

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARK SKAPINETZ,
454 Pine Ridge Trail SE
Marietta, GA 30067,
an individual,

v.

COESTERVMS.COM, INC.
7529 Standish Place
Suite 200
Rockville, MD 20855,
a Maryland corporation,

and

BRIAN COESTER
13 Apricot Court
Gaithersburg, MD 20878,
an individual.

Case No. 8:17-cv-01098

Jury Demand

Plaintiff Mark Skapinetz (“Plaintiff” or “Skapinetz”) brings this action against COESTERVMS.COM INC. and BRIAN COESTER (collectively, “Defendants”).

I. JURISDICTION AND VENUE

1. This is an action for trespass to chattels, trespass to land, conversion, fraud, invasion of privacy, and violations of the Stored Communications Act (18 U.S.C. § 2702(a)). Plaintiff seeks damages and injunctive relief to remedy Defendants’ unauthorized access of his e-mail accounts through Google Inc. (“Google”)’s computer systems and facilities, which Google uses to provide e-mail accounts and access thereto for its customers.

2. This Court has personal jurisdiction over Defendants, who have engaged in business activities in and directed at the State of Maryland, have committed tortious acts within Maryland, and are citizens of Maryland.

3. This Court has original subject matter jurisdiction over Plaintiff's claim of violations of the Stored Communications Act under 18 U.S.C. § 2701(a) pursuant to 28 U.S.C. § 1331.

4. This Court has supplemental jurisdiction over Plaintiff's claims arising under the laws of Maryland pursuant to 28 U.S.C. § 1367(a) because the claims are so related to the claims within the bounds of original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendants are citizens of Montgomery County and a substantial part of the events or omissions giving rise to the claims pled herein occurred in Montgomery County.

II. THE PARTIES

6. Plaintiff Mark Skapinetz is an adult individual residing at 454 Pine Ridge Trail SE, Marietta, Georgia 30067, and is gainfully employed as a real estate appraiser in the Atlanta, Georgia, metropolitan area.

7. Defendant COESTERVMS.COM INC. is a Maryland corporation, with its principal place of business at 7529 Standish Place, Suite 200, Rockville, Maryland 20855, and a mailing address at 7361 Calhoun Place, Suite 505, Rockville, Maryland 20855.

8. Defendant BRIAN COESTER is an adult individual residing at 13 Apricot Court, Gaithersburg, Maryland 20878, and is also the principal, owner, and resident agent for Defendant COESTERVMS.COM.

9. The conduct alleged herein to be attributable to Defendants was conduct initiated by each defendant individually, conduct that each defendant caused to occur, controlled, directed, or authorized, conduct that each defendant had the ability or authority to control, direct, or

authorize, conduct that each defendant encouraged, assisted in, or participated in, and conduct for which each defendant is liable. Each defendant aided and abetted in the conduct set forth below, as each defendant possessed knowledge of such conduct, provided assistance in such conduct, and benefitted from such conduct, whether in whole or in part.

III. FACTUAL BACKGROUND

10. In the real estate appraisal business, referral companies are often hired by lenders or banks to perform real estate appraisal services prior to the lender or bank approving a mortgage for the property.

11. Acting as a middle man, said referral companies then engage local real estate appraisers with the appropriate credentials to perform the appraisal services while pocketing a small fee for their role in facilitating the transactions; the local appraisers typically retain a large percentage of the total sum for themselves.

12. Defendant COESTERVMS.COM INC. is one such referral company in the real estate appraisal business.

13. Defendant BRIAN COESTER is the owner, principal, and resident agent of COESTERVMS.COM INC.

14. As a real estate appraiser, Plaintiff works under the umbrella of his appraisal company, What's it Worth Appraisal Services, LLC.

15. Plaintiff, and each of his computer devices, were physically located in Georgia during all relevant times.

16. Plaintiff utilized two e-mail addresses for online communications dealing with real estate and real estate appraisal services.

17. Plaintiff utilizes a Google e-mail (“Gmail”) account for his business dealings related to real estate appraisals, wiwapp@gmail.com.

18. Plaintiff utilized a second Gmail account for his more personal dealings related to real estate and real estate appraisals, mappraiser14@gmail.com.

19. Plaintiff made use of the same telephone number, (404) 421-0055, in both Gmail accounts, indicating in the Gmail “security options” that it was the telephone number to be used if he were to lose access to either account.

20. Plaintiff’s (404) 421-0055 telephone number is linked to his name and his business online.

21. Stated differently, an Internet search for the (404) 421-0055 phone number would return results about Plaintiff and his appraisal company.

22. As a real estate appraiser, Plaintiff entered into a business relationship with Defendants in or around April 2014, and Defendants began assigning Plaintiff work performing real estate appraisals as a subcontractor.

23. Between April 2014 and April 2016, Plaintiff took on approximately thirty-six (36) appraisal assignments through Defendants.

24. As a result of frustration with untimely and inadequate compensation from Defendants for work performed, in or around April 2016, Plaintiff informed Defendants that he would no longer work with them on real estate appraisal assignments.

25. In or around May or June of 2016, Plaintiff became aware of a lawsuit filed against Defendants by a former employee of Defendants that alleged “a history and pattern of engaging in fraudulent conduct which has led to their reputation for dishonesty in the appraisal management

company industry.” *See Scheer v. Coester*, 41906-V in the Circuit Court for Montgomery County, Maryland, Docket No. 1, ¶ 23.

26. Plaintiff composed and distributed an e-mail from his Gmail account mappraiser14@gmail.com informing a number of his colleagues in the real estate appraisal business about this lawsuit on or around November 11, 2016.

IV. DEFENDANTS’ UNLAWFUL CONDUCT

27. Shortly after sending said e-mail, at or about 11:19 a.m. EST on November 11, 2016, Plaintiff received an alert which stated: “Your Google account mappraiser14@gmail.com was just used to sign in from Chrome on Windows.” *See Exhibit #1.*

28. The message, generated automatically from Google, also listed “Maryland” as the location of the device that had just accessed Plaintiff’s account. *Id.*

29. Over the course of the next several hours, this same Chrome browser accessed Plaintiff’s mappraiser14@gmail.com and wiwapp@gmail.com accounts multiple times, including at 11:54 a.m. EST, 12:23 p.m. EST, 12:46 p.m. EST, and 12:51 p.m. EST, all on November 11, 2016. *See Exhibit #2.*

30. The Chrome browser’s Internet Protocol (“IP”) address was 2601:152:4202:5f00:e5bb:3cd6:f465:b31d at all relevant times. *Id.*

31. Unable to attribute this Chrome browser’s activity in his mappraiser14@gmail.com and wiwapp@gmail.com accounts to himself, Plaintiff became concerned.

32. Plaintiff utilized a third-party website, <http://www.ip-tracker.org>, to determine the source of the associated IP address, 2601:152:4202:5f00:e5bb:3cd6:f465:b31d, which was the IP reported by Google in Plaintiff’s Google account. *See Exhibit #3.*

33. Another IP geolocating website, iptrackeronline.com, was also referenced. *Id.*

34. Upon review, the IP address at issue was revealed to be geo-located to Rockville, Maryland, with registration to Comcast Cable Communications, LLC. Indeed, both third party websites confirmed the same information. *Id.*

35. Almost immediately prior to the alert received at 11:19 a.m. EST, at or about 11:09 a.m., Plaintiff received an e-mail at his mappraiser14@gmail.com account from bcoester@coesterappraisals.com, which carbon copied (“cc’ed”) ggrant@shulmanrogers.com.

36. Plaintiff has been informed and believes, and therefore alleges, that bcoester@coesterappraisals.com is an e-mail address utilized by Defendants.

37. The email address username “bcoester” contains the first initial and last name of Defendant Brian Coester.

38. The domain name “coesterappraisals.com” is owned by “Brian Coester” and “Coester Appraisal Services.” *See* Exhibit #4.

39. Plaintiff has been informed and believes, and therefore alleges, that ggrant@shulmanrogers.com is an e-mail address utilized by attorney Gregory Grant, who was the attorney of record for Defendants in the above mentioned case, *Scheer v. Coester*, in the Circuit Court for Montgomery County.

40. Said 11:09 a.m. EST e-mail from Brian Coester indicated that the sender was unaware that Plaintiff was the individual behind the mappraiser14@gmail.com e-mail account, as no name was utilized in the salutation.

41. Coester’s 11:09 AM email from Coester did not address Plaintiff by name, because Coester had not yet ascertained the identity of Plaintiff based only on the mappraiser14@gmail.com account.

42. The e-mail included the language: “We will be in touch soon, I understand that you have an issue with myself and have decided to e-mail our clients about this and inappropriately mischaracterizing [sic] the nature of the suit and also the factually [sic] allegations which already have been dismissed with a partial motion to dismiss . . .”

43. Plaintiff believes and therefore alleges that the e-mail from bcoester@coesterappraisals.com was in direct response to the e-mail he had circulated about Defendants’ legal dispute with their former employee.

44. In the same e-mail thread and quickly on the heels of the first, Plaintiff received another e-mail at his mappraiser14@gmail.com account, at 12:22 PM, which read: “Mark – We have been able to verify this is you. Greg – Please get in touch with Mark immediately. Brian”.

45. As demonstrated, Defendants appear to have been able to identify Plaintiff’s identity over the course of approximately 11:09 AM on November 11, 2016 until approximately 12:22 PM on November 11, 2016.

46. On information and belief, Defendants first unlawfully accessed the mappraiser14@gmail.com Gmail account, because this account was the source of the email which Defendants were angry about.

47. Plaintiff does not presently have information as to the specific methods via which Defendants unlawfully gained access to his account.

48. However, on information and belief, Defendants undertook employed malware

49. However, Plaintiff did not maintain many emails in the account, and there was no other immediately identifying information within the account.

50. However, Plaintiff did maintain a “recovery” telephone number in the “security settings.” This number was 404-421-0055.

51. On information and belief, Defendants employed a certain type of “malware,” namely, software that is intended to damage or disable computers and computer systems.

52. This malware allowed the Defendants to determine Plaintiff’s password for the mappraiser14@gmail.com account.

53. In the alternative, Defendants were able to access the Plaintiff’s email account by guessing his password, or otherwise engaging in other activity that allowed Defendants to access the accounts that were not authorized by Plaintiff.

54. The malware employed by Defendants, or another unknown method, provided access to Plaintiff’s mappraiser14@gmail.com account.

55. Once Defendants gained unauthorized access to the accounts, Defendants reviewed each and every email in the mappraiser14@gmail.com account.

56. Moreover, Defendants reviewed the security settings in the mappraiser14@gmail.com account.

57. Upon review of the security settings, Defendants were able to determine that the recovery telephone number in the security settings was 404-421-0055.

58. Given this new knowledge of the 404-421-0055 recovery number, Defendants conducted an Internet search for the search term: “404-421-0055”

59. Upon reviewing the search results, Defendants were able to determine that the phone number was associated with Plaintiff and his appraisal firm.

60. Thereafter, Defendants likely undertook several steps. First, Defendants likely recognized that they had a business relationship with Plaintiff, and reviewed their internal records, where they would have been able to determine that Plaintiff used the wiwapp@gmail.com in communications with them.

61. Second, or, in the alternative, Defendants accessed Plaintiff's website <http://www.whatsitworthapp.com/contact.html>, where the email address wiwapp@gmail.com was publicly listed.

62. Based on one or both of the preceding actions, Defendants determined that Plaintiff was the owner of the wiwapp@gmail.com email address.

63. Shortly after making this determination, Defendants accessed the wiwapp@gmail.com email account using the same malware used to access the mappraiser14@gmail.com account.

64. In the alternative, Defendants, knowing the password to the mappraiser14@gmail.com account, used the same password to access the wiwapp@gmail.com email account, because both accounts were secured by the same password at the time of the unauthorized accesses.

65. The Defendants' unauthorized access to the wiwapp@gmail.com email account occurred from approximately 11:54 AM and continued for a period of at least two hours, and possibly more.

66. During this time, Defendants accessed each and every email that was stored in the wiwapp@gmail.com email account.

67. On information and belief, the wiwapp@gmail.com email account contained approximately eight hundred (800) emails on November 11, 2016.

68. Plaintiff believes and therefore alleges that Defendants were responsible for the access of his Gmail accounts by the Chrome browser with associated IP address 2601:152:4204:5f00:35bb:3cd6:f465:b31d multiple times on November 11, 2016, and that it was this unauthorized access which allowed Defendants to ascertain his identity.

69. The alleged accesses contained herein were not authorized by either Google or Plaintiff in any way.

70. Plaintiff ultimately deleted the mappraiser14@gmail.com e-mail account, but continues to maintain his wiwapp@gmail.com email account, which is his main business e-mail account.

71. On or around January 8, 2017, Defendants began to engage Plaintiff in an online conversation with Plaintiff via the social media platform, Twitter. *See Exhibit #7.*

72. A text version of the Twitter conversation is attached hereto. *See Exhibit #8.*

73. On January 8, 2017 at 10:52 PM, Defendant Coester wrote “You can look it up on google who owns every email account it's never private.”

74. On January 8, 2017 at 10:52 PM, Plaintiff wrote, in part, “. . . of my email accounts being illegaly [sic] accessed from a device in Rockville md 2 min before you emailed me. I had the IP address noted and traced to Rockville md 5 min after you emailed me that you verified an account owned by me. I have security. Maybe it wasn't you. it's [sic] really a coincidence that both emails had the same password and both got accessed by someone in Rockville md one 2 min prior to your email and my business one just after that for 2 hours. I'm awaiting the investigation results by Comcast and the FBI.”

75. On January 8, 2017 at 10:58 PM Defendant Coester responded, in part “I don't have a clue what you're talking about other then [sic] you sent an email to Dave, Dave sent it to me and I sent it to my IT who said it was you. I've never had a problem with you nor would I have a problem with you.”

76. On information and belief, “sent it to my IT” is a reference to Defendants' IT department.

77. On information and belief, the “IT department” is headed by Jerry White, who is an employee of Defendants.

78. On information and belief, White and Coester are close friends.

79. On information and belief, Coester asked White to access each of Plaintiff’s email accounts for purposes of investigating similar emails Plaintiff may have sent about Defendant’s pending lawsuit.

80. In the alternative, Coester personally accessed Plaintiff’s email accounts.

81. In the alternative, White personally accessed Plaintiff’s accounts, in his capacity as an employee of Defendants.

82. In the alternative, Coester or White engaged a third party to unlawfully access the Plaintiff’s accounts, in their capacity as employees of Defendants.

V. PLAINTIFF’S RESPONSE

83. As stated *supra*, Plaintiff is gainfully employed as a real estate appraiser.

84. Plaintiff submits that an appropriate fee for his time is \$100 per hour. Plaintiff will support his claimed rate during the discovery portion of the litigation.

85. As a result of Defendants’ actions, Plaintiff was required to spend significant periods of time investigating and attempting to rectify the unauthorized access of his Gmail account, resulting in significant lost wages, continuing costs, and the deletion of the account. Additionally, Plaintiff has spent the intervening months in a state of uncertainty with regards to his online security, his privacy, and the privacy of his clients.

86. On or around November 11, 2016, Plaintiff was required to spend the entirety of the day absent from his gainful employment, instead investigating and responding to the unauthorized access and conducting a damage assessment.

87. On or around November 11, 2016, Plaintiff reviewed the initial alerts he received from Gmail regarding his mappraiser14@gmail.com account and conducted related research online. He also researched Defendants. Plaintiff spent approximately half of one hour on these tasks. Plaintiff believes the value of his time spent to be approximately \$50.

88. On or around November 11, 2016, Plaintiff reviewed the initial alerts he received from Gmail regarding his wiwapp@gmail.com account. Plaintiff spent approximately six tenths of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$60.

89. On or around November 11, 2016, Plaintiff took “screenshots” of his Gmail accounts, including screenshots of the alerts he received from Google, screenshots of the e-mails he received from bcoester@coesterappraisals.com, screenshots of the “Recently used devices” webpage related to his Gmail accounts, screenshots of a webpage displaying the history of the browsers that had accessed his Gmail accounts, and screenshots of his related IP address research. Plaintiff spent approximately three and one half hours on these tasks. Plaintiff believes the value of his time spent to be approximately \$350.

90. On or around November 11, 2016, Plaintiff filed an report online with the Federal Bureau of Investigation regarding the unauthorized accesses of his Gmail accounts. Plaintiff spent approximately three tenths of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$30.

91. On or around November 11, 2016, Plaintiff undertook an audit of his electronic devices’ security, including verifying and updating the anti-virus software present. Plaintiff spent approximately two and one half hours on this task. Plaintiff believes the value of his time spent to be approximately \$250.

92. On or around November 11, 2016, Plaintiff placed a telephone call to the American Guild of Appraisers, an organization that assists independent real estate appraisers. Plaintiff spent approximately two tenths of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$20.

93. On or around November 11, 2016, Plaintiff contacted Pat Turner, a real estate appraiser that Plaintiff knew had prior experience with Defendants. Multiple telephone calls occurred. Plaintiff spent approximately two tenths of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$20.

94. On or around November 11, 2016, Plaintiff placed a telephone call to the Office of the Maryland Attorney General to determine what course of action could be taken to stop the unlawful accesses of his Gmail accounts. Plaintiff spent approximately two tenths of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$20.

95. On or around November 12, 2016, Plaintiff placed a telephone call to Comcast and spoke with those agents that are employed as security and forensic investigators by the company. Plaintiff spent approximately three tenths of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$30.

96. On or around November 14, 2016, Plaintiff placed several telephone calls to the Comcast investigators identified *supra*. In total, Plaintiff spent approximately one and two tenths of one hour on these tasks. Plaintiff believes the value of his time spent to be approximately \$120.

97. On or around November 14, 2016, Plaintiff telephoned the Rockville City (Maryland) Police Department, in part to determine what course of action could be taken to prevent the further unlawful accesses of his Gmail accounts. Plaintiff spent approximately one tenth of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$10.

98. On or around November 14, 2016, Plaintiff again telephoned the Office of the Maryland Attorney General. Plaintiff spent approximately one tenth of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$10.

99. On or around November 14, 2016, Plaintiff placed a telephone call to the Montgomery County Sheriff Department. Plaintiff spent approximately three tenths of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$30.

100. On or around November 22, 2016, Plaintiff placed a telephone call to the Comcast investigators identified *supra*. Plaintiff spent approximately two tenths of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$20.

101. On or around November 28, 2016, Plaintiff again telephoned the Comcast investigators regarding the unauthorized accesses of his Gmail accounts. Plaintiff spent approximately two tenths of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$20.

102. On or around November 29, 2016, Plaintiff placed a telephone call to the Cobb County (Georgia) Police Department regarding the unauthorized accesses of his Gmail accounts. Plaintiff spent approximately three tenths of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$30.

103. On or around December 6, 2016, Plaintiff placed another telephone call to the Comcast investigators regarding the unauthorized accesses of his Gmail accounts. Plaintiff spent approximately two tenths of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$10.

104. On or around December 7, 2016, Plaintiff placed a similar telephone call to the Comcast investigators. Plaintiff spent approximately three tenths of one hour on this task. Plaintiff believes the value of his time spent to be approximately \$30.

105. On or about January 8, 2017, through January 11, 2017, Plaintiff engaged in a conversation with Defendants via the social media platform Twitter in order to ascertain whether or not Defendants were responsible for the unauthorized access of his Gmail account. In total, Plaintiff spent approximately one half of one hour on these communications. Plaintiff believes the value of his time spent to be approximately \$50.

106. Plaintiff claims that, in total, he spent eleven and six tenths hours investigating and rectifying the unauthorized accesses of his Gmail accounts.

107. Plaintiff claims that, in total, the actual damages of the value of his time spent is \$1,160.

CLAIM I
(Violation of the Stored Communications Act 18 U.S.C. § 2701(a))

108. Plaintiff realleges and incorporates by reference each and every allegation set forth above.

109. Enacted in 1986, the Stored Communications Act (“SCA”) was part of the comprehensive Electronic Communications Privacy Act, all of which concentrated on theretofore unaddressed privacy concerns relating to the advent of new and widely-utilized technologies.¹

110. The SCA criminalizes the intentional access of a facility through which an electronic communication service is provided when that access is done without or in excess of

¹ See, e.g., *Garcia v. City of Laredo*, 702 F.3d 788, 791 (5th Cir. 2012); *United States v. Councilman*, 418 F.3d 67, 80-81 (1st Cir. 2005) (en banc); *In re Google, Inc.*, 806 F.3d 125, 145 (3d Cir. 2015); Orin S. Kerr, *A User’s Guide to the Stored Communications Act, and a Legislator’s Guide to Amending It*, 72 Geo. Wash. L. Rev. 1208, 1209-15 (2004).

authorization and when said access results in the unauthorized party obtaining, altering, or preventing authorized access to a wire or electronic communication while it is in electronic storage.²

111. The SCA also provides a method for obtaining civil relief when a citizen is harmed by the conduct described therein.³

112. Appropriate civil remedies under the SCA include “equitable or declaratory relief, a reasonable attorney’s fee and other costs, and ‘damages under subsection (c),’” which provides that a court “‘may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of \$1,000. If the violation is willful or intentional, the court may assess punitive damages.’”⁴

113. In this jurisdiction, available remedies for a successful plaintiff under the SCA include but are not limited to: equitable or injunctive relief; declaratory relief; actual damages; statutory damages; punitive damages; attorneys’ fees; and costs.⁵

² “The SCA prohibits unauthorized access to wire and electronic communications in temporary and back-up storage and provides in relevant part: ‘[W]hoever- (1) intentionally accesses without authorization a facility through which an *electronic communication service* is provided; or (2) intentionally exceeds an authorization to access that facility; and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in *electronic storage* in such a system shall be punished as provided in subsection (b) of this section.’” *Garcia v. City of Laredo*, 702 F.3d 788, 791 (5th Cir. 2012) (quoting 18 U.S.C. § 2701(a) (2006)) (emphasis in original) (alterations in original).

³ “The SCA also creates a civil cause of action, in which the plaintiff may obtain equitable or declaratory relief, reasonable attorney’s fees and other costs, together with damages.” *Hoofnagle v. Smyth-Wythe Airport Comm’n*, 2016 U.S. Dist. LEXIS 67723, *26 (W.D. Va. 2016) (citing 18 U.S.C. § 2707(b)); see also *Van Alstyne v. Elec. Scriptorium, Ltd.*, 560 F.3d 199, 204 (4th Cir. 2009).

⁴ *Van Alstyne v. Elec. Scriptorium, Ltd.*, 560 F.3d 199, 204-205 (4th Cir. 2009) (quoting 18 U.S.C.A. § 2707(b) and (c)) (internal citations omitted).

⁵ “The sole limitation [under § 2707(c)] is that the violation of the SCA be ‘willful or intentional’ . . .” *Van Alstyne*, 560 F.3d at 209.

114. The SCA “define[s] the term ‘electronic communication service,’ . . . as ‘any service which provides to users thereof the ability to send or receive wire or electronic communications.’”⁶

115. The SCA defines the term “electronic communication” as “any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce,” but specifically notes that “electronic communication” should not be interpreted to include “any wire or oral communication,” “any communication made through a tone-only paging device,” “any communication from a tracking device,” and “electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.”⁷

116. The SCA defines the term “electronic storage” as “any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof” or “any storage of such communication by an electronic communication service for purposes of backup protection of such communication.”⁸

117. Although there is some disagreement among the Circuits as to when an “electronic communication” is in “electronic storage” as contemplated under the SCA, and the SCA does not define the term “facility,” it has been clearly established in this jurisdiction that a violation of the statute has been committed where an individual or entity accesses, without or in excess of his or

⁶ *In re Google Inc.*, 806 F.3d 125, 146 (3d Cir. 2015) (quoting 18 U.S.C. § 2510(15) (incorporated by reference in 18 U.S.C. § 2711(1) of the SCA)).

⁷ 18 U.S.C. § 2510(12) (incorporated by reference in 18 U.S.C. § 2711(1) of the SCA).

⁸ 18 U.S.C. § 2510(17) (incorporated by reference in 18 U.S.C. § 2711(1) of the SCA).

her authorization, an e-mail communication stored on the servers of an Internet Service Provider (“ISP”).⁹

118. Through the actions alleged above, Defendants violated the SCA when they knowingly and intentionally accessed Plaintiff’s Gmail accounts, without authorization from Plaintiff or Google, and thereby obtained access to Plaintiff’s e-mails, which are electronic communications as contemplated by the SCA.

119. When Defendants accessed Plaintiff’s Gmail accounts, his e-mail communications were in electronic storage on Google’s servers; Google’s servers are facilities through which electronic communication services, in this case e-mail communication services, are provided.

120. Through Defendants’ actions alleged above, Plaintiff suffered actual damages in an amount to be determined at trial.

121. Defendants’ conduct constitutes a violation of the SCA, and Plaintiff is therefore entitled to damages – actual, punitive, and statutory – as well as attorneys’ fees and costs, as provided by the Act. Plaintiff is similarly entitled to injunctive and other appropriate equitable and declaratory relief against Defendants.

⁹ See, e.g., *Educational Testing Serv. v. Stanley H. Kaplan Educ. Ctr.*, 965 F. Supp. 731, 740 (D. Md. 1997) (“[I]t appears evident that the sort of trespasses to which the Stored Communications Act applies are those in which the trespasser gains access to information to which he is not entitled to see . . . The Senate Report explaining the statute also supports this reading . . . The report states, for example, that a subscriber to a computer mail facility would violate the statute by accessing the electronic storage of other subscribers to the facility without specific authorization to do so . . . Put another way, the wrongful acts targeted by the Stored Communications Act are those committed while a user is in electronic ‘contact’ with a computer facility”); *Int’l Ass’n of Machinists & Aero. Workers v. Werner-Matsuda*, 390 F. Supp. 2d 479, 497 (D. Md. 2005) (“[T]he [Senate] Report provides that § 2701 ‘addresses the growing problem of unauthorized persons deliberately gaining access to, and sometimes tampering with, electronic communications that are not intended to be available to the public.’”) (quoting S. Rep. No. 99-541, at 35 (1986)); *Van Alstyne v. Elec. Scriptorium, Ltd.*, 560 F.3d 199, XX (4th Cir. 2009) (on appeal from the Eastern District of Virginia regarding the appropriateness of awarding statutory damages, punitive damages, and attorney’s fees under the SCA without first finding that the plaintiff suffered actual damages where the SCA claim was based upon the plaintiff’s former employer’s access of her personal e-mail account while she was employed with the company and for more than a year after she left); *Hoofnagle v. Smyth-Wythe Airport Comm’n*, 2016 U.S. Dist. LEXIS XX, *27-28 (W.D. Va. XX) (“As a practical matter, for the purposes of establishing a claim under the SCA, I do not think that it makes any difference whether an email stored on an internet service provider’s server has been opened or not. Internet service providers store all email, whether opened, read, sent, or even deleted. Accordingly, I do not find the defendants’ argument in this regard persuasive.”).

CLAIM II
(Trespass to Chattels)

122. Plaintiff realleges and incorporates by reference each and every allegation set forth above.

123. In this jurisdiction, “trespass has been defined as the intentional use or intermeddling with the chattel in possession of another . . . such intermeddling occurring when the chattel is impaired as to its condition, quality, or value.”¹⁰

124. Maryland courts have “found trespass to chattel to be analogous to conversion, requiring the intent to act but not necessarily the intent to deprive.”¹¹

125. Plaintiff’s Gmail accounts and e-mail communications are property that is recognizable as chattel for purposes of the tort of trespass to chattel.¹²

126. Through the actions alleged above, Defendants knowingly and intentionally committed the tort of trespass to chattel when they accessed without authorization, and therefore intermeddled with, Plaintiff’s Gmail accounts and e-mail communications.

¹⁰ *Ground Zero Museum Workshop v. Wilson*, 813 F. Supp. 2d 678, 697 (D. Md. 2011) (quoting *United States v. Arora*, 860 F. Supp. 1091 (D. Md. 1994) (quoting *Restatement (Second) of Torts*, §§ 217(b), 218(b))) (alterations in original).

¹¹ *MCI Communs. Servs. v. Am. Infrastructure-MD, Inc.*, 2013 U.S. Dist. LEXIS 113061, *51-52 (D. Md. 2013) (citing *Keys v. Chrysler Credit Corp.*, 303 Md. 397, 494 A.2d 200, 208 (Md. 1985) (“The intent required is not necessarily a matter of conscious wrongdoing. It is rather an intent to exercise a dominion or control over the goods which is in fact inconsistent with the plaintiff’s rights.”) (citation omitted); see also *Darcars Motors of Silver Spring, Inc. v. Borzym*, 150 Md. App. 18, 818 A.2d 1159, 1172-73 (Md. Ct. Spec. Ap. 2003) (same) (citation omitted); Dobbs, *Law of Torts* § 60 (“It is enough if the defendant had an intent to act upon the property; . . . he is liable even though he had no intent to harm or even to invade another’s interests.”)

¹² See, e.g., *Ground Zero Museum Workshop v. Wilson*, 813 F. Supp. 2d 678, 697 (D. Md. 2011) (“Although websites are not tangible property in the traditional sense, courts in Maryland, New York, and elsewhere have been willing to recognize claims for conversion or trespass to chattels involving certain digital things, such as websites and domain names and computer networks. See *Translucent Commc’ns, LLC v. Americas Premier Corp.*, No. WGC-08-3235, 2010 U.S. Dist. LEXIS 16459, 2010 WL 723937, at *15 (D. Md. Feb. 24, 2010) (permitting claim for conversion of domain name); *Astroworks, Inc. v. Astroexhibit, Inc.*, 257 F. Supp. 2d 609, 618 (S.D.N.Y. 2003) (holding that the plaintiff could maintain a claim for conversion of his website); *CompuServe, Inc. v. Cyber Promotions, Inc.*, 962 F. Supp. 1015, 1022 (S.D. Ohio 1997) (finding that bulk e-mailing by defendants constituted trespass to chattels because ‘the value of [the] equipment to CompuServe is diminished even though it is not physically damaged by defendants’ conduct’).”)

127. With their intermeddling, Defendants made Plaintiff's Gmail accounts worth less, as it no longer provided the privacy that makes e-mail accounts and e-mail communications valuable to their users.

128. Through the actions alleged above, Defendants significantly impaired the condition, quality, and value of Plaintiff's Gmail accounts and e-mail communications.

129. Through Defendants' actions alleged above, Plaintiff suffered damages in an amount to be determined at trial. Plaintiff is entitled to actual damages and those damages that flowed from Defendants' unlawful conduct.¹³

CLAIM III (Trespass to Land)

130. Plaintiff realleges and incorporates by reference each and every allegation set forth above.

131. In Maryland, "[t]respass to land involves the intentional or negligent intrusion upon the property of another or his possessory interest therein."¹⁴

132. Plaintiff's Gmail accounts and his e-mail communications constitute his property, and he has a possessory interest therein.

133. In order for a plaintiff to prove trespass, he or she "must show: (1) the defendant interfered with a possessory interest in his property, (2) through the defendant's physical act or force against that property, (3) which was executed without the plaintiff's consent."¹⁵

¹³ "[I]n both trespass and conversion cases, 'additional damages adequate to compensate an owner for other injurious consequences which result in a loss greater than the diminished or market value . . . may be allowed.'" *United States Bank Trust Nat'l Ass'n v. Venice Md LLC*, 92 Fed. Appx. 948 (4th Cir. 2004) (quoting *Staub v. Staub*, 37 Md. App. 141, 376 A.2d 1129, 1133 (Ct. Spec. App. Md. 1977)).

¹⁴ *MCI Communs. Servs. v. Am. Infrastructure-MD, Inc.*, 2013 U.S. Dist. LEXIS 113061 (D. Md. 2013) (citing *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 961 A.2d 665, 687 (Md. Ct. Spec. App. 2008)).

¹⁵ *MCI Communs. Servs. v. Am. Infrastructure-MD, Inc.*, 2013 U.S. Dist. LEXIS 113061 (D. Md. 2013) (citing *Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 961 A.2d 665, 688 (Md. Ct. Spec. App. 2008)).

134. Through the actions alleged above, Defendants knowingly and intentionally committed the tort of trespass to land when they intruded upon Plaintiff's property, his Gmail accounts.

135. Defendants interfered with Plaintiff's possessory interest in his Gmail accounts and e-mail communications with their physical act of accessing his account without authorization, and therefore without Plaintiff's consent.

136. Through Defendants' actions alleged above, Plaintiff suffered damages in an amount to be determined at trial.

**CLAIM IV
(Conversion)**

137. Plaintiff realleges and incorporates by reference each and every allegation set forth above.

138. In this jurisdiction, with regards to a claim of conversion, which is "recognized as similar to trespass to chattels but where the interference with the property interest is more substantial, Maryland courts have stated: "[T]he gist is not the acquisition of the property by the wrongdoer, but the wrongful deprivation of a person of property to the possession of which he is entitled. Accordingly, a conversion occurs at such time as a person is deprived of property to which he is entitled to possess."¹⁶

139. A person or entity is guilty of conversion where he or she commits "any act of ownership or dominion . . . *over the personal property of another* in denial of his right or inconsistent with it."¹⁷

¹⁶ *Ground Zero Museum Workshop v. Wilson*, 813 F. Supp. 2d 678, 696 (D. Md. 2011) (quoting *Staub v. Staub*, 37 Md. App. 141, 143, 376 A.2d 1129 (1977)) (citing *Lawrence v. Graham*, 29 Md. App. 422, 427, 349 A.2d 271 (1975)).

¹⁷ *Vaughn v. Vaughn*, 146 Md. App. 264 (Ct. Spec. App. 2002) (quoting *Interstate Ins. Co. v. Logan*, 205 Md. 583, 588-89, 109 A.2d 904 (1954)) (emphasis in original).

140. As stated above, Plaintiff's Gmail accounts and e-mail communications are his property as understood under an analysis of the tort of conversion, and Plaintiff was entitled to exclusive control and possession of them.

141. Through the actions alleged above, Defendants knowingly and intentionally committed the tort of conversion when they asserted ownership and dominion over Plaintiff's Gmail accounts and e-mail communications by accessing the accounts without authorization and giving themselves the same access to Plaintiff's e-mail communications as an authorized user would have, inconsistent with Plaintiff's right to exclusive ownership of and dominion over the Gmail accounts and the e-mail communications therein.

142. Through the actions alleged above, Plaintiff suffered damages in an amount to be determined at trial. Plaintiff is entitled to actual damages and those damages that flowed from Defendants' unlawful conduct.

**CLAIM V
(Fraud)**

143. Plaintiff realleges and incorporates by reference each and every allegation set forth above.

144. Under Maryland law, in order to prevail on a claim of fraud, ““a plaintiff must prove (1) that the defendant made a false representation to the plaintiff, (2) that its falsity was either known to the defendant or that the representation was made with reckless indifference as to its truth, (3) that the misrepresentation was made for the purpose of defrauding the plaintiff, (4) that the plaintiff relied on the misrepresentation and had the right to rely on it, and (5) that the plaintiff suffered compensable injury resulting from the misrepresentation.””¹⁸

¹⁸ *Philip Morris, Inc. v. Angeletti*, 358 Md. 689, 751 (Md. Ct. App. 2000) (quoting *Nails v. S & R, Inc.*, 334 Md. 398, 415, 639 A.2d 660, 668 (1994)) (emphasis removed).

145. Through the actions alleged above, Defendants knowingly and intentionally represented to Plaintiff that they were not responsible for the unauthorized accesses of Plaintiff's Gmail accounts from the time of their first e-mail to Defendant on November 11, 2016, and continuing into the present.

146. Defendants knew that this representation was false, but Defendants made the representation in an effort to confuse and mislead Plaintiff and prevent the present action from being filed, thereby minimizing their legal liability for the unauthorized access of Plaintiff's Gmail account.

147. Plaintiff relied upon Defendants' representations of innocence, and he had a right to do so, as he and Defendants had shared a close business relationship.

148. Plaintiff relied upon Defendants' misrepresentations and deleted his mappraser14@gmail.com account because he could not initially ascertain the party responsible for the unauthorized access that had occurred therein and because he had very real fears as to the disclosure of the confidential information the account and its e-mail communications contained.

149. In response to Defendants' unauthorized accesses of his Gmail accounts and their misrepresentations of innocence, Plaintiff deleted his mappraiser14@gmail.com account, losing business records, confidential data, and client and colleague contact information.

150. Through the actions alleged above, Plaintiff suffered damages in an amount to be determined at trial.

CLAIM VI
(Invasion of Privacy – Intrusion Upon Seclusion)

151. Plaintiff realleges and incorporates by reference each and every allegation set forth above.

152. In Maryland, “[i]ntrusion upon seclusion is one of four varieties of the umbrella tort of invasion of privacy.”¹⁹

153. Intrusion upon seclusion involves “[t]he intentional intrusion upon the solitude or seclusion of another or his private affairs or concerns that would be highly offensive to a reasonable person.”²⁰

154. In this jurisdiction, “courts have construed ‘offensive intrusion’ to require either an unreasonable manner of intrusion, or intrusion for *an unwarranted purpose*.”²¹

155. Plaintiff’s Gmail accounts and e-mail communications are his private affairs, and his use of the Gmail accounts is only valuable to him where it is in solitude and seclusion.

156. Through the actions alleged above, Defendants knowingly and intentionally intruded upon Plaintiff’s solitude and his private affairs when they accessed his Gmail accounts and e-mail communications without authorization.

157. Defendants intruded upon Plaintiff’s solitude and private affairs in an unreasonable manner, in that they accessed his account without any legitimate authorization.

158. Defendants’ purpose for intruding upon Plaintiff’s solitude and private affairs was unwarranted, in that it was simply so that they could retaliate against the sender of the e-mail that informed individuals of the lawsuit against them.

¹⁹ *Whye v. Concentra Health Servs.*, 2013 U.S. Dist. LEXIS 137142, *44 (D. Md. 2013) (citing *Bailer v. Erie Ins. Exchange*, 344 Md. 515, 525-27, 687 A.2d 1375, 1380-81 (1997); *Pemberton v. Bethlehem Steel Corp.*, 66 Md. App. 133, 163-65, 502 A.2d 1101, 116-17 (1985), *cert. denied*, 306 Md. 289, 508 A.2d 488, *cert. denied*, 479 U.S. 984, 107 S. Ct. 571, 93 L. Ed. 2d 575 (1986)).

²⁰ *Whye v. Concentra Health Servs.*, 2013 U.S. Dist. LEXIS 137142, *44-45 (D. Md. 2013) (quoting *Mitchell v. Baltimore Sun Co.*, 164 Md. App. 497, 522, 883 A.2d 1008, 1022 (2005), *cert. denied*, 390 Md. 501, 889 A.2d 418 (2006)) (internal quotation marks omitted) (alterations in original) (citing Restatement (Second) of Torts § 652B (1977) (describing this branch of the tort as the “intentional intrusion upon the solitude or seclusion of another or his private affairs or concerns that would be highly offensive to a reasonable person”); *Furman v. Sheppard*, 130 Md. App. 67, 73, 744 A.2d 583, 585 (2000)).

²¹ *Luedtke v. Nabors Alaska Drilling, Inc.*, 768 P.2d 1123, 1137 (Alaska 1989) (emphasis added).

159. At common law, “[t]here is . . . no liability unless the interference with the plaintiff’s seclusion is a substantial one, of a kind that would be highly offensive to the ordinary reasonable man, as the result of conduct to which the reasonable man would strongly object.”²²

160. Similarly, “[t]he tort of intrusion upon seclusion ‘requires that the matter into which there was an intrusion is entitled to be kept private by the plaintiff.’”²³

161. The ordinary, reasonable, and modern individual fully expects and is entitled to keep private their personal communications and collected information available via their e-mail accounts, and Plaintiff had the same expectation and entitlement with regards to his Gmail accounts and the e-mail communications therein.

162. Similarly, the ordinary, reasonable, and modern individual would find it to be highly invasive and offensive if someone were to gain unauthorized access to their e-mail accounts or communications.

163. Through the actions alleged above, Defendants are guilty of the tort of invasion of privacy because of their knowing and intentional intrusion upon Plaintiff’s solitude and into his private affairs in a manner and for a reason which any ordinary man would find both unreasonable and highly offensive.

164. Through the actions alleged above, Plaintiff suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Mark Skapinetz respectfully requests that this Court grant the following relief:

²² Restatement (Second) of Torts § 652B, cmt d (1977).

²³ *Whye v. Concentra Health Servs.*, 2013 U.S. Dist. LEXIS 137142, *65 (D. Md. 2013) (quoting *Barnhart v. Paisoo Pubs., LLC*, 457 F. Supp. 2d 590, 593 (D. Md. 2006)).

1. An award of damages in an amount not less than \$100,000 and to be further determined at trial;
2. An award of actual, statutory, and compensatory damages as a result of Defendants' unlawful conduct;
3. An award of punitive damages as a result of Defendants' willful and unlawful conduct;
4. An issuance of injunctive or other equitable relief as this Court deems necessary to protect Plaintiff's interests and to prohibit Defendants from further engaging in wrongful conduct of the nature alleged herein;
5. An award of reasonable litigation expenses and attorneys' fees;
6. An award of pre-judgment and post-judgment interest to the extent permitted under the law; and
7. Such further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff respectfully demands that the claims alleged herein be adjudicated in a trial by jury.

Respectfully Submitted,

/s/ Eric J. Menhart

Eric J. Menhart, Esq.

Lexero Law

316 F Street NE, Suite 101

Washington, D.C. 20002

Tel.: 855.453.9376

Fax: 855.453.9376

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the Court's ECF system and all parties of record were served via that system.

/s/ Eric J. Menhart

Eric J. Menhart, Esq.