

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

MAUREEN HAINS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 3:19-cv-00504-MHL
)	
DAWN M. ADAMS,)	
)	
Defendant.)	

**BRIEF IN SUPPORT OF MOTION TO DISMISS PURSUANT TO FED. R. CIV. P.
12(b)(6) OR, IN THE ALTERNATIVE WITH RESPECT TO COUNT VI,
FOR A MORE DEFINITE STATEMENT PURSUANT RULE 12(e)**

Defendant, Dawn M. Adams ("Adams"), by counsel, has moved for the dismissal, in part, of the Complaint against her in this matter pursuant to Fed. R. Civ. 12(b)(6). In the alternative with respect to Count VI (Unjust Enrichment), Defendant has move for a more definite statement of the claim against her pursuant to Fed. Rule Civ. P. 12(e). In support of her motion, Adams states the following grounds:

1. As to Count I alleging violations of the federal Stored Communications Act, Adams moves for a partial dismissal because Maureen Hains ("Hains") has improperly alleged that an attempt is a violation of [18 U.S.C. § 2701](#).
2. As to Count II alleging violations of the Computer Fraud and Abuse Act, Adams moves for a dismissal because Hains has not pled facts which, even if true, would satisfy the statutory threshold for damages to sustain a civil action under [18 U.S.C. § 1030](#).
3. As to Count III alleging computer fraud under the [Virginia Computer Crimes Act](#) ("VCCA"), Adams moves for a partial dismissal because Hains has not pled any statements from

which a fact finder could reasonably infer that Adams converted property from Hains's Facebook or Wells Fargo accounts.

4. As to Count IV alleging computer trespass under the VCCA, Adams moves for a partial dismissal because Hains has not pled any statements from which a fact finder could reasonably infer that Adams altered, deleted, copied, caused copies to be made, or otherwise violated Virginia Code § [18.2-152.4](#) as to Hains's Facebook and/or Wells Fargo accounts.

5. As to Count V alleging invasion of privacy under the VCCA, Adams moves for complete dismissal because Hains has not alleged that Adams viewed, much less intentionally viewed, information protected by Virginia Code § [18.2-152.5](#).

6. As to Count VI alleging unjust enrichment, Adams moves for dismissal because Hains has not pled facts which, even if true, support her claims for damages. In the alternative, Hains has pled her claims for damages with such vagueness and imprecision that Adams cannot meaningfully answer and, therefore, Hains should be required to provide a more definitive statement as to her alleged damages pursuant to Rule 12(e).

I. STANDARD OF REVIEW

Fed. R. Civ. P. 12(b)(6)

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a complaint.

Randall v. United States, 30 F.3d 518, 522 (4th Cir. 1994). In *Bell Atlantic Corp. v. Twombly*, the Supreme Court established the following standard of review for Rule 12(b)(6) motions:

While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, [citations omitted], a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. *See Papasan v. Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). Factual allegations must be enough to raise a right to relief above the speculative level, [citation omitted], on the

assumption that all the allegations in the complaint are true (even if doubtful in fact).

550 U.S. 544, 555 (2007) (citations omitted). Two years later, in *Ashcroft v. Iqbal*, the Court elaborated further:

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'"

556 U.S. 662, 678 (2009) (citations omitted).

The Court need not accept as true:

- unsupported legal allegations;¹
- legal conclusions couched as factual allegations;²
- conclusory factual allegations devoid of any reference to actual events;³ or
- legal conclusions drawn from the facts, unwarranted inferences, unreasonable conclusions, or arguments.⁴

II. ARGUMENT

Hains has failed to adequately plead facts which, if true, would establish that Adams violated the alleged statutes in Counts I-V. As a result, Adams requests this Court to dismiss the following claims, in whole or in part:

- Count I as to the attempted access of Hains's Wells Fargo account;
- Count II in its entirety;
- Count III in its entirety;

¹ *Revene v. Charles County Comm'rs*, 882 F.2d 870, 873 (4th Cir.1989)

² *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

³ *United Black Firefighters v. Hirst*, 604 F.2d 844, 847 (4th Cir.1979).

⁴ *Wahi v. Charleston Area Med. Ctr., Inc.*, 562 F.3d 599, 616 n.26 (4th Cir. 2009).

- Count IV as to Adams's alleged access of Hains's Facebook and attempted access of Hains's Wells Fargo accounts;
- Count V in its entirety; and,
- Count VI in its entirety, or in the alternative, ordering Hains to produce a more definitive statement as to damages pursuant to Rule 12(e).

To summarize Adams's requests, the following chart illustrates the claims and/or counts Adams requests this Court to dismiss. An "x" indicates the claim should be dismissed. Hains's Complaint alleges five different causes of action pertaining to three separate electronic accounts and one count (unjust enrichment) applying generally to Adams. Thus, Hains has made, essentially, sixteen different claims. Twelve of these should be dismissed.

Count	Facebook account	Gmail account	Well Fargo account
Count I (Stored Communications Act)			x
Count II (Federal Computer Fraud)	x	x	x
Count III (State Computer Fraud)	x		x
Count IV (Computer Trespass)	x		x
Count V (Computer Invasion of Privacy)	x	x	X
Count VI (Unjust Enrichment)⁵	x		

⁵ Count VI, Unjust Enrichment, unlike the other counts in the Complaint, is not tied to specific allegations regarding particular electronic accounts. Rather, it is a single claim made broadly. As discussed, *infra*, this Count should also be dismissed. Though it does not pertain, particularly, to Gmail, Facebook, or Wells Fargo accounts, this count is included in the chart above so that all counts are summarized in the chart.

While Adams denies any liability to Hains for the remaining four claims in the Complaint, those claims present issues that are not susceptible to resolution at this stage in the proceedings.

A. Count I - Ms. Hains Has Failed to State a Claim Under 18 U.S.C. § 2701, et seq. (Stored Communications Act), Related to Hains's Wells Fargo Account.

Hains alleges violations of the [18 U.S.C. § 2017](#), et seq. (the "Stored Communications Act" or "SCA"), stemming from alleged unauthorized access of her Facebook and Gmail accounts as well as an attempted unauthorized access of her Wells Fargo online account. (Compl. ¶¶ 40, 46) (stating "Adams was the person who **attempted** to gain unauthorized online access to Hains' Wells Fargo account.") (emphasis added). Count I should be dismissed as applied to Adams's alleged attempt to access Hains's Wells Fargo account.

As to the attempted access of the Well Fargo account, the SCA does not create violations merely for attempting to access a protected facility. *United States v. Cioni*, 649 F.3d 276, 283-84 (4th Cir. 2011) (holding criminal defendant's "failed attempt could not have formed the basis for a violation of § 2701(a)"). Thus, while Adams denies she attempted to access Hains' Wells Fargo account, even if she did attempt such an action, a mere attempt as alleged in the Complaint does not meet the statutory requirements for a violation of the SCA, which requires actual access to an electronic communication service. *Id.* at 283 (stating "Section 2701 requires that the person *actually* access a facility without authorization" (emphasis in original)).

For the foregoing reasons, this Court should dismiss Count I as it applies to any alleged attempts to access Hains Wells Fargo account.

B. Count II - Ms. Hains Has Failed to State a Claim Under Which 18 U.S.C. § 1030, et seq. (Computer Fraud and Abuse Act) Provides Recovery.

Hains fails to properly state a claim for damages under [18 U.S.C. § 1030](#) (the Computer Fraud and Abuse Act or "CFAA"). The CFAA permits a plaintiff to pursue a civil action only if the alleged conduct satisfies the requirements of subclauses I-V of 18 U.S.C. § 1030(c)(4)(A)(i). *See* 18 U.S.C. § 1030(g). Thus, Hains has no civil claim unless one of the following three criteria relevant to this action is proved:

"(I) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least \$5,000 in value;

(II) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;

(III) physical injury to any person. . ."

18 U.S.C. § 1030(c)(4)(A)(i).⁶

Hains fails to allege that Adams's alleged unauthorized access of her Facebook, Gmail, or attempted access of her Wells Fargo account caused losses—as defined in the CFAA—of \$5,000 or more. Under the statute, a loss is defined as: "any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service." 18 U.S.C. § 1030(e)(11). This is not as broad a definition as Hains attempts to make it.

⁶ The statute sets out five separate qualifying conditions for a civil right of recovery. Hains's Complaint only speaks to the first three set out above. The Complaint does not allege that IV (threat to public safety) or V (damaging a computer used by the federal government in furtherance of the administration of justice or national security) are implicated in this matter. 18 U.S.C. § 1030(c)(4)(A)(i).

Despite a rote recitation that she suffered more than \$5,000 in losses and consequential damages, Hains does not adequately plead that she suffered \$5,000 in losses, as defined by the CFAA. (Compl. ¶ 73) The only losses (*i.e.* costs associated with responding to the alleged unauthorized access to her accounts) that Hains alleges is spending 65-80 hours of her time. (Compl. ¶ 54) Assuming Hains spent the outer limit of that amount of time responding to alleged unauthorized access to her accounts (*i.e.*, 80 hours), she has failed to allege the \$5,000 minimum threshold. Hains made a salary of \$62,184 in 2018, inclusive of overtime.⁷ Assuming Hains worked 1920 hours a year, her salary works out to \$32.38/hour.⁸ Thus, the most in damages Hains accrued as a result of Adams accessing her account was only slightly above half of the required damages necessary to sustain a civil cause of action ($\$32.38 \times 80 = \$2,591$). Nor does Hains allege that any of the information deleted had an intrinsic value in and of itself to use to allow her to cross the \$5,000 minimum threshold.

Hains attempts to assert that her medical costs can be used to reach the \$5,000 minimum required by the CFAA. This is incorrect because "losses" which can count towards the \$5,000 minimum are statutorily limited only to those costs of responding to a claim and "consequential damages incurred because of interruption of service." 18 U.S.C. § 1030(e)(11). Hains has not alleged any interruption of service or any consequential damages related to her inability to access any information. She has not alleged that any medical expenses she has incurred are related to

⁷ See <http://data.richmond.com/salaries/2018/state/virginia-house-of-delegates/maureen-kd-hains> When considering a Rule 12(b)(6) motion, in addition to the complaint, the Court may also examine documents incorporated into the complaint by reference and matters of which a court may take judicial notice. Fed. R. Evid. 201 (permitting Court to take judicial notice of facts that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned"); see also *Virginia Innovation Scis. Inc. v. Samsung Elecs. Co.*, 983 F. Supp. 2d 700, 707 (E.D. Va. 2013) (citations omitted). Adams requests this Court to take judicial note of the fact that Hains was paid \$62,184 in salary for 2018.

⁸ This represents the most generous hourly wage that can reasonably be calculated because it factors vacation and overtime in the Plaintiff's favor.

any "interruption of service" or are a cost associated with "responding to a claim." Therefore, no other allegation in the Complaint related to losses can be used to satisfy this threshold requirement.

Nor does Hains allege that she suffered from the "the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals." 18 U.S.C. § 1030(c)(4)(A)(i)(II). Rather, Hains makes the unadorned and unsupported allegation that certain of her medical issues have been "exacerbated." (Compl. ¶ 53). This allegation is conclusory and without any factual explanation how the alleged computer data violations "exacerbated" an unspecified medical condition. More to the point, Hains offers no allegation that relates any computer data violation to the modification or impairment of any medical examination, diagnosis, treatment, or care. What modification occurred? What impairment? What medical examination or diagnosis was affected? What treatment or care? The Complaint is silent on all these issues. *See Iqbal*, 556 U.S. at 678 (the merely threadbare recital of the elements of a cause of action, supported by mere conclusory statements, are not sufficient to survive a motion to dismiss).

Finally, Hains does not allege a physical injury to any person, including herself, resulting from the access of her Facebook and/or Gmail accounts and the attempted access of her Wells Fargo account. Again, she claims some medical conditions were "exacerbated," (Compl. ¶ 53), but she does not allege any manifestation of a physical injury which would satisfy this prong. Her conclusory and factually rootless allegation is not a plausible allegation of the elements of the claim asserted.

C. Count III - Ms. Hains Has Failed to State a Claim Under Virginia Code § 18.2-152.3 (Computer fraud), Related to Hains's Facebook and Wells Fargo Account.

To adequately plead a cause of action under Virginia Code § [18.2-152.3](#) (Computer fraud), Hains must plead facts which, if true, demonstrate that Adams used a computer network, without authority, to either 1) obtain property or services by false pretense, 2) embezzle or commit larceny, or 3) convert Hains's property. VA. CODE ANN. § 18.2-152.3. Hains makes no allegation that Adams obtained property or services through false pretenses, or committed embezzlement or larceny related to her Gmail, Facebook, and Wells Fargo accounts. This leaves only the question of whether Hains has adequately alleged conversion.

Hains does not allege that Adams's use of a computer network, without authority, allowed her to convert property from Hains's Facebook account because she does not allege that any of Adams's actions denied Hains the right to access the information contained in the Facebook account itself. *See Handberg v. Goldberg*, 2019 Va. LEXIS 95, *18 (2019) (stating the tort of conversion is "any wrongful exercise or assumption of authority . . . over another's [property], depriving him of their possessions; [and any] act of dominion wrongfully exerted over property in denial of the owner's right, or inconsistent with it." (internal quotations omitted)).

Finally, Hains does not allege that anyone actually ever entered the Wells Fargo account, making it logically impossible that information within that account could be converted. Therefore, the claims must be dismissed because the claim cannot be proven as to the Facebook and Wells Fargo accounts even assuming all of the allegations in the Complaint are true. The claim must also be dismissed as to the Wells Fargo account because the Virginia Code does not create a civil cause of action for an *attempted* violation of § 18.2-152.3. *See* VA. CODE ANN. § 18.2-152.12 (creating civil cause of action for "*a violation of any provision of this article*" but not creating a civil cause of action for attempts or other inchoate violations of Article 7.1

("Computer Crimes") of Title 18.2, Chapter 5 of the Code of Virginia); *see also* VA. CODE ANN. § [18.2-27](#) (criminalizing attempts to commit criminal offenses which section is in Title 18.2, Chapter 3, Article 2 of the Virginia Code, not Title 18.2, Chapter 5, Article 7.1 (Computer Crimes) of the Virginia Code).⁹ *See also Coca-Cola Bottling Co. v. County of Botetourt*, 259 Va. 559, 565 (2000) (stating it is an established rule of statutory construction that a court may not 'add' words to a plain and unambiguous statute.)

D. Count IV - Ms. Hains Has Failed to State a Claim Under Virginia Code § 18.2-152.4 (Computer trespass), Related to Hains's Facebook and Wells Fargo Account.

Hains has not alleged facts which, if true, prove a violation of Virginia Code § 18.2-152.4 (Computer trespass) as to Hains's Facebook and Wells Fargo accounts. Merely accessing a computer account does not amount to a computer trespass within the meaning of Virginia Code § 18.2-152.4. To adequately plead a computer trespass, Hains must allege facts which, if true, would establish that Adams acted to:

- "1. Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs or computer software from a computer or computer network;
2. Cause a computer to malfunction, regardless of how long the malfunction persists;
3. Alter, disable, or erase any computer data, computer programs or computer software;
4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;
5. Use a computer or computer network to cause physical injury to the property of another;
6. Use a computer or computer network to make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs or computer software residing in, communicated by, or produced by a computer or computer network;

⁹ The civil code does not have a similar provision created a cause of action for attempts. Instead, civil causes of action for an attempt are created individually. *See, e.g.*, Virginia Code § [8.01-622.1](#) which creates a civil cause of action for aiding an attempted suicide.

7. [Repealed.]

8. Install or cause to be installed, or collect information through, computer software that records all or a majority of the keystrokes made on the computer of another without the computer owner's authorization; or

9. Install or cause to be installed on the computer of another, computer software for the purpose of (i) taking control of that computer so that it can cause damage to another computer or (ii) disabling or disrupting the ability of the computer to share or transmit instructions or data to other computers or to any related computer equipment or devices, including but not limited to printers, scanners, or fax machines."

VA. CODE ANN. § 18.2-152.4(a)(1-9).

Hains only alleges that emails and files within her Gmail account were deleted. (Compl. ¶¶ 41, 42). She makes no such allegation related to her Facebook or Wells Fargo accounts. The only allegation related to the Facebook account is that it was "accessed" while Hains was in the hospital. (Compl. ¶ 40). The Complaint itself makes no allegation that information was even accessed or altered in the Well Fargo account. (*See* Compl. ¶¶ 45, 46).

Therefore, as to the Facebook and Wells Fargo accounts, Hains has not adequately alleged any of the statutory requirements of Virginia Code § 18.2-152.4 were met and therefore this claim should be dismissed as to these two accounts. Further, as to the Wells Fargo account, the Virginia Code does not create a crime of "attempted" computer trespass in the civil context. *See* VA. CODE ANN. § 18.2-152.12 (creating civil cause of action for "*a violation of any provision of this article*" but not creating a civil cause of action for attempts or other inchoate violations of Article 7.1 ("Computer Crimes") of Title 18.2, Chapter 5 of the Code of Virginia). *See also* VA. CODE ANN. § 18.2-27 (criminalizing attempts to commit criminal offenses which section is in Title 18.2, Chapter 3, Article 2 of the Virginia Code, not Title 18.2, Chapter 5, Article 7.1 (Computer Crimes) of the Virginia Code).

E. Count V - Ms. Hains Has Failed to State a Claim Under Virginia Code § 18.2-152.5 (Computer invasion of privacy).

Hains has not adequately alleged facts which, if true, prove a violation of Virginia Code § [18.2-152.5](#) (Computer invasion of privacy). To adequately plead a computer invasion of privacy, Hains must plead that Adams used a computer network to "*intentionally examine[d]* without authority any employment, salary, credit or any other financial or identifying information, as defined in clauses (iii) through (xiii) of subsection C of § 18.2-186.3, relating to any other person. "Examination" under this section *requires the offender to review the information* relating to any other person after the time at which the offender knows or should know that he is without authority to view the information displayed." VA. CODE ANN. § 18.2-152.5 (emphasis added).

Hains does not allege that Adams examined at all, much less intentionally examined, any protected information under § 18.2-152.5. Instead, the Complaint merely mentions that such protected information was stored in the Facebook and Gmail accounts allegedly accessed by Adams. (Compl. ¶ 94). This is insufficient. Just because information is stored in an account does not create a presumption that it was viewed. The statute contains no such presumption. The Court should decline Hains's implicit invitation to create such a presumption.

Assuming *arguendo* that the information was viewed (and the Complaint does not allege that it was), the Complaint does not allege that Adams had the intent to specifically view protected information. Merely viewing protected information does not constitute a violation—the protected information must be "*intentionally examined.*" VA. CODE ANN. § 18.2-152.5. Code § 18.2-152.5 provides explicitly: "*Examination' under this section requires the offender to review the information relating to any other person after the time at which the offender knows or should know that he is without authority to view the information displayed.*" VA. CODE ANN. §

18.2-152.5(A). Thus, Hains must plead not only that Adams intentionally *accessed* her accounts, which she does in a conclusory fashion in Paragraph 55, but she also must allege that Adams intentionally sought out information protected under the statute and purposefully—not merely accidentally—*viewed it and continued to view it after realizing that she should not do so*. The Complaint makes neither allegation.

The Complaint does not sufficiently allege that either requirement was met because it omits all allegations that Adams even viewed any protected information, much less did so intentionally. This is especially glaring in that the Complaint specifically references information that was searched for and viewed, (*see* Compl. ¶ 42), but omits allegations that Adams intentionally viewed any data protected by § 18.2-152.5.

Additionally, by asserting that only an attempt was made to access Hains's Wells Fargo account, the Complaint admits that Adams could not have viewed any information contained in Hains's Wells Fargo account. The Virginia Code does not create a civil cause of action for an attempted violation of § 18.2-152.5. *See* VA. CODE ANN. § 18.2-152.12 (creating civil cause of action for "*a violation of any provision of this article*" but not creating a civil cause of action for attempts or other inchoate violations of Article 7.1 ("Computer Crimes") of Title 18.2, Chapter 5 of the Code of Virginia). *See also* VA. CODE ANN. § [18.2-27](#) (criminalizing attempts to commit criminal offenses which section is in Title 18.2, Chapter 3, Article 2 of the Virginia Code, not Title 18.2, Chapter 5, Article 7.1 (Computer Crimes) of the Virginia Code).

F. Count VI - Ms. Hains Has Failed to State a Claim for Unjust Enrichment. Alternatively, a More Particular Statement Under Rule 12(e) is Required.

Finally, Hains has failed to adequately plead the facts establishing the elements of unjust enrichment. Plaintiff has failed to properly plead the majority of her damages; therefore, the

claims of damages which are vague or unsupported by fact should be either be dismissed or, alternatively, Plaintiff should be required to plead a more definitive statement under Rule 12(e).

Hains makes conclusory statements about the amount of damages she actually claims she is owed. She claims she is entitled to \$100,000 as a result of her unjust enrichment claim. (Compl. P. 19). Hains, however, only asserts she is owed \$52,000 for the value of her unpaid services for performed for Adam's campaign. (Compl. ¶ 99). Yet, even here Hains does not allege how many hours she worked, what agreement if any there was for her to be paid a particular amount for particular work, what her hourly rate should have been, or even what is customary among campaign managers. Instead, in a conclusory fashion, she merely asserts that she is owed \$52,000. (Compl. ¶ 99).

Additionally, Hains's statements are not sufficient to properly plead her damages because many allegations are simply too vague. For example, Plaintiff alleges that she performed a "substantial amount of ICD-10 medical coding" but ascribes no amount of missing pay to the allegation or, for that matter, number of hours or rate of pay. (Compl. ¶ 98). She further states "some" of her office supplies "may" still be in Adam's office. (Compl. ¶ 101). Not only does Hains not seem to know if the supplies are there, she does not allege any value to them. And she avers that she paid to store a large number of yard signs and paid for materials and supplies for the campaign but, again, makes no allegation as to how long the supplies were stored or what dollar amount might be ascribed to any such expenses. (Compl. ¶ 100). Finally, Plaintiff alleges that she handled personal matters "such as" requesting a refund from the Washington Post and working to remove a parking ticket from Defendant's record. (Compl. ¶ 102). Again, no dollar amount is ascribed to the value of any such work.

These allegations are too vague to properly defend against because they do not state with any certainty the amount of damages associated with any of the assertions. How many hours were worked, how much money did Hains allegedly pay for storage and to whom and when, what rate of pay relates to "requesting a refund" from the Washington Post? No defendant could answer Hains's vague and conclusory allegations or even be reasonably on notice of what the claims actually are. Instead, Hains conclusorily alleges a very round, very large, claim of \$100,000.

The Unjust Enrichment count should, therefore, be dismissed because it fails to state plausibly any claim to damages. *See Iqbal*, 556 U.S. at 678 (the merely threadbare recital of the elements of a cause of action, supported by mere conclusory statements, are not sufficient to survive a motion to dismiss). Alternatively, to the extent that Plaintiff has failed to adequately plead damages for certain actions, she should be required to definitively state what work she performed, supplies she provided, costs of storage, and any other damages she claims with sufficient specificity for Adams to understand what the damages are and how they were derived. The conclusory allegation of \$100,000 appears to be, for want of a better description mere speculation and guess work.

III. CONCLUSION

WHEREFORE, and by reason of the foregoing, Dawn M. Adams respectfully requests the Court to grant her motion to dismiss, or in the alternative, to order Hains to produce a more definitive statement to, the aforementioned counts of this action, and for all relief as the Court may deem fair and just.

Dated: August 30, 2019

Respectfully Submitted,

DAWN M. ADAMS,

By Counsel

/s/ Cullen D. Seltzer

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CERTIFICATE OF SERVICE

I certify that on this 30th day of August, 2019, I electronically filed the foregoing using the Court's CM/ECF system, which will then send a notification of such filing ("NEF") to all counsel of record.

/s/ Cullen D. Seltzer

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