UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MARK E. PHILLIPS,

Plaintiff,

v.

THE EXECUTOR OF THE ESTATE OF ROBERT MORRIS ARNOLD, JANE DOE ARNOLD, wife of the late Robert M. Arnold and their marital community composed thereof;
JULIA DE HAAN,
JEFFREY ALAN SMYTH,
JUANITA MARY JARDINE, aka JAN MARY WALLACE, aka SARAH BLAIR, aka JOAN REARDON, aka JARDINE MARY WALLACE, AND aka ROB L. SCRUGGS;
CHRISTOPHER ERIC LUNDVALL, and DOES 1-25,

Defendants.

Case Number:

COMPLAINT

1. **Computer Fraud and Abuse Act (18 U.S.C. §1030 *et seq.*);**
2. **Breach of Contract;**
3. **Tortious Interference with Contract;**
4. **Fraud;**
5. **Conspiracy;**
6. **Trespass to Chattels; and**
7. **Conversion;**
8. **Indemnity.**

JURY DEMAND

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

Plaintiff Mark E. Phillips files this complaint for damages against Robert Morris Arnold and Jane Doe Arnold, Julia De Haan, Jeffery Alan Smyth, Juanita Mary Jardine aka Jan Mary Wallace and Christopher Eric Lundall, and Does 1-25 (collectively "defendants"), and upon information and belief alleges as follows:

INTRODUCTION

This case arises out of a series of investments by Robert M. Arnold in companies owned and operated by plaintiff Mark E. Phillips; namely MOD Systems, Inc. (hereinafter "MOD") and Banana, Inc. (hereinafter "Banana"). Mr. Phillips had developed highly sensitive and confidential technology applications used in interstate commerce, including low-level cryptography for the music and entertainment industries, as well as for the mobile payment industry. After the investment of Mr. Arnold, Mr. Phillips was able to further refine the technology licensed to MOD to the point that Toshiba Corporation, NCR, Inc., and Deluxe Entertainment, Inc. agreed to invest an additional $35 million in MOD. At about the same time, Banana had executed a development deal in the country of Bolivia that would license its technology to allow cell phone customers to make payments using their cell phones, a tremendous potential market where "point of payment" infrastructure was terribly underdeveloped. Defendant Jan Wallace is an accomplished con artist and fraud who has specialized in "advising" start-up companies and then uses her inside information to trump up charges against the company officers so she can assume control. Defendants Jeff Smyth and Julia De Haan are the lawyer and accountant, respectively, of Mr. Arnold. Mr. Arnold recently passed away, so plaintiff names his successor in interest, the Executor of the Estate of Robert M. Arnold as a defendant. All the defendants were motivated variously by personal greed, ego, an attorney's desire to gain an unfair negotiating

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

advantage for his client in a takeover attempt, and fraud. Defendants schemed and caused to be filed an unfounded and unsupported "Derivative Claim" against plaintiff and his companies in an attempt to enrich themselves of the MOD Series A investment. Defendants also conspired to illegally access plaintiff's personal computers and accounts, stole confidential personal information, interfered with plaintiff's access to his own computers and data, converted the information in the computers to their own uses, and used the stolen information and data to cause plaintiff harm, violating multiple state and federal laws. This Complaint seeks to recompense plaintiff for all of the damages suffered as a result of defendants' actions.

THE PARTIES

1. Plaintiff Mark E. Phillips is an individual and a resident of King County, State of Washington. He is the founder and at various times was the majority shareholder of MOD and Banana, businesses organized under the laws of the State of Washington with their principal places of business in King County, State of Washington. He is the sole shareholder of A Dot Corporation.

2. 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. A Dot was Mr. Phillips' "technology incubator," where he would develop technology, write code and manufacture hardware to be used in future business projects.

3. Defendant Executor of the Estate of Robert Morris Arnold is an individual and a resident of King County, State of Washington, and is the successor in interest to Robert M. Arnold, including legal responsible for any claims made against the Estate of Robert M. Arnold. Mr. Arnold was a well-known "angel investor" in the Seattle,

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

Washington area. It is believed that Mr. Arnold had invested more than $55 million in approximately 100 start-up companies in the Seattle area, and was an investor in two of plaintiff's corporations; MOD and Banana.

4. Defendant Jane Doe Arnold is the wife of defendant Mr. Arnold and the owner of that portion of Mr. Arnold's community estate as identified under the laws of the State of Washington.

5. Defendant Julia De Haan is a resident of King County, State of Washington, and a licensed accountant practicing in the Seattle area. Ms. De Haan is an advisor to Mr. Arnold and at various times herein held a power of attorney on Mr. Arnold's behalf. It is believed that Ms. De Haan was defendant Mr. Arnold's primary adviser and manager of the "start-up" investment portfolio.

6. Defendant Jeffrey Alan Smyth is a resident of King County, State of Washington, and a licensed attorney practicing in the Seattle area. Mr. Smyth is legal counsel for Mr. Arnold and the attorney who filed the "derivative claims" against plaintiff and his companies.

7. Defendant Jan Wallace, aka Jan Jardine (and other various pseudo-names) is a citizen of Canada who resided in Scottsdale, State of Arizona, at the time of the conduct alleged herein. It is believed that Ms. Wallace had interests in various businesses in the United States and abroad at the time, even though she had entered the country under a "visitor" visa and was legally barred from working. It is further believed that Ms. Wallace has returned to live in Canada.

8. Defendant Christopher Eric Lundvall was a resident of King County, State of Washington, at the time of the conduct alleged herein. Mr. Lundvall was a former employee of plaintiff Mr. Phillips and A Dot. It is believed that Mr. Lundvall currently lives in the former Soviet republic, Kazakhstan.

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
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9. Doe defendants 1 thru 25 are individuals who acted in concert with the named defendants in their illegal and tortious conduct, and whose identities or conduct are unknown to plaintiff at this time. When such identity or conduct is discovered, plaintiff will seek leave of court to amend the complaint.

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 Ms. Wallace pursuant to 28 U.S.C. §1332(a)(3), as Mr. Phillips and Ms. Wallace are residents of different states, and the amount in controversy exceeds $75,000.

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

14. This Court has personal jurisdiction over all defendants because each defendant conducts business activities in this jurisdiction, voluntarily entered into written contracts within this jurisdiction, and has caused harm to Mr. Phillips within this jurisdiction.

15. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) because defendants have substantial contacts with and/or the majority of the pertinent witnesses 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.

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
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FACTUAL ALLEGATIONS

MOD and Banana Corporation

16. Plaintiff Mark Phillips founded MOD in 2005 along with Anthony Bay. Mr. Bay contributed $50,000 towards the new company with Mr. Phillips contributing office space, staff, computer and other equipment, cash, and his personal credit to support the new company in an amount estimated to be $3 million.

17. Mr. Phillips also contributed a stream of income due and owing to A Dot Corporation from work done on other, unrelated projects; which income supported MOD after its formation. Over time, Mr. Phillips also set up a line of credit using his personal credit that MOD could access, as well as loaned MOD more than $1 million dollars.

18. Plaintiff Mr. Phillips was the majority shareholder of MOD and its CEO as well as its Chief Technology Officer up until his ouster from the company in 2009.

19. MOD was a technology company that licensed Mr. Phillips' intellectual property in order to create an efficient system to deliver digital video content to consumers via an SD card.

20. Plaintiff Mr. Phillips founded Banana in 2006. Mr. Phillips was its sole shareholder and director until defendant Mr. Arnold's investment in Banana in 2006.

21. Banana was set up to hold certain of Mr. Phillips' intellectual property that was used to design a system to allow consumers to make purchases using their cellular telephones. It was anticipated that this technology would be especially useful in countries that lacked a comprehensive and extensive monetary infrastructure.

22. Plaintiff Mr. Phillips founded A Dot Corporation in 2003. A Dot was set up to develop certain computer technologies that would be used in products designed for consumers. A Dot was Mr. Phillips "technology incubator" that allowed him to develop different technologies that would have applications with computers and smart

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40 Lake Bellevue Dr. #100
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devices. For example, A Dot was hired by Microsoft to develop and write code for its smart watches.

23. As Mr. Phillips' intellectual property and technology increased, he planned to set up different corporations that would license certain of his intellectual property to develop and market certain, related products. This general plan for technical development led to the formation of MOD and Banana; each designed to license specific intellectual property to develop and market distinct products.

24. MOD, Banana and A Dot are parties to various inter-company and service agreements that govern the sharing of resources, including staff and intellectual property. These agreements do not permit any employee of one company to access the computers of another company without specific authorization.

25. The data encryption work performed by Mr. Phillips, A Dot, MOD, and Banana for digital entertainment, digital technology, and financial transactions is so sensitive that each company controlled access to its own computers and strictly limited access to their computers. No defendant had permission, implicit, tacit, implied or otherwise to access any of the computers at any of the companies of MOD, Banana, and A Dot.

Mr. Arnold invests in MOD, Banana

26. After a series of negotiations, defendant Mr. Arnold agreed to invest in both MOD and Banana. On October 13, 2006, he signed a Subscription Agreement with MOD, a true and correct copy of which is attached hereto as Exhibit "A." At the same time, Mr. Arnold entered into a Subscription Agreement with Banana, a true and correct copy of which is attached hereto as Exhibit "B."

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
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27. Both Subscription Agreements contained specific language regarding the operations of the companies. Each contained a specific language about the all aspects of the investment. For example, defendant Mr. Arnold accepted all responsibility for due diligence prior to his investment in Section 1.6 "Investor Responsibility for Due Diligence" at page 3. Mr. Arnold also agreed that he had been provided all documents necessary in order to evaluate the investment, including all documents requested of MOD and Banana in Section 3.1 "Availability of Information" at page 4.

28. Additionally, Mr. Arnold was warned that MOD (and Banana) was a start up company with no significant earning history or profitability. He was specifically notified on page A-4 that "Our principal members and management will continue to exert a substantial amount of control in the operation of our business." Later in that section, he agreed that "No investment in the company should be made unless the investor is willing to entrust all aspects of our management and operations to Mark Phillips and Anthony Bay." There is little doubt that Mr. Arnold understood Mr. Phillips had wide latitude to do whatever he thought necessary for the success of the companies, including, but not limited to, the development of technology, the business direction of the companies, and the expenditure of company assets.

29. Mr. Arnold employed agents and employees to review the Subscription Agreements in detail before entering into the agreements, including, but not limited to, defendant Ms. De Haan and Cole Younger. Mr. Arnold voluntarily and knowingly signed these agreements. In negotiating on behalf of Mr. Arnold, it is believed that all actions taken by Ms. De Haan were within the course and scope of her agency relationship with Mr. Arnold. By entering into the agreements, defendant Mr. Arnold ratified the actions of his agent, Ms. De Haan, and the other agents who acted on his behalf.

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40 Lake Bellevue Dr. #100
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A Dot's Computers

30. A Dot purchased and owned dozens of computers, including servers that are housed in the same server room as MOD's servers. The names of some of A Dot's computers are DOTSERVER, DOTDEVSQL, DOTDEV, DOTSHARE, DOTMETAWAL, DOTBUILD, as well as 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.

31. A Dot owned several portable "laptop" computers.

32. A Dot owned storage tapes and other storage devices, mainly housed in the server room shared with MOD at MOD's offices. These computers were separate from Mr. Phillips' capital contribution to MOD at its inception.

33. In addition to the physical computers that Mr. Phillips and A Dot owned, they also licensed 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.

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

35. A Dot's computers are all password-protected, locally encrypted, server encrypted or require server authentication to access. Plaintiff and former A Dot/MOD employees had full access to A Dot's passwords and data until March 2009, when the passwords were changed without Mr. Phillips' or anyone from A Dot's permission.

36. During the time that Mr. Phillips was MOD's CEO up until March 2009, his assistants Rachel Huffman, Lauren Kronmiller and Josette Jenkins had Mr. Phillips' permission to access the A Dot Computers for the sole purpose of accessing Mr.

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Phillips' calendar, contacts and emails located on the Phillips/A Dot server and/or its computers. They had no permission to access Phillips/A Dot's substantive data, work product for clients, accounting records, or other business records.

37. In addition to Mr. Phillips's assistants, two junior level MOD information technicians, Michael Striecher and Stephen Borges, had access to Phillips/A Dot's passwords for the sole purpose of being able to reboot and/or restore the computers in the event of an emergency or as part of their routine, pre-approved maintenance. At no time did these two junior employees have permission to access any substantive data or information belonging to A Dot or Mr. Phillips.

Wallace Steals Passwords and Invades A Dot's Computers

38. Ms. Wallace, who styles herself at times as a fundraiser for start-up companies and at other times as the CEO of shell companies, managed and marketed with her business associate, Nevada attorney Kyleen Cane, was introduced to Mr. Phillips as someone who could help him raise additional funds to help MOD and his other businesses expand.

39. In 2007 and 2008, Ms. Wallace and Mr. Phillips spent a substantial amount of time together, and, in addition to the business relationship that Ms. Wallace had with MOD, A Dot, Banana and Mr. Phillips, a personal relationship developed between the two. While Mr. Phillips was busy preparing for the Toshiba investment, Ms. Wallace was using her business and personal relationship with Mr. Phillips to gain access to all of Mr. Phillips' property in order to glean information about MOD, A Dot, Banana, and the other companies and to illegally access the computers of MOD, A Dot, Banana, and the other companies.

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

40. At no time was Ms. Wallace given permission to access any of the data on any of the computers for any of the companies by Mr. Phillips or any other person.

41. It is believed that Ms. Wallace gained unauthorized access to the computers of all the companies by copying down passwords she found or stole from documents or computers, or by surreptitiously observing passwords being typed into portable computers.

42. Ms. Wallace also attempted to ingratiate herself with Mr. Phillips' assistants and it is believed that some of the confidential and protected information she obtained was gleaned either surreptitiously from them or by creating some ruse to get the information. She is an experienced and accomplished con.

43. Starting in the spring of 2008, Ms. 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, and that she has given the information to others, including some defendants, most notably, defendant Mr. Smyth.

44. The personal relationship between Ms. Wallace and Mr. Phillips ran hot and cold. There were many occasions of warmth when expensive gifts and travel was indulged, as well as many instances of anger and verbal abuse. Sometime in 2008, Ms. Wallace became extremely angry with Mr. Phillips because he did not award her any stock in MOD during a substantial Series A financing in which Toshiba Corporation, NCR, Inc., and Deluxe Entertainment Services Group, Inc. invested $35 million. It is believed that around this time, Ms. Wallace hacked into A Dot's computers and stole confidential information from them for the specific purpose of extracting an extorted payment or shares in MOD from Mr. Phillips. Ms. Wallace also had the ability to manipulate data on the computers, and it is believed that she did so on several occasions.

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
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45. Ms. Wallace, unable to extort money from Mr. Phillips, contacted defendant Mr. Arnold, his attorney, defendant Mr. Smyth, and his accountant, defendant Ms. De Haan, and offered them access to the information she had illegally copied/obtained.

46. While Ms. Wallace had possession of one A Dot computer, on or about September 2008, she lied to Mr. Phillips and other A Dot employees, telling them that the computer was "locked" and "not opened." In truth, Ms. Wallace accessed the computer without authorization using stolen passwords, and emailed confidential, protected documents to her own email address and possibly others. Internet and temporary file creation logs for the dates and times in question confirm that 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 by a person without Mr. Phillips or A Dot's approval.

47. Mr. Phillips learned of or became aware of the conduct of Ms. Wallace, in March of 2010 and caused to be filed a complaint on behalf of A Dot against the offending parties which complaint was dismissed without prejudice after plaintiff was taken into custody following his arrest.

Wallace Invades Mr. Phillips' Personal Computers and Accounts

48. Without authorization from Mr. Phillips, Ms. Wallace accessed his personal computers and personal accounts, including his G-mail account. It is believed and alleged that she gained access to Mr. Phillips' passwords through the same, surreptitious means as she accessed the passwords to the A Dot accounts. Mr. Phillips'

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

personal accounts were similarly protected by passwords, but these passwords were not shared nor given to any other person at MOD or any of the other companies.

49. Between 2006 through 2009 defendant, Ms. Wallace would access Mr. Phillips' personal information and then email the documents she found to her own email account. It is believed that Ms. Wallace then erased the email that "sent" Mr. Phillips' personal information to her own account to conceal her theft and access from Mr. Phillips.

50. The information that Ms. Wallace accessed and stole was personal and, in turn, confidential. For example, Ms. Wallace stole personal emails between plaintiff Mr. Phillips and his mother and sister. More importantly, Ms. Wallace accessed Mr. Phillips personal financial information, including statements from his money managers. The stolen statement would be used against him by the defendants in seeking to force him to settle their unfounded claims against him.

51. Between the summer of 2008 through early 2010, defendant Mr. Lundvall was an employee of plaintiff Mr. Phillips and A Dot. Mr. Lundvall enjoyed a close relationship with Mr. Phillips and would often perform unique tasks on behalf of Mr. Phillips for which he was paid. For example, Mr. Lundvall traveled to Ms. Wallace's house to set up her computers, configure her wireless, and ensure that Mr. Phillips/A Dot computers were secure.

52. After the personal relationship between Ms. Wallace and Mr. Phillips ended in the summer of 2007, Mr. Lundvall was dispatched as Mr. Phillips' envoy to recover Mr. Phillips' personal possessions from Ms. Wallace, including a 2007 Aston Martin automobile.

53. It is believed that Mr. Lundvall, using his close relationship with Mr. Phillips, surreptitiously gleaned passwords and other personal information from Mr.

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

Phillips. It is further believed that Mr. Lundvall shared the passwords and personal information that he stole from Mr. Phillips with defendant Ms. Wallace.

54. In winter of 2009 and beginning of 2010, Mr. Lundvall changed loyalty from Mr. Phillips to Ms. Wallace and in particular, to Ms. Wallace's teenage daughter, Chloe Jardine-Cutler. Either unbeknownst to Ms. Wallace, or at her urging, Mr. Lundvall entered into a consensual, sexual relationship with Ms. Wallace's underage, teenage daughter. This fact became important after it was later discovered, in early 2010, that Mr. Lundvall and Ms. Wallace conspired to set up a "rape for hire" scheme against Mr. Phillips.

55. On three separate occasions between March and April 2010, Ms. Wallace made a report to Phoenix and Seattle law enforcement agency that Mr. Phillips had "hired" Mr. Lundvall to "rape" her daughter, Chloe, and that Mr. Phillips would then pay Mr. Lundvall upon the completion of the "rape." Defendant Ms. Wallace first attempted to use this "rape for hire" conspiracy to extort money from Mr. Phillips, and, when that proved unsuccessful, as proof to law enforcement of Mr. Phillips' criminal conduct.

56. At the time that defendant Ms. Wallace made the allegations against Mr. Phillips, she knew or should have known that those allegations were false. The Assistant United States Attorney who prosecuted Mr. Phillips was forced to acknowledge the existence of the "Wallace/Lundvall Rape For Hire Conspiracy" during a custody hearing. A true and correct copy of that hearing is attached hereto as Exhibit "E."

57. Mr. Phillips did not learn of Ms. Wallace's unauthorized access to his personal accounts and computers and the theft of his personal information until January 2013, when he was released from custody and able to review all the documents

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

from his criminal trial. Included in the hundreds of thousands of separate documents is a report from the CART team of the FBI, which documents the unauthorized access of Mr. Phillips' personal accounts and computers by Ms. Wallace, Mr. Lundvall and Mr. Smyth. Discovery from the criminal case has also shown that Ms. Wallace shared the stolen information directly with Mr. Arnold, Ms. De Haan and Mr. Smyth.

Wallace Gives Stolen Data to Cane and Smyth

58. Without authorization from Mr. Phillips/A Dot, Ms. Wallace showed data she stole from Mr. Phillips and A Dot computers, including confidential banking and accounting records belonging to Mr. Phillips/A Dot, to her long-time business associate, Ms. Cane, an attorney, who Ms. Wallace herself had recommended and helped seat on MOD's board of directors. Wallace also showed the data to Mr. Bay. She is believed to have manipulated some of the data she stole before delivering it to others, including defendants Mr. Smyth and Ms. De Haan.

59. Ms. Wallace has boasted to third parties that she was able to "steal" protected data from A Dot computers over a period of several months and that she gave this stolen data to Mr. Smyth, who as Mr. Arnold's attorney was frequently at odds with MOD's management over various issues, including the ownership of Mr. Phillips' intellectual property and corporate control issues. Ms. Wallace was motivated to steal and then use the stolen information and data from the plaintiff' computers by sheer greed and revenge. Ms. Wallace had already tried, on several occasions, to extort more money from plaintiff; and, she was aware of the value of the Series A financing from Toshiba, et al to Mr. Phillips and to MOD.

60. Ms. Wallace was incensed at Mr. Phillips when he rejected any attempt to grant stock and or options in MOD to Ms. Wallace following the Series A financing

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

deal. She not only argued repeatedly and vehemently with Mr. Phillips, but threatened him and told third parties that she would "ruin [and destroy] him." Additionally Ms. Wallace wanted revenge against Mr. Phillips, who had again unilaterally ended their turbulent, tumultuous personal relationship in December 2007; a relationship that Ms. Wallace fostered solely to gain access to Mr. Phillips' assets and to enrich herself.

61. In March 2008, Ms. Wallace contacted Mr. Arnold and was put in contact with Mr. Smyth. It is believed that Ms. Wallace offered to share the information she had stolen from A Dot computers with Mr. Smyth. According to Mr. Smyth's statements to the FBI in January of 2011, he met with Ms. Wallace in December 2008, January 2009, and again in December 2009 in Seattle or at her home in Arizona and downloaded stolen information on a thumb drive, or received e-mails and documents he knew to be stolen. Over the same period of time, third parties have witnessed Mr. Smyth and Ms. Wallace engaged in a personal flirtatious and drunken relationship, further cementing their conspiracy against plaintiff.

62. Defendant Mr. Smyth knew that the information he received from Ms. Wallace was "stolen" from Mr. Phillips, that Ms. Wallace was not authorized to access the Phillips/A Dot computers, and that she was not authorized to share any information or data that she had illegally acquired.

63. However, Mr. Smyth also lied to law enforcement officials during that interview. In what is believed to be an effort to downplay his contacts with defendant Ms. Wallace, Mr. Smyth denied that messages sent from his cell phone, titled "Jeff's iPhone," were not from "his" cellular phone; and, in fact, denied owning an iPhone at that time. A true and correct copy of that interview with Mr. Smyth is attached hereto as Exhibit "O."

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

64. Ms. Wallace has stated to third parties and testified in federal court that she accessed computers and stole data from them upon Mr. 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, Mr. Smyth was attempting to improve Mr. Arnold's bargaining position as an existing shareholder, in large part by using data that Ms. Wallace stole from Phillips/A Dot computers. Mr. Smyth was desperate to improve Mr. Arnold's position during negotiations because the MOD Subscription Agreement specifically warned Mr. Arnold that any subsequent investor would gain priority over Mr. Arnold's investment, and that Mr. Arnold's shares would be diluted with the new investment. Both of these would occur and did occur with the Toshiba/NCR/Deluxe/Phillips investment.

The Sordid Wallace/Cane History

65. Ms. Wallace was introduced to plaintiff as a "fund raiser" and a corporate adviser to start-up companies. She held herself out as the CEO of several companies as well as a corporate consultant. She is none of the above. She is an accomplished con artist, liar and fraud.

66. Ms. Wallace, a Canadian citizen, was in the United States on a "visitor's visa," making her ineligible to work or earn money. To get around this prohibition, she used up to six different social security numbers, kept most of her money off shore, and hid behind a plethora of corporate identities and structures.

67. Ms. Cane, the former Michael Cane also known as Michael Eiselman, a male lawyer, leads a law firm in Nevada, Cane Clark LLP, that holds itself out as specializing in corporate transactions and securities matters.

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68. Ms. Wallace's ties to her co-conspirator and partner, Ms. Cane, go back as early as 1996. For over a decade they have been involved in various ventures. In almost all instances in which Ms. Cane represented Ms. Wallace and her companies, they have been sued for questionable transactions and/or fraud.

69. More relevant, Ms. Wallace has a distinct modus operendi for assuming control of small or start-up corporations. She and her partner, Ms. Cane, perfected their scheme over the years.

70. Ms. Wallace's motivation for turning the stolen Phillips/A Dot information over to Ms. Cane is believed to be in furtherance of one of their long-running schemes to gain control of MOD and Banana. In the past, Ms. Wallace and Ms. Cane, working in concert and sometimes with the participation of others, target companies desiring to go public, force them into shell companies in a reverse merger (sometimes laden with undisclosed or mis-described debt instruments that latter are "called" by Wallace or her cohorts after the transaction is consummated), cause "whistleblower" complaints against company executives often involving a pattern of allegations involving sexual misconduct or drug abuse, instituting sham litigation review committees or audit committees, installing members of their own small group of cronies on the boards of the target companies and/or the sham litigation/audit committees, and ultimately taking over the companies.

71. The scheme (as documented by publicly available securities records and legal pleadings in other cases involving Dynamic Associates, Legal Access Technologies, MW Medical, Secured Diversified Investments, Davi Skin, among many others) commonly 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.

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72. 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, Banana, and A Dot are believed to have become targets of this fraud ring starting as early as 2007.

73. The nefarious activities of Ms. Wallace and Ms. Cane have resulted in over a dozen lawsuits and investigations. A brief summary of their activities can be found in the whistle blower complaint filed with the IRS by forensic accounting expert, Dennis Mandell. A true and correct copy of Mr. Mandell's complaint is attached hereto as Exhibit "D."

74. Ironically, Banana, using the codename MetaWallet, had software algorithms that detected and identified the sophisticated money laundering scheme that Cane and Wallace employed in their illicit activities, which information was used as the basis for Mr. Mandell's IRS Whistleblower Complaint. This is ironic given defendant Ms. De Haan's confusion as to the value of the Phillips intellectual property and her subsequent efforts with Ms. Wallace and Mr. Smyth to "dupe" Mr. Arnold into attempting to destroy Mr. Phillips and the companies in which he, Mr. Arnold, was an investor.

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

75. As defendant Mr. Arnold's attorney, defendant Mr. 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. In addition, Mr. Smyth would have received or should have received from Mr. Arnold, all

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

agreements and transactions that Mr. Arnold, as a shareholder, would have received and reviewed.

76. Among the many ways in which Mr. Smyth was made aware of A Dot's independent corporate status from MOD and other companies is Mr. 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 and the sharing of MOD's physical office resources, including its office space, computers and staff, by A Dot.

77. In particular, during the 2008 Series A financing, Mr. Smyth on behalf of Mr. Arnold demanded and reviewed numerous documents making it explicitly clear that A Dot's intellectual property residing on its computers belongs to A Dot and its customers, and solely to Banana, MOD or any other entity. In addition, this information was contained, and fully disclosed, in the Subscription Agreements entered into by Mr. Arnold with both MOD and Banana.

78. It is believed that defendant Ms. De Haan, who managed Mr. Arnold's investments in start-up companies, realized that the investments which totaled $55 million, were worth close to nothing. In fact, the only two investments that appeared to have any market value were Mr. Arnold's investments with Mr. Phillips in MOD and Banana.

79. It is believed that Ms. De Haan was under pressure from Mr. Arnold and his family to mitigate any losses from the start-up investment fund. Seeing the valuations of MOD and Banana following the Series A investment by Toshiba, et al., along with the private, confidential information from Ms. Wallace, gave Ms. De Haan an idea of how to cover up her negligence and incompetence in investing in and

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

managing the start-up fund - she would steal the money and the companies from Mr. Phillips.

80. It is believed that Mr. Smyth was hired to represent Mr. Arnold at the recommendation and behest of Ms. De Haan. It is believed that Mr. Smyth was chosen because he would accept the obvious lies and falsehoods told by Ms. Wallace, and that he would agree to take possession of confidential information and data he knew to be stolen from plaintiff. It is further believed that Mr. Smyth agreed to work with Ms. De Haan to "dupe" Mr. Arnold as to the true facts regarding the start-up investments and the claims of Mr. Arnold vis-à-vis MOD and Banana.

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

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

83. Defendants Mr. Smyth and Ms. De Haan were aware of the valuations of both MOD and Banana, as well as the intellectual property owned and licensed by Mr. Phillips. The valuations were completed concurrent with the Series A due diligence. A true and correct copy of the valuations of MOD, Banana, and the Phillips' Intellectual Property are attached hereto as Exhibits "F," "G" and "H," respectively.

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
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84. After delivering his draft complaint, Mr. Smyth again attempted to extract a settlement from MOD and Mr. Phillips, demanding that MOD force Mr. Phillips to hand over stock in MOD sufficient to give to Mr. Arnold a 51% interest in the company (worth over $60 million) in exchange for Mr. Arnold's agreement not to file his complaint. Mr. Smyth further demanded $5 million in royalties from intellectual property owned or controlled by Mr. Phillips, again basing his demands upon leverage he felt he had from data stolen from Mr. Phillips' and A Dot's computers by Ms. Wallace. Mr. Smyth further demanded that Mr. Phillips turn over all stock in Banana Corporation (worth $60 million) to Mr. Arnold, Banana's only other shareholder. Mr. Smyth also demanded in writing that several employees loyal to Mr. Phillips be fired immediately, most or all of whom happened to be key witnesses to Ms. Wallace's theft of Mr. Phillips' and A Dot's property and her subsequent conduct in attempting to leverage the stolen information to her and others' advantage.

85. Ironically, the demands by Mr. Smyth total an amount that roughly redeems Mr. Arnold's essentially worthless "start-up" investment fund, a fund directed, managed and operated by defendant Ms. De Haan.

The Defendants Conspire

86. In early 2008, defendant Ms. Wallace approached Mr. Arnold and it is believed entered into an agreement to provide Mr. Arnold and his agents and designees, Ms. De Haan and Mr. Smyth, with the confidential and protected data that she has stolen from Phillips/A Dot's computers.

87. The defendants agreed to use the information in an attempt to force Mr. Phillips to relinquish control of both MOD and Banana and ultimately to give up substantial amounts of the equity that he held in both corporations.

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

88. To accomplish their goals, Mr. Smyth uses the stolen information to level baseless allegations against Mr. Phillips.

89. As a result of the allegations, defendant Ms. Wallace recommends that Mr. Phillips appoint her co-conspirator, Ms. Cane, to the MOD board of directors Demand Review Committee.

90. As a further result of the allegations, Mr. Phillips was forced to place his MOD shares into a "voting trust," with Ms. Cane as the trustee. At no time did Ms. Cane ever disclose to plaintiff her extensive and detrimental conflicts of interest. It is believed that Ms. Cane had no intention of complying with her fiduciary responsibilities on behalf of Mr. Phillips, but, instead, planned all along to continue the conspiracy with Ms. Wallace to assume control of MOD and then access its capital for their own, personal gain.

91. In furtherance of the conspiracy, defendants Ms. Wallace, Ms. De Haan, and Mr. Smyth reported Mr. Phillips' "misconduct" to the FBI and the United States Attorney's Office in Seattle. Each of these defendants, in subsequent interviews with federal law enforcement officials, lied about various aspects of their dealings with Mr. Phillips, about important details of their "association," and about their own interests in the demise of Mr. Phillips. Among the many prevarications, one of the most telling is the claim that defendant Ms. Wallace first contacted defendant Mr. Arnold's office in December of 2008. In fact, the defendants met and began to conspire before March 2008. This is important because Toshiba had already given MOD a "loan" of $4 million and was set to complete the Series A financing later that year for the full $35 million. The defendants misrepresented the date to the federal officials because it would become obvious that they were reporting the "wrongful" conduct of Mr. Phillips to be able to oust him from MOD.

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

92. Ms. De Haan gave an interview with the FBI that is nearly a complete fabrication. Although she was Mr. Arnold's "attorney in fact" and headed up Mr. Arnold's "due diligence" in the MOD and Banana investments, she told the FBI that she didn't believe that Mr. Phillips invested any money in MOD, that she believed the intellectual property owned by Mr. Phillips had been "included" in the Arnold Subscription Agreement, that she was not sure of the value of the Phillips intellectual property, and that she "smelled a rat" with the MOD investment. A true and correct copy of the FBI summary of statement is attached hereto as Exhibit "P."

Smyth's Use of Stolen Data In Other Venues and Arnold Breaches the Subscription Agreements

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

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

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

95. Following some of these meetings between Ms. Wallace and Mr. Smyth, in October and November 2008 Ms. Wallace relayed messages from Mr. Smyth to Mr. Phillips, claiming to be negotiating on behalf of Mr. Arnold. Ms. Wallace attempted to convince Mr. Phillips to give 50% of his MOD shares to Mr. Arnold as part of a deal she would broker. Ms. Wallace stated that she was using her personal attorney, Claire Ambrosio, to be her messenger to deliver documents to and from Mr. Smyth.

96. In January, 2009 after Mr. Smyth served his draft complaint upon MOD, Ms. Wallace again attempted to convince Mr. Phillips to settle with Mr. Arnold (presumably on behalf of Mr. Smyth) for 50% of his shares in MOD, and that if he did, Mr. Smyth would not file the threatened complaint against MOD and Mr. Phillips. Again, Mr. Phillips refused these indirect demands from Smyth.

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

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
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98. In April, 2009 after Mr. Phillips had stepped aside from his role as MOD's CEO, in a meeting with Mr. Smyth and Ms. De Haan, Mr. Smyth's law partner Chris Mason held up what he purported to be Mr. Phillips' personal brokerage statement (stolen from Mr. Phillips' and/or A Dot's computers) and said words to the effect that "money will make this [i.e., Mr. Arnold's claims] go away." Mr. Phillips' then-attorneys, Anthony Gewald and Ronald Braley, witnessed this attempted use by Mr. Smyth and his partner of stolen documents from Mr. Phillip's and/or A Dot's computer system.

99. Mr. Smyth, on behalf of Mr. Arnold, in February 2009 filed a verified shareholder derivative lawsuit against MOD and Banana Corporation, of which Mr. Arnold and Mr. Phillips were then the only shareholders. A true and correct copy of the verified derivative lawsuit, signed by defendant Mr. Arnold, is attached hereto as Exhibit "C."

100. It is believed and alleged that Mr. Smyth and Ms. De Haan "duped" defendant Mr. Arnold, misrepresenting facts and/or using stolen data and information from both Mr. Phillips and A Dot computers so that Mr. Arnold would "verify" a complaint that had obvious, patent factual errors.

101. For example, one such "verified" lie in the February 2009 lawsuit was the "fact" that Mr. Phillips was embezzling from MOD $15,000 to $25,000 per month through Ms. Wallace's company, Meteor, to a bank account in the Netherlands purportedly controlled by Mr. Phillips, when in fact, no such transactions had ever occurred. Mr. Smyth and Ms. Wallace fabricated this allegation to smear Mr. Phillips and pressure him to relinquish his majority control of MOD and Banana. When Mr. Phillips refused to relinquish money or property, Ms. Wallace and later Mr. Smyth both sent copies of the lawsuit to John Cook of TechFlash.com.

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
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102. Following his filing of the lawsuit, in an attempt to extract a settlement of Mr. Arnold's claims against Banana, Mr. Smyth sent Banana's attorney James Smith of Smith Hennessey PLLC an email that had been stolen from an A Dot/Banana computer.

103. On March 10, 2010 after dismissing his derivative lawsuit against Banana with prejudice, Mr. Smyth filed another complaint against Banana, A Dot and others. In this new complaint, Mr. Smyth made several allegations clearly based upon data stolen from A Dot's computers, which Mr. Smyth either solicited or received knowing that it was stolen. For example, Mr. Smyth alleged in his complaint against Banana that his "investigation has revealed" that A Dot (wholly owned by Mr. Phillips) had at an unspecified point in time transferred money abroad. These conclusions are drawn solely from A Dot data stolen by Ms. Wallace and/or others acting at the direction of Mr. Arnold's agents. At the time he made these allegations on March 12, 2010, Mr. Smyth was fully aware that the data he based his complaint upon was fraudulently obtained from A Dot, its rightful owner.

104. Mr. 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.

Mr. Phillips' Substantial Damages

105. Mr. Phillips has been substantially damaged as a result of the tortious conduct in this case. Plaintiff has been damaged by having to expend substantial time, money, and resources to realize and be able to prove that the defendants not only improperly accessed Phillips/A Dot computers, but then stole protected, confidential data and information which was then used against Mr. Phillips.

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40 Lake Bellevue Dr. #100
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106. Mr. Phillips was forced to hire computer technicians to assess the damage to Phillips/A Dot's portable computers and to investigate the status of A Dot's larger computers, as well as the amount and quality of data stolen by defendants, which remains in the control of defendants and their cohorts.

107. Mr. Phillips has particularly been damaged by defendant Mr. Arnold's breach of the MOD and Banana Subscription Agreements. By filing the unfounded and frivolous derivative claims, as well as in settlement negotiations, defendants Mr. Arnold, Mr. Smyth and Ms. De Haan made it clear they intended to extort Mr. Phillips of his entire holdings in MOD and Banana and $8.5 million in cash. Their tortious conduct has had its foreseeable, intended consequences. Mr. Phillips has lost his interest in MOD and MOD has ceased to exist as a viable concern.

108. As a further result of defendants' tortious conduct, MOD and Banana, once valued at $123 million and $60 million, respectively, are now essentially worthless. Additionally, Mr. Phillips had licensing agreements for the use of his intellectual property with MOD in the amount of $5 million and a license agreement with Banana in the amount of $2.5 million. These licensing agreements have never been paid. And all intellectual property contributed to MOD for majority stock was ignored when voted.

109. Mr. Phillips was further 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. 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 Cane,

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
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Ambrosio, Lane Powell, Fenwick & West, and others) may be making use of the stolen property.

110. Some of Phillips/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 Phillips/A Dot's clients.

111. As a further consequence of defendants' tortious conduct, plaintiff has suffered significant loss of income of $500,000 per year, plus 30% performance bonus. Mr. Phillips' employment contract with MOD has not been honored as a proximate result of defendants' conduct and allegations.

112. Mr. Phillips' monetary damages are believed to exceed $100,000,000.

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

113. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 112 as if set forth fully herein.

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

115. By their actions, each and every named defendant and Does 1-25 acting in concert with them either directly accessed Phillips/A Dot's protected computers or instructed such computers to be accessed without either Phillips or A Dot's knowledge or authorization.

116. Defendants, including Does 1-25, 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 Phillips/A Dot, and by

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

obtaining information from such protected computers, including but not limited to confidential banking and accounting records belonging to Phillips/A Dot and pertaining to Phillips/A Dot's clients.

117. Defendants, including Does 1-25, have violated the Computer Fraud and Abuse Act, 18 U.S.C. §1030(a)(4), by knowingly, and with intent to defraud Phillips/A Dot, accessing one or more protected computers belonging to Phillips/A Dot without authorization, and by means of such conduct furthering the intended fraud and obtaining one or more things of value, including but not limited to confidential banking and accounting records belonging to Phillips/A Dot.

118. Defendants, including Does 1-25, 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 Phillips/A Dot without authorization, and as a result of such conduct, recklessly causing damage to Phillips/A Dot, including but not limited to impairing the integrity and availability of data and/or information belonging to Phillips/A Dot and its clients by hacking into Phillips/A Dot's computers and changing its passwords without Phillips/A Dot's permission.

119. Defendants, including Does 1-25, 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 Mr. Phillips and A Dot without authorization, and as a result of such conduct, recklessly causing damage and loss to plaintiff, including but not limited to impairing the integrity and availability of data and/or information belonging to Phillips/A Dot and its clients by hacking into Phillips/A Dot's computers and changing its passwords without Phillips/A Dot's permission, and by causing plaintiff to incur damage and loss in the form of costs associated with expending substantial time,

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
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money, and resources to identify the scope of the damage to Phillips/A Dot and the extent of defendants' fraud and theft.

120. Does 1-25, 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.

Second Cause of Action
Breach of Contract (MOD, Banana)
(Against Defendant Robert Arnold)

121. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 112 as if set forth fully herein.

122. Defendant willingly and knowingly entered into a Subscription Agreement as an investor in MOD on October 13, 2006. *See* Exhibit "A" attached hereto. As a result of the Agreement, defendant Mr. Arnold invested $3.5 million in MOD in return for a number of shares of the corporation.

123. Defendant willingly and knowingly entered into a Subscription Agreement as an investor in Banana on July 7, 2006. *See* Exhibit "B" attached hereto. As a result of the Agreement, defendant Mr. Arnold invested $5.5 million in Banana in return for a number of shares of the corporation.

124. Defendant was specifically advised that MOD, Banana had numerous and important inter-corporation and service agreements with "related" companies also owned by plaintiff.

125. Defendant was specifically informed of the fact that Mr. Phillips and his other corporate entities owned certain intellectual property that would be licensed to

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

allow MOD to develop set top boxes which would allow consumers to quickly and efficiently download digital content. Defendant was also specifically informed that Mr. Phillips would be licensing additional technologies related to payment systems for mobile devices.

126. Defendant specifically consented, by entering into both Subscription Agreements, to allow Mr. Phillips unfettered discretion in the operation, development and management of the corporations.

127. Defendant Mr. Arnold breached those Subscription Agreements by filing a verified Derivative Complaint against MOD, Banana, plaintiff and others in February 2009. The verified complaint contained numerous falsehoods and misrepresentations and was based, in part, on stolen, confidential information, and sought to stop the very conduct that Mr. Arnold had already ratified.

128. Defendant Mr. Arnold claims to have filed the complaint "on behalf of the shareholders" which was a ruse, as his demand was only for an increase in his own share holdings. The sad irony is that by filing the complaint on "behalf of the shareholders," he destroyed the company, making the total "shareholder value" worthless.

129. The destruction of the corporations was a foreseeable result of defendant Mr. Arnold's breach of the contract, which, in fact, was his goal all along if he could not own and control the corporations in their entirety.

130. As a result of defendant's wrongful conduct, plaintiff Mr. Phillips has been damaged by the loss of his equity shares in MOD, by the loss of MOD as an on-going concern, and by the loss of his annual salary as a MOD officer and employee.

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Bellevue, WA 98005
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131. As a result of defendant's wrongful conduct, plaintiff Mr. Phillips has been damaged by the loss of Banana as an on-going concern, and by the loss of his service agreement as a Banana consultant.

132. As a result of defendant's wrongful conduct, Mr. Phillips has been forced to expend significant sums to pay for lawyers to defend him in the wrongful actions brought by defendant. Mr. Phillips requests reimbursement of all attorneys' fees as approved by that written Agreement entered into by defendant.

133. As a proximate cause of defendant's wrongful, intentional and fraudulent conduct, plaintiff has suffered damages as alleged above according to proof at trial.

Third Cause of Action
Tortious Interference With Contract (MOD)
(Against All Defendants)

134. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 112 as if set forth fully herein.

135. Defendants, and all of them, were aware that plaintiff Mr. Phillips and defendant Mr. Arnold had entered into a Subscription Agreement with MOD and that Mr. Phillips was the majority shareholder and CEO of MOD. *See* Exhibit "A" attached hereto.

136. Defendants, and all of them, were also aware that plaintiff Mr. Phillips had entered into a series of contracts with other corporate entities, including but not limited to AnythingBox, MOD, and Banana, among others that entitled him to fees and payment for the licensing of his intellectual property. *See* Exhibits "I", "J", and "K" attached hereto.

137. Defendants, and all of them, were also aware that plaintiff Mr. Phillips had entered into a series of contracts with MOD, to wit, an Employment Agreement,

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

Subscription and Contribution Agreement, and Shareholder Agreement dated October 17, 2008. *See* Exhibit "L", "M", and "N" attached hereto.

138. Defendants, and all of them, knew or should have known that their theft of plaintiff's confidential and personal information, their conspiracy to use the information, and their false, baseless accusations against plaintiff Mr. Phillips would interfere with the contracts between Mr. Phillips and Mr. Arnold, Mr. Phillips and MOD, and Mr. Phillips and AnythingBox.

139. Defendants, and all of them, knew or should have known that their theft of plaintiff's confidential and personal information, their conspiracy to use the information, and their false, baseless accusations against plaintiff Mr. Phillips would interfere with the contracts between Mr. Phillips, A Dot, AnythingBox, Banana, MOD, Toshiba, NCR and Deluxe Entertainment.

140. Among the acts of defendants that interfered with the contracts identified above, defendants filed baseless claims of wrongdoing against plaintiff, caused the MOD board of directors to institute a "review committee," and used Mr. Phillips' personal, private information in an attempt to force Mr. Phillips to relinquish his interests and shares in MOD and A Dot, and made false allegations of wrongdoing against Mr. Phillips as detailed herein.

141. Plaintiff believes and on that basis alleges that defendants intended to interfere with the contracts identified herein based upon their greed and envy, as well as their desire to cover up their incompetence and negligence resulting in losses in the Arnold investment fund, to try to "step into" or assume the contractual rights and benefits of plaintiff.

142. Defendants, and all of them, knew or should have known that their conduct would substantially interfere with the contractual rights of plaintiff, and, in

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

fact, the defendants' conduct was intended to interfere with the contractual rights of plaintiff.

143. As a result of defendants' wrongful conduct, plaintiff has been significantly damaged by the loss of their contractual rights, which has led to the loss of Mr. Phillips' interest in MOD, and all other corporate interests. In addition, plaintiff has been further damaged by defendant's wrongful conduct because he has lost all contractual rights of those agreements with MOD, AnythingBox, including the Employment Agreement and the Licensing Agreement.

144. As a further result of defendants' wrongful conduct, plaintiff has been forced to expend significant amounts to retain and employ attorneys in an effort to protect his stolen information and defend themselves against baseless accusations.

145. The acts of defendants, and all of them, were done with the specific intent to harm plaintiff or take property from plaintiff, and were malicious and without conscious regard for the rights of plaintiff. As such, plaintiff is entitled to an award of punitive damages in an amount to be determined at trial.

146. Plaintiff has been damaged in a significant amount, and should be awarded compensatory damages in an amount to be proven at trial.

Fourth Cause of Action
Tortious Interference With Contract (Banana)
(Against All Defendants)

147. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 112 as if set forth fully herein.

148. Defendants, and all of them, were aware that plaintiff Mr. Phillips and defendant Mr. Arnold had entered into a Subscription Agreement with Banana and that

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
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Mr. Phillips was the majority shareholder and CEO of Banana. See Exhibit "B" attached hereto.

149. Defendants, and all of them, were also aware that plaintiff Mr. Phillips had entered into a series of contracts with other corporate entities, including but not limited to AnythingBox, MOD, and Banana, among others that entitled him to fees and payment for the licensing of his intellectual property. See Exhibit "I" attached hereto.

150. Defendants, and all of them, knew or should have known that their theft of plaintiff's confidential and personal information, their conspiracy to use the information, and their false, baseless accusations against plaintiff Mr. Phillips would interfere with the contracts between Mr. Phillips and Mr. Arnold, Mr. Phillips and Banana.

151. Defendants, and all of them, knew or should have known that their theft of plaintiff's confidential and personal information, their conspiracy to use the information, and their false, baseless accusations against plaintiff Mr. Phillips would interfere with the contracts between Mr. Phillips, A Dot, AnythingBox, Banana, MOD, Toshiba, NCR and Deluxe Entertainment.

152. Plaintiff believes and on that basis alleges that defendants intended to interfere with the contracts identified herein based upon their greed and envy, as well as their desire to cover up their incompetence and negligence resulting in losses in the Arnold investment fund, to try to "step into" or assume the contractual rights and benefits of plaintiff.

153. Defendants, and all of them, knew or should have known that their conduct would substantially interfere with the contractual rights of plaintiff, and, in fact, the defendants' conduct was intended to interfere with the contractual rights of plaintiff.

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40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

154. As a result of defendants' wrongful conduct, plaintiff has been damaged by defendant's wrongful conduct because he has lost all contractual rights of those agreements with Banana, including the Licensing Agreement.

155. As a further result of defendants' wrongful conduct, plaintiff has been forced to expend significant amounts to retain and employ attorneys in an effort to protect his stolen information and defend themselves against baseless accusations.

156. The acts of defendants, and all of them, were done with the specific intent to harm plaintiff or take property from plaintiff, and were malicious and without conscious regard for the rights of plaintiff. As such, plaintiff is entitled to an award of punitive damages in an amount to be determined at trial.

157. Plaintiff has been damaged in a significant amount, and should be awarded compensatory damages in an amount to be proven at trial.

Fifth Cause of Action
Fraud
(Against Defendants Arnold, De Haan and Smyth)

158. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 112 as if set forth fully herein.

159. Defendants Mr. Arnold, Mr. Smyth and Ms. De Haan made certain representations to plaintiff in reviewing, revising and consenting to the various agreements between the parties.

160. Representations made by Ms. De Haan or Mr. Smyth on behalf of Mr. Arnold were made with his express or implied consent or authority as his agents, attorneys and advisers. Mr. Arnold personally represented to plaintiff that he would support him in his business efforts and honor their contractual relations. Each defendant knew these representations to be false at the time they were made.

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

161. Those representations by these defendants were false and made to induce plaintiff to do certain things in reliance upon these representations; namely, to lull plaintiff into believing that Mr. Arnold and his agents would honor the written agreements and support Mr. Phillips.

162. Defendant Mr. Arnold had no intention of honoring those obligations and duties to which he consented. In fact, it appears that Mr. Arnold, alone and in concert with his agents, Ms. De Haan and Mr. Smyth, as well as in concert with Ms. Wallace, upon learning of the success of MOD and its investment from Toshiba, planned to remove Mr. Phillips from MOD and to take as much of his contractual and property rights as possible.

163. Plaintiff reasonably relied upon these representations to his detriment.

164. As a result of his reliance, plaintiff was significantly damaged in an amount to be proven at trial. The acts of defendants, and all of them, were done with the specific intent to harm plaintiff or take property from plaintiff, and were malicious and without conscious regard for the rights of plaintiff. As such, plaintiff is entitled to an award of punitive damages in an amount to be determined at trial.

Sixth Cause of Action
Fraud
(Against Defendants Wallace and Lundvall)

165. Defendant Ms. Wallace made incalculable misrepresentations and misstatements of material facts. Her entire life is a fabrication. No interaction between Ms. Wallace and plaintiff was honest. It is believed that Ms. Wallace, from the inception of their relationship, planned to steal from plaintiff anything of value that she could acquire either by herself or in concert with others. Ms. Wallace claimed to be a business consultant, a start-up adviser, an investment facilitator, as well as his girlfriend.

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

166. Ms. Wallace knew these representations to be false at the time she made them, and never intended to honorably or morally comply with any promise made to plaintiff.

167. Defendant Mr. Lundvall and defendant Ms. Wallace made representations that were false to both plaintiff and to law enforcement authorities. Mr. Lundvall told Mr. Phillips that he would help him retrieve his 2007 Aston Martin, computer data and interface with Ms. Wallace, when in fact, he was conspiring with Ms. Wallace against Mr. Phillips.

168. Both Mr. Lundvall and Ms. Wallace made material misrepresentations to law enforcement authorities regarding a "rape for hire" scheme involving Ms. Wallace's underage teenage daughter.

169. Both defendants knew these statements to be false at the time they made them.

170. Plaintiff justifiably and reasonably relied upon the promises and misrepresentations of the defendants to his detriment, including trusting them, allowing them access to his home and office, and divulging important information and confiding in them.

171. The acts of defendants, and all of them, were done with the specific intent to harm plaintiff or take property from plaintiff, and were malicious and without conscious regard for the rights of plaintiff. As such, plaintiff is entitled to an award of punitive damages in an amount to be determined at trial.

172. As a proximate cause of the defendants' wrongful, intentional and fraudulent conduct, plaintiff has suffered damages as alleged above according to proof at trial.

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

Seventh Cause of Action
Conspiracy
(Against All Defendants)

173. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 112 as if set forth fully herein.

174. The defendants, and all of them, did knowingly and willfully conspire and agree to a plan of action that was designed and intended to cause plaintiff harm and to damage him.

175. The goal of the conspiracy was to wrongfully possess or steal as much of plaintiff's property as possible, thus enriching themselves at plaintiff's expense. Specifically, defendant Ms. Wallace intended to defraud plaintiff into giving her shares in MOD for her "consulting" services. When this proved unsuccessful, Ms. Wallace conspired with her long time partner, Ms. Cane, as well as defendants Mr. Arnold, Ms. De Haan, Mr. Smyth and Mr. Lundvall to remove Mr. Phillips from any management or ownership role in MOD and Banana in order to enrich themselves at Mr. Phillips' expense.

176. The defendants took several steps to accomplish these goals, including but not limited to, the following actions:

(a) Stealing, or causing to be stolen personal and confidential information belonging to plaintiff and A Dot;

(b) Using the stolen information in an effort to force plaintiff to relinquish his positions as CEO of MOD and Banana;

(c) Using the stolen information in an attempt to extort plaintiff;

(d) Prevaricating and lying to federal investigators about Mr. Phillips' conduct;

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40 Lake Bellevue Dr. #100
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(e) Breaching Agreements with plaintiff by filing frivolous and unfounded lawsuits.

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

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

178. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 112 as if set forth fully herein.

179. Mr. Phillips, through his wholly owned corporate entity, 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 Phillips and A Dot personnel.

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

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

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

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
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Ninth Cause of Action
Conversion
(Against All Defendants)

183. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 112 as if set forth fully herein.

184. Defendants willfully have interfered with Mr. Phillips' computers owned and exclusively used by A Dot, and have taken possession of A Dot computers at different points in time from 2008 through the present. The possession of A Dot's computers by the defendants, and all of them, was and is to the exclusion of Mr. Phillips and A Dot, and has prevented plaintiff from any use or enjoyment of the computers during the time that defendants possessed them.

185. As a proximate cause of defendants' wrongful, intentional and fraudulent conduct, plaintiff has suffered damages as alleged above according to proof at trial.

Tenth Cause of Action
Contractual Indemnity
(Against Defendant Robert Arnold)

186. Plaintiff repeats and incorporates by reference each allegation in paragraphs 1 through 112 as if set forth fully herein.

187. Defendant Robert Arnold entered into a written agreement with MOD, Banana.

188. That written agreement contains specific clauses requiring defendant Mr. Arnold to indemnify Mr. Phillips under certain circumstances. Specifically, section 1.7 of the MOD and Banana Subscription Agreement entitled "Indemnification" outlines the duties of Mr. Arnold to indemnify Mr. Phillips. See Exhibit "A" and "B" attached hereto.

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
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189. The claims made by defendant Mr. Arnold in the derivative lawsuit are not personal claims, but are claims filed on behalf of the "shareholders." See Exhibit "C" attached hereto.

190. As such, the claims in the derivative lawsuit are of the nature that defendant Mr. Arnold is required to indemnify plaintiff by operation of the contracts. Mr. Arnold's original lawsuit against MOD has caused damage to Mr. Phillips and MOD, requiring MOD to retain lawyers and expend funds in its defense. MOD, in turn, was required to defend Mr. Phillips and provide a defense against Mr. Arnold's baseless claims.

191. Plaintiff requests an order that defendant Mr. Arnold be required to indemnify plaintiff for any and all costs associated with the "derivative lawsuit," including but not limited to attorneys' fees, costs, and any other fees allowed under the contract.

PRAYER FOR RELIEF

192. WHEREFORE, plaintiff, Mr. Phillips, prays for judgment against defendants, jointly and severally, as follows:

193. For an immediate injunction protecting those computers identified herein as belonging to plaintiff that are in the possession of defendants;

194. For a prohibitory injunction barring Defendants from in any way accessing plaintiff's computers, or using information stolen from plaintiff, for any purpose, and an order that defendants return all computers belonging to Mr. Phillips, MOD, Banana, and A Dot identified herein or through further discovery;

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

196. For actual and consequential damages in an amount to be determined at trial, but believed at this time to exceed $100,000,000;

197. 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;

198. For an order naming plaintiff Mark Phillips as the sole owner and shareholder of MOD, Inc.;

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

200. For attorney's fees to the extent permitted by law or by contract;

201. For costs of suit; and

202. 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 11, 2013

LAW OFFICE OF REED YURCHAK

By:______________________________
REED YURCHAK, WSBA No. 37366
Attorney for Plaintiff

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205

VERIFICATION

MARK PHILLIPS hereby declares as follows:

I am the Plaintiff named hereinabove. I have personal and testimonial knowledge of the facts set forth below and am competent to be a witness herein.

I have read the foregoing Complaint, know the contents thereof and believe the same to be true.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 11th day of March, 2013

mark phillips

MARK PHILLIPS

LAW OFFICE OF REED YURCHAK
40 Lake Bellevue Dr. #100
Bellevue, WA 98005
TELE: 425-941-6659; FAX: 425-654-1205