$0.01 per share of Absolute Health stock. See Composite Exhibit R.
10. My review of trades of Absolute Health revealed the following:
- a. Barranquilla – Newbridge account - Approximately 25,300 shares of Absolute Health were sold from August 5 to August 16, 2004, and approximately 25,300 shares were purchased and sold during that same period (including shares issued under stock certificate numbers 3109 and 3111), Barranquilla realized a net gain of approximately \$10,990 from August 5 to August 16, 2004. A true and correct copy of my analysis is attached hereto as Exhibit X.
 - b. Barranquilla – Electronic Access account - Approximately 4,533,819 shares of Absolute Health were sold from November 15 to December 3, 2004 and approximately 4,533,819 shares were purchased during that same period (including shares issued under stock certificate numbers 3109 and 3111), Barranquilla realized a net gain of approximately \$9,394,156 from sales and purchases of Absolute Health from November 15 to December 3, 2004. See attached Exhibit X.

- c. Chiang Ze – Sunstate account – Approximately 521,655 shares of Absolute Health were sold from June 14 to August 24, 2004, and approximately 521,655 shares were purchased during that same period (including shares issued under stock certificate number 3108), Chiang Ze realized a net gain of approximately \$623,757 from sales and purchases of Absolute Health from June 14 to August 24, 2004. A true and correct copy of my analysis is attached hereto as Exhibit Y.
- d. Chiang Ze – Electronic Access account – Approximately 3,211,743 shares of Absolute Health were sold from October 13 to December 10, 2004, and approximately 3,211,743 shares were purchased during that same period (including shares issued under stock certificate number 3108), Chiang Ze realized a net gain of approximately \$4,427,965 from sales and purchases of Absolute Health from October 13 to December 12, 2004. See attached Exhibit Y.

11. In addition, Ventana sold approximately 100,000 shares of Absolute Health between June 14 and June 18, 2004 (including shares issued under stock certificate number 3116), Ventana realized a net gain of approximately \$81,000 from sales and purchases of Absolute Health from July 27 to August 3, 2004. A true and correct copy of my analysis is attached hereto as Exhibit Z.

Documents Reviewed – Wire Transfer Records

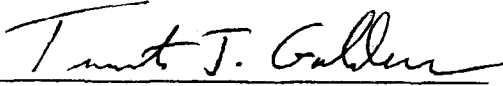
12. I also reviewed records of wire transfers received from Newbridge, Sunstate, Electronic Access, and Penson Financial Services Inc., the clearing firm for each of these stock brokerage firms. My review revealed the following:

- a. Ryzcek – \$1,172,876 was transferred from Ryzcek’s account to Sun Trust Bank account number 41001143506 between June 29 and August 5, 2004, for the benefit of Ryzcek.
- b. Chiang Ze - \$4,134,865 was transferred from Chiang Ze’s account to Sun Trust Bank Bank account number 41001143506 between July 28 and August 11, 2004. Also, \$4,858,712 was transferred from Chiang Ze’s account to First Curacao International Bank, N.V., (“First Curacao”), for the benefit of Chiang Ze account number 01-801-200455-01.
- c. Barranquilla - \$9,213,425 was transferred from Barranquilla’s account to Barclay’s Bank, for the benefit of First Curacao for further credit to Barranquilla’s account number SA 01-801-200637-01.
- d. Da Silva – \$1,769,005 was transferred from Da Silva’s account to an unknown destination.

Documents Reviewed – Trading History

13. I also have reviewed the 52-week high and low stock prices for Concorde as reported by Yahoo! Finance, which demonstrate that the stock price declined from a 52-week high of \$8.90 on August 12, 2004, to \$2.51 the next day then climbing to \$5.40 on August 18 followed by a steady decline to a low of \$0.16 on November 2, 2004.

14. I also have reviewed the 52-week high and low stock prices for Absolute Health as reported by Yahoo! Finance which demonstrate that the stock price declined from a 52-week high of \$2.75 on August 12, 2004, to a 52-week low of \$0.55 on October 20 before achieving new 52-week highs of \$2.86 on November 30 and then \$5.09 the next day, December 1, 2004.


Timothy J. Galdencio

Executed on February 11, 2005

EXHIBIT 2

United States District Court

SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

SUBPOENA IN A CIVIL CASE

v.

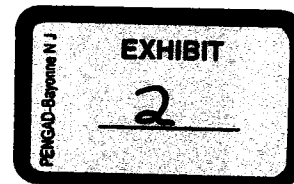
CASE NUMBER: 05-80128-CIV-ZLOCH/SNOW

CONCORDE AMERICA, INC.,
ABSOLUTE HEALTH AND FITNESS, INC.,
HARTLEY LORD, DONALD E. OEHMKE,
BRYAN KOS, THOMAS M. HEYSEK,
ANDREW M. KLINE, AND PAUL A. SPREADBURY

Defendants,

DASILVA, SA, VANDERLIP HOLDINGS, NV,
CHIANG ZE CAPITAL, AVV,
RYZCEK INVESTMENTS, GMBH,
BARRANQUILLA HOLDINGS, SA,

Relief Defendants.



TO: Jeremy Ross, Esq.
Bush Ross, P.A.
220 South Franklin Street
Tampa, Florida 33602-5330

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM
DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): See Attachment for list of documents to produce the address below, via US Mail or Federal Express

PLACE

Securities and Exchange Commission
801 Brickell Avenue, Suite 1800, Miami FL 33131

DATE AND TIME
August 8, 2005
at 9:00 a.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure. 30(b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE


Attorney for Plaintiff

August 2, 2005

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Linda S. Schmidt, Senior Trial Counsel
U.S. Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131, (305) 982-6315

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

PROOF OF SERVICE

served	DATE	PLACE
	SERVED BY (PRINT NAME)	
SERVED BY (PRINT NAME)		MANNER OF SERVICE.
		TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the material or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Attachment to Subpoena Duces Tecum

A. DEFINITIONS AND INSTRUCTIONS

1. You may comply with this subpoena by producing legible copies of the responsive documents. The SEC retains the right to inspect the originals of the documents produced prior to the trial of this cause.

2. "Documents" includes all writings and graphic matter of any kind, including, but not limited to, the original, all interim drafts, and each copy containing interlineation, deletions, marginal notes, or which is otherwise non-conforming and which shall include, but not be limited to, any file, financial statement or report, note, bank statement, canceled checks, analysis, deposit slip, credit and debit memoranda, wire transfer, telex, bill (including telephone and credit card), correspondence, prospectus, script, transcript, offering materials, e-mails, ledger sheet, receipt, transcript, photograph, sketch, chart, graph, diagram, diary, telephone log, appointment calendar, telegram, telecopy, fax, diary, mailgram, accounting work paper, report, computer printout, filing with any state or federal agency, inter- or intra-office communication, minutes of meetings, invoices, and any tangible items of readable or visual material, whether printed, typed, handwritten, microfilmed, or recorded on tape, computer harddrive or disk or other means of recording or data entry.

3. "Relating or referring to" a given subject matter means any document or communication that constitutes, contains, embodies, comprises, reflects, identifies, describes, analyzes, or in any way relates to that subject, including, without being limited to, cover letters and correspondence sent in connection with any document.

4. Unless otherwise stated, the time period covered by these requests shall be from January 1, 2004, through the date of service of this subpoena.

B. DOCUMENTS REQUESTED

1. Please produce any and all documents relating to the Bush Ross, P.A. Trust Account(s) including, but not limited to, any bank accounts held at SunTrust Bank, in the possession or subject to the control of Bush Ross, P.A. or any subsidiaries, predecessors, affiliates, or agents thereof, made, dated or pertaining to any of the individuals or entities listed below:

1. Concorde America, Inc.;
2. Absolute Health and Fitness, Inc.;
3. DaSilva, SA;
4. Vanderlip Holdings, NV;
5. Chiang Ze Capital, AVV;
6. Ryzcek Investments, GMBH;
7. Barranquilla Holdings, SA;
8. Keel Enterprises;
9. Bovee Enterprises, LLC;

10. Jasmine Takamine, Sdn Bdh;
11. Stromberti Esse, GbmH;
12. Ventana Consultants, Ltd.;
13. Ventana of Pennsylvania;
14. Storage Innovation Technologies, Inc.;
15. Storage Internet Communications, Inc.;
16. Brooke Holdings, SA;
17. Jonti Warburg, Ltd.;
18. Allied Funding Group, Inc.;
19. Turquoise Investments, Ltd.;
20. Sterling ACS Ltd;
21. Sterling Trust, Ltd. (Anguilla);
22. Sterling Management, LLC;
23. IMA Advisers, Inc.;
24. Brazos Partners;
25. Victoria Management, Ltd.;
26. Investment Profiles, LLC;
27. Asian American Capital;
28. Asian American Capital Management;
29. Asian American Capital Partners;
30. Thomas Heysek Associates Company, Inc.;
31. Donald E. Oehmke;
32. Bryan Kos;
33. Jeremy Jaynes;
34. Hartley Lord;
35. Andrew Kline;
36. Thomas Heysek;
37. Francis Gaskins;
38. Caroline Archambault;
39. Warren Hansen;
40. Erica Hansen;
41. Ellen Dembski;
42. Mark Rice;
43. Howell Woltz;
44. Vernice Woltz;
45. Connie Oysterman Webb
46. Scott Campbell;
47. BK Ventures;
48. Corporate Financial Consultants;
49. Lucky 123;
50. Dude Enterprises;
51. Internet Profiles, LLC;
52. Internet Promotions, LLC a/k/a Internet Promos, LLC;
53. Internet Opportunities, LLC;
54. JDJ Associates;
55. Alpine Properties, LLC;

56. **Steamline Capital Group, Inc.;**
57. **Park City Properties, LLC;**
58. **Freewebland, Inc.**
59. **Merrydale Partners Group;**
60. **I Max Direct, Inc.;**
61. **Sunstate Equity Trading;**
62. **Hyperion Trading;**
63. **First Research Financial;**
64. **Daniel Kantrowitz; and**
65. **Wexton Investments**

EXHIBIT 3

BUSH | ROSS

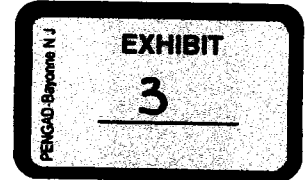
ATTORNEYS AT LAW

220 South Franklin Street
Tampa, Florida 33602-5330
(813) 224-9255 (Phone)
(813) 228-9620 (Fax)
www.bushross.com

Mailing Address:
Post Office Box 3913
Tampa, Florida 33601-3913

August 17, 2005

Linda S. Schmidt, Esq.
United States Securities and Exchange Commission
Southeast Regional Office
801 Brickell Avenue, Suite 1800
Miami, Florida 33131



Re: SEC v. Concorde America, Inc. (the "Company")
Case No. 05-80128-CIV-Zloch

Dear Ms. Schmidt:

I acknowledge receipt of the staff's subpoena, dated August 2, 2005 (the "Subpoena"), requiring production by the Bush Ross, P.A. law firm (the "Firm") and myself of all documents within the possession of either which comprise or relate to transactions undertaken through the medium of Firm trust accounts and on behalf of or otherwise with respect to entities and individuals identified in the subpoena. Although the Subpoena directs a document transmittal date of August 8, discussion held in my absence from the office between you and my legal assistant has caused us to understand that an informal extension of that transmittal date has been granted to August 19. I appreciate that accommodation.

With regard to our compliance, I advise that: (a) the Firm (f/k/a Bush Ross Gardner Warren & Rudy, P.A.) is not the successor in interest to any other entity, has no affiliates (other than its individual shareholders) or subsidiaries, and is not the principal in any agency relationship having anything to do with the captioned action; (b) the Firm maintains with SunTrust Bank a single IOTA Trust Account, as well as a number of money market trust accounts established on behalf of a variety of clients; (c) of the 65 persons named in the Subpoena, the Firm's trust account records reflect transactions undertaken with respect only to the following: the Company, DaSilva, SA, Chiang Ze Capital, AVV, Ryzcek Investments, GMBH, Ventana Consultants, Ltd. ("Ventana"), Jeremy Jaynes, BK Ventures and Corporate Financial Consultants, LC ("CFC"); (d) each of such transactions was undertaken through the Firm's IOTA trust account; (e) the records within the Firm's possession which would respond to the Subpoena include wire transfer (incoming and outgoing) confirmation sheets, written instructions to disburse funds from such trust account, written inquiries as to trust account balances and related documents; (f) all such documents as related to the Company have heretofore been transmitted to your offices; and (g) in my individual capacity I am in possession of no documents to which the Subpoena has reference.

As you are aware, Ventana is currently represented by Messrs. Planzos and Serafini, and each of BK Ventures and CFC by Messrs. Levenson and Nortman. Additionally, Mr. Jaynes is represented by Scott Wellons. I have, accordingly, provided Messrs. Planzos, Levenson and Wellons with a copy of the Subpoena and requested guidance as to whether their respective clients wish to assert an attorney-client

August 17, 2005

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BUSH | ROSS
ATTORNEYS AT LAW

privilege with respect to such records. Each has responded with a request that I assert such privilege to its maximum level of applicability¹, and Mr. Levenson has further requested that the privilege be asserted with respect to all records applicable to entities with which Brian Kos, the principal of each of CFC and BK Ventures, was affiliated at the time of their creation. Inasmuch as each of the Firm's trust account transactions undertaken on behalf of an above-named relief defendant was done so on the basis of an instruction provided by a representative or agent of CFC, I have assumed that the Levenson directive was intended to apply to such defendants².

Given that circumstance, I have reviewed Rule 4-1.6 (Confidentiality of Information) of the Rules Regulating the Florida Bar³ which states under subdivision (a) that a "lawyer shall not reveal information relating to representation of a client except as stated in subdivisions (b), (c) and (d), unless the client consents after disclosure to the client." As you will observe from a review of the cited subdivisions, none apply currently and only subdivision (d) (disclosure following tribunal order and permitted exhaustion of all appellate remedies) has possible future applicability. The official comment appended to such Rule further states in applicable part that:

"The principle of confidentiality is given effect in 2 related bodies of law, the attorney-client privilege . . . in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a lawyer may be . . . required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or by law."

Accordingly, pending our receipt of a court order compelling production by the Firm of the records which I have been instructed by Messrs. Planzos, Levenson and Wellons to withhold, I am unable to effect further compliance with the directive of the Subpoena, and in that regard you may treat this letter as an objection effected under Rule 45(c)(2)(B), Fed.R.Civ.P.

Yours truly,


Jeremy P. Ross

Cc: David Levenson, Esq.
Sotiris Planzos, Esq.
Scott Wellons, Esq.

355830.1

¹ Mr. Planzos has noted, however, that his response is dictated by his absence from the office and that upon his return later this month he may be willing to modify that instruction.

² I have requested Mr. Levenson's confirmation of this assumption but to date have not received the same. Should I do so I will advise.

³ Such rules, as you recognize, govern the professional conduct of all members of that Bar.

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ATTORNEYS AT LAW

220 South Franklin Street
Tampa, Florida 33602-5330
(813) 224-9255 [Phone]
(813) 223-9620 [Fax]
www.bushross.com

Mailing Address:
Post Office Box 3913
Tampa, Florida 33601-3913

JEFFREY W. WARREN
jwarren@bushross.com
(813) 204-6423 [Direct Line]

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.

Superior Court-Palo Alto Courthouse
December 7, 2005
Page 2

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

Superior Court-Palo Alto Courthouse
December 7, 2005
Page 3

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.

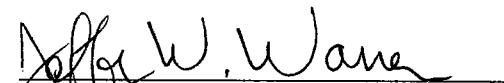
To date, our firm has not received any formal service of process. We became aware of this litigation from Kirsch's e-mail message sent to me on December 2, 2005.

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.

Steve Kirsch
13930 La Paloma Rd Los Altos Hills, CA 94022
(650) 279-1008 fax: (408) 716-2493

December 12, 2005

Commissioner James P. Madden
Santa Clara Superior Court
270 Grant Avenue, Dept 86
Palo Alto, CA 94306

Re: Response to Bush Ross letter of December 7, 2005

Case number: 2-05-SC-002909

Dear Commissioner Madden:

I am writing this letter in response to the letter from Bush Ross dated December 7, 2005.

I realize that no response is necessary since their ex parte request will not be granted without a hearing, but in advance of any such hearing that may be calendared, I wanted to set the record straight and provide you with some background information in this case.

As we all know, courts are supposed to find the truth and administer justice.

That's why I brought this case. To find the truth and seek justice.

On the other hand, the Defendant, Bush Ross P.A., is going to be doing everything it possibly can to ensure that the truth remains hidden. Their letter to you is a just a perfect example of how an unethical law firm operates to both hide and distort the truth so that they can get off the hook for their actions. I'm sure you'll see more examples as this case proceeds.

By way of background, I received 18 unsolicited faxes that I determined (through various independent methods) all came from the same entities. I subpoenaed fax.com to tell me their client who sent these faxes and they indicated that these faxes were sent for Camelot Promotions. I also verified this from my database of all fax.com faxes; all the faxes I got were in the Camelot Promotions directory. Therefore, having two pieces of independent evidence saying the exact same thing, I subpoenaed the bank records of Camelot Promotions to find out who paid them. Those bank records indicated that they received close to \$500,000 in 7 wire transfers from Bush Ross P.A. during the time the faxes were sent. I know from my discussions with Fax.com's CFO, Tom Roth, that Fax.com requires payment up front before sending the faxes so the people who are involved in making these payments are liable as "senders" of the faxes (i.e., it is the principals and their agents, such as Bush Ross, who are liable). This is the longstanding interpretation of the federal Telephone Consumer Protection Act that the Federal Communications Commission has issued (see *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Mem. Opn. and Order (adopted July 26, 1995; released Aug. 7, 1995) 10 F.C.C.R. 12391, 12407-12408 [1995 F.C.C. LEXIS

5179, pp.**38-**39] , fns. omitted, reconsideration granted on another point in *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order on Further Reconsideration (adopted April 3, 1997, released April 10, 1997) 12 F.C.C.R. 4609. The FCC's interpretation is due "great deference." *Griggs v. Duke Power Co.*, 401 U.S. 424, 434 (1971); *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 844 (1984).)

Therefore, I asked Bush Ross P.A. to explain the money transfers and as you see from their letter and declaration, they claim to know nothing about such transfers.

Half a million bucks from their client trust account (which requires extensive documentation for all transfers) and they know nothing?!? Give me a break. Nobody is going to believe that one.

So I sure didn't believe it. Especially since other records and testimony I obtained showed Bush Ross P.A. also paid virtually all of the other people involved in this massive pump-and-dump fraud, which may be the largest pump and dump fraud in US history (a total "take" of close to \$100M according to estimates by one of the perpetrators).

The SEC also didn't believe Bush Ross's "Sgt. Schultz defense" of "we know nothing" either. The SEC has also subpoenaed the Bush Ross trust account records which, as the SEC pointed out to the court, are NOT subject to attorney-client privilege like Bush Ross erroneously claimed. I know that because I've been following the federal docket using my Pacer account.

In short, the Bush Ross law firm is in deep doo-doo and they are going to use every trick in the book (and spare no legal expense) to get off the hook. Numerous pieces of evidence (e-mails to/from Jere Ross, admission of the Defendant, bank wires, testimony of others) are consistent with the allegation that Bush Ross co-founder, Jere Ross, was a co-conspirator in this fraud and by the principle of respondeat superior, the firm is liable as well since all of Ross's actions were in the scope of his employment with the firm.

Let's take a look at their letter as an example of how they are trying to obfuscate the truth and frustrate this court's duty to find the truth:

1. They'd like you to dismiss based on a lack of personal jurisdiction over the firm and they want you to quash the subpoena that I sent to the SEC. However, they haven't made a proper motion before the court to do that. They need to file a motion form and get a court date where their motion can be heard. There is simply no justification for doing this as an ex parte matter. Secondly, they want to quash my subpoena but they admit they don't even know what it contains because they've only seen page 1. They've otherwise stated no legal basis for seeking an order quashing the subpoena. Just because they don't have a copy of the full subpoena is not a legal basis for seeking its quashal. And then they tell you (at the

bottom of pg. 2) this giant whopper: that the subpoena should be quashed for reasons that they can't tell you because they haven't seen it! **That's completely absurd.** This is one of Florida's top law firms telling you that you should quash this subpoena because, even though they haven't seen it, there are many reasons that they will find once they see it. How can they know that? Give me a break. They can't know it. This just shows you how desperate they are to hide the truth from you that they would put forward such ridiculous legal arguments such as that. Besides, it's way too late to quash it because the SEC already complied and I have the information. And that information isn't good for Bush Ross at all. Now if Bush Ross is an ethical law firm that hasn't done anything wrong, why would they jump through hoops to try to get my subpoena quashed? Well, they wouldn't. In fact, if they were honest, they'd do just the opposite and encourage production of evidence rather than try to keep it all hidden from the court. Honest people, like me, want evidence to be uncovered. Dishonest people, like them, want to cover it up. It's that simple.

2. The Bush Ross firm claims the court has no personal jurisdiction over the firm. I agree with them that this court doesn't have general jurisdiction over them. I am only claiming special jurisdiction. I presented facts in federal court that the faxes came from fax.com, fax.com was paid by Camelot, and that Camelot was paid by Bush Ross. And then Bush Ross says "we know nothing about any payments to Camelot." That's just not believable. Their bank records prove that they are liars. The emails that I got from the SEC indicate they wired other funds in furtherance of the conspiracy. The fact is that the dough to send these faxes came from the Bush Ross firm's client trust account and the firm damn well knew the purpose of these payments because: (1) they are required to know that information per Florida Bar Rule 5-1.2(b)(4) and 5-1.2(b)(5)(D) and 5-1.2(b)(6)(D) and (2) because I have an e-mail from Jere Ross himself admitting that what his clients were doing was likely to be criminal. As co-conspirators, they are liable for all torts committed in furtherance of the conspiracy. The simplest way to make the PJ argument is this: junk faxes received in California are intentional torts directed into California. The courts have already held that there is PJ in these cases against the sender, no matter where they are located. For example, Judge Kleinberg spent a lot of time reviewing several rounds of briefs in the Vision Lab case where they made exactly the same arguments that Bush Ross has made and ultimately lost their appeal, upholding your original correct determination that PJ applies to out-of-state agents of out-of-state entities who are involved in sending illegal faxes nationwide, some of which are directed to California. In the Vision Lab case, Vision Lab argued that they were merely an agent of the real sender of the faxes and knew nothing about the contents. Agents are liable, just like the principals; that is standard agency law. So the only question left for determining PJ is whether Bush Ross is one of the senders of the faxes. In this case, Bush Ross acted both as an agent of the principals (i.e., of the internationally famous spammers Jeremy Jaynes and Bryan Kos) in causing these faxes to be sent as well as co-conspirators. Either way, they are liable. When you follow the money and the money trail ends at Bush Ross and the only explanation from Bush Ross is

that it can't explain it, the court has no choice but to allow inquiry into the question whether they are either the original sender or an agent of the sender. As a practical matter, the documentation typically required by a law firm to release trust funds to a contractor includes an invoice from the contractor. So since Bush Ross isn't producing any evidence and claims no knowledge of the wires to Camelot, we can only conclude they are withholding the evidence and it is reasonable to believe that in fact, they had the documentation they are required to have which would indicate that they knew these funds were for the sending of faxes. The bottom line is we traced the money to them and they stonewalled the court. Who is the court going to believe?

3. Next, they argue that because PJ was denied in my federal case against Jeremy Ross personally, it must be denied against the firm. There are at least 3 flaws to that argument. 1) Jere Ross (a person) and Bush Ross (a law firm) are two different legal entities. Just because you have PJ on one, doesn't imply you have PJ on the other. And the converse is true as well. If there is no PJ on one, it doesn't imply that there is no PJ on the other. So their logic is faulty. 2) Both my attorney and I think the judge made an error in his determination. We had bank records tying the faxes to Bush Ross. But we had no evidence tying Jere Ross *personally* to the transfers since Ross denied involvement (and the court held that we never asserted that Ross personally made the wire transfer). The court should have allowed us limited discovery to determine that (such as getting the wire authorizations that Bush Ross is required to keep), but we believe the court made an error in not allowing us that discovery. Regardless, the PJ decision was *only* relative to Ross *personally* and not the firm so the ruling doesn't matter. 3) The judge in the PJ ruling kept emphasizing that there was no evidence tying Jere Ross personally to the wire transfers since Ross denied involvement and we never asserted that Ross personally made the wire transfer. However, there was clear evidence presented tying the law firm Bush Ross PA to the wire transfer since that is where the funds originated from. The judge NEVER said we wouldn't have PJ on the firm. They can't point to that anywhere in the ruling (and they didn't because it isn't there). So they are just trying to mislead you here.
4. They say that they never sent me the fax. That is wrong because the "sender" of the fax is broadly interpreted (since this is a remedial statute) and encompasses are all the entities who cause the faxes to be sent whether they do so knowingly or not. It doesn't matter because this is a strict liability statute. Intent and knowledge are immaterial. That is the reason for the FCC interpretation; else, violators of the TCPA would be immune simply by having others do the dirty work. But the bank records are clear: Bush Ross PA paid to have those faxes sent. They claim that they don't have any knowledge of the transfers to Camelot. Half a million bucks! So the "buck" is stopping at the law firm. Do you believe the bank records or do you believe the law firm? Someone paid to send those faxes out. Our trail goes right to the law firm and according to the law firm itself, it ends at the law firm. The law firm has come up with no alternative theory regarding the money trail. They did not challenge the bank evidence. Therefore, based on the evidence before the court, the source must be the law firm. There is simply no other option

for the court to believe otherwise, based on the evidence I collected and based on their own testimony under oath.

5. They said that my statement that they paid nearly \$500,000 to have the faxes sent is false. Why are we supposed to believe that? The 7 bank wires from their firm to Camelot that was admitted into evidence in the federal case. They total \$464,795.00. They NEVER disputed the authenticity of those bank statements in their response. So on what basis is my statement false? They sure don't want to explain those wires, do they? Why don't they tell you what those wire transfers were for?
6. They said my statement that they were a key conspirator was false. Yet they've admitted that world-famous spammer Kos talked to Jere Ross all the time, and I've subpoenaed bank records showing they've paid out almost \$1M to a wide range of perpetrators and contractors who collectively were responsible for executing the fraud, and they've received \$1,172,876 from Ryzcek Investments between June 29 and August 5, 2004 and \$4,134,865 was transferred from Chiang Ze Capital, AVV between July 28 and August 11, 2004. So \$1M went out to promote the stocks and \$5.2M came back in from the illegal trading profits (other accounts besides the law firm were used to receive funds). And on August 15, Jere Ross wrote me an email admitting that there was likely criminal activity in this stock fraud that involved 3 of his clients (Kos, Oehmke, and Lord). Jere Ross is a smart guy. And \$5 million bucks is a lot of dough. So how can all this be going on and they don't have a clue as to what is going on? Nobody's going to believe that. Just the bank records alone are strong evidence that Bush Ross sat right in the middle of this fraud; they paid the contractors and received the stock profits from the illegal trades from all these off shore entities created by Howell Woltz, who is the asset protection guy that Jaynes uses. In fact, based on their statements of knowing nothing about what is going on coupled with the fact that they were clearly at the center of the money action (from the bank records), would lead the court to believe that Bush Ross is the mastermind behind the whole plot. And they've dug themselves into a deep hole now because they can't say that they weren't to blame and it was someone else behind this because if they did that now, it would be an admission that they've lied under oath and their credibility would be toast (not that it isn't already).
7. Next, in the 6th paragraph on page 2, they say all this stuff is fictional contrivances. Really? The bank records I found were fictional? So where are the REAL bank records? The bank records the SEC found were fictional too that pointed to the Bush Ross account? OK, so where are the REAL bank records? Why can't they show a filing in the SEC case where they proved that the SEC evidence was wrong? The lawsuit the SEC brought against all three of Ross' clients that were involved in this was fictional? The faxes were fictional? I exposed these crooks on my website more than 6 months before the SEC brought suit against them. The SEC did their own investigation and found the same people responsible for the stock fraud that I did. And yet they accuse me of making this stuff up and yet they can't dispute a single piece of evidence I introduced. This is not credible. The best they can do is their declaration that they didn't do it? If this

is fictional, why didn't they seek sanctions in the federal case? Why didn't they produce the REAL records in that case?

8. Next, they try to attack my credibility. The best they can come up with is that they subtly accuse me of lying on the claim form in item 9 which states that I haven't brought more than 12 claims in the last 12 months. I believe that in the last twelve months, I've brought a total of ZERO actions. Last time I check, zero is less than 12. They have produced no evidence other than reference to an erroneous statement in a newspaper article. They haven't even produced the case number of even a single case that they claim I filed in the past 12 months. Not one case! This stuff is available electronically to anyone. So they are irresponsibly not checking the record that is easily available to them before making false accusations. And that is the BEST they can come up with to attack my credibility. Pretty sad. In short, they should simply admit that they can't attack my credibility. Sham attacks such as this simply make them look even less credible than they already are (if that is possible at this point).
9. Lastly, they'd like YOU to allow their counsel to appear on their behalf. They are, in short, asking you to do something illegal to benefit them. You can't do that. Only I can authorize it by agreeing to it. Had they been the least bit cooperative in explaining how they aren't liable given the evidence, I might be accommodating to their request. Had Jere Ross not deliberately tried to mislead me when I confronted him (feeding me false information that he knew was false in an effort to direct me on a wild goose chase), maybe I'd have more sympathy for them. But all the evidence I've obtained implicates them. And they have made it very expensive for me to pursue them by throwing up legal roadblocks costing me thousands of dollars when all they needed to do is explain, in light of all the evidence, how it is possible for Jere Ross to be clueless as to what was going on. They never did that. So I'm not inclined to do them any favors either. They certainly knew after the SEC suit and after I notified them that Jere Ross was integrally involved in helping these guys perpetrate one of the biggest penny stock scams in US history. Even after it all came down, Jere Ross is still working at that firm. So let's put it this way. I'm not inclined to do them any favors.

Throughout this process, the Defendant has offered no exculpatory evidence nor any explanations for the wire transfers. I have given them multiple opportunities to do that. I told them if they could explain the bank records, I'd consider dropping my case. They clammed up. Silence. They refuse to return any of my phone calls or respond to any of my emails. They do not refute any of the evidence I discovered, yet they claim my suit is meritless. They have acted to obstruct the SEC's inquiry by improperly objecting to the production of records in that case. In short, they are doing everything they can to keep the courts from finding the truth.

The simple truth is this. Somebody sent those faxes to me. To find the sender, I followed the money. Through subpoena of the bank records I learned who was the client who paid Fax.com, Inc. to send the faxes. The money trail stopped at Bush Ross. Lacking their forthrightness from the beginning, I had no available means of finding the truth but to sue

Steve Kirsch
13930 La Paloma Rd Los Altos Hills, CA 94022
(650) 279-1008 fax: (408) 716-2493

them, all in an effort to get them to explain what is going on. Then in court documents, they offered no explanation that fit the facts. They claimed to know nothing. That's impossible. It doesn't fit the evidence. Millions of dollars don't get transferred without someone knowing what is going on. If they are not liable, they must explain why and their explanation must fit the evidence. If they can't do that, then the court has no choice but to allow a plaintiff harmed in California and who sues in California to bring them to trial in California to conclude one way or the other whether they are liable. Their money trail leads to California and the payments for the faxes sent to me create a money trail leading back to them. My bank record evidence shifts the burden to them. It is up to them to shift the burden back. They have consistently failed to do that. Their only defense: "we didn't do it your honor."

They can't come up with an explanation that fits all the facts without admitting liability. That's why they are stonewalling and trying (very unsuccessfully) to attack my credibility. It's that simple.

You can read more about the Defendant at:

<http://www.junkfax.org/fax/profiles/wsp/wsp.htm>

and

<http://www.junkfax.org/fax/profiles/wsp/bushross/BushRoss.htm>

and examine the hyperlinked evidence yourself and see who you believe. It's a long read, but it is both entertaining and informative.

Thank you.

Sincerely yours,

Steven T. Kirsch

cc:

Jeffrey Warren, President, Bush Ross, PO Box 3913, Tampa, FL 33601-3913
(also sent via email to jwarren@bushross.com)

Name and Address of Court: Superior Court - Palo Alto Courthouse
270 Grant Avenue, Palo Alto, CA 94306
650-462-3800 x3820

SMALL CLAIMS CASE NO. 205SC002909

PLAINTIFF/DEMANDANTE (Name, address, and telephone number of each):
Kirsch, Steven T.
13930 La Paloma Rd
Los Altos Hills, CA 94022-2628

DEFENDANT/DEMANDADO (Name, address, and telephone number of each):
Bush Ross P.A. c/o Jeffrey W. Warren, President
PO Box 3913
Tampa, FL 33601

Telephone No.: 650-279-1008

Telephone No.: (813) 224-9255

Telephone No.:

Telephone No.:

See attached sheet for additional plaintiffs and defendants.

**SMALL CLAIMS SUBPOENA
FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS
AND THINGS AT TRIAL OR HEARING AND DECLARATION**

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of witness, if known):
US Securities and Exchange Commission c/o Alise M. Johnson, Esq., 801 Brickell Av STE 1800,
Miami, FL 33131

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this case at the date, time, and place shown in the box below UNLESS your appearance is excused as indicated in box 4b below or you make an agreement with the person named in item 2 below.

a. Date: January 9, 2006 Time: 8:30am Dept.: 86 Div.: Room:
b. Address: 270 Grant Avenue, Palo Alto, CA 94306

2. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name of subpoenaing party: Steven T. Kirsch b. Telephone number: 650-279-1008

3. Witness Fees: You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 2.

PRODUCTION OF DOCUMENTS AND THINGS

(Complete item 4 only if you want the witness to produce documents and things at the trial or hearing.)

4. YOU ARE (item a or b must be checked):

- a. Ordered to appear in person and to produce the records described in the declaration on page two. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
- b. Not required to appear in person if you produce (i) the records described in the declaration on page two and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number; your name; and the date, time, and place from item 1 in the box above. (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party listed at the top of this form.

5. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

[SEAL]



Date issued: 11-8-05

Clerk, by Rebecca R. Morrison, Deputy

(See reverse for declaration in support of subpoena)

Page one of three

PLAINTIFF/PETITIONER: Kirsch, Steven T.	CASE NUMBER: 205SC002909
DEFENDANT/RESPONDENT: Bush Ross P.A.	

**DECLARATION IN SUPPORT OF
SMALL CLAIMS SUBPOENA FOR PERSONAL APPEARANCE
AND PRODUCTION OF DOCUMENT AND THINGS AT TRIAL OR HEARING
(Code Civil Procedure sections 1985, 1987.5)**

1. I, the undersigned, declare I am the plaintiff defendant judgment creditor
 other (specify): _____ in the above entitled action.
2. The witness has possession or control of the following documents or other things and shall produce them at the time and place specified on the *Small Claims Subpoena* on the first page of this form.
- a. For trial or hearing (specify the exact documents or other things to be produced by the witness):
A copy of the CD ROMs given to the SEC in the CNDD case by Paul Spreadbury.
If you deliver a copy of the CD-ROMs directly to Plaintiff within 10 days of the date of service, you are deemed to be in compliance with this subpoena and excused from the requirements in 4b on the previous pg.
- Continued on Attachment 2a.
- b. After trial to enforce a judgment (specify the exact documents or other things to be produced by the party who is the judgment debtor or other witness possessing records relating to the judgment debtor):
- (1) Payroll receipts, stubs, and other records concerning employment of the party. Receipts, invoices, documents, and other papers or records concerning any and all accounts receivable of the party.
 - (2) Bank account statements, canceled checks, and check registers from any and all bank accounts in which the party has an interest.
 - (3) Savings account passbooks and statements, savings and loan account passbooks and statements, and credit union share account passbooks and statements of the party.
 - (4) Stock certificates, bonds, money market certificates, and any other records, documents, or papers concerning all investments of the party.
 - (5) California registration certificates and ownership certificates for all vehicles registered to the party.
 - (6) Deeds to any and all real property owned or being purchased by the party.
 - (7) Other (specify): _____
3. Good cause exists for the production of the documents or other things described in paragraph 2 for the following reasons:
There is an email from Jere Ross in this CD ROM that proves that Ross approved a phoney press release that was not authorized by the company at the very same time he was also counsel for the company. This means that Ross was a co-conspirator in the securities fraud which due to respondeat superior, means the law firm is liable.
- Continued on Attachment 3.
4. These documents are material to the issues involved in this case for the following reasons:
See #3
- Continued on Attachment 4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 8, 2005

..... Steven T. Kirsch
(TYPE OR PRINT NAME)

▶ 
(SIGNATURE OF PARTY)

(See proof of service on page three)



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
SOUTHEAST REGIONAL OFFICE**

SUITE 1800
801 BRICKELL AVENUE
MIAMI, FLORIDA 33131
(305) 982-6300
Writer's Direct Dial: 305-982-6341
Writer's Email: levensonr@sec.gov

November 18, 2005

Via Federal Express

Mr. Steven T. Kirsch
13930 La Paloma Road
Los Altos Hills, CA 94022-2628
(650) 279-1008

RE: Steven T. Kirsch v. Bush Ross PA, California Small Claims Case No.
205SC002909

Dear Mr. Kirsch:

This letter acknowledges receipt of your subpoena to Alise Johnson of this office dated November 8, 2005, in the above referenced case. Without waiving any arguments the Commission or Ms. Johnson may have regarding the personal jurisdiction of the court in this matter, we are producing the CD Rom of e-mails from Paul Spreadbury that the subpoena calls for. We note the subpoena also calls for a completed declaration of a records custodian. This is impossible in this instance, because the Commission is not the official custodian of records for these e-mails. As you know, they were produced to us by a third party, Paul Spreadbury. All we can tell you is that these are the e-mails Mr. Spreadbury produced to us.

As we are producing the documents the subpoena seeks, we do not intend to make a personal appearance on January 9, 2006 in Palo Alto. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Robert K. Levenson".

Robert K. Levenson
Regional Trial Counsel

Enclosure

Steve Kirsch

From: Steve Kirsch
Sent: Thursday, December 22, 2005 8:51 PM
To: 'Jeffrey Warren (jwarren@bushross.com)'
Subject: Kirsch v. Bush Ross PA: subpoena

Importance: High

Attachments: SubpoenaBushRossForService2.PDF



SubpoenaBushRoss
ForService2.PD...

Jeff,

Here's an electronic copy for you of my subpoena to Bush Ross PA to make it easier for you to respond.

I've really tried hard to minimize my requests and make them as specific as possible for you so that there is no ambiguity.

If you have any questions, objections, or anything isn't clear, just give me a call at 650-279-1008 and I'll be happy to help.

Also, I've prepared an evidence binder for you with about 250 pages of stuff in support of my case. I'll send you that after the holidays so that you will have sufficient time to prepare for the hearing on January 9 at 8:30am in D-86 in Palo Alto.

I look forward to seeing you then.

Have a nice holiday. Give my best to Jere.

-steve

Name and Address of Court: Superior Court - Palo Alto Courthouse
270 Grant Avenue, Palo Alto, CA 94306
650-462-3800 x3820

SMALL CLAIMS CASE NO. 205SC002909

PLAINTIFF/DEMANDANTE (Name, address, and telephone number of each):
Kirsch, Steven T.
13930 La Paloma Rd
Los Altos Hills, CA 94022-2628

DEFENDANT/DEMANDADO (Name, address, and telephone number of each):
Bush Ross P.A. c/o Jeffrey W. Warren, President
PO Box 3913
Tampa, FL 33601

Telephone No.: 650-279-1008

Telephone No.: (813) 224-9255

Telephone No.:

Telephone No.:

See attached sheet for additional plaintiffs and defendants.

**SMALL CLAIMS SUBPOENA
FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS
AND THINGS AT TRIAL OR HEARING AND DECLARATION**

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of witness, if known):
Bush Ross P.A. c/o Jeffrey W. Warren in his capacity as its President,
220 South Franklin Street, Tampa, FL 33601 (813) 224-9255

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this case at the date, time, and place shown in the box below UNLESS your appearance is excused as indicated in box 4b below or you make an agreement with the person named in item 2 below.

a. Date: January 9, 2006 Time: 8:30am Dept.: 86 Div.: Room:
b. Address: 270 Grant Avenue, Palo Alto, CA 94306

2. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE YOU ARE TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name of subpoenaing party: Steven T. Kirsch b. Telephone number: 650-279-1008

3. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 2.

PRODUCTION OF DOCUMENTS AND THINGS

(Complete item 4 only if you want the witness to produce documents and things at the trial or hearing.)

4. YOU ARE (item a or b must be checked):

- a. Ordered to appear in person and to produce the records described in the declaration on page two. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
- b. Not required to appear in person if you produce (i) the records described in the declaration on page two and (ii) a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose the original declaration of the custodian with the records. Seal the envelope. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number; your name; and the date, time, and place from item 1 in the box above. (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party listed at the top of this form.

5. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

(SEAL)



Date issued: 12-19-05

Clerk, by Rebecca R. Morend, Deputy

(See reverse for declaration in support of subpoena)

Page one of three

PLAINTIFF/PETITIONER: Kirsch, Steven T.	CASE NUMBER: 205SC002909
DEFENDANT/RESPONDENT: Bush Ross P.A.	

**DECLARATION IN SUPPORT OF
SMALL CLAIMS SUBPOENA FOR PERSONAL APPEARANCE
AND PRODUCTION OF DOCUMENT AND THINGS AT TRIAL OR HEARING
(Code Civil Procedure sections 1985, 1987.5)**

1. I, the undersigned, declare I am the plaintiff defendant judgment creditor
 other (specify): _____ in the above entitled action.
2. The witness has possession or control of the following documents or other things and shall produce them at the time and place specified on the *Small Claims Subpoena* on the first page of this form.
- a. For trial or hearing (specify the exact documents or other things to be produced by the witness):
See attached.
- Continued on Attachment 2a.
- b. After trial to enforce a judgment (specify the exact documents or other things to be produced by the party who is the judgment debtor or other witness possessing records relating to the judgment debtor):
- (1) Payroll receipts, stubs, and other records concerning employment of the party. Receipts, invoices, documents, and other papers or records concerning any and all accounts receivable of the party.
 - (2) Bank account statements, canceled checks, and check registers from any and all bank accounts in which the party has an interest.
 - (3) Savings account passbooks and statements, savings and loan account passbooks and statements, and credit union share account passbooks and statements of the party.
 - (4) Stock certificates, bonds, money market certificates, and any other records, documents, or papers concerning all investments of the party.
 - (5) California registration certificates and ownership certificates for all vehicles registered to the party.
 - (6) Deeds to any and all real property owned or being purchased by the party.
 - (7) Other (specify): _____
3. Good cause exists for the production of the documents or other things described in paragraph 2 for the following reasons:
The reason for each item is explained in each item requested in paragraph 2.
- Continued on Attachment 3.
4. These documents are material to the issues involved in this case for the following reasons:
There are at least 4 ways Bush Ross PA can be liable for sending the faxes: (1) they originated the payment for the faxes (2) they acted as an agent of the sender with full knowledge of what they were being asked to do (3) they are a co-conspirator in securities fraud, (4) Jere Ross conspired with Bryan Kos to commit securities fraud and is thus liable for all torts committed by the conspiracy. (continued on attachment)
- Continued on Attachment 4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 18, 2005

.....
Steven T. Kirsch
(TYPE OR PRINT NAME)

▶ 
(SIGNATURE OF PARTY)

(See proof of service on page three)

Case 2-05-SC-002909 Kirsch v. Bush Ross PA

Attachment 2a (SC-107)

REQUIREMENTS

- 1) No redactions are permitted in the requested documents unless expressly specified in the request.
- 2) There is no attorney-client privilege for trust account documents as you know from the SEC motion to compel so you'll need to produce these documents.

DEFINITIONS

- 1) CLIENT or CLIENTS means Bryan Scott Kos, Donald E. Oehmke, Jeremy Jaynes, and Hartley Lord and any entities that are clients of the firm and controlled by or strongly associated with these 4 people including, but not limited to: Concorde America (Lord), Ventana Consultants, Ltd. (Oehmke), Ventana Consultants of Pennsylvania LLC (Oehmke), J & L Interactive (Kos), BK Ventures (Kos), World Wide Picks LTD (Kos), and Corporate Financial Consultants, LC (Kos).
- 2) OFFSHORE ENTITY or OFFSHORE ENTITIES means Barranquilla Holdings, SA, Vanderlip Holdings NV, Chiang Ze Capital, AVV, Da Silva, SA, Stromberti Esse, GHBH, Jonti Warburg, LTD, and Ryzcek Investments, GMBH.
- 3) PERIOD refers to the period from May 1, 2004 to August 31, 2004.
- 4) TRUST ACCOUNT refers to the Defendant's client trust account (Sun Trust Banks Account # 41001143506)
- 5) CAMELOT refers to Camelot Promotions LLC

DOCUMENT REQUESTS

- 1) All invoices for services rendered by Defendant for CLIENTS and OFFSHORE ENTITIES during the PERIOD. **Justification:** The reason for this request is that legal bills detail the actions performed by the firm. I expect that these documents will show that Defendant performed a range of services that could not be accomplished without knowing that CLIENTS are committing fraud and thus establishing that Defendant is a co-conspirator and thus liable for sending the faxes.
- 2) Documents showing all receipts and disbursements of TRUST ACCOUNT funds associated with CLIENTS and OFFSHORE ENTITIES during the PERIOD and the client/matter associated with those transfers. I want the records that are required under Florida Bar Rule 5-1.2(b)(6). These records that are produced must include the reason for each transfer including any supporting documentation including invoices. This information is required by the Florida Bar Rules. If there are unrequested transactions on the same page, redactions of those transactions are permitted. **Justification:** I expect these

documents will show that Defendant had clear knowledge that they were assisting securities fraud which means Defendant is a co-conspirator and thus liable for sending the faxes.

- 3) Documents showing all funds disbursed from TRUST ACCOUNT to CAMELOT during PERIOD and the client/matter associated with those transfers. These documents only need be produced if not already produced in request #2. If there are unrequested transactions on the same page, redactions of those transactions are permitted. **Justification:** I expect these documents will show that Defendant had clear knowledge that they were paying to have junk faxes sent and are thus liable for sending the faxes.
- 4) Any e-mails sent or received by Jere Ross containing the word Kirsch during the month of August 2004 as well as the period from 10/31/05 to 11/15/05. **Justification:** Ross's emails in reaction to my probing during these period may reveal that he's trying to cover his tracks and thus knows he's liable. These emails wouldn't be subject to attorney-client privilege since the crime-fraud exception means that there is no attorney-client privilege with respect to CLIENTS.
- 5) All e-mails sent between Jere Ross and Bryan Kos during the PERIOD. **Justification:** Ross's emails with Kos should reveal that Ross knows that Kos is a crook and assisted him anyway which means Ross is a co-conspirator and thus liable for sending the faxes and by respondeat superior, so is Defendant. These emails wouldn't be subject to attorney-client privilege since the crime-fraud exception means that there is no attorney-client privilege with respect to any CLIENTS.
- 6) All e-mails sent between Jere Ross and Howell Woltz during the PERIOD. **Justification:** Woltz is Jayne's asset protection guy who set up the offshore entities that were used to transfer the illegal trading profits. Woltz isn't a client of the firm so Ross's emails with Woltz aren't privileged. Woltz's emails should reveal that Ross knew he was assisting a bunch of crooks. This means Ross is a co-conspirator and thus liable for sending the faxes and by respondeat superior, so is Defendant.
- 7) Any document showing the identity of the person who stole Jessi Hornnik's computer on July 7 or July 8 from the Bush Ross offices. **Justification:** This is relevant since that person has access to missing wire transfer records which are relevant since I am allowed to discover any information that is calculated to lead to the discovery of admissible evidence and these documents may show Defendant knew the purpose of these wire transfers and thus is liable.
- 8) Any and all documents, including memos and e-mails, officially reprimanding Jere Ross for his actions in assisting CLIENTS in the perpetration of the alleged securities fraud. **Justification:** The SEC lawsuit, which the firm is familiar with, lays out the actions of CLIENTS. If the firm didn't reprimand Ross for his role in assisting CLIENTS, it is an excellent indicator that the firm has ratified their actions in helping CLIENTS commit securities fraud and is thus a co-conspirator and liable for all torts, including the sending of the junk fax that I received.

- 9) Any and all documents describing the company policies and procedures in effect in 2004 regarding TRUST ACCOUNT transactions as well as any form(s) that are required to be filled out for adding or disbursing funds. If these documents are not available, then supply the documents with respect to the current rules. **Justification:** The firm may require additional documentation regarding transfers that I have not asked for because I didn't know it was required. I am allowed to discover any information that is calculated to lead to the discovery of admissible evidence.
- 10) Documents showing all funds disbursed from TRUST ACCOUNT that had been received from OFFSHORE ENTITIES during PERIOD and showing or identifying the client/matter associated with those outgoing transfers. I want the trust account documentation that is required under Florida Bar Rule 5-1.2(b)(6). The documents that are produced must include an indication of the reason for each outgoing transfer including any supporting documentation including any invoices, who requested that transfer (both the client and the attorney involved), the date, and the amount, and where exactly the money was transferred to (person and account #). This information is required by the Florida Bar Rules. These documents only need be produced if all of them were not already produced in request #2. If there are unrequested transactions on the same page, redactions of those transactions are permitted. Note that this request includes documents covering all *disbursements* both *during* and *after* PERIOD, but is limited in scope to the funds *received* during PERIOD from OFFSHORE ENTITIES. In short, you guys got millions of illegal trading profits transferred from OFFSHORE ENTITIES into the trust account during PERIOD and I want to know who you funneled that money to, how much each recipient was paid, and who at Bush Ross authorized the outgoing allocation. **Justification:** These documents are relevant since they reveal that Defendant knew exactly who controlled the offshore entities that orchestrated the illegal trades because Defendant was able to precisely allocate out those illegal trading profits among their clients and potentially others. This provides additional evidence for the allegation that Defendant was a co-conspirator in the securities fraud and thus is liable for sending the junk fax to me.
- 11) The most recent invoice for each CLIENT and OFFSHORE ENTITY. **Justification:** Amazingly, Oehmke is still doing stock scams. The others may be too. If Bush Ross is still helping with securities work now that everyone knows that they are crooks, it would ratify their earlier actions. That would make them co-conspirators and thus liable for sending me the fax. This will establish the date on which representation ceased.

Attachment 4 (SC-107)

Since Jere Ross was at all times acting in his capacity as an employee of the firm, under respondeat superior, the firm is also liable for Ross's torts which would include the sending of junk faxes to me.

These document requests are relevant to establishing one or more of these liability theories, e.g., that Jere Ross or Bush Ross PA had information that establishes that they knowingly participated in helping their clients Bryan Kos, Don Oehmke, Hartley Lord commit securities fraud.

PLAINTIFF/PETITIONER: Kirsch, Steven T.	CASE NUMBER: 205SC002909
DEFENDANT/RESPONDENT: Bush Ross P.A.	

**PROOF OF SERVICE OF SMALL CLAIMS SUBPOENA FOR PERSONAL APPEARANCE
AND PRODUCTION OF DOCUMENTS AND THINGS AT TRIAL OR HEARING
AND DECLARATION**

1. I served this *Small Claims Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration* by personally delivering a copy to the person served as follows:
- a. Person served (*name*):
 - b. Address where served:
 - c. Date of delivery:
 - d. Time of delivery:
 - e. Witness fees (*check one*):
 - (1) were offered or demanded and paid. Amount: \$ _____
 - (2) were not demanded or paid.
 - f. Fee for service: \$ _____

2. I received this subpoena for service on (*date*):

3. Person serving:
- a. Not a registered California process server.
 - b. California sheriff, marshal, or constable.
 - c. Registered California process server.
 - d. Employee or independent contractor of a registered California process server.
 - e. Exempt from registration under Business & Professions Code section 22350(b).
 - f. Registered professional photocopier.
 - g. Exempt from registration under Business & Professions Code section 22451.
 - h. Name, address, and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date:

Date:

▶ _____
(SIGNATURE)

▶ _____
(SIGNATURE)