UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

A DOT CORPORATION, Plaintiff, v. ANTHONY BAY, RICHARD BARBER, DEREK DE BAKKER, DAVID DOUGLASS, JAN WALLACE, and Does 1-10, Defendants.	Case Number: **COMPLAINT** **1. Computer Fraud and Abuse Act (18 U.S.C. §1030 *et seq.*);** **2. Trespass to Chattels; and** **3. Conversion.** **JURY DEMAND**

Plaintiff A Dot Corporation ("A Dot"), by and through its attorneys Holman Cahill Garret Ives Oliver & Andersen, PLLC and Dhillon & Smith LLP, files this Complaint on behalf of A Dot Corporation ("A Dot"") against Anthony Bay ("Bay"), Richard Barber ("Barber"), Derek De Bakker ("De Bakker"), David Douglass ("Douglass"), Jan Wallace ("Wallace"), and Does 1-10 (collectively, "Defendants") and, upon information and belief, alleges as follows:

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INTRODUCTION

1. This case concerns several individuals who wrongfully accessed and continue to access computers owned by A Dot, a Seattle business engaged in developing highly sensitive and confidential technology applications used in interstate commerce, including high-level cryptography for the music and entertainment industries. The defendants were motivated variously by personal greed, ego, an attorney's desire to gain an unfair negotiating advantage for his client in a corporate takeover attempt, and fraud participants' attempts to leverage their racketeering scheme against another Seattle-based corporation. With their different motivations but common tactic, the defendants at various times broke into A Dot's computers and/or ordered such trespasses, stole A Dot's confidential data, interfered with A Dot's access to its own computers and data, converted the computers to their own uses, and used the stolen data to cause substantial harm to A Dot and others, violating multiple provisions of the federal Computer Fraud and Abuse Act and state law. This Complaint seeks to stop the fraud and abuse and obtain recompense for A Dot's damages.

THE PARTIES

2. Plaintiff A Dot Corporation is a private corporation organized under the laws of the state of Washington with its principal place of business in King County, Washington.

3. Pursuant to a written agreement dated June 1, 2005, A Dot shares office space with Mod Systems, Inc. ("Mod") at 1201 3rd Ave., Suite 1000, Seattle, WA 98101.

4. Defendant Anthony Bay ("Bay") is a consultant for Mod, and as of the date of the filing of this Complaint described himself as Mod's Chief Executive Officer ("CEO").

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5. Defendant Richard "Rich" Barber ("Barber") was at all times material hereto a resident of the state of Washington. Barber was Mod's Chief Financial Officer from 2008 to 2010.

6. Defendant Derek De Bakker ("De Bakker") was at all times material hereto a resident of the state of Washington. As of the date of the filing of this Complaint, De Bakker is Mod's General Counsel.

7. Defendant David Douglass ("Douglass") was at all times material hereto a resident of the state of Washington. Douglass was a financial consultant to Mod in 2009, and in 2008 served as its Chief Financial Officer.

8. Defendant Jan Wallace ("Wallace") was at all times material hereto a citizen of Canada residing in Scottsdale, Arizona and operating several securities, lending and business schemes in various U.S. jurisdictions and abroad.

9. Does 1-10 are individuals who acted in concert with the named Defendants in illegally accessing, interfering with, misappropriating and/or damaging A Dot's computers.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331.

11. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367, as they form part of the same case or controversy as the federal Computer Fraud and Abuse Act claim.

12. This court has diversity jurisdiction over the state law claims against Wallace pursuant to 28 U.S.C. §1332(a)(3), as A Dot and Wallace are residents of different states, and the amount in controversy exceeds $75,000.

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13. This Court has personal jurisdiction over all Defendants because each Defendant conducts business activities in this jurisdiction and has caused harm to A Dot in this jurisdiction.

14. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) because Defendants have substantial contacts with and/or may be found in this district; many of the events giving rise to this lawsuit have arisen and continue to occur in this district; and Defendants have committed the majority of their alleged tortious acts in this district.

FACTUAL ALLEGATIONS

Mod and A Dot

15. A Dot was founded by Mark Phillips in 2003.

16. A Dot's business includes developing high-end technical applications for high security data encryption, particularly for the digital entertainment industry, computer hardware, semi-conductor, software development, systems analysis and business analysis. Among A Dot's clients over the years has been Microsoft Corporation; other clients include major entertainment studios.

17. A Dot's sole shareholder, Mark Phillips, was until March 25, 2009 the Chief Executive Officer of Mod. Phillips is also a founder and the majority shareholder of Mod.

18. Mod's business, according to its website, is creating digital video delivery systems for delivering entertainment to consumers.

19. Mod and A Dot are parties to various inter-company agreements that govern the sharing of resources, including staff, and intellectual property. These agreements do not permit any Mod employee access to A Dot's computers.

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20. A Dot's data encryption work for digital entertainment businesses is so sensitive that A Dot tightly controlled access to its computers, limited such access to Mark Phillips, A Dot former employee Kenn Gordon, Phillips' executive assistants for limited purposes and information technology personnel, also for very limited purposes relating to safety and system re-booting following power interruptions or maintenance. No Defendant has permission to access A Dot's computers.

A Dot's Computers

21. A Dot has purchased and owns dozens of computers, including servers housed in the same server room as Mod's servers at 1201 3rd Avenue, Suite 1000, in Seattle. The names of some of A Dot's computers are DOTSERVER, DOTDEVSQL, DOTDEV, DOTSHARE, DOTMETAWAL, DOTBUILD and other computers with DOT-designated serial numbers, purchase records or asset tags. These computers comprise both physical machines as well as "sub-computers" in the form of computer "real estate" located on large servers.

22. A Dot owns several portable "laptop" computers.

23. A Dot owns storage tapes and other storage devices, mainly housed in the server room shared with Mod at Mod's offices.

24. In addition to the physical computers that A Dot owns, it also licenses computer software for its exclusive use, including the accounting program QuickBooks, Microsoft's Developer Network development applications, operating systems, and desktop productivity applications including Microsoft Outlook, Microsoft Word, and Excel.

25. All computers owned and operated by A Dot are connected to the internet and/or are used in interstate commerce.

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26. A Dot's computers are all password protected, locally encrypted, server encrypted or require server authentication to access. Mark Phillips and former A Dot employee Kenn Gordon had full access to A Dot's passwords and data until March, 2009 when the passwords were changed without their permission.

27. During the time that Phillips was Mod's CEO, through March, 2009, his assistants Rachel Huffman, Lauren Kronmiller and Josette Jenkins had Phillips' permission to access the A Dot computers for the sole purpose of accessing Phillips' calendar, contacts and emails located on the A Dot server and/or computers. They had no permission to access A Dot's substantive data, work product for clients, accounting or other business records.

28. In addition to Phillips' two assistants, two junior level MOD information technicians, Michael Striecher and Stephen Borges, had access to A Dot's passwords for the sole purpose of rebooting and/or restoring the computers in the event of an emergency or routine, pre-authorized maintenance. At no time did these two junior employees have permission to access any substantive data belonging to A Dot.

Wallace Steals Passwords and Invades A Dot's Computers

29. Wallace, who styles herself at times as a fundraiser for early stage companies and at other times as the CEO of shell companies sold through her business associate Kyleen Cane, had a business relationship with Mod whereby she expected to receive money and/or stock from Mod for raising funds for its expansion. In 2007 and 2008, Wallace spent a substantial amount of time with Phillips and attempted to glean information about Mod and gain access to its computers as well as to the computers of other companies associated with Phillips, including A Dot.

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30. At no time has A Dot given Wallace permission to any access data on its computers in any manner.

31. Wallace is believed to have gained access to A Dot computers without authorization by copying down passwords she found or stole from documents or computers, or by surreptitiously observing passwords being typed into portable computers.

32. Since the summer of 2008, Wallace has boasted to various individuals that she had gained access to all of A Dot's computers and had used that access on numerous occasions for her personal purposes, as well as given the information to others, including some defendants and Seattle attorney Jeffrey Smyth ("Smyth").

33. During the second half of 2008, angered that she was not being granted stock in Mod during a substantial Series A financing in which Toshiba Corporation, NCR, Inc. and Deluxe Entertainment Services Group, Inc. invested $35 million in Mod, Wallace hacked into A Dot's computers and stole confidential information from them for the specific purpose of extracting a payment or shares from Mod or Mod investor Robert Arnold ("Arnold") and/or from Phillips or Mod. Wallace also manipulated data on the computers. She is believed to have offered to sell the stolen data to Mod shareholders including Arnold, Arnold's attorney Smyth and/or corporate insiders seeking to take control of Mod, including Bay.

34. While one A Dot computer was in her vicinity in or about September, 2008, having informed A Dot that the computer was safe and not opened, Wallace forwarded documents and emails from the A Dot computer, which she accessed without authorization using stolen passwords, to herself and possibly others. Internet and temporary file creation logs for the dates and times in question confirm that

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Wallace breached the computers' security and hacked into A Dot's system. Other computer records, including computer access logs, permission logs, RAID disk mirroring monitoring records, file and power logs also verify access to A Dot's computers without A Dot's approval.

Wallace Gives Stolen Data to Cane, Bay and Smyth

35. Without authorization from A Dot, Wallace showed data she stole from A Dot computers, including confidential banking and accounting records belonging to A Dot, to her long-time business associate, Cane, an attorney who then sat on Mod's board of directors. Wallace also showed the data to Bay. She is believed to have manipulated some of the data she stole before delivering it to others, including Smyth and Julia De Haan, Arnold's accountant and attorney-in-fact from time to time.

36. Wallace's ties to Cane for over a decade include several instances in which Wallace has been sued for corporate transactions in which Cane represented her company or represented her in a questionable transaction. Wallace's motivation for turning stolen information over to Cane is believed to be in furtherance of a long-running scheme by which Wallace and Cane, working in concert and sometimes with the participation of others, target companies desiring to go public, sell them shell companies in a reverse merger (sometimes laden with undisclosed or mis-described debt instruments that later are called by Wallace or her cohorts after the transaction is consummated), cause "whistleblower" complaints against company executives often involving pattern allegations of sexual or drug abuse, institute sham litigation review committees or audit committees, install members of their own small group of cronies on the boards of the target companies and/or the sham litigation/audit committees, and ultimately take over the companies. The scheme (as documented by publicly available securities records and legal pleadings in other cases) sometimes involves bankrupting the companies and/or issuing large amounts of securities to connected parties, and sending assets offshore into nominee bank accounts in the Cayman Islands and Bermuda. Companies affiliated with Wallace and/or Cane have been or are the targets of government investigation in securities fraud and money laundering schemes. Wallace, Cane and/or their business associates usually end up in control of the companies they target. Mod and A Dot are believed to have become targets of this fraud ring starting as early as 2007.

37. Wallace has boasted to third parties that she had given data stolen from A Dot computers over a period of several months to Smyth, who as Arnold's attorney was frequently at odds with Mod's management over various intellectual property ownership and corporate control issues. Wallace's motivation for hacking into A Dot's computers, other than seeking to control Mod and A Dot with Cane's assistance and obtaining valuable stock in the Series A financing, is believed to be her desire to get paid certain consulting funds she believed were owed to her by Mod. She may also have been motivated by personal animus against Phillips, who refused to approve Mod's granting her stock in the Series A Mod financing. She also is believed to have been animated by a desire to socialize with Seattle's prominent citizens, including Arnold.

38. Wallace is believed to have approached Bay with the stolen data knowing that Bay was seeking a way to take over Mod after his consulting fees were suspended in the fall of 2007 due to board dissatisfaction with his performance; that suspension was affirmed by Mod's board, and Bay's request to accrue the suspended fees as a payable on Mod's books denied, in August, 2008. As a founder of Mod and a Mod

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shareholder, Bay sought a vehicle for staying in a control position at Mod and possibly even ascending to the CEO position of Mod – a goal he was able to accomplish in large part due to the stolen and manipulated data from A Dot, which he used to leverage a temporary change in control at Mod.

39. Wallace has stated to third parties that she sometimes accessed A Dot computers and took data from them upon Smyth's specific request for certain data. During the 2008 time period when Mod was engaged in the $35 million Series A financing round from Toshiba and others, Smyth was attempting to improve Arnold's bargaining position as an existing shareholder, in part by using data that Wallace stole from A Dot computers.

Smyth Uses Stolen A Dot Data To Attempt Settlement with Phillips, Mod

40. On behalf of Arnold, who until recently was also a shareholder in another company founded by Phillips and his colleagues, Banana Corporation ("Banana"), Smyth has had numerous occasions over several years to review Mod documents that clearly delineate Mod's relationship with A Dot and other companies, including Banana.

41. Among the many ways in which Smyth was made aware of A Dot's independent corporate status from Mod and other companies is Smyth's review on behalf of Arnold of the May 2006 and October 2006 Mod Common Stock Agreements, and the June 2006 Banana Common Stock Agreement, wherein Arnold explicitly acknowledged A Dot's separate existence from Mod and Banana (also founded by Mark Phillips) and the sharing of Mod's physical office resources and staff by A Dot.

42. In particular, during the 2008 Series A financing, Smyth on behalf of Arnold demanded and reviewed numerous documents making it explicitly clear that A

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Dot's intellectual property residing on its computers belongs only to A Dot, and not to Banana Corporation, Mod or any other entity.

43. Smyth, using information he knew was stolen by Wallace from A Dot's computers, then attempted to force Phillips to give his majority shareholdings in Mod to Arnold, threatening that otherwise, Arnold would sue Mod and Phillips personally, using the stolen information in his case to smear Phillips and his colleagues. Phillips refused to accede to this extortionate use of A Dot's stolen data.

44. On behalf of Arnold, Smyth on December 18th, 2008 delivered to Mod a draft shareholder derivative complaint improperly coupled with a direct shareholder complaint against Mod and Phillips on behalf of Arnold. The draft complaint was laden with information stolen from A Dot's computers by Wallace, which Smyth knew was stolen.

45. After delivering his draft complaint, Smyth again attempted to extract a settlement from Mod and Phillips, demanding that Mod force Phillips to hand over stock in Mod sufficient to give to Arnold a 51% interest in the company (worth over $60 million) in exchange for Arnold' agreement not to file his complaint. Smyth further demanded $5 million in royalties from intellectual property owned or controlled by Phillips, again basing his demands upon leverage he felt he had from data stolen from A Dot computers by Wallace. Smyth further demanded that Phillips turn over all stock in Banana Corporation (worth $60 million) to Arnold, Banana's only other shareholder. Smyth also demanded in writing that several Mod employees loyal to Phillips be fired immediately, most or all of whom happened to be key witnesses to Wallace's theft of A Dot property and her subsequent conduct in attempting to leverage the stolen information to her and others' advantage.

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Bay, Cane, Barber, Douglass and De Bakker Illegally Access A Dot Computers

46. In January 2009, Mod's board formed a "Demand Review Committee" ("DRC") consisting of board members Bay (named in Arnold's draft complaint as a defendant) and Cane, ostensibly to review Arnold's demands and investigate his allegations. Cane recommended the formation of an "independent" committee, as she has done at previous corporations where she represented the company and/or sat on its board and Wallace, not coincidentally, raised some form of "whistleblower" complaint against a company's rightful management.

47. Bay, as a former consultant to A Dot in 2004 and 2005, and a founder of Mod, is intimately familiar with A Dot's independent corporate status, and is well aware of the architecture of A Dot's computer system. Bay, as a consultant executive to Mod, never had permission to access or change any data on the A Dot servers or computers.

48. Bay's motivations for instructing that A Dot's computers be broken into and its data accessed, manipulated and/or distributed, is believed to include his attempt to cover up an unauthorized payment of $110,000 he caused Douglass to pay to him in September, 2008 in direct violation of a Mod board order suspending Bay's pay. If Bay were in control of Mod, he would be in a stronger position to conceal this unauthorized payment and increase his own pay – which he promptly did upon becoming Mod's acting CEO after pushing Phillips aside.

49. Mod CFO Barber and General Counsel De Bakker obtained the A Dot usernames and passwords from Michael Streicher and Stephen Borges, Mod's information technicians.

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50. Barber and De Bakker instructed junior Mod accounting employee Kole Harwood to use the passwords they misappropriated to search A Dot's data for information they instructed Harwood to find and deliver to them.

51. As Mod's CFO, responsible for booking payments from time to time from A Dot to Mod or vice versa, Barber was well aware of the distinct corporate identity of A Dot and the fact that he never had permission to access A Dot's computers or data. Barber had also performed services for A Dot from 2003-2005 and knew from direct communications with Phillips that A Dot was a company that developed cryptography systems and employed a high degree of security to protect its systems, and whose data Barber did not have permission to access.

52. De Bakker was fully aware of A Dot's corporate status and the highly sensitive nature of its intellectual property and data because, as an attorney at the law firm Foster Pepper, he had represented Phillips prior to becoming Mod's full-time in-house counsel.

53. In addition to illegally accessing A Dot's computers and its data, Barber and De Bakker instructed the Mod IT staff to change all A Dot passwords, without the authorization of any A Dot officer and with full knowledge that in so doing, they were cutting off A Dot's rightful owner's and authorized users' access to A Dot's computers. Barber and De Bakker also instructed Mod's information technology staff not to communicate with A Dot's management concerning A Dot's computers systems and computers after they changed the passwords.

54. The DRC instructed former CFO David Douglass to review Mod's QuickBooks records for the sole and limited purpose of verifying that certain Mod-A Dot transactions were similarly booked at both companies. For this limited purpose

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only, A Dot's former employee Kenn Gordon gave Douglass the QuickBooks username and password for A Dot.

55. Douglass, who had worked with Mod previously as its CFO in 2008, was well aware of the distinct corporate status of A Dot and that A Dot's computer system and data required separate permissions from Mod's computer systems and data.

56. The DRC did not – nor could it – authorize Douglass or any Mod personnel to review A Dot's financial records. Nevertheless, Douglass and others acting under his direction did access and review A Dot's confidential accounting records contained on A Dot's computers, without A Dot's authorization, and being fully aware that they had to use A Dot's passwords to hack into its computers to steal the data they sought. In violation of the limited permission given by Gordon to Douglass, Douglass and/or other defendants quickly changed the QuickBooks passwords so that A Dot could no longer access A Dot's QuickBooks files.

57. Cane and Bay, assisted by Mod's general counsel De Bakker, forced Phillips' personal assistants to give them A Dot's passwords, which they used to break into A Dot's computers without authorization, review A Dot's data, and deliver A Dot's data to others including Mod's outside counsel, Lane Powell PC and later Fenwick & West LLP.

58. At all relevant times, Lane Powell PC and Fenwick & West LLP knew that the data they were reviewing or requested to review was stolen from A Dot's computers, and that Mod and Mod's executives had no permission from A Dot to violate its property and steal its data. Fenwick & West attorney William Bromfield, who presently represents Mod, previously represented Mod, A Dot and Banana with respect to various intellectual property matters, and is fully aware of the distinct corporate

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identities, distinct ownership, proprietary computer systems and data, and separate intellectual property of A Dot.

59. Cane, a Nevada securities attorney hired by Mod and sitting on Mod's board, who reviewed and participated actively in preparing the Series A financing documentation for Mod which included numerous documents pertaining to A Dot's separate legal status, distinct ownership and valuable, confidential intellectual property, at all times was aware that she and her colleagues on the DRC had no permission to access any A Dot computer or data for any purpose whatsoever, nor to change A Dot's passwords. She nonetheless knowingly ordered such data to be accessed, reviewed such data, and even billed Mod for the review of documents she knew were stolen from A Dot.

60. De Bakker, as Mod's general counsel, was well aware of A Dot's distinct corporate identity and also was aware that at no point in time had he ever been given any permission to access, review or modify any A Dot computers or data. He nonetheless knowingly ordered the review of data illegally taken from A Dot's computers, gave it to others, and is believed to have ordered the accessing and review of specific data from A Dot's computers.

61. The DRC hired Wallace – the first of the A Dot data thieves – to review the stolen data on the DRC's behalf. Wallace has billed Mod and been compensated by Mod for time she spent illegally accessing and reviewing data on or through A Dot's computers. The DRC's draft and "final" reports concerning Arnold's allegations make specific reference to a March 17, 2009 "interview" of Wallace by the DRC where the DRC reviewed documents that Wallace stated she obtained from a laptop used by Phillips (which belongs to A Dot). Wallace was paid $126,000 by Mod for the data she

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stole from A Dot for Smyth, Cane and Bay. The DRC has attempted to force Phillips to pay to Mod the $126,000 that Mod paid to Wallace for A Dot's stolen property.

62. On November 12, 2009 the DRC was found by Judge Erlick of the King County Superior Court to be improperly constituted, forcing Mod to dissolve the DRC and reconstitute a litigation committee without either Bay or Cane on it.

63. Even after Bay and Cane were removed by court order from the DRC, they continued to violate A Dot's computers and steal its data, and instruct others to do so as well. For example, in February and March of 2010, Bay instructed Mod's new CFO Robert De Lucia to access A Dot's computers to search for additional A Dot data.

Smyth's Use of Stolen Data In Other Venues

64. As described above, Smyth used stolen A Dot data procured for him by Wallace to attempt to force Mod to grant his client Arnold the majority of Phillips' shares in Mod. When that attempt failed, Smyth used the stolen information in his lawsuits against Mod, Banana, Mod executives Gordon, Douglas Lower and Phillips, on Arnold's behalf. At all times relevant herein, Smyth has been aware that his legal pleadings against these parties are predicated in large part upon stolen and/or manipulated documents taken from A Dot's computers without A Dot's permission.

65. Smyth has held numerous meetings over several months in 2008 and 2009 with Wallace, including meetings where Wallace was observed physically taking A Dot computers to meetings with Smyth. At no time has either Wallace or Smyth been authorized to access A Dot computers for any purpose.

66. Following some of these meetings between Wallace and Smyth, in October and November 2008 Wallace relayed messages from Smyth to Phillips, claiming to be negotiating on behalf of Arnold. Wallace attempted to convince Phillips to give 50% of

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his Mod shares to Arnold as part of a deal she would broker. Wallace stated that she was using her personal attorney, Claire Ambrosio, to be her messenger to deliver documents to and from Smyth. Phillips refused Smyth's indirect offers to settle the yet-to-be-filed (or even articulated) claims against Phillips through Wallace's overtures.

67. In December, 2008 after Smyth served his draft complaint upon Mod, Wallace again attempted to represent Arnold's demand (presumably relayed by Smyth) that if Phillips would give Arnold 50% of his shares, Smyth would not file the threatened complaint against Mod and Phillips. Again, Phillips refused these indirect demands from Smyth.

68. Smyth has continued to use data stolen from A Dot's computers as leverage in negotiations with Phillips, Mod and their representatives, attempting to coerce a settlement of Arnold's claims. For example, during a meeting with Phillips in March, 2009 demanded by Cane, Bay and Mod's then-attorneys at Lane Powell to attempt to settle Arnold's claims against Phillips, they pulled documents from a folder that purported to be Phillips' private bank documents (stolen directly from A Dot's computers by Wallace and provided by Smyth to Cane and Bay), and "confronted" Phillips with the allegation that he had engaged in financial wrongdoing related to A Dot. Phillips' attorneys at the time, Anthony Gewald and Ronald Braley of Lasher Holzapfel Sperry & Eberson witnessed Cane, Bay and the Lane Powell attorney's presentation of materials stolen from A Dot's computers and described as originating from Smyth, at the meeting.

69. In April, 2009 after Phillips had stepped aside from his role as Mod's CEO, in a meeting with Smyth and Arnold accountant and attorney-in-fact Julia De Haan, Smyth's law partner Chris Mason held up what he purported to be a personal

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brokerage statement of Phillips' (stolen from A Dot's computers) and said words to the effect that "money will make this [i.e., Arnold's claims] go away." Phillips then-attorneys Anthony Gewald and Ronald Braley witnessed this attempted use by Smyth and his partner of stolen documents from A Dot's computer system.

70. Smyth, on behalf of Arnold, in 2009 filed a shareholder derivative lawsuit against Banana Corporation, of which Arnold and Phillips were then the only shareholders. Following his filing of the lawsuit, in an attempt to extract a settlement of Arnold's claims against Banana, Smyth sent Banana's attorney James Smith of Smith Hennessey PLLC an A Dot email that had been stolen from an A Dot computer.

71. On March 10, 2010 after dismissing his derivative lawsuit against Banana with prejudice, Smyth filed another complaint against Banana, A Dot and others. In it, Smyth made several allegations clearly based upon data stolen from A Dot's computers, which Smyth either solicited or received knowing that it was stolen. For example, Smyth alleged in his complaint against Banana that his "investigation has revealed" that A Dot (wholly owned by Phillips) had at an unspecified point in time transferred money abroad. These conclusions are drawn solely from A Dot data stolen by Wallace and/or others acting at the direction of Mod's DRC or Arnold's agents. At the time he made these allegations in March, 2010, Smyth was fully aware that the data he based his complaint upon was fraudulently obtained from A Dot, its rightful owner.

72. Smyth has no independent or lawful basis to allege many of the allegations in the Banana complaint, other than documents stolen from A Dot's computers.

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A Dot's Damages

73. A Dot has been damaged by having to expend substantial time, money, and resources to identify the scope of the damage to A Dot and the extent of Defendants' (including Does 1-10) fraud, theft and destruction of property. These damages include hiring computer technicians to assess the damage to A Dot's portable computers, and also include the costs of investigating the fate of A Dot's larger computers and data in the control of Defendants and their cohorts.

74. A Dot has been substantially damaged as a result of the computer breaches caused by Defendants in that A Dot is required by contract to inform many contractual counterparties – including several prominent digital media companies – of the fact of such breaches and the resolution of the computer breaches. Several Defendants, including Bay, are aware that their breaches of A Dot's data would cause harm to A Dot's relationships with its contractual counterparties as well as harm to those counterparties themselves. A Dot, having begun its assessment of the damage perpetrated by Defendants' invasion of its computers, is in the process of contacting all A Dot clients to inform them of Defendants' data breaches, Defendants' access to and possession of data stolen from A Dot, and the fact that other recipients of the stolen property who are not named as Defendants (including Smyth, Cane, Ambrosio, Lane Powell, Fenwick & West, and others) may be making use of the stolen property.

75. A Dot's ongoing business relationships with Mod and Banana, as well as other third parties have been substantially damaged by Defendants' actions, including theft of A Dot's documents and wrongfully changing the A Dot passwords and cutting off physical access to A Dot computers at Mod's shared offices with A Dot.

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76. Some of A Dot's computers are believed to have been reformatted, overwritten, imaged and copied, all of which affect the integrity of any data remaining and effectively destroy much or all of the original data, including data belonging to A Dot's clients.

77. A Dot's monetary damages are believed to exceed $10,000,000.

First Cause of Action
Breach of the Computer Fraud and Abuse Act, 18 U.S.C. §1030
(Against All Defendants)

78. A Dot repeats and incorporates by reference each allegation in paragraphs 1 through 77 as if set forth fully herein.

79. All of A Dot's computers are protected computers involved in interstate commerce within the meaning of the CFAA.

80. By their actions, each and every named Defendant and Does 1-10 acting in concert with them either directly accessed A Dot's protected computers or instructed such computers to be accessed without either A Dot's knowledge or authorization.

81. Defendants, including Does 1-10, have violated the Computer Fraud and Abuse Act, 18 U.S.C. §1030(a)(2)(C), by intentionally and without authorization accessing one or more protected computers belonging to A Dot, and by obtaining information from such protected computers, including but not limited to confidential banking and accounting records belonging to A Dot and pertaining to A Dot's clients.

82. Defendants, including Does 1-10, have violated the Computer Fraud and Abuse Act, 18 U.S.C. §1030(a)(4), by knowingly, and with intent to defraud A Dot, accessing one or more protected computers belonging to A Dot without authorization, and by means of such conduct furthering the intended fraud and obtaining one or more

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things of value, including but not limited to confidential banking and accounting records belonging to A Dot.

83. Defendants, including Does 1-10, have violated the Computer Fraud and Abuse Act, 18 U.S.C. §1030(a)(5)(B), by intentionally accessing one or more protected computers belonging to A Dot without authorization, and as a result of such conduct, recklessly causing damage to A Dot, including but not limited to impairing the integrity and availability of data and/or information belonging to A Dot and its clients by hacking into A Dot's computers and changing its passwords without A Dot's permission.

84. Defendants, including Does 1-10, have violated the Computer Fraud and Abuse Act, 18 U.S.C. §1030(a)(5)(C), by intentionally accessing one or more protected computers belonging to A Dot without authorization, and as a result of such conduct, recklessly causing damage and loss to A Dot, including but not limited to impairing the integrity and availability of data and/or information belonging to A Dot and its clients by hacking into A Dot's computers and changing its passwords without A Dot's permission, and by causing A Dot to incur damage and loss in the form of costs associated with expending substantial time, money, and resources to identify the scope of the damage to A Dot and the extent of Defendants' fraud and theft.

85. Does 1-10, or some of them, are liable for some or all of the specified breaches of the Computer Fraud and Abuse Act because some of them instructed others to breach A Dot's computers, which itself has been held to violate the Computer Fraud and Abuse Act even where the defendants did not physically hack into or illegally access the computers themselves.

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86. As a direct and proximate cause of Defendants' deliberate misconduct, A Dot has suffered damages as alleged above, according to proof at trial, but exceeding the sum of $5,000 within the year preceding the filing of this complaint.

87. A Dot is entitled to a preliminary and a permanent injunction prohibiting all Defendants from accessing any A Dot computer or using A Dot data stolen from its computers, and a mandatory injunction requiring the return of all A Dot data and/or computers in any Defendants' possession or in the possession of any party to whom Defendants may have given the data and/or computers.

Second Cause of Action
Trespass to Chattels
(Against All Defendants)

88. A Dot repeats and incorporates by reference each allegation in paragraphs 1 through 87 as if set forth fully herein.

89. A Dot owns and operates valuable chattels, including its computers and computer system, which also includes licensed computer programs such as QuickBooks and Microsoft Outlook used by A Dot personnel for A Dot business.

90. By their acts described above, Defendants have trespassed A Dot's computer system, without justification or authorization by A Dot, and thereby interfered with A Dot's right to possess and operate its chattels during the time period when the computers were wrongfully accessed.

91. Defendants have, after hacking into A Dot's computers, changed its passwords or ordered that its passwords be changed without A Dot's permission, thereby substantially interfering with A Dot's right to enjoy its chattels without interference.

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92. As a proximate cause of Defendant's wrongful, intentional and fraudulent conduct, A Dot has suffered damages as alleged above according to proof at trial.

93. A Dot is entitled to a preliminary and a permanent injunction prohibiting Defendants from using, interfering or intermeddling with A Dot's computers and/or its computer data.

Third Cause of Action
Conversion
(Against All Defendants)

94. A Dot repeats and incorporates by reference each allegation in paragraphs 1 through 93 as if set forth fully herein.

95. Defendants willfully have interfered with A Dot's computers, taking possession of A Dot computers at different points in time from 2008 through the present. These Defendants' possession of A Dot's computers was and is to the exclusion of A Dot, and has prevented A Dot from any use or enjoyment of the computers during the time that Defendants possessed them.

96. As a proximate cause of Defendants' wrongful, intentional and fraudulent conduct, A Dot has suffered damages as alleged above according to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, A Dot prays for judgment against Defendants, jointly and severally, as follows:

1. For actual and consequential damages in an amount to be determined at trial, but believed at this time to exceed $10,000,000;

2. For the imposition of a constructive trust upon Defendants' ill-gotten gains as a result of the tortious activities detailed above, and disgorgement of said gains;

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3. For prohibitory injunction barring Defendants from in any way accessing A Dot's computers, or using information stolen from A Dot, for any purpose;

4. For a mandatory injunction requiring all persons in possession of data stolen from A Dot to return such to A Dot immediately and certify that they have kept no copy or forwarded it to others;

5. For exemplary damages for Defendants' misconduct in an amount to be determined at trial;

6. For attorney's fees to the extent permitted by law;

7. For costs of suit; and

8. Such other and further relief as this Court deems just.

DEMAND FOR JURY TRIAL

Under Fed.R.Civ.P. 38(b), Plaintiff demands jury trial of all issues raised by the Complaint.

Date: March 29, 2010

Holman Cahill Garrett Ives Oliver & Andersen, PLLC

By: ______________________

Larry R. Garrett, WSBN 23830
Attorneys for A Dot Corporation

Dhillon & Smith LLP

By: *Harmeet K. Dhillon*

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Harmeet K. Dhillon (admission *pro hac vice* pending)
Attorneys for A Dot Corporation

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