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1 JAMES H. CASELLO, CBN 76021
2 DANFORTH F. LINCOLN, CBN 131591
3 Casello & Lincoln
4 1551 N. Tustin Avenue, Suite 850
5 Santa Ana, California 92705-8636
6 Telephone: (714) 541-8700
7 Facsimile: (714) 541-8707

8 Attorney for Plaintiff ERIC WILSON

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF ORANGE

11 ERIC WILSON, an individual
12 Plaintiff,

13 vs.

14 STEVEN T. KIRSCH, an individual;
15 DAVID BESA, an individual; JONATHAN
16 C. HARLOW, an individual; PHILIP
17 BOWLES, an individual; GENE
18 CARMEAN, an individual; DAVID M.
19 KORPI, an individual; THOMAS B.
20 ADLER, an individual; MARK KLEIN, an
21 individual; MARK R. GATELEY, an
22 individual; WAYNE RICHARD FAY, an
23 individual; DEIRDRE COGHLAN, an
24 individual; RICHARD M. KERBEL, an
25 individual; STEVE LANER, an individual;
26 LEGACY FARMS, LLC, a California
27 Limited Liability Company and DOES 1-
28 1000, inclusive,

Defendants.

Case No. 04CC07429

OPPOSITION TO SPECIAL MOTION TO
STRIKE THE FIRST AND SECOND
CAUSES OF ACTION OF THE
COMPLAINT PURSUANT TO CCP
§425.16; DECLARATION OF JAMES H.
CASELLO

Assigned For All Purposes To:
Hon. Randell L. Wilkinson
Dept. C-19

Date: October 6, 2004
Time: 1:30 p.m.
Dept.: C-19
Trial Date: None

Complaint Filed: July 7, 2004

TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:

Plaintiff respectfully submits the following Opposition in response to the Motion of
defendants pursuant to CCP §425.16.

I.

**THE MOTION IS MOOT AS THIS ACTION IS BEING DISMISSED
CONCURRENTLY HEREWITH**

Plaintiff Eric Wilson is filing and serving concurrently herewith a Request for Dismissal of this action thereby rendering the request to dismiss this action moot. As reflected in the attached Declaration of James H. Casello, the reason for the dismissal is twofold:

a. The primary purpose of the lawsuit has been accomplished: to stop the filing of multiple small claims actions against Eric Wilson up and down the state with hearings set at or near the same time has ceased; and

b. Recent events has resulted in their being no funds to finance the pursuit of this litigation.

II.

CONCLUSION

This action having been dismissed, the relief requested has already been obtained rendering the motion moot and should be taken off calendar or denied.

Dated: September 23, 2004

Respectfully submitted,

CASELLO & LINCOLN


James H. Casello, Attorneys for Defendants,
FAX.COM, INC. and KEVIN KATZ

1 DECLARATION OF JAMES H. CASELLO

2 IN OPPOSITION TO MOTION

3 I, James H. Casello, declare as follows:

4 1. I am the attorney of record for plaintiff herein and if called as a witness I could and
5 would competently testify to the matters set forth herein of my own personal knowledge except
6 for those matters that I state on information and belief.

7 2. The primary motive for filing this case in the first instance was to stop the
8 coordinated attack brought by Steven Kirsch in motivating and financing people to file numerous
9 small claims actions against an officer of Fax.com, Inc. (and not the company itself). With
10 filings occurring all up and down the state and trials all set for the same time was literally
11 impossible for Mr. Wilson in to appear and defend all these cases. A coordinated effort to
12 deprive a litigant of his day in Court would constitute abuse of process. Since the filing of this
13 lawsuit, this practice has ceased with only occasional small claims filings as a result of the
14 defendant Kirsch's efforts. Defendant Kirsch however continues to file declarations in other
15 person's small claims actions and write letters to those Judges. This practice must equate to the
16 unauthorized practice of law.

17 3. Recent events has also caused there to be no funds available to finance this litigation
18 and as a result of the foregoing, this lawsuit is being dismissed. A true and correct copy of the
19 Request for Dismissal of the entire action is attached hereto and is being submitted concurrently
20 herewith.

21 I declare under penalty of perjury that the foregoing is true and correct. Executed this
22 23rd day of September, 2004 at Santa Ana, California.

23
24 
25 _____
26 James H. Casello, Declarant
27
28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): James H. Casello CASELLO & LINCOLN 1551 N. Tustin Ave. Ste. 850 Santa Ana, CA 92705-8636	TELEPHONE NO.: (714) 541-8700	FOR COURT USE ONLY
ATTORNEY FOR (Name): ERIC WILSON Insert name of court and name of judicial district and branch court, if any: Orange County Superior Court Central Justice Center		
PLAINTIFF/PETITIONER: ERIC WILSON, an individual DEFENDANT/RESPONDENT: STEVEN T. KIRSCH, an individual; et al.		
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other Abuse of Process and Unfair Competition <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Other (specify):		

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1) With prejudice (2) Without prejudice
- b. (1) Complaint (2) Petition
 (3) Cross-complaint filed by (name):
 (4) Cross-complaint filed by (name):
 (5) Entire action of all parties and all causes of action
 (6) Other (specify):*

on (date):
on (date):

Date: September 23, 2004

James H. Casello
 (TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

CASELLO & LINCOLN

 (SIGNATURE)
 Attorney or party without attorney for: **ERIC WILSON**
 Plaintiff/Petitioner Defendant/Respondent
 Cross-complainant

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:
 (TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

(SIGNATURE)
 Attorney or party without attorney for:
 Plaintiff/Petitioner Defendant/Respondent
 Cross-complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

(To be completed by clerk)

3. Dismissal entered as requested on (date):
 4. Dismissal entered on (date): as to only (name):
 5. Dismissal not entered as requested for the following reasons (specify):

 6. a. Attorney or party without attorney notified on (date):
 b. Attorney or party without attorney not notified. Filing party failed to provide
 a copy to conform means to return conformed copy

Date: _____ Clerk, by _____ Deputy

