

1 Ronald J. Logar, Nevada State Bar No. 00303
Eric A. Pulver, Nevada State Bar No. 07874
2 LOGAR PULVER
1875 Plumas Street, Suite 1
Reno, NV 89509
3 Tel.: 775 786 5040
Fax: 775 786 7544
4 E-mail: eric@logarpulver.com

5 Peter Chase Neumann, Nevada Bar No. 00636
136 Ridge Street
6 Reno, NV 89501
Tel.: 775 786 3750
7 Fax: 775 786 8791
E-mail: petercneumann@sbcglobal.net

8 Attorneys for Plaintiff, Michael J. Flynn, Esq.

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

11 MICHAEL J. FLYNN,

12 Plaintiff

13 vs.

14 LINER GRODE STEIN YANKELEVITZ
15 SUNSHINE REGENSTREIF & TAYLOR
LLP, DEBORAH A. KLAR, and TERI
16 PHAM,

17 Defendants

3:09-CV-00422-PMP-RAM

FIRST AMENDED COMPLAINT

18
19 Plaintiff, MICHAEL J. FLYNN, by and through his counsel of record, as and for causes of
20 action against Defendants, and alleges as follows:

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1 **1. JURISDICTION AND VENUE**

2 1. The Court has jurisdiction pursuant to 28 U.S.C. §1332 (diversity); and 18 U.S.C.
3 § 1030 (computer hacking); 18 U.S.C. § 2707 (violations Electronic Communication Privacy Act),
4 18 U.S.C. §§ 1962, 1964 (RICO) and over the state law claims pursuant to 28 U.S.C. §1367
5 (supplemental jurisdiction). Venue is proper pursuant to 28 U.S.C. §1441(b). Jurisdiction and
6 venue are proper in this Court because this Amended Complaint is related to the subject matter of
7 four actions now or previously pending in this court, involving the same parties, and arising out
8 of the same transactions and events.

9 **2. PARTIES**

10 2. Plaintiff Michael J. Flynn, Esq., is and at all times mentioned in this complaint a
11 Massachusetts licensed attorney practicing law since 1970, who appeared pro hac vice in the State
12 of Nevada in the Nevada cases recited herein. He is domiciled in the Commonwealth of
13 Massachusetts.

14 3. Defendant, Liner, Grode, Stein, Yankelevitz, Sunshine, Regenstreif & Taylor, LLP
15 , (the “Liner firm”) is a Los Angeles based law firm with offices at 1100 Glendon Ave., Los
16 Angeles, California, 90024-3503. It previously represented Edra Blixseth; and Dennis
17 Montgomery, Brenda Montgomery, and the Montgomery Family Trust, (“the Montgomery
18 Parties”).

19 4. Defendants Deborah Klar and Teri Pham are attorneys and former partners in the
20 Liner firm, who previously represented the Montgomery parties and Edra Blixseth in multiple
21 matters. They are licensed to practice law in California and appeared pro hac vice in Nevada on
22 behalf of the Montgomery parties and Edra Blixseth in Nevada in the case of Dennis Montgomery
23 v. eTreppid Technologies. United States District Court, District of Nevada, Civil Case No. 3:06-
24 cv-00056. They are domiciled in California.

25 5. Plaintiffs do not know the true names and capacities of Defendants sued herein as
26 DOES 1 through 10, inclusive, and therefore sue said Defendants under such fictitious names.
27 Plaintiffs are informed and believe that such fictitious Defendants are responsible in some manner
28 for the events and happenings herein referred to, and proximately caused the damage to Plaintiffs

1 as herein alleged. Plaintiffs will seek leave to amend this Amended Complaint to allege their true
2 names and capacities when the same have been ascertained.

3 6. At all times herein, Defendants, acted as the agents and partners of each other, and
4 as the agents and representatives of Edra Blixseth and Dennis Montgomery, and as the agents and
5 partners of the Liner firm. At all times referred to herein, Defendants, and each of them, were the
6 agents, consultants, co-venturers, or in some manner agents or principals, or both for each other
7 and were acting at all times alleged herein within the course and scope of their agency.

8 **3. FACTUAL BACKGROUND**

9 7. On or about June - July of 2007, Defendants Pham and Klar, while employed as
10 attorneys at the Liner firm, were retained to provide legal services for the Montgomery Parties in
11 connection with litigation pending in the U.S. District Court for the District of Nevada in Case
12 No. 3:06-CV-0056 (consolidated) (“Nevada Litigation”). On or about February - March, 2007,
13 Klar and the Liner firm were also representing Edra Blixseth, Montgomery’s partner, co-
14 conspirator, and joint tortfeasor in the commission of torts against the Plaintiff. Plaintiff had
15 previously represented the Montgomery Parties in this litigation but withdrew as counsel when
16 Plaintiff discovered that the Montgomery Parties, and Edra Blixseth, were engaged in criminal
17 and fraudulent conduct for which Dennis Montgomery was attempting to use Plaintiff’s legal
18 services to perpetuate his and Edra Blixseth’s frauds on the U.S. government and on this Court.

19 8. For example, on April 13, 2007, Dennis Montgomery told Plaintiff that he was
20 hacking into the computers and emails of third parties on behalf of Edra Blixseth while Plaintiff
21 was representing him. Further, Plaintiff discovered that the software that was the subject of the
22 Nevada Litigation, and which Montgomery and Edra Blixseth were asserting ownership of in the
23 Nevada Litigation, more specifically the “noise filtering” software to decode terrorist threats, was
24 a complete fraud. It did not exist. The purported software which Dennis Montgomery and Edra
25 Blixseth represented could be used to detect secret terrorist communications and could identify
26 terrorists and their weapons from satellites and airplanes was being used by them in a fraudulent
27 scheme to defraud the U.S. government, foreign governments, and private individuals. Until Edra
28 Blixseth terminated him on or about March 26, 2007, Michael Sandoval was a co-conspirator in

1 said frauds.

2 9. When Plaintiff withdrew as counsel for the Montgomery Parties and sought to
3 recover attorneys' fees owed to him by the Montgomery Parties, Defendants willfully filed a
4 complaint in the Los Angeles Superior Court in bad faith and with malice seeking injunctive
5 relief based on knowingly false allegations relating to plaintiff's license to practice law in
6 Massachusetts and his pro hac vice representation of the Montgomery parties in Nevada cases
7 with the ulterior purpose of circumventing Nevada law and Nevada court orders with respect to
8 plaintiff's "retaining lien" over the Montgomery "client files"; and attempting to circumvent the
9 state secrets privilege and court orders requiring that plaintiff's files remain subject to Nevada
10 Federal Court jurisdiction; and attempting to defeat plaintiff's legal fees and costs due and
11 payable under Nevada law; and seeking to coerce plaintiff to drop his claim for fees and costs
12 through threats and intimidation based on false and fraudulent allegations in the complaint with
13 respect to plaintiff's alleged holding himself out as having a California law license; and for the
14 purpose of countering specific negative publicity relating to Montgomery's alleged fabrication of
15 emails relating to the bribery of Nevada's Governor, thereby shifting the spotlight to plaintiff
16 while falsely claiming that plaintiff had lied to defendant about his California law license; and for
17 the ulterior, bad faith and improper purpose of intimidating, outspending, and frivolously suing
18 plaintiff; and for the improper purpose of perpetuating the receipt and use of fraudulently
19 procured investment monies from a third party, by their other client Edra Blixseth and her agents
20 for the purpose of preserving the ongoing fraudulent operation of Opspring LLC and Blxware
21 LLC; and as part of their attack strategy to harass and intimidate the plaintiff.

22 10. Because Plaintiff had previously represented Montgomery, and thereby
23 represented a threat to expose their fraudulent scheme to defraud the U.S. Government,
24 Montgomery and Edra Blixseth conspired to obtain by illegal means, including computer
25 hacking, the communications of Plaintiff via email, for the purpose of hindering, obstructing and
26 defeating Plaintiff's legal rights and obligations under the Nevada Rules of Professional Conduct,
27 specifically Rule 3.3, and to defeat Plaintiff's recovery in Nevada of fees owed to him. The
28 Liner Firm, Deborah Klar and Teri Pham served both Montgomery and Edra Blixseth as their

1 lawyers and recipients of the “hacked” information and the instruments to attack, obstruct, and
2 defeat Plaintiff’s legal rights and obligations by illegal and improper means.

3 11. Defendants willfully filed two applications for a “writ of possession” in the Los
4 Angeles case in bad faith and with malice for the ulterior and improper purpose of circumventing
5 Nevada law and Nevada court orders with respect to plaintiff’s “retaining lien;” and
6 circumventing the state secrets privilege; and seeking to defeat plaintiff’s claims for legal fees
7 and costs; and based on the perjured declaration of Montgomery that plaintiff “held himself out
8 as a California lawyer” which Montgomery allegedly didn’t discover until he hired defendants.
9 The timing and the basis for the filing of these pleadings derived from “hacked” information.

10 12. Defendants willfully filed a perjured declaration of Montgomery dated September
11 10, 2007 in the Los Angeles Superior Court case and in the Nevada cases in bad faith, and with
12 malice and for the ulterior and improper purpose of defeating Nevada jurisdiction and obtaining
13 California jurisdiction and venue in order to defeat plaintiff’s fee and costs incurred solely in the
14 Nevada cases; and for the purpose of circumventing the state secrets privilege; and for the
15 purpose of avoiding posting of a bond explicitly mandated by the Nevada Court’s October 12,
16 2007 Order. The timing and the basis for the filing of these pleadings and the perjured
17 declarations derived from “hacked” information.

18 13. Defendants willfully filed a San Diego Fee Arbitration Petition in bad faith and
19 with malice , and for the ulterior and improper purpose of defeating Nevada jurisdiction based on
20 the perjured declaration, circumventing Nevada Court Orders, and to defraud plaintiff of his fees
21 and costs. The timing and the basis for the filing of this Petition derived from “hacked”
22 information.

23 14. Defendants willfully filed a complaint with the Massachusetts Board of Bar
24 Overseers with malice and in bad faith, and for the improper purpose of defeating Nevada
25 jurisdiction based on the perjured declaration, circumventing Nevada Court Orders, and to
26 defraud plaintiff of his fees and costs. The timing for the filing of this complaint derived from
27 “hacked” information as part of the larger scheme to intimidate Plaintiff.

28 15. Defendants in collaboration with Montgomery willfully prepared, fabricated and

1 filed, both in Nevada and California, the September 10, 2007 perjured declaration of Montgomery
2 knowing that every pleading filed in Nevada available on-line bore on its face that plaintiff is
3 licensed in Massachusetts; that plaintiff's stationary stated on its face that plaintiff was "Only
4 Admitted in Massachusetts;" that they possessed, and local counsel possessed transcripts,
5 documents and testimony that plaintiff only represented himself to be a Massachusetts lawyer,
6 and that even the most cursory of any investigation and inquiry would have established the falsity
7 of their fabricated declaration. They have utilized the perjured declaration in multiple filings in
8 order to harass and intimidate plaintiff as part of their attack strategy. Defendants filed the
9 perjured declaration as part of a larger scheme derived from "hacked" information to intimidate
10 Plaintiff and defeat his legal rights and obligations.

11 16. Defendants individually and collectively, and acting as the agents of each other,
12 engaged in the foregoing "willful acts" with malice and the specific intent to lie to, and perpetrate
13 a fraud on the courts in California and Nevada; and for the improper purposes and ulterior motive,
14 and by unlawful means, of defrauding plaintiff of his fees and costs in the sum of approximately
15 \$630, 0000. Defendants acted collectively using the Liner firm's resources and fees obtained
16 from fraudulent billing for bad faith litigation strategies, and pursuant to its policies. They did so
17 for the improper purpose of obtaining jurisdiction and venue in California in order to defeat
18 plaintiff's rights under Nevada law and applicable court orders; in order to defeat and circumvent
19 the state secrets privilege and as part of their attack strategy designed to harass and intimidate
20 plaintiff. In its October 12, 2007 Order, the Nevada District Court explicitly ruled that seeking
21 the "client files in the California law suit was directly "contrary" to Nevada court orders.

22 17. The timing and the contents of the filings of the Defendants, coupled with
23 Montgomery's admissions of computer hacking, coupled with Plaintiff's observed facts regarding
24 the hacking, coupled with his disclosures to the Defendants, coupled with their subsequent
25 reliance on Montgomery and use of "hacked" information, given to them by both Edra Blixseth
26 and Montgomery, supports their actual knowledge of the use of "hacked" information; or use of
27 information that they knew or reasonably should have known was obtained by Montgomery and
28 Edra Blixseth by illegal means, including computer hacking.

1 18. Defendants employed a fraudulent financing scheme in collusion with
2 Montgomery and Edra Blixseth in order to finance the perpetration of their torts against the
3 Plaintiff and to pay themselves legal fees derived from the fraudulent financing scheme. They
4 participated in the procurement of fraudulent loans from Western Capital Partners for \$13
5 million, from Wachovia Bank for \$8 million, from Stockman Bank for \$4.6 million, from
6 American Bank for \$9.5 million; and from First Bank & Trust for \$10 million. These loans were
7 all procured by means of overtly fraudulent financial statements and fraudulent loan applications
8 prepared in whole or in part by Defendants. Without the procurement of said fraudulent loans
9 totaling approximately \$50 million in collaboration with Edra Blixseth and Montgomery – using
10 fraudulent representations relating to the fraudulent technology – Defendants would not have
11 been able to perpetrate their frauds against the Plaintiff. In addition, millions of dollars of these
12 funds were paid by Edra Blixseth to Montgomery, some of which was used to purchase computer
13 equipment used in the computer hacking scheme.

14 **First Cause of Action - Aiding and Abetting Violations of 18 U.S.C. § 1030**

15 **(Against All Defendants)**

16 19. Plaintiff re-alleges each allegation contained within the above paragraphs.

17 20. Pursuant to 18 U.S.C. § 1030(g) plaintiff has a civil cause of action against
18 defendants for aiding and abetting Montgomery's "hacking" into plaintiff's computers, disclosing
19 the information to the defendants; and the defendants' subsequent use of said information in the
20 perpetration of their other torts. Defendants together with Montgomery knowingly accessed
21 plaintiff's computers and obtained information without authorization for the purpose of gaining
22 an advantage in existing litigation involving the attorney's fees, including their knowing and
23 collective intent to defraud plaintiff of his legal fees by knowingly using information unlawfully
24 obtained from accessing plaintiff's computers without authorization; and knowingly using
25 information gained through said illegal access in the pursuit of their scheme to harass and
26 intimidate the plaintiff and crush him into submission.

27 21. Specifically, on April 13, 3007, Dennis Montgomery told Plaintiff that on
28 numerous prior occasions that he was hacking into the computers of Timothy L. Blixseth and had

1 purportedly discovered as a result of this hacking that Mr. Blixseth had transferred “7 million
2 dollars” to an offshore bank account held by a foreign bank in the Cayman Islands for the purpose
3 of concealing assets from Ms. Blixseth and her attorneys as they resolved issues concerning the
4 Blixseths’ division of their marital community assets in relation to the Blixseths’ then pending
5 divorce proceedings.

6 22. Montgomery obtained this purported information on behalf of Ms. Blixseth and
7 her attorney, including Deborah Klar, who at that time was preparing pleadings and affidavits as
8 part of a separate law suit connected to the Blixseth divorce proceedings. The collaborative use
9 of this allegedly “hacked” information by the Defendants and Edra Blixseth’s attorneys is
10 evidenced by the fact that Ms. Blixseth’s divorce attorneys on June 15, 2007 sent a letter to Mr.
11 Blixseth’s attorneys inquiring about his “recent offshore banking activity in the Cayman Islands .
12 . . .” Edra Blixseth and Montgomery both disclosed to Deborah Klar that the information was
13 obtained by Montgomery “through Dennis’ computer skills.”

14 23. Between January 2007 and April of 2007, Montgomery gave Plaintiff information
15 that Montgomery represented came from a U.S. intelligence agency based on phone calls
16 Montgomery was purportedly receiving from an “intelligence operative” using a 000 000 0000
17 phone number, which Montgomery said he was at time confirming through a computer located at
18 George Washington University and which was operated and controlled by a U.S. intelligence
19 agency. Montgomery’s statements to Plaintiff were designed to mislead Plaintiff into believing
20 that a specific intelligence agency was cooperating with him against the Trepp parties when in
21 retrospective fact, Montgomery was hacking into computers. Montgomery first led Plaintiff to
22 believe that Montgomery obtained this information by receiving phone calls from an individual
23 inside a specific intelligence agency who was supporting Montgomery’s purported interception of
24 terrorist threats and working with him to convey the technology to the government without
25 interference from the Trepp parties.

26 24. Yet, on and after April 13, 2010, after this Court unsealed the FBI reports on April
27 9, 2007, Montgomery disclosed that he was actually receiving this information through
28 intercepting, with the aid of a separate intelligence operative, information into in the computer

1 located at George Washington University.

2 25. After Montgomery disclosed the computer hacking on April 13, 2007, and for the
3 ensuing 60 days, Montgomery's conflicts with Plaintiff intensified over multiple matters
4 including Montgomery's computer hacking with the alleged assistance of an "intelligence
5 operative", the validity of his purported technology for which he was seeking Plaintiff's legal
6 services to defend, his statements in previous declarations Montgomery had executed, and the
7 non-payment of Plaintiff's fees and costs. As this conflict escalated, plaintiff became
8 increasingly suspicious of Montgomery's veracity, and began noticing strange operations on
9 Plaintiff's computer including the movement of his cursor, particularly early in the morning when
10 his computers were not being used. When Plaintiff notified Montgomery that he was
11 withdrawing from representing him in June, 2007, Plaintiff began observing the involuntary
12 backspacing of letters and words that he was then typing on his computer relating to
13 Montgomery. Until recently, these backspacing incidents occurred on numerous occasions when
14 Plaintiff was preparing documents or emails relating to Montgomery or Edra Blixseth.

15 26. On April, 9, 2007, the Nevada District Court unsealed certain FBI reports relating
16 to Montgomery which Plaintiff then discussed with Montgomery and Edra Blixseth resulting in
17 meetings at Porcupine Creek on April 12 – 13, 2007. Montgomery told Plaintiff between April
18 13, 2007 and May 30, 2007 that Edra Blixseth had previously requested Montgomery to
19 "monitor" the computers of her business partner, Michael Sandoval, to learn information about
20 him and his business dealings; and Montgomery had further told Plaintiff that Michael Sandoval
21 had made a similar request of Montgomery to "monitor" the computers of Edra Blixseth. In late
22 May, 2007, Montgomery stated that he was removing all of his purported technology and all of
23 his electronically stored intercepted information from the premises of Opspring LLC in Bellevue,
24 Washington. During this period, Montgomery told Plaintiff that Sandoval had possession of
25 "thousands" of Edra Blixseth's emails which he had "intercepted" for Sandoval; and that Edra
26 Blixseth had possession of the "entire contents of Sandoval's hard drives". When Plaintiff asked
27 Montgomery on several occasions between April 13, 2007 and mid May, 2007 what "monitoring"
28 meant, Montgomery generally retorted "what the f... do you think it means!"

1 27. Beginning in June – July, 2007, Defendants, and each of them, began representing
2 the Montgomery Parties in the Nevada cases after having previously represented Edra Blixseth
3 since March, 2007 and having access to her information derived from Montgomery’s computer
4 hacking. During this time, Dennis Montgomery continued his pattern of hacking into the
5 computers of Plaintiff as evidenced by Plaintiff’s observations relating to the movements of his
6 cursor and the backspacing discussed above, and as evidenced by numerous incidents where
7 Plaintiff would be conveying information via his computers and then strange incidents would
8 occur. In late July of 2007, Plaintiff informed Defendants through Teri Pham that Montgomery
9 was hacking into computers for Edra Blixseth including his own computers; and that
10 Montgomery had possession of all Plaintiff’s electronically stored information and emails. Later,
11 in August, 2007, Deborah Klar admitted to this Court that she had access or possession of
12 Montgomery’s electronically stored information, which Plaintiff believes includes information
13 obtained by Montgomery from Plaintiff’s computers through computer hacking. Later, in August
14 – September, 2009, after Montgomery filed bankruptcy, Montgomery stated in bankruptcy
15 proceedings that the Liner firm had possession of *all* of his electronically stored information.

16 28. Defendants, and each of them, knowing that Dennis Montgomery was gaining
17 information against his adversaries including Plaintiff, from hacking into their computers,
18 nevertheless used this wrongfully gained information in their litigation efforts against Plaintiff.

19 29. Specifically, in numerous pleadings filed with this Court and in California in or
20 around August – September, 2007, the Defendants represented that Plaintiff possessed the
21 Montgomery Parties’ “client files” within California. Defendants’ factual basis for these
22 representations in their pleadings concerning the location of the Montgomery Parties’ client files
23 could only have been provided to them from Montgomery as a result of Montgomery’s
24 unauthorized access (“hacking”) into Plaintiff’s computers and emails during the summer of
25 2007. In fact, said “client files” are located on Plaintiff’s computers in California, Massachusetts,
26 or wherever Plaintiff is located with his lap top. Plaintiff’s paper client files were located in
27 Massachusetts and some in California. Similarly, the Defendants filed pleadings that Plaintiff
28 was allegedly communicating attorney client privileged information to third parties.

1 30. Defendants had no basis to make this allegation without receiving information
2 from Montgomery derived from hacking into Plaintiff's computers and then altering the
3 information in some manner. Consistent with Montgomery's hacking practices, Montgomery
4 would gain unauthorized access into a third person's computers and/or emails to gain certain
5 source information and then alter that information for his own purposes and to use against his
6 adversaries. For example, Montgomery engaged in this hacking and manipulation in the Nevada
7 Litigation when he fabricated the "Gibbons' emails" wherein Montgomery obtained unauthorized
8 access into the emails of third parties and then manipulated those emails in a manner that
9 portrayed Warren Trepp bribing Jim Gibbons. Montgomery gained unauthorized access into third
10 party computers to create what purported to be a federal grand jury target letter sent to Timothy
11 L. Blixseth but was in fact a fraudulent target letter but which was given to Deborah Klar to use
12 in her representation of Edra Blixseth for the purpose of gaining an advantage over Tim Blixseth.

13 31. At all times material to the allegations herein, Defendants' knew that
14 Montgomery's modus operandi was to hack into computers, intercept emails and information,
15 then alter emails and/or information to fit into fabricated allegations against his adversaries.
16 Defendants used this information against Plaintiff with said knowledge and while knowing
17 Montgomery was a pathological perjurer. On this basis, and pursuant to this scheme, Defendants
18 filed Montgomery's perjured declaration in California and Nevada.

19 32. Defendants knew that Montgomery was hacking into the computers of his
20 adversaries and that such hacking was the source of the factual information that he was providing
21 to them for their use in pleadings filed against Plaintiff, and/or being used in their work product to
22 develop their scheme of harassment and intimidation against Plaintiff. As Defendants Pham and
23 Klar were the individual attorneys of record for the Montgomery Parties during this time period
24 and were the attorneys whose names appeared on pleadings filed with this Court and in California
25 against Plaintiff, they were specifically responsible for using the information provided to them by
26 Montgomery which they knew, or had reason to know, he obtained from hacking into Plaintiff's
27 computers.

28 33. Plaintiff is informed and believes that throughout the litigation described above

1 involving Montgomery and Defendants, Montgomery was continuing to hack into Plaintiff's
2 emails and computers and was providing such information to Defendants, which Defendants
3 knew was derived from Montgomery's hacking, for Defendants' use in filing and pleadings in
4 this Court and in California against Plaintiff.

5 34. As a result of Montgomery's hacking into his computers and the ensuing stress
6 suffered by Plaintiff as a result of Defendants using the information gained from that hacking
7 against him in the litigation conduct described above, Plaintiff suffered from an extremely
8 debilitating condition known as Shingles from the first week of October 2008 through December
9 2008. This physical injury suffered by Plaintiff was debilitating, painful and constitutes an injury
10 for which he is entitled to compensatory relief in an amount to be proven at trial.

11 **Second Cause of Action: Aiding and Abetting Violations the Stored Communications Act,**

12 **18 U.S.C. § 2707**

13 **(Against All Defendants)**

14 35. Plaintiff re-alleges each allegation contained within the above paragraphs.

15 36. Based on the facts recited above, Defendants aided and abetted Dennis
16 Montgomery in obtaining unauthorized access to Plaintiff's emails and stored data in violation of
17 18 U.S.C. §§ 2701 and are therefore liable to Plaintiff pursuant to 18 U.S.C. § 2702 for his
18 damages suffered as a result, including, but not limited to, approximately \$630,000 in attorneys'
19 fees owed by the Montgomery parties, and plaintiff has incurred over \$400,000 in fees and costs
20 expended to defend against Defendants' outrageous litigation conduct described above, and for
21 compensatory damages arising from Plaintiff's physical injury described above, and for punitive
22 damages and attorneys' fees as allowed under 18 U.S.C. § 2707(c).

23 **Third Cause of Action: Aiding and Abetting Invasion of Privacy**

24 **(Against All Defendants)**

25 37. Plaintiff re-alleges each allegation contained within the above paragraphs.

26 38. Plaintiff had a reasonable expectation that his computers' contents and
27 communications made through said computers would remain private and confidential.
28 Defendants, using Montgomery's computer hacking methods as described above against him in

1 litigation in Nevada and California, violated and invaded Plaintiff's rights to privacy.

2 39. As a proximate cause of the foregoing acts and misconduct recited in paragraphs 1
3 through 33 involving the violations of 18 U.S.C. § 1030 and 18 U.S.C. 2511 (interception of wire
4 and electronic communications), plaintiff has lost approximately \$630,000 in attorneys' fees
5 owed by the Montgomery parties, and plaintiff has incurred over \$400,000 in fees and costs
6 expended to defend against defendants' outrageous conduct; plaintiff has also suffered injury to
7 his reputation, humiliation, embarrassment, mental suffering, inconvenience, anxiety, fears, and
8 mental and emotional distress which physically manifested itself in the form of Plaintiff suffering
9 from a debilitating flare up of shingles between October and December of 2008.

10 40. Pursuant to this Count, Plaintiff demands compensatory and consequential
11 damages against all defendants; and punitive damages (Nev. Rev. Stat. 42.005) for oppression,
12 fraud and/or malice relating to their invasion of Plaintiff's privacy.

13 **Fourth Cause of Action: Violations of RICO Act (18 U.S.C. §§ 1962, 1964)**

14 **(Against All Defendants)**

15 41. Plaintiff re-alleges each allegation contained within the above paragraphs.

16 42. At all material times, the Defendants, and each of them, formed an "association-in-
17 fact" that constituted an enterprise which engaged in, and whose activities affected, interstate
18 commerce. The enterprise is an entity separate and apart from the pattern of racketeering alleged.
19 The enterprise, included Dennis Montgomery, Edra D. Blixseth, Defendant Pham, Defendant
20 Klar, and the Liner firm, of which Defendant Pham and Defendant Klar were agents during this
21 time period.

22 43. The purpose of the enterprise was to procure fraudulent loans from lenders in order
23 to secure monies to pay Defendants' legal fees in order to unlawfully harass and intimidate
24 Plaintiff in the manner described above; and to hack into Plaintiff's computers, and to obtain
25 contracts with the United States Government whereby Edra Blixseth and Dennis Montgomery,
26 through their entities, and while represented by Defendants, would obtain not less than \$100
27 million from the U.S. Government in exchange for selling the Government the national security
28 related software described, which software was in fact fraudulent.

1 44. The predicate acts of the RICO enterprise consisted of the Defendants, and each of
2 them, representing and actively participating with Edra Blixseth and Montgomery in obtaining
3 loans from banks and private lenders based on fraudulent financial statements and representations
4 for the purpose of obtaining funds so that Defendants could be paid to continue to harass and
5 intimidate Plaintiff; and to pay Montgomery so that he could pay Defendants' legal fees; and to
6 litigate in the Nevada Case the purported ownership of the fraudulent software so that
7 Defendants could benefit from Edra Blixseth, through her entities, selling this purported software
8 to the U.S. Government, which software was in fact fraudulent.

9 45. In particular, between March and June of 2008, Defendants represented Edra
10 Blixseth and her entities in modifying a loan Ms. Blixseth owed to a Colorado private lender,
11 Western Capital Partners LLC ("WCP"), so that Defendants could then arrange for Ms. Blixseth
12 to borrow not less than \$8 million from Wachovia Bank, N.A. to continue to fund the RICO
13 enterprise. Specifically, between March of 2008 and June of 2008, Defendants represented Edra
14 Blixseth in requesting that WCP release its security interest in Ms. Blixseth's ownership interest
15 in Blxware LLC. This release of Ms. Blixseth's interest in Blxware LLC was necessary because
16 Defendants had arranged for Wachovia Bank to lend Ms. Blixseth \$8 million if Wachovia could
17 obtain Ms. Blixseth's interest in Blxware LLC as collateral for the loan. During this process,
18 Defendants represented to Wachovia Bank that Blxware LLC owned the fraudulent software
19 described above (hereinafter "Software") and that Blxware had contracts valuing at least \$100
20 million with the U.S. Government for the Government to use the Software for terrorist detection
21 purposes. Defendants, however, intentionally concealed from Wachovia that the ownership status
22 of the Software was being disputed in the Nevada Case, that the use and sale of the Software was
23 subject to an injunction in the Nevada Case, and more importantly that the Software was
24 fraudulent as it did not in fact detect terrorist threats. Defendants knew of these defects in the
25 Software because Defendants were representing Edra Montgomery and Dennis Montgomery in
26 the Nevada Case during this period, yet failed to disclose these facts to Wachovia, thereby
27 perpetrating a fraud on Wachovia in connection with their representations to Wachovia.
28 Defendants further perpetrated a fraud on Wachovia by misrepresenting to Wachovia that Edra

1 Blixseth was able to pay her bills as they came due and that Ms. Blixseth was not subject to any
2 threatened or pending litigation when in fact Defendants were concurrently representing Edra
3 Blixseth in Montana and California cases wherein Defendants prepared sworn statements on
4 behalf of Ms. Blixseth stating that Ms. Blixseth was unable to pay her bills as they came due, was
5 millions of dollars in arrears in taxes and other debts, and was generally insolvent. Defendants
6 were actively involved in this lending fraud perpetrated on Wachovia because they brought
7 Wachovia to Ms. Blixseth for the purpose of making the loan; and they had contacts with
8 Wachovia loan officers and initially arranged for Ms. Blixseth and Wachovia officials to discuss
9 the loan in the Defendants' offices then Defendants were actively involved in meetings between
10 Wachovia and Ms. Blixseth regarding the loan, made the above false representations to Wachovia
11 on behalf of Ms. Blixseth, and represented Ms. Blixseth in reviewing and revising loan closing
12 documents associated with the loan from Wachovia wherein affirmative representations were
13 made to Wachovia which Defendants knew to be false. Defendants further provided false
14 financial statements to Wachovia during Wachovia's underwriting process. The financial
15 statements were false because they ascribed values to the Software that was grossly inflated and
16 which failed to list a \$13 million loan owed by Ms. Blixseth to WCP; and which concealed the
17 Nevada litigation and injunction.

18 46. Defendants perpetrated this fraud on Wachovia to obtain money for the purpose of
19 funding their continued efforts to harass and intimidate Plaintiff, to prevent him from revealing
20 their frauds with respect to the Software, and to sell the fraudulent Software to the U.S.
21 Government for \$100 million; and to pay Blixseth to pay Montgomery to hack into Plaintiff's
22 computers.

23 47. Defendants committed additional frauds on other banks in the same manner by
24 providing other banks with false financial statements, making knowingly false representations
25 regarding Ms. Blixseth's solvency and her ability to pay her debts as they came due and her
26 litigation status. The banks and lenders on which these additional frauds were perpetrated
27 include: American Bank in Montana for which Defendants helped procure loans totaling at least
28 \$9.5 million in or around November and December of 2007; First Bank and Trust located in

1 Newport Beach California for which Defendants helped Ms. Blixseth procure loans totaling \$10
2 million in March of 2008; CrossHarbor Capital Partners LLC located in Boston Massachusetts
3 from which Ms. Blixseth obtained a \$35 million loan on August 13, 2008 and for which
4 Defendants provided CrossHarbor knowingly false financial statements; and Stockman Bank in
5 Montana for which Defendants helped Ms. Blixseth procure loans totaling \$4.6 million in
6 September of 2008.

7 48. In committing these predicate acts involved with their bank and lending fraud,
8 Defendants did so from California while communicating through emails, phone lines and other
9 interstate means of communications with banks and lenders in other states including attorneys for
10 Wachovia located in New York, attorneys and principals for CrossHarbor in Boston, and banks in
11 Montana and their representatives.

12 49. The Defendants RICO predicate acts of obtaining funds for Ms. Blixseth based on
13 fraudulent representations to lenders, and using information knowingly obtained through
14 computer hacking was done for the purpose of harassing and intimidating Plaintiff and
15 perpetuating their scheme to defraud the U.S. Government based on the fraudulent Software.

16 50. The Defendants' RICO scheme has damaged Plaintiff in his business of practicing
17 law as described above in an amount of not less than \$1,030,000 associated with unpaid legal fees
18 owed to him by Montgomery and his own litigation defense costs incurred as a result of
19 Defendants' wrongful conduct for which Plaintiff is entitled to recovery, plus treble damages and
20 attorneys' fees allowed under 18 U.S.C. 1964.

21 51. Pursuant to 18 U.S.C. § 1962(d), Defendants, and each of them, both directly
22 participated in the RICO scheme alleged about and conspired with Edra Blixseth, Dennis
23 Montgomery, and themselves, to further the RICO scheme described above.

24 **Sixth Cause of Action: RICO Conspiracy (18 U.S.C. § 1962(d))**

25 **(Against All Defendants)**

26 52. Plaintiff re-alleges each allegation contained within the above paragraphs.

27 53. Pursuant to 18 U.S.C. § 1962(d), Defendants, and each of them, both directly
28 participated in the RICO scheme alleged about and conspired with Edra Blixseth, Dennis

1 Montgomery, and themselves, to further the RICO scheme described above.

2 54. The Defendants' RICO conspiracy has damaged Plaintiff in his business of
3 practicing law as described above in an amount of not less than \$1,030,000 associated with
4 unpaid legal fees owed to him by Montgomery and his own litigation defense costs incurred as a
5 result of Defendants' wrongful conduct for which Plaintiff is entitled to recovery, plus treble
6 damages and attorneys' fees allowed under 18 U.S.C. 1964.

7 **Seventh Cause of Action: Civil Conspiracy**

8 **(Against All Defendants)**

9 55. Plaintiff re-alleges each allegation contained within the above paragraphs.

10 56. Under Nevada law, Defendants acted for their own personal advantage in the form
11 of earning legal fees paid to them by Montgomery and Edra Blixseth as they perpetrated their
12 "scorched earth" litigation strategy against Plaintiff.

13 57. In this regard, Defendants conspired with Edra Blixseth and Dennis Montgomery
14 to invade Plaintiff's privacy by hacking into his computers and emails for the purpose of
15 perpetuating their scorched earth tactics against Plaintiff.

16 58. As a result of the Defendants' conspiracy in this regard, Plaintiff has lost
17 approximately \$630,000 in legal fees and an additional \$400,000 defending himself against
18 Defendants' wrongful litigation and litigation strategies employed against him in furtherance of
19 Defendants' conspiracy.

20 59. Plaintiff demands compensatory and consequential damages against Defendants;
21 and punitive damages for their oppression, fraud and malice relating to their conspiracy.

22 DATED this 16th day of December, 2010.

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25 _____
Peter Chase Neumann
Nevada Bar No. 00636
136 Ridge Street
26 Reno, NV 89501
27 Tel.: 775 786 3750
Fax: 775 786 8791
28 E-mail: petercneumann@sbcglobal.net

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Ronald J. Logar
Nevada State Bar No. 00303
Eric A. Pulver
Nevada State Bar No. 07874
LOGAR PULVER
1875 Plumas Street, Suite 1
Reno, NV 89509
Tel.: 775 786 5040
Fax: 775 786 7544
E-mail: eric@logarpulver.com

Attorneys for Plaintiff, Michael J. Flynn, Esq.

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CERTIFICATE OF SERVICE

Pursuant to Fed.R.Civ.P. 5(b), the undersigned hereby certifies that a true and correct copy of the foregoing FIRST AMENDED COMPLAINT was filed electronically via CM/ECF in the United States District Court, for the District of Nevada, with notice of same being electronically served by the Court on all of the attorneys of record registered with the CM/ECF system this 16th day of December, 2010.

/s/ Cheryl L. Purcell
Cheryl L. Purcell