

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)