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No JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TYAN, INC.,

Plaintiff,

v.

YOVAN GARCIA,

Defendant.

Case No. CV 15-05443- MWF (JPRx)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This matter came on for trial before the Court sitting without a jury on January 10, 2017. Following the presentation of evidence and the parties' closing arguments, the matter was taken under submission.

Having carefully reviewed the record and the arguments of counsel, as presented at the trial and in their written submissions, the Court now makes the following findings of fact and reaches the following conclusions of law under Rule 52 of the Federal Rules of Civil Procedure. Any finding of fact that constitutes a conclusion of law is also hereby adopted as a conclusion of law, and any conclusion of law that constitutes a finding of fact is also hereby adopted as a finding of fact.

1 The following witnesses were called and examined by the parties in the order
2 recited below:

3 All testimony was given on **January 10, 2017**. Joseph S. Fischbach and Andrew
4 Zelus appeared on behalf of Plaintiff Tyan, Inc., d/b/a Security Specialists (“Tyan”) and
5 gave an opening statement. Defendant Yovan Garcia appeared *in pro se* and gave an
6 opening statement.

7 Mr. Fischbach first examined **Nick Tsotsikyan**, founder, owner, and Director of
8 Operations of Security Specialists. Mr. Tsotsikyan’s sworn declaration was submitted in
9 lieu of a full direct examination. Mr. Garcia cross-examined Mr. Tsotsikyan.

10 Mr. Fischbach next examined **Steve Leon**, Operations Manager of Security
11 Specialists. Mr. Leon’s sworn declaration was submitted in lieu of a full direct
12 examination. Mr. Garcia cross-examined Mr. Leon.

13 Mr. Fischbach recalled **Mr. Tsotsikyan** for redirect examination. Mr. Garcia
14 recross-examined Mr. Tsotsikyan.

15 Mr. Zelus next examined Defendant **Yovan Garcia** regarding Defense Exhibit A.

16 Mr. Zelus then examined **Junior Arana**, a Patrol Officer for Security Specialists.
17 Mr. Arana’s sworn declaration was submitted in lieu of a full direct examination. Mr.
18 Garcia cross-examined Mr. Arana.

19 Mr. Zelus examined **Ken Hagopian**, a principal in Digital Synergy Consulting,
20 Inc., the company that provides IT support for Security Specialists. Mr. Hagopian’s
21 sworn declaration was submitted in lieu of a full direct examination. Mr. Garcia cross-
22 examined Mr. Hagopian. Mr. Zelus conducted a redirect examination; Mr. Garcia
23 conducted a recross examination. Mr. Zelus conducted a second redirect examination;
24 Mr. Garcia conducted a short, second recross examination.

25 Mr. Zelus next examined Defendant **James Caspari**, a former Patrol Officer for
26 Security Specialists. Mr. Caspari’s sworn declaration was submitted in lieu of a full direct
27 examination. Mr. Garcia cross-examined Mr. Caspari. Mr. Zelus conducted a short
28 redirect examination of Mr. Caspari; and Mr. Garcia conducted a recross examination.

1 Mr. Zelus conducted a second redirect examination of Mr. Caspari; Mr. Garcia conducted
2 a second recross examination.

3 Mr. Zelus examined **Denis Rybalka**, a Field Training Officer for Security
4 Specialists. Mr. Rybalka's sworn declaration was submitted in lieu of a full direct
5 examination. Mr. Garcia cross-examined Mr. Rybalka.

6 **Mr. Garcia** then took the stand and testified in his own defense. Mr. Zelus cross-
7 examined Mr. Garcia.

8 Finally, Mr. Fischbach examined **Mr. Tsotsikyan** a third time, as a rebuttal witness.
9 Mr. Garcia cross-examined Mr. Tsotsikyan.

10 At the end of the day, Mr. Fischbach made his closing argument for Plaintiff. Mr.
11 Garcia made his own closing argument.

12 13 **I. FINDINGS OF FACT**

14 **A. Background**

15 1. Nick Tsotsikyan founded Security Specialists, a private security patrol
16 company, in 1999. Since then, Security Specialists has provided security services
17 throughout Southern California.

18 2. At some point, Tsotsikyan realized that the typical reporting process used by
19 most security companies could be updated and streamlined with modern technology.
20 Tsotsikyan purchased FileMaker Pro, a software that enables users to develop custom,
21 proprietary databases. Tsotsikyan taught himself to use FileMaker Pro and began to
22 develop a set of custom databases for use by Security Specialists.

23 3. Eventually, Tsotsikyan developed a unique set of forms and databases that, in
24 his opinion, set Security Specialists apart from the competition. Each patrol car is
25 equipped with a laptop computer, from which Patrol Officers can access Security
26 Specialists' central database over the internet. Patrol Officers can then generate their daily
27 reports as they patrol. The reports are emailed or faxed directly to clients as a .pdf. In an
28

1 industry where carbon copy reports are still common, Tsotsikyan believes that his custom
2 forms helped Security Specialists to distinguish itself from its competitors.

3 4. Tsotsikyan also used FileMaker Pro to develop databases to store confidential
4 client information and employee records. All of Security Specialists' databases were
5 protected by username and password. Only administrators — *i.e.*, Steve Leon and
6 Tsotsikyan — were authorized to edit the reporting software and access the confidential
7 client and employee databases.

8 5. Tsotsikyan averred that he spent 5,000 hours over the course of 15 years
9 developing the forms and databases that Security Specialists uses. In 2009–2010,
10 Tsotsikyan hired Dina Torok, a certified FileMaker developer, to help him continue
11 developing the custom files. Torok charged \$170 per hour, and Tsotsikyan believes that
12 this is a fair hourly rate.

13 **B. Inconsistencies in Garcia's Payroll Records**

14 6. Yovan Garcia began working for Security Specialists as a Patrol Officer
15 sometime in or around 2012.

16 7. On July 24, 2014, Steve Leon noticed something odd about Garcia's payroll
17 records. Although Garcia's schedule reflected that he had worked typical eight-hour days
18 during the previous two-week pay period, the payroll program indicated that Garcia had
19 worked twelve hours per day, and thus was owed 40 hours of overtime pay.

20 8. At first, Leon thought that perhaps the payroll program was not adding
21 properly. Then, he noticed that someone had tampered with the program's "Lunch" field.
22 Four hours had been added into the lunch field each day, which accounted for the
23 unexplained extra 40 hours of overtime in Garcia's records. The hours had been entered
24 in black text on a black background, in one-point font. As a result, the alterations to
25 Garcia's hours would not have been noticeable to the casual observer. The alterations
26 resulted in Garcia's being paid wages for overtime that, presumably, he did not work.

27 9. His curiosity piqued, Leon pulled the paystub server log, which tracks all
28 attempts to log into the payroll database. The paystub server log was admitted into

1 evidence as Exhibit 3. The log indicated that just the night before, on July 23, 2014 at
2 about 9:00 p.m., someone logged into the payroll program from Garcia's patrol laptop.
3 The individual used an administrative username and password. As a Patrol Officer,
4 Garcia was not authorized to access the payroll database and was never given the
5 username or password.

6 10. Leon eventually figured out that Garcia's hours had been artificially inflated
7 since at least January 2014. Garcia's paystubs for each of those pay periods, along with
8 his corresponding schedule for that pay period, was admitted into evidence as Exhibit 2.

9 11. As an example of how Garcia's hours were altered, in the first pay period of
10 the year, Garcia's paystub shows that he worked 80 hours of regular scheduled time, 20.5
11 hours of overtime, and 8 hours of holiday time. Garcia's schedule for that same period
12 shows that he only actually worked 80 hours of regular scheduled time (including one 8-
13 hour day of holiday time) and three hours of overtime. The discrepancy meant that Garcia
14 was overpaid by \$371.67 that month.

15 12. Garcia's hours were similarly inflated for each subsequent pay period. No
16 other employee's records reflected a similar discrepancy. Leon testified that, as a Patrol
17 Officer, Garcia was not authorized to access or alter the scheduler program, and was never
18 given the supervisor password that would have allowed him to do so.

19 13. Leon testified competently and knowledgeably about this incident. The
20 Court credits his testimony.

21 14. Leon discussed the issue with Tsotsikyan. He then tried to call Garcia to ask
22 him about the discrepancy. Leon left a message asking Garcia to come into the office for
23 a meeting, but Garcia never arrived. Instead, Garcia called someone he considered to be a
24 friend at Security Specialists, long-time employee Denis Rybalka, and asked to meet.

25 15. Rybalka had the day off, and had spent the day washing his car. He tried to
26 avoid Garcia's calls. Rybalka had just finished hand waxing his car when he received yet
27 another call from Garcia, and finally decided to answer.

28

1 16. Garcia was in a panic. He was speaking “gibberish,” and was talking too fast
2 for Rybalka to follow. Rybalka thought he heard Garcia say, “they found out;” Garcia
3 was worried that he had been fired. Garcia asked to meet because he didn’t feel like he
4 could talk about what had happened over the phone.

5 17. Rybalka hung up and immediately called Leon. Leon asked Rybalka to meet
6 with Garcia — and to record the conversation for Security Specialists’ benefit. Rybalka
7 had worked at Security Specialists for more than a decade, and he was intensely loyal to
8 the company and to Leon in particular. Rybalka set his cell phone to record and drove his
9 freshly waxed car to a nearby McDonald’s to meet with Garcia.

10 18. The audio recording that Rybalka made was admitted, along with a transcript,
11 as Exhibit 4. Rybalka spoke slowly and clearly while testifying. He did not hesitate to
12 answer questions and appeared confident in his answers. Based on his manner when
13 testifying and other factors, the Court credits Rybalka’s testimony.

14 19. During the meeting, Garcia told Rybalka that Garcia suspected Leon wanted
15 to meet with him because he had been receiving inflated paychecks for the past few
16 months. Garcia told Rybalka the following story:

17 20. Garcia began by explaining that he has some skill with computers. A few
18 months prior, someone from Security Specialists’ competitor, PTS Security Services
19 (“PTS”), had asked him to come take a look at a broken laptop. While working on the
20 computer, Garcia noticed a file labelled “Security Specialists.” Curious, he opened the
21 file, only to find what he recognized to be confidential client records. Garcia saved the
22 file to his own device, deleted it from the laptop, and said nothing to his contact at PTS.

23 21. A little while later, Richard Balint, a former employee of Security Specialists
24 and current employee of PTS, contacted Garcia. Balint told Garcia that he knew Garcia
25 had seen the “Security Specialists” file on the laptop. He asked Garcia not to say anything
26 to his employer about the file — and promised that Garcia would be well compensated for
27 staying quiet. Garcia said nothing, and soon after started receiving the inflated paychecks.

28

1 22. Rybalka tried to convince Garcia to tell his story to Leon. Rybalka
2 emphasized to Garcia that accepting the extra money had been wrong; but said that he
3 believed Garcia that it was PTS who inflated the paychecks. Rybalka thought that if
4 Garcia would only explain what happened to Leon, Garcia would be able to keep his job.

5 23. Garcia was reluctant. He was afraid, he said. He had a family and was
6 worried for their safety. Besides, Garcia did not like Leon and thought that he and
7 Tsotsikyan would probably just try to blame the whole thing on Garcia. Instead, Garcia
8 wanted Rybalka to tell Leon and Tsotsikyan what had happened. Garcia thought that the
9 two higher-ups would be more receptive to his story if they heard it from Rybalka first.

10 24. Eventually, Rybalka convinced Garcia to meet with Leon and Tsotsikyan.
11 Rybalka arranged the meeting.

12 25. Leon, Tsotsikyan, Rybalka, and Garcia all met later that evening at a North
13 Hollywood gas station. This time, it was Leon who recorded the conversation. The audio
14 recording and a transcript were admitted as Exhibit 6.

15 26. At the gas station, Leon aggressively confronted Garcia about the inflated
16 paychecks. Garcia told the assembled men his story about fixing the laptop for PTS and
17 the offered reward in exchange for his silence about the Security Specialists file. Garcia
18 explained that he thought there was a “mole” inside the company who was altering his
19 hours. Over and over, Garcia repeated that he had only acted to protect the company and
20 his friends who worked there.

21 27. Leon immediately started pressing Garcia for names. He and Tsotsikyan
22 thought that even if Garcia did not have the administrative password, he must know who
23 did. At first Garcia was reluctant to name any names, citing a vague fear for his family’s
24 safety. Eventually, after being assured that the company would not press charges against
25 him for the inflated paychecks — or even ask for the money back — Garcia talked. By
26 the end of the meeting Garcia named several Security Specialists employees who he
27 claimed were agents of PTS. All of them were subsequently fired.

28

1 28. Leon also confronted Garcia about the entries in the paystub server log
2 indicating that Garcia logged into the management system from his patrol laptop the night
3 before Leon discovered the inflated wages. Garcia denied having used the administrator
4 password to log in.

5 29. Garcia also emailed the client information that he said he found in the
6 Security Specialists file to Leon. The email contained a spreadsheet with entries for
7 several clients, and included their phone numbers, addresses, as well as other confidential
8 information. The attachment was admitted as Exhibit 7 at trial. Leon testified that Garcia
9 was never authorized to access this sort of client information, nor did Security Specialists
10 ever give Garcia a username or password that would have allowed him to access this
11 information.

12 **C. Garcia's Firing**

13 30. A few months later, in September 2014, management at Security Specialists
14 began to notice something odd about towing patterns at the properties in Garcia's patrol
15 area. While a Patrol Officer would typically tow one or two cars in any given day, Garcia
16 was regularly towing between five and ten cars per day. Moreover, most of the cars were
17 being towed by one particular company, L&M Towing.

18 31. Tsotsikyan and Leon became concerned that Garcia was towing cars in
19 exchange for illegal kickbacks from L&M Towing. To test this theory, the pair decided to
20 transfer Garcia to a different patrol area, presumably one that L&M Towing did not
21 service, to see whether his towing patterns would change.

22 32. On September 29, 2014, Leon informed Garcia that he was being reassigned
23 to a different patrol area. Right away, Garcia became very upset. In Leon's retelling,
24 Garcia argued with Leon to be put back in his old patrol area. When Leon refused, Garcia
25 insisted that Security Specialists was pushing him out. Leon explained that was not true,
26 that the company was just reassigning Garcia to a different patrol area. Eventually, Garcia
27 told Leon he was quitting; Leon told Garcia to put it in writing. In Garcia's retelling, the
28 reassignment was Security Specialists' way of pushing him out of the company and

1 forcing him to quit. Either way, Garcia submitted a handwritten note to Security
2 Specialists that day, stating simply “I Yovan Garcia quit Security Specialist[s],” signed
3 Yovan Garcia. The note was admitted as Exhibit 45.

4 33. The day he was fired, Garcia texted Rybalka. At first, Garcia seemed only to
5 want to rant, complaining that he’d given two years of his life to a company that never
6 really cared about him. Then, Garcia began to talk about how ungrateful Security
7 Specialists was for the protection he had provided them. Garcia texted Rybalka a picture
8 of a client file on one of Security Specialists’ proprietary forms, as an example of the
9 “protection” he provided. Later on, Garcia texted Rybalka a picture of Leon’s employee
10 personnel file, also a confidential document.

11 34. Rybalka showed the messages to Leon and Tsotsikyan. Leon testified that
12 the two images Garcia sent were of confidential files that Garcia never had authorization
13 to access. Without an administrative username and password, Garcia should not have
14 been able to see them, let alone store copies on his phone.

15 **D. The Security Specialists Hack**

16 35. On October 14, 2014, Security Specialists’ company servers were hacked.
17 The hacker targeted Tsotsikyan’s archived emails, company server files, accounting
18 software, and databases used for accounting, invoices, and payroll. Security Specialists’
19 custom-made FileMaker Pro databases were also targeted. The company lost files used to
20 schedule employees, generate and store field security reports, record and search client
21 information, and store service location instructions and service records. Security
22 Specialists’ backup files were also deleted or corrupted and the hacker was in the process
23 of reformatting the company’s various drives when the intrusion was discovered and the
24 servers disconnected from the internet. Tsotsikyan testified that the damage was extensive
25 and debilitating.

26 36. Junior Arana, a Security Specialists Patrol Officer, testified that he was on
27 patrol the night of the hack. While Arana was in the field, he noticed that his patrol laptop
28 had been accessed remotely. Arana watched as a number of files were accessed and

1 deleted, including Yovan Garcia’s reprimand file. Arana told his supervisor, Petros
2 Dertsakyan, what he had seen, and at some point drafted a short statement to the same
3 effect. The statement was admitted as Exhibit 11.

4 37. Although Arana is still employed by Security Specialists, and thus has a
5 motive to testify favorably to his employer, he also appeared to answer questions honestly
6 and to the best of his ability. Arana told a consistent story in Exhibit 11, his declaration,
7 on direct examination, and during cross examination. The Court credits Arana’s
8 testimony based on its content and plausibility, and also on Arana’s demeanor while
9 testifying.

10 38. A few hours before the hack, former employee and Defendant Richard Balint
11 — the same former employee who, according to Garcia, offered Garcia a reward for
12 keeping quiet about the Security Specialists file on the PTS laptop — called Security
13 Specialists. Petros Dertsakyan, a Security Specialists employee, answered the call.
14 Dertsakyan stated that Balint called to ask how things were going at Security Specialists.
15 At some point later, Dertsakyan typed up his recollection of the phone call as a signed
16 statement; exactly when the statement was created is unclear, as it is undated. The
17 statement was admitted as Exhibit 17.

18 39. Balint called Security Specialists a second time on October 17, 2014, just
19 three days after the hack. Gevorg Dertsakyan, another Security Specialists employee,
20 answered the call. Later that day, Dertsakyan typed up his recollection of the phone call,
21 which was admitted as Exhibit 18. The statement was dated October 17, 2014 and signed
22 by Dertsakyan. Dertsakyan stated that Balint identified himself before asking “How is
23 your system, I heard it was down?” Balint asked, “Someone hacked it, did you check out
24 the website?” Dertsakyan asked Balint who had told him that Security Specialists had
25 been hacked; Balint replied, “a little birdy.”

26 40. Security Specialists’ website was also vandalized that same week. The
27 website’s header was changed to read “Are you ready” along with the date December 1,
28 2014, and a string of five digits. Leon testified that these numbers were the first five

1 digits of his Social Security Number. The website had also been edited to include a
2 particularly unflattering picture of Leon. Leon and Tsotsikyan took the vandalism as a
3 threat, both to Security Specialists generally and Leon specifically.

4 **E. Garcia's Connection to the Hack**

5 41. Whoever vandalized the website solicited further embarrassing stories and
6 photos related to Security Specialists. The hacker left an email address where he or she
7 could be contacted: theAnonygroup@gmail.com.

8 42. In an effort to figure out who had hacked the website — and perhaps also
9 Security Specialists' network — Security Specialists served Google with a subpoena for
10 the account information. Google responded with a few pages of information, admitted as
11 Exhibit 13.

12 43. Included in Google's response was an IP address associated with the
13 "theAnonygroup" email address. Ken Hagopian, Security Specialists' IT contractor,
14 testified that in October 2014 he ran a web search using several independent online IP
15 tracker tools to determine the approximate location of the user who had been assigned the
16 IP address. Screenshots of the search were admitted as Exhibit 14. Hagopian traced the
17 IP address to a neighborhood in North Hollywood, about a block from where Garcia lives.

18 44. James Caspari, a former Patrol Officer for Security Specialists, testified about
19 a phone call he received from Garcia in September or October 2014. Caspari had quit
20 working for Security Specialists about six months before, on March 10, 2014. Caspari
21 was taking classes and working on building his own security company. Caspari testified
22 that Garcia called him to offer some computer software for his security company. When
23 Garcia came by, Caspari realized that the software was very similar to the software that
24 Security Specialists used. Garcia offered the software to Caspari in exchange for agreeing
25 to serve as Qualified Manager in the security company that Garcia was in the process of
26 developing. Caspari agreed to take a look, but felt that something was off about the
27 software. When Caspari expressed his concerns, Garcia told Caspari that he had
28 developed Security Specialists' software, and that he thus owned the software rights.

1 Caspari was not convinced, especially because Garcia refused to give Caspari the
2 administrative password.

3 45. Nevertheless, Caspari agreed to serve as Garcia's Qualified Manager in
4 exchange for the software. Caspari began using the software in his own business. He
5 testified that, in practice, the software operated remarkably similarly to Security
6 Specialists' software.

7 46. Caspari testified that he eventually stopped using the software Garcia gave
8 him. Caspari testified that not only did the software never work particularly well, but his
9 suspicions about the true ownership of the software continued unabated. Eventually,
10 Caspari concluded that the software was not necessary to run his business. He has since
11 resigned as Garcia's Qualified Manager.

12 47. While testifying, Caspari appeared nervous and ill at ease. He asked to
13 review his declaration before testifying and could not answer a single question without
14 referencing his declaration first. Caspari essentially testified directly from the declaration,
15 paragraph by paragraph, rather than speaking extemporaneously about any of the above
16 events. Caspari required prompting from his declaration for even the smallest details. It
17 was not clear whether Caspari actually remembered *any* of the above events, to which he
18 nevertheless testified. Moreover, given that Caspari was also named as a defendant in this
19 action, and faced similar liability for his role in the hack before settling separately with
20 Security Specialists, Caspari had some motivation to avoid any indication of his own
21 involvement with, and potential responsibility for, the hack. Therefore, the Court gives
22 his testimony little weight.

23 **F. Garcia's Version of Events**

24 48. Garcia denies that he ever hacked Security Specialists. After starting to work
25 for the company in about 2012, Garcia soon realized that it was not as professional as its
26 client-facing image implied. Management was paranoid about competitors and regularly
27 fired employees for possible collusion. Management was particularly concerned with
28

1 PTS, which had been started by a former employee and Defendant Mher Uzunyan, and
2 with whom run-of-the-mill business competition had become personal.

3 49. The day Leon discovered the inflated payroll checks, Garcia had worked the
4 night shift. He got off work at 4:30 a.m.; Leon then asked him to come in to talk about the
5 checks at 9:00 a.m. Garcia explained that he had to take care of his daughter and, in any
6 case, fell asleep. He slept through the meeting. Garcia later got a phone call from one of
7 his colleagues at Security Specialists, who told Garcia that he had been taken off the
8 schedule. Garcia understood this news to mean that he had been fired. It was then that he
9 called Rybalka to arrange a meeting.

10 50. Once Garcia got to the McDonald's for the meeting, it became clear to him
11 that Rybalka was recording him. Garcia testified that when he went to get a hamburger,
12 Rybalka followed. When he went to the bathroom, Rybalka followed. So, knowing that
13 he was being recorded, Garcia decided to play a game: Garcia made up the story about
14 fixing the laptop for PTS just to see how Rybalka would react. Garcia did the same in his
15 second meeting, with Tsotsikyan and Leon, because he knew that it would upset them.
16 Garcia testified that, in reality, none of the events he relayed in either meeting ever
17 actually occurred.

18 51. Even taking Garcia at his word that he lied to Rybalka, Tsotsikyan, and Leon,
19 Garcia never explained what had really happened. That is, Garcia never explained why
20 his payroll numbers were inflated and how he came to be in possession of Security
21 Specialists' confidential client information. The evidence that Garcia had obtained
22 unauthorized access to Security Specialists' confidential files was thus un rebutted.

23 52. Garcia also flatly denied ever hacking Security Specialists or its website.
24 Garcia admitted to giving Caspari FileMaker Pro files that were very similar to those used
25 by Security Specialists. But he said he did so as a favor to Caspari, and that he had
26 developed the files himself. Garcia testified that FileMaker software is not difficult to buy
27 or learn, and said he had created his own files at some point during or right after his
28 employment with Security Specialists. However, Garcia could not explain the similarities

1 in filenames or layout between Security Specialists' forms and the forms Garcia gave to
2 Caspari, other than to say that similar templates are easy to find online. The Court thus
3 discounts Garcia's implausible testimony and finds that Garcia obtained the files through
4 the hack.

5 53. Garcia also contested Hagopian's conclusion that the IP address traced to a
6 physical address close to where Garcia lives in North Hollywood. Garcia used several
7 websites to trace the same IP address a few weeks before trial, and found it was associated
8 with an address in Sherman Oaks.

9 54. Hagopian testified in response that IP addresses are not tied to a specific
10 location "in perpetuity." Rather, searching for the physical referent for an IP address at
11 one point in time may yield a different result than searching for the physical location of
12 the same IP address at a different point in time.

13 55. The Court infers from Hagopian's testimony that an IP search is more likely
14 to be accurately traced to an individual's location the sooner after a particular incident
15 involving that IP address it is searched. Therefore, because Hagopian's search of the IP
16 address associated with the October 2014 hack was conducted sooner after the hack than
17 Garcia's search, the results of Hagopian's search are more likely to actually represent
18 where the hacker was during the incident than Garcia's search.

19 56. Tsotsikyan also testified that Garcia had access to information in
20 Tsotsikyan's personal email that Garcia otherwise had no way to know. Garcia told
21 Caspari about a car that Tsotsikyan had bought. Garcia testified that he had seen the car at
22 Security Specialists' offices the day he quit. But, according to Tsotsikyan, the car was not
23 delivered until after Garcia had quit. However, Tsotsikyan had arranged for the car's
24 delivery over email, before the hack. Therefore, it appears likely that Garcia read about
25 the vehicle's impending delivery in Tsotsikyan's email, rather than actually seeing it for
26 himself at Security Specialists.

27 57. In sum, the Court does not find Garcia's testimony to be credible. Not only
28 did Garcia himself admit to being capable of creating complex lies on short notice (for

1 example, when he testified that he made up the whole story about PTS), Garcia's
2 testimony failed to explain key aspects of his involvement with the various computer
3 hacking and website attacks at issue in this action. And Garcia himself testified that he is
4 good with computers — he can reformat drives, create FileMaker Pro files, and knows
5 some html.

6 58. Garcia also told internally contradictory and easily disproved lies while
7 testifying. The story about the car provides one example; another came when Garcia
8 presented what he said was a letter of commendation from Security Specialists, but which
9 later testimony indicated was in fact a compliment delivered by Garcia himself, who
10 pretended to be a client and emailed the “compliment” to Tsotsikyan through a spoofed
11 email address. Throughout his testimony, Garcia appeared nervous, spoke quickly, and
12 tended to talk himself in circles.

13 **G. The Court's Findings**

14 59. Based on the foregoing testimony and evidence, the Court finds as follows:

15 60. Garcia personally hijacked Security Specialists' website. Garcia also
16 accessed Security Specialists' network without authorization and increased the number
17 overtime hours he had worked, so that he was paid overtime wages he had not earned.

18 61. Furthermore, Garcia was involved in a conspiracy to hack Security
19 Specialists' network. Although the specifics of the conspiracy are not clear from the
20 testimony, there is sufficient evidence to support a finding that Garcia worked with at least
21 one other individual to steal confidential files from Security Specialists and destroy the
22 servers and hardware that hosted Security Specialists' information. Even before the hack,
23 Garcia was able to access Security Specialists' network from his patrol car, using an
24 administrative password that he had never been given, to change his reported number of
25 hours. Additionally, it is clear from the text messages that Garcia sent to Rybalka that
26 Garcia had at some point acquired confidential files that he was never authorized to
27 access. And soon after the hack, the evidence indicates, Garcia came into possession of
28 Security Specialists' proprietary FileMaker Pro forms. Whether or not Garcia himself was

1 the hacker, the evidence indicates that in the hack, Garcia obtained Security Specialists’
2 confidential and proprietary materials that he otherwise had no authorization to access.

3 62. As evidenced by Garcia and Caspari’s subsequent attempts to solicit Security
4 Specialists’ customers, the aim of this conspiracy was twofold: first, to damage Security
5 Specialists in an effort to reduce its competitive advantage; and second, to obtain access to
6 those files that gave Security Specialists its advantage, and use them to solicit Security
7 Specialists’ clients. Garcia copied portions of Security Specialists’ promotional materials
8 for the security company he later developed, and created sample reports using the stolen
9 FileMaker Pro forms. Using these stolen materials, Garcia successfully poached several
10 of Security Specialists’ clients, as discussed in more detail below.

11 **H. Damages**

12 63. Plaintiff requests the following damages, as set forth in Tsotsikyan’s
13 declaration:

- 14 a. Garcia’s unworked overtime pay: \$6,071.49
- 15 b. Payroll taxes and insurance costs on Garcia’s unworked overtime pay:
16 \$1,214.29
- 17 c. Invoices for work by Digital Synergy, Ken Hagopian’s IT company,
18 for work to repair damage from the hack: \$83,260.37
- 19 d. Miscellaneous data recovery costs: \$3,187.27
- 20 e. Recovery of domain name: \$500
- 21 f. Increased payroll costs for recovery: \$20,000
- 22 g. Loss of proprietary files: \$425,000
- 23 h. Lost profits: \$346,111.66
- 24 i. Attorneys’ fees: \$64,446.50
- 25 j. Litigation costs: \$5,857.62

26 64. Plaintiff also requests punitive damages, which are available under the
27 California Uniform Trade Secrets Act (“CUTSA”). *See* Cal. Civ. Code § 3426.3(c).

28

1 Finally, Plaintiff requests attorneys' fees and costs, available under California Penal Code
2 section 502(e)(2).

3 **1. Costs related to Garcia's inflated checks**

4 65. The Court has found that Garcia was involved in a scheme to access his
5 payroll records and artificially inflate the number of overtime hours he earned.

6 Accordingly, as explained below, Plaintiff is entitled to collect damages for Garcia's
7 excess pay.

8 66. Plaintiff submitted paystubs indicating that Garcia was paid \$6,071.49 more
9 than he was owed for the number of hours he worked between January 2014 and July
10 2014, when the scheme was discovered. Garcia's pay stubs, pay checks, and schedules
11 were admitted as Exhibit 2, and adequately support Plaintiff's request.

12 67. Plaintiff submitted no records to prove it spent \$1,214.29 in payroll taxes and
13 insurance costs on the inflated wages. Tsotsikyan averred that payroll taxes and insurance
14 costs were "typically" 20% of what the employee was paid, but did not provide any more
15 detail as to how he reached that conclusion, or any evidence to show that the 20% figure
16 was representative of what Security Specialists typically paid on *Garcia's* wages.

17 68. Accordingly, the Court finds that Plaintiff has failed to meet its burden to
18 show its entitlement to payroll taxes and insurance costs. The proposed method of
19 calculation is too speculative and is unsupported by the evidence. The Court awards
20 **\$6,071.49** in damages related to Garcia's inflated checks.

21 **2. Repair Costs**

22 69. Ken Hagopian testified about his efforts after the hack to repair the damage
23 to Security Specialists' network and email. Tsotsikyan called Hagopian in as soon as he
24 realized something was wrong with the servers. After directing that the servers be
25 disconnected from the internet, Hagopian began to assess the damage. In Hagopian's
26 opinion, the hacking resulted in a near total loss. The company server files, sage software,
27 Outlook Exchange email database files, and FileMaker Pro server files had all been
28

1 deleted. To do damage this extensive, Hagopian reasoned, the hacker must have used an
2 administrative username and password.

3 70. Although he could not remember the exact timeline of the effort, Hagopian
4 testified that he undertook a “protracted project” to make Security Specialists functional
5 again. He tried to recover the deleted information, but was largely unsuccessful. Instead,
6 Hagopian had to rebuild all of the servers from scratch. Hagopian scanned every one of
7 Security Specialists’ computers for viruses (including all of the laptops in all of the patrol
8 cars), wiped them clean, and reinstalled all of the programs and data. Some hardware and
9 software had to be replaced entirely.

10 71. In support of his testimony, Hagopian submitted invoices for the project
11 totaling \$83,260.37. The invoices were admitted as Exhibit 22. The Court reviewed the
12 invoices and discovered that many did not appear to bill for services provided in
13 connection with the hack. Most obviously, several of the invoices were dated August and
14 September 2014, months before the hack occurred. The invoices also listed items as late
15 as October 2015 for routine services, like determining why Outlook was running slowly
16 on a particular day, or purchasing annual licenses. Moreover, many of the billing records
17 are so heavily redacted that the Court was unable to determine what service was
18 performed, let alone whether it was provided in connection with the hack.

19 72. Having gone through the records, the Court finds that only a portion of the
20 invoices can be tied with any certainty to the October 2014 hack. These invoices include
21 hardware purchased in late October and early November 2014, as well as all service
22 invoices tagged “Server down issues” (Ticket No. 10976), “Server Rebuild – Ticket 2”
23 (Ticket No. 12001), and “Server issues ticket 3” (Ticket No. 12444). Together, these
24 invoices total **\$53,017.11**. The Court finds this sum to be an appropriate amount of
25 compensation for Hagopian’s hack-related services.

26 73. Tsotsikyan also testified that, after Security Specialists’ website was
27 hijacked, he had some trouble convincing the hosting company to release the domain
28 name back to Security Specialists. Tsotsikyan eventually paid \$500 for a notarized letter

1 from the company to which the website had been transferred. The letter instructed the
2 web host to return the domain name to Security Specialists. A copy of the letter was
3 admitted as Exhibit 15. The Court finds this testimony sufficient to show Plaintiff's
4 entitlement to **\$500** for the recovery of Security Specialists' domain name.

5 74. Plaintiff additionally requests \$3,187.27 in what it calls "miscellaneous data
6 recovery costs." Tsotsikyan explained that after the hack, Security Specialists sent its
7 hard drives to an offsite file recovery company in an attempt to recover the erased files.
8 Security Specialists was also forced to buy replacement hardware. Exhibit 23 includes
9 credit card records that have been redacted to show only charges related to the hack. The
10 records adequately support Plaintiffs' request and the Court finds **\$3,187.27** to be a
11 reasonable amount to pay in data recovery services.

12 75. Plaintiff also requests \$20,000 in increased payroll costs to the company for
13 hours that Tsotsikyan, Leon, and other employees spent working overtime to address
14 issues raised by the hack. Tsotsikyan testified that for at least thirty days after the
15 incident, he and other Security Specialists employees worked many extra hours rebuilding
16 databases and records, including the payroll database. The Court finds this to be a
17 reasonable amount to expend on payroll to return Security Specialists to some semblance
18 of functionality during the month following the hack. Accordingly, Plaintiff is awarded
19 **\$20,000** in extra payroll costs for the month following the hack.

20 76. Finally, Plaintiff requests compensation for the loss of its proprietary
21 FileMaker Pro files. Tsotsikyan explained that he spent in excess of 5,000 hours
22 developing the databases and forms that were attacked. Tsotsikyan once paid an
23 experienced FileMaker Pro software developer \$170 per hour to consult on developing the
24 database, and believes \$170 per hour to be a reasonable rate. Multiplying the proposed
25 reasonable hourly rate by the number of hours he spent on software development,
26 Tsotsikyan estimated that the proprietary files he had developed over the years were worth
27 approximately \$850,000. Tsotsikyan added that other security providers paid \$1 million
28 to implement an inferior database platform. Tsotsikyan further testified that he lost about

1 half of the work he had done to create his proprietary database in the hack. Therefore,
2 Plaintiff asks for \$425,000 in damages for the loss of the FileMaker Pro files.

3 77. The Court does not agree that the above method is an appropriate method for
4 valuing the loss of Security Specialists' proprietary files. For one thing, Tsotsikyan was
5 admittedly an amateur, a self-taught developer who had to learn the program on the go.
6 He is unlikely to be able to charge the same hourly fee as an experienced professional.
7 Similarly, because Tsotsikyan was learning the program as he went, all 5,000 hours are
8 unlikely to be billable. Any professional would be expected to cut out billing
9 inefficiencies resulting from inexperience or redundant efforts.

10 78. Finally, the Court notes that Tsotsikyan was already paid his regular wages
11 for the hours he spent developing the program in the first place, and Plaintiff will be
12 compensated for the time Tsotsikyan spent rebuilding what was lost. To also pay
13 Tsotsikyan an hourly wage for developing the program in the first place would result in
14 his being paid twice for the same work.

15 79. The Court recognizes that the proprietary files likely had some value
16 independent of Tsotsikyan's pay while developing them, or while rebuilding the database.
17 That is, the confidential information and proprietary forms would likely be worth some
18 sum to an objective buyer hoping to open his or her own security company in the greater
19 Los Angeles area. But the cost to develop the proprietary information is not the same as
20 the cost to resell it. The Court doubts that Plaintiff's proprietary files would be worth
21 \$425,000. The Court places the likely resale value of what was lost at **\$100,000**, and
22 awards Security Specialists that sum in addition to the increased payroll costs for
23 rebuilding the various databases and files.

24 **3. Lost Income**

25 80. Finally, Plaintiff requests \$346,111.66 in lost profits. Plaintiff believes, and
26 the Court concludes below, that the goal of the hack was to cripple Security Specialists
27 and use its proprietary files to lure away its clients. Plaintiff submitted as Exhibits 24 and
28 25 examples of solicitation emails sent by Garcia and Caspari to Security Specialists'

1 clients, which utilize stolen promotional materials and forms to convince the clients to
2 change providers. Plaintiff submitted as Exhibit 21 a list of clients that it believes it lost
3 due to the hack, along with the date the client became “inactive” and the monthly revenue
4 each client provided.

5 81. The first entry, for client Santiago Estates, appears to have been included in
6 error, as its inactive date is July 11, 2014 — three months before the hack. As for the
7 remaining clients, the latest inactive date is June 15, 2015. The emails soliciting clients
8 using stolen materials date to April 2015, and Plaintiffs provide evidence that Garcia
9 continued to solicit Security Specialists’ clients through at least September 2015. Plaintiff
10 has met its burden of proof to show lost profits from November 2014 through June 2015.

11 82. In his declaration, Tsotsikyan states that the company lost \$329,630.16 in
12 annual revenue from clients who left Security Specialists due to the hack. Tsotsikyan
13 appears to have based its valuation on the sum of the total monthly revenue provided by
14 each client, which includes the monthly income from Santiago Estates. Plaintiff
15 multiplied the monthly loss by 12 to arrive at \$329,630.16 in annual lost revenue.

16 83. Tsotsikyan assumes that 35% of the annual lost revenue would be profit. He
17 also explains that according to industry standards, the usual valuation of a client contract
18 is three years’ worth of profit. Multiplying the annual lost revenue by 35%, and
19 multiplying that sum by three years, Tsotsikyan arrived at \$329,630 in lost profits due to
20 the hack.

21 84. The Court finds that this method significantly overvalues Plaintiff’s likely
22 lost profits. Plaintiff’s proposed sum assumes that each client’s contract would have
23 provided three years’ of profits from the date that client left Security Specialists. The
24 Court finds that estimate to be overly optimistic. The testimony of Tsotsikyan and Leon
25 shows that Security Specialists is in a competitive business. Even if the hack had not
26 occurred, presumably at least some of Security Specialists’ clients would have been lured
27 away within six months of October 2014 by competitors’ promises of cheaper or more
28 professional service. Even assuming some of the contracts would have lasted another

1 three years from the time they became inactive, other clients likely would have left at the
2 same time anyway, or would have left in fewer than three years.

3 85. Accordingly, the Court finds that a 1.5 year valuation, or half of the industry
4 standard, is more appropriate. The Court also finds that the annual lost revenue must be
5 calculated without the annual revenues of Santiago Estates, which as previously explained
6 became inactive months before the hack. Without Santiago Estates, the total monthly lost
7 revenue due to the hack is \$21,569.18. Multiplied by 12 months, the Court finds that
8 Security Specialists' annual lost income is \$258,830.16. Assuming 35% of that is profit,
9 and valuing the likely remaining term of the each contract at 1.5 years, the Court awards
10 Security Specialists **\$135,885.83** in lost profits.

11 86. In total, the Court awards Plaintiff **\$318,661.70** in actual damages.

12 **4. Attorneys' Fees**

13 87. Because the litigation in this action is not yet concluded, the Court declines to
14 award any attorneys' fees at this point. Counsel for Plaintiff may submit a separate
15 request for fees after the final judgment is entered. The request shall be properly noticed
16 under the Local Rules and supported by an attorney declaration and billing records.

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II. CONCLUSIONS OF LAW

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2 1. The Court concludes that Defendant Garcia is liable for the following four
3 claims: violation of the Computer Fraud Abuse Act (“CFAA”), 18 U.S.C. § 1030(a)(4);
4 violation of the Stored Communications Act, 18 U.S.C. § 2701(a); violation of the
5 California Computer Data Access and Fraud Act, California Penal Code section 502; and
6 violation of the California Uniform Trade Secrets Act (“CUTSA”), California Civil Code
7 section 3426, *et seq.* Much of this liability arises from the same factual nexus. By
8 accessing Security Specialists’ protected network to artificially inflate his hours and by
9 participating in a conspiracy to hack into Security Specialists’ password protected,
10 confidential databases, Garcia incurred civil liability on all four claims.

11 **A. Claim One: Violation of the Computer Fraud Abuse Act, 18 U.S.C.** 12 **§ 1030(a)(4)**

13 2. “The CFAA prohibits acts of computer trespass by those who are not
14 authorized users or who exceed authorized use.” *Facebook, Inc. v. Power Ventures, Inc.*,
15 844 F.3d 1058, 1065 (9th Cir. 2016). Under § 1030(a)(4), a person who “knowingly and
16 with intent to defraud, accesses a protected computer without authorization, or exceeds
17 authorized access, and by means of such conduct furthers the intended fraud and obtains
18 anything of value[,]” with some exceptions not relevant here, violates the CFAA. A
19 plaintiff may pursue a civil claim under the statute if the harm exceeds \$5,000 in value
20 during a one-year period. *Id.* § 1030(g); *Facebook*, 844 F.3d at 1066. The civil plaintiff
21 is limited to economic damages on this claim. *Id.*

22 3. Therefore, “[t]o bring an action successfully under § 1030(g) based on a
23 violation of § 1030(a)(4), [Plaintiff] must show that [Garcia]: (1) accessed a protected
24 computer, (2) without authorization or exceeding such authorization that was granted, (3)
25 knowingly and with intent to defraud, and thereby (4) furthered the intended fraud and
26 obtained anything of value, causing (5) a loss to one or more persons during any one-year
27 period aggregating at least \$5,000 in value.” *LVRC Holdings LLC v. Brekka*, 581 F.3d
28 1127, 1132 (9th Cir. 2009) (internal quotation marks and citations omitted) (citing *P.C.*

1 *Yonkers, Inc. v. Celebrations the Party and Seasonal Superstore, LLC*, 428 F.3d 504, 508
2 (3d. Cir.2005); *Theofel v. Farey–Jones*, 359 F.3d 1066, 1078 (9th Cir.2004)).

3 4. Here, all of the elements of § 1030(a)(4) are met.

4 5. A “protected computer” is one that “is used in or affecting interstate or
5 foreign commerce or communication.” 18 U.S.C. § 1030(e)(2)(B). This has been
6 construed to include computer networks and databases. *United States v. Nosal*, 844 F.3d
7 1024, 1058 (9th Cir. 2016) (“*Nosal II*”) (“The CFAA’s restrictions have been applied to
8 computer networks, databases and cell phones.”). Protected computers are “effectively all
9 computers with Internet access.” *United States v. Nosal*, 676 F.3d 854, 859 (9th Cir.
10 2012) (“*Nosal I*”). The databases and computers at issue in this action were connected via
11 the Internet and thus were protected as defined by the statute.

12 6. Whether Garcia had authorization to access Plaintiff’s computers turns on
13 whether Security Specialists gave him permission to use them. *See Nosal II*, 844 F.3d at
14 1028 (“[W]e conclude that ‘without authorization’ is an unambiguous, non-technical term
15 that, given its plain and ordinary meaning, means accessing a protected computer without
16 permission.”); *LVRC Holdings*, 581 F.3d 1133 (“an employer gives an employee
17 ‘authorization’ to access a company computer when the employer gives the employee
18 permission to use it.”). As the Court previously found, Garcia never had permission to
19 access any of the files that were hacked. Garcia was not a supervisor and neither
20 Tsotsikyan nor Leon ever gave Garcia the administrative username and password.

21 7. The intent element of the statute is defined with reference to the criminal
22 standard. *See Nosal II*, 844 F.3d at 1032 (approving use of Ninth Circuit model jury
23 instructions to define “intent to defraud” under the CFAA). Intent to defraud is defined in
24 the Ninth Circuit model jury instructions as “the intent to deceive or cheat.” Instruction
25 8.121. When Garcia accessed the Security Specialists payroll files to alter his hours, he
26 acted with intent to defraud Security Specialists by cheating the company out of wages
27 that he never earned.

28

1 8. Garcia was also involved in a conspiracy to hack the Security Specialists
2 network with a username and password that he was unauthorized to use. The hacker
3 accessed the files without Security Specialists' permission or knowledge, making
4 illegitimate use of a legitimate password. The conspiracy thus acted with intent to defraud
5 Security Specialists.

6 9. Garcia's personal actions furthered the payroll fraud to the extent that he was
7 able to collect more than \$6,000 in unworked overtime pay. Additionally, the proprietary
8 data the hackers obtained was worth at least \$100,000, and the hack itself succeeded in
9 damaging Security Specialists' network to such an extent that it took at least a month to
10 get the various databases and systems back in working order.

11 10. Finally, the CFAA defines "losses" to include "any reasonable cost to any
12 victim, including the cost of responding to an offense, conducting a damage assessment,
13 and restoring the data, program, system, or information to its condition prior to the
14 offense, and any revenue lost, cost incurred, or other consequential damages incurred
15 because of interruption of service" 18 U.S.C. § 1030(e)(11). As discussed above,
16 Security Specialists incurred significant costs in assessing the damage, restoring the data,
17 and in lost revenue.

18 11. Therefore, the Court concludes that Garcia was a participant in a conspiracy
19 to hack Security Specialists, and that the hack violated the CFAA.

20 **Claim Two: Violation of the Stored Communications Act, 18 U.S.C.**

21 **§ 2701(a)**

22 12. "The Stored Communications Act provides a cause of action against anyone
23 who 'intentionally accesses without authorization a facility through which an electronic
24 communication service is provided . . . and thereby obtains, alters, or prevents authorized
25 access to a wire or electronic communication while it is in electronic storage.'" *Theofel v.*
26 *Farey-Jones*, 359 F.3d 1066, 1072 (9th Cir. 2004) (quoting 18 U.S.C. §§ 2701(a)(1),
27 2707(a)). "Like the tort of trespass, the Stored Communications Act protects individuals'
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1 privacy and proprietary interests.” *Theofel v. Farey-Jones*, 359 F.3d 1066, 1072 (9th Cir.
2 2004). Section 2707 provides for civil liability under the statute.

3 13. The hack, as described above, included an effective attack on Security
4 Specialists’ email servers as well as the data stored in its network and backup drives.
5 Tsotsikyan was unable to access his email during the hack, and many emails were simply
6 lost. This result was one of the intended purposes of the hack. Accordingly, the Court
7 concludes that the conspiracy to hack Security Specialists also violated the Stored
8 Communications Act.

9 **C. Claim Three: Violation of the California Computer Data Access and**
10 **Fraud Act, California Penal Code Section 502**

11 14. California Penal Code section 502 imposes civil liability on a person who
12 “[k]nowingly accesses and without permission takes, copies, or makes use of any data
13 from a computer, computer system, or computer network, or takes or copies any
14 supporting documentation, whether existing or residing internal or external to a computer,
15 computer system, or computer network.” *Id.* § 502(c)(2); *see also id.* § 502(e)(1)
16 (permitting a plaintiff to bring a civil action for a violation of any provision of section
17 502(c), for compensatory, injunctive, and equitable relief). Garcia violated section 502
18 when, without permission, he accessed Security Specialists’ payroll system from his patrol
19 laptop and altered his payroll records. He was also involved in the conspiracy to hack
20 Security Specialists, and through that conspiracy obtained proprietary files and databases,
21 including Leon’s confidential employee personnel file and the FileMaker Pro forms that
22 he gave to Caspari.

23 15. Accordingly, the Court concludes that Garcia violated section 502.

24 **D. Claim Four: Violation of the CUTSA, California Civil Code section 3426,**
25 **et seq.**

26 16. “Trade secret misappropriation occurs whenever a person . . . discloses or
27 uses, without consent, another’s trade secret that the person ‘[u]sed improper means to
28 acquire knowledge of’ . . .” *Altavion, Inc. v. Konica Minolta Sys. Lab. Inc.*, 226 Cal. App.

1 4th 26, 41–42, 171 Cal. Rptr. 3d 714 (2014) (quoting Cal. Civ. Code § 3426.1(b)(2)(A)).
2 “Improper means includes theft, . . . misrepresentation, . . . or espionage through
3 electronic or other means.” *SASCO v. Rosendin Elec., Inc.*, 207 Cal. App. 4th 837, 844,
4 143 Cal. Rptr. 3d 828 (2012), *as modified on denial of reh’g* (Aug. 7, 2012) (quoting Cal.
5 Civ. Code § 3426.1(a)). A trade secret is defined as “information, including a . . .
6 program . . . that: (1) [d]erives independent economic value, actual or potential, from not
7 being generally known to the public or to other persons who can obtain economic value
8 from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the
9 circumstances to maintain its secrecy.” *Id.* (quoting Cal. Civ. Code § 3426.1(d)).

10 17. The California Supreme Court has emphasized that “the primary purpose of
11 California’s trade secret law . . . is to promote and reward innovation and technological
12 development and maintain commercial ethics.” *DVD Copy Control Ass’n, Inc. v. Bunner*,
13 31 Cal. 4th 864, 878, 4 Cal. Rptr. 3d 69 (2003), *as modified* (Oct. 15, 2003) (internal
14 quotation marks omitted).

15 18. Plaintiff has met its burden to show that its confidential client databases and
16 FileMaker Pro files were trade secrets. Tsotsikyan testified that the FileMaker Pro forms
17 he developed, such as the forms that allowed Security Specialists Patrol Officers to send
18 reports to clients instantly from the field, gave Security Specialists a competitive edge.
19 Indeed, Garcia himself recognized the independent value of Security Specialists’ files and
20 databases when he offered Caspari access to the forms in exchange for Caspari’s
21 willingness to help Garcia by taking a position in Garcia’s fledgling security company.
22 *Cf. Direct Techs., LLC v. Elec. Arts, Inc.*, 836 F.3d 1059, 1071 (9th Cir. 2016) (affirming
23 grant of summary judgment in favor of the defendant where a putative trade secret had
24 “no actual or even potential value to [the plaintiff] outside of a single ephemeral project
25 for a single customer.”).

26 19. Additionally, Security Specialists made reasonable efforts to keep these
27 materials secret by authorizing only its two highest ranked and most trusted employees,
28 Tsotsikyan and Leon, to edit its FileMaker Pro files and confidential client information.

1 20. Finally, Garcia’s later use of Security Specialists’ client list and FileMaker
2 Pro files to poach clients constitutes misappropriation under the statute. Garcia was never
3 authorized to access the files, let alone use them to his advantage and to Security
4 Specialists’ great expense. *See, e.g., Reeves v. Hanlon*, 33 Cal. 4th 1140, 1155, 17 Cal.
5 Rptr. 3d 289 (2004) (internal citations omitted) (“A violation of the [CUTSA] occurs
6 when an individual misappropriates a former employer’s protected trade secret client list,
7 for example, by using the list to solicit clients or to otherwise attain an unfair competitive
8 advantage.”). By participating in a conspiracy to steal Security Specialists’ confidential
9 files and databases by accessing Plaintiff’s network without authorization — and then
10 personally using those files to undercut Security Specialists’ competitive standing by
11 soliciting its clients while it worked to repair the damage from the hack — Garcia
12 misappropriated Plaintiff’s trade secrets.

13 **E. Claim Five: Civil Conspiracy**

14 21. Allegations of civil conspiracy cannot constitute a separate claim for relief
15 under California law. *See, e.g., Moran v. Endres*, 135 Cal. App. 4th 952, 954, 37 Cal.
16 Rptr. 3d 786, 788 (2006) (“Conspiracy is not a cause of action, but a legal doctrine that
17 imposes liability on persons who, although not actually committing a tort themselves,
18 share with the immediate tortfeasors a common plan or design in its perpetration.”)
19 (internal quotation marks and citation omitted); *Ram v. Wachovia Mortgage, FSB*, No.
20 CIV S-10-1834 LKK DAD PS, 2011 WL 1135285, at *9 (E.D. Cal. Mar. 25, 2011) (“No
21 cause of action for conspiracy exists unless the pleaded facts show some wrongful act that
22 would support a cause of action without the conspiracy.”) (quoting *Jones v. Wells Fargo*
23 *Bank*, 112 Cal. App. 4th 1527, 1541, 5 Cal. Rptr. 3d 835 (2003)); Haning, Flahavan &
24 Kelly, Cal. Practice Guide: Personal Injury (The Rutter Group) ¶ 2:946 (“A civil
25 conspiracy is not itself an actionable tort.”). Therefore, the Court interprets Plaintiff’s
26 fifth claim for relief as an alternative basis for holding Garcia liable for the forgoing torts.
27 Where the Court has concluded that Garcia is liable under a theory of civil conspiracy, the
28 Court has so noted in the above discussion.

1 **F. Remedies**

2 22. Under the CFAA, an injured plaintiff may collect as damages ““any
3 reasonable cost . . . including the cost of responding to an offense, conducting a damage
4 assessment, and restoring the data, program, system, or information to its condition prior
5 to the offense, and any revenue lost, cost incurred, or other consequential damages
6 incurred because of interruption of service.”” *Facebook, Inc. v. Power Ventures, Inc.*, 844
7 F.3d at 1066 (quoting 18 U.S.C. § 1030(e)(11)). As calculated above in the Findings of
8 Fact, the Court awards Plaintiff damages for Garcia’s unworked overtime pay, the various
9 costs to recover and repair Security Specialists’ lost and damaged files, the fair value of
10 the FileMaker Pro files, and Security Specialists’ lost profits as a result of the hack. The
11 same damages suffice to compensate Plaintiff for its injuries under the Stored
12 Communications Act, Penal Code section 502, and the CUTSA.

13 23. Additionally, the CUTSA permits an injured plaintiff to obtain “exemplary
14 damages in an amount not exceeding twice any” damages award for willful and malicious
15 misappropriation. Cal. Civ. Code § 3426.3(c); *see also Mattel, Inc. v. MGA Entm’t, Inc.*,
16 705 F.3d 1108, 1110 (9th Cir. 2013) (explaining that the CUTSA permits an award of
17 punitive damages for willful and malicious trade secret misappropriation). However,
18 California requires specific evidence of the defendant’s financial condition to award
19 punitive damages. *See Vacco Indus., Inc. v. Van Den Berg*, 5 Cal. App. 4th 34, 46 n.11, 6
20 Cal. Rptr. 2d 602 (1992), *as modified* (Apr. 14, 1992) (holding that, under *Adams v.*
21 *Murakami*, 54 Cal.3d 105, 116, 123, 284 Cal. Rptr. 318 (1991), “substantial evidence of [a
22 defendant’s] financial condition” is required to award a plaintiff punitive damages
23 pursuant to the CUTSA). California courts consider “evidence of the defendant’s
24 financial condition” to be “*essential* for evaluating whether the amount of punitive
25 damages actually awarded is appropriate.” *Robert L. Cloud & Assocs., Inc. v. Mikesell*, 69
26 Cal. App. 4th 1141, 1151 n.8, 82 Cal. Rptr. 2d 143 (1999), *as modified* (Feb. 11, 1999)
27 (emphasis added).

1 and files to undercut Security Specialists' competitive advantage. The Court thus finds in
2 favor of Plaintiff.

3 On Plaintiff's Claim Five for civil conspiracy, the Court concludes that civil
4 conspiracy is not a separate claim for relief under California law, but rather an alternative
5 means of finding liability. As a technical matter the Court finds in favor of Defendant
6 Garcia on this claim, but the Court has previously noted where it has found Defendant
7 Garcia liable for the foregoing claims on a theory of civil conspiracy.

8 In total, Plaintiff is awarded **\$318,661.70** in damages. As the prevailing party,
9 Plaintiff may be entitled to statutory attorneys' fees, in a sum to be calculated at a later
10 date.

11 Plaintiff has pending claims against one other Defendant in this action, Mher
12 Uzunyan. The Court will enter a separate judgment pursuant to Federal Rules of Civil
13 Procedure 54 and 58(b) once those claims are resolved and the entire action is concluded.

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16 Dated: May 2, 2017.

17 MICHAEL W. FITZGERALD
18 United States District Judge
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