

of the initiating parties in any legal proceedings.” On December 10, 2009, Plaintiff initiated litigation in the 152nd Judicial District Court of Harris County, Texas. This Court therefore has jurisdiction over the parties in that the amount claimed exceeds the minimum jurisdictional limits of the Court

III. PARTIES

3. Plaintiff is an incorporated entity in Texas.
4. Defendant STATE OF MINNESOTA is a State of the United States of America which may be served by and through its governor, Tim Pawlenty, Office of the Governor, 130 State Capitol, 75 Rev. Dr. Martin Luther King, Jr. Blvd., St. Paul Minnesota 55155.

Plaintiff requests citation be prepared and held for JOHN PATTERSON, 281-236-8543, Box 97, for private service on the Defendant.

5. Defendant MINNESOTA OFFICE OF THE STATE AUDITOR by be served by and through it's State Auditor, Rebecca Otto, 525 Park Street, Suite 500, St. Paul, Minnesota 55103.

Plaintiff requests citation be prepared and held for JOHN PATTERSON, 281-236-8543, Box 97, for private service on the Defendant.

6. Defendant MINNESOTA DEPARTMENT OF FINANCE may be served by and through it s acting Commissioner, Tom Hanson, Department of Finance, Minnesota Secretary of State, Retirement Systems of Minnesota Bldg., 60 Empire Drive, Suite 100, St. Paul, Minnesota 55103.

Plaintiff requests citation be prepared and held for JOHN PATTERSON, 281-236-8543, Box 97, for private service on the Defendant.

IV. FACTS

7. Plaintiff is in the business of creating, licensing, and offering technical support of a software program designed for employers to comply with immigration laws of the

United States. On or about April 10, 2008, a Standard License Agreement was signed between Plaintiff and Defendant State of Minnesota (Minnesota), and specifically by Patricia Anderson, former commissioner of the Defendant Minnesota Office of State Auditor (MOSA). These Defendants collectively are referred to herein as “the Minnesota Defendants”

8. An Addendum to the Contract was later executed by and between the Defendant Minnesota Department of Finance (MDF), specifically the Materials Management division, on or about July 1, 2009. That Addendum was an addition to the first contract signed back in April of 2008 and bound the parties. Said Addendum was signed in addition to and in consideration of the selling of Plaintiff’s software and support to Minnesota generally in order that applicants for employment with Minnesota could be screened to determine their citizenship status.

9. On or about the end of October 2009, Plaintiff learned that a portion of that Contract Addendum was breached, in whole or in part, by one or more individuals who wrongfully appropriated trade secrets of the Plaintiff and confidential information of third party clients of the Plaintiff. The release of said information violated the terms and conditions of the Contract *en toto*, and includes (but is not necessarily limited to) Contract Addendum Paragraph 8.

10. Paragraph 8 of the Contract Addendum dealt with Obligations of the Parties, which described in detail liability for breaches of the Plaintiff’s software and those who had access to it. Due to this breach of security, in whole or in part, unknown individuals and/or current staff members of the Minnesota defendants learned of a mode of hacking into Plaintiff’s software via the Internet.

11. The as yet unknown staff members of the Minnesota Defendants, acting alone or in concert and conspiracy with others, proceeded to hack into Plaintiff's software and wrongfully appropriated confidential data of third parties. This confidential data included, but is not necessarily limited to full names, dates of birth, and social security numbers of innocent third parties.

V. CAUSES OF ACTION

A. *Breaches of Contract*

12. There was a valid, enforceable contract between Minnesota, MOSA, and MDF, or "the Minnesota Defendants." The Plaintiff is a proper party to sue for breach of that contract. The Plaintiff performed its contractual obligation. The Defendants breached the contract and said breaches caused Plaintiff injuries.

13. All conditions precedent have occurred.

14. Under TEX. CIV. PRAC. & REM. CODE SEC. 18.001, the Plaintiff has or will make demand for its attorney's fees and costs associated with this collection for these breaches of contract.

B. *Trade Secret Misappropriation and/or Conspiracy to Misappropriate Trade Secrets.*

15. The Plaintiff owned a trade secret. That is, the code itself, and the information from third party customers within its directories. The Defendants used or disclosed the trade secrets after acquiring the trade secrets by improper means, and/or after acquiring the trade secret with notice that the disclosure was improper.

16. More specifically, the Plaintiff sues for its actual damages, any value gained by the Defendants from misappropriating such knowledge, royalty for use (if applicable), market value of the trade secrets, exemplary damages, interest and court costs.

17. Plaintiff reserves the right to ask for injunctive relief on these grounds.

C. *Violations of the Stored Communications Act (SCA) and/or Conspiracy to Violate the SCA.*

18. The STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS ACT of 1986 (SCA), 18 U.S.C. 121 Sec. 2703, *et seq.* provides for criminal penalties for anyone who "...intentionally accesses without authorization a facility through which an electronic service is provided or...intentionally exceeds authorization to access that facility; and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in such system..." *Id.* at Sec. 2701.

19. The Act also provides a civil remedy for violation of the SCA in Sec. 2707. Plaintiff may use 18 U.S.C. 121 Sec. 2707 as grounds for injunctive or declarative relief, actual damages, and attorneys' fees and costs.

20. Plaintiff therefore reserves its rights for injunctive and/or declarative relief.

D. *Violations of The Computer Fraud and Abuse Act (CFAA) 18 U.S.C. 1030(g) and/or Conspiracy to Violate the CFAA*

21. Plaintiff seeks civil liability from the Minnesota Defendants and certain unknown staff members therein for violations enumerated below of the CFAA. The Plaintiff seeks actual damages in excess of \$5,000.00, attorneys' fees and costs, and reserves its right for injunctive or declaratory relief. These violations of CFAA include, but are not necessarily limited to:

–18 U.S.C. Sec. 1030 (a) (2) Unlawful Access to Obtain Information—

22. Plaintiff sues the Minnesota Defendants for the unauthorized access to a computer to obtain information from a “protected computer” of information from any department or agency of the United States. In this instance, the Department of Homeland Security had interfaced with Plaintiff’s e-verify abilities.

–18 U.S.C. Sec. 1030 (a) (4) Unlawful Access to Obtain Something of Value—

23. Plaintiff sues the Minnesota Defendants for knowingly accessing without authorization a computer used in interstate commerce and obtaining anything of value, namely various individuals’ confidential data perhaps for sale to third parties.

–18 U.S.C. Sec 1030(a) (5) (A) Unlawful Access Causing Damage—

24. Plaintiff sues the Minnesota Defendants for knowingly transmission of a program, code, information, or command to a protected computer and intentionally causes damage, and/or, in the alternative, recklessly causing damage, and/or, in the alternative, causes damage.

E. Breaches of the Texas HARMFUL ACCESS BY COMPUTER Statute and/or Conspiracy to Violate the Statute

25. Pursuant to TEX. CIV. PRAC. & REM. CODE SEC 143.001, Plaintiff is a “person” who is injured or whose property in injured as a result of a violation under Chapter 33 of the TEX. PENAL CODE. Plaintiff qualifies as such a person.

26. Plaintiff is therefore entitled to actual damages, and reasonable attorneys’ fees and costs.

F. Breaches of the Texas Theft Liability Act (TLA) and/or Conspiracy to Violate the TLA

27. The Plaintiff was a provider of services. These Defendants unlawfully appropriated, secured, or stole the Plaintiff's services, under TEX. PENAL CODE SEC. 31.04. The unlawful taking was made with the intent to deprive Plaintiff of pay for the services rendered, and the Plaintiff sustained damages as a result. *See* TEX. CIV. STAT. & REM. CODE SECS. 134.001-134.005

28. Plaintiff also expressly asks for \$1,000 in addition to its actual damages, attorneys fees and costs of court as per the ACT.

G. Fraudulent Misrepresentation and/or Conspiracy to Defraud.

29. These Defendants made representations to the Plaintiff, namely using false identities. These representations are material, as they form the basis of the relationship between the parties. The representations turned out to be false; as they accessed information they otherwise (without the deceit) would not be able to have access to. The Defendants made these representations with the intent that the Plaintiff act upon them by and through the functioning of the Plaintiff's code to specific requests and the Plaintiff was damaged.

H. Negligence and Gross Negligence

30. The Minnesota Defendants owed the Plaintiff duties. These duties are both contractual, as mentioned supra, but also in Texas common law. The Minnesota Defendants breached those duties, and the Plaintiff was harmed. The Minnesota

Defendants degree of negligence rises to the level of gross negligence and/or malice for which exemplary damages are available.

31. Specifically, Plaintiff sues for pain and suffering and mental anguish of its employees and officers which Plaintiff consists of.

VI. OTHER MATTERS

32. In addition, Plaintiff brings other theories of liability such as conspiracy, aiding and abetting, assisting and concert of action against the Minnesota Defendants and other parties, to be named as discovery continues. Conspiracy, therefore, as pled herein not as a cause of action *per se*, but rather a theory of liability.

33. Plaintiff also seeks liability of the Minnesota Defendants under the doctrines of respondeat superior and principle-agent theory, holding all Defendants jointly and severally liable.

34. Plaintiff sues for violations of various Texas laws pursuant to Paragraph 7. of the Contract Addendum between Plaintiff and the Minnesota Defendants which states, "This Agreement shall be governed by the laws of the State of Texas," as mentioned *supra*.

35. As discovery continues, Plaintiff expressly reserves the right to add other parties to the conspiracies, acts, and/or omissions mentioned herein.

VII. REMEDIES

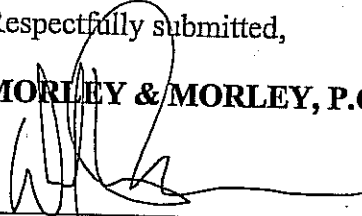
36. Under our present system, remedies for injustice is dispensed by and through damages. Damages are best dispensed in United States dollars and cents. Therefore, the Plaintiff asks for the following:

- a. Actual damages;
- b. Pain and Suffering for the employees and officers of Plaintiff;
- c. Mental Anguish for the employers and officers of Plaintiff;
- d. Attorneys fees and costs of court;
- e. Statutory Damages;
- f. Pre and post-judgment interest
- g. Plaintiff reserves its right for injunctive and/or declarative relief in equity

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Defendants be cited to appear and answer herein, and that Plaintiff has and recovers \$10,000,000.00 ten million dollars as judgment against Defendants for all of its damages and costs of suit, that Plaintiff be awarded exemplary damages over and above its actual damages, pre-judgment interest on all such sums from the time such damages accrued until judgment, that Plaintiff be awarded post-judgment interest on all such sums awarded from the time of judgment until paid, and all such other and further relief, at law or in equity, to which Plaintiff may show itself to be justly entitled.

Respectfully submitted,

MORLEY & MORLEY, P.C.



Arden J. Morley
State Bar No.14460775
David Person
Texas Bar Number 00786163
5909 West Loop South, Suite 300
Bellaire, Texas 77401
Tel: (713) 839-9955
Fax: (713) 839-7249

ATTORNEYS FOR PLAINTIFF