IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF KING

HOLD SECURITY LLC, a Wisconsin Limited Liability Company Plaintiff, vs. MICROSOFT CORPORATION, a Washington Corporation, Defendant.	No. _____ COMPLAINT

Plaintiff Hold Security ("Plaintiff" and/or "Hold Security") alleges as follows:

I. PARTIES

1.1 Plaintiff Hold Security LLC ("Hold") is a Wisconsin Limited Liability Company with its principal place of business in Mequon, Ozaukee County, Wisconsin.

1.2 Defendant Microsoft Corporation ("Microsoft") is a Washington Corporation with its principal place of business in Redmond, King County, Washington.

II. JURISDICTION AND VENUE

2.1 This Court has subject matter jurisdiction pursuant to RCW 2.08.010.

2.2 Microsoft is subject to personal jurisdiction in this Court pursuant to RCW

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4.28.185.

2.3 Venue is proper pursuant to RCW 4.12.010 and .025.

III. FACTS

3.1 Hold provides information security and threat intelligence services to large institutional clients.

3.2 In early 2014, Hold, through confidential business practices and its own work product, obtained access to over 360 million stolen account credentials on the Dark Web. These account credentials consisted of compromised emails and passwords.

3.3 In early 2014, Microsoft, through its employee Simon Pope ("Pope"), contacted Hold to obtain services related to recovering stolen account credentials on the Dark Web.

3.4 Microsoft requested services from Hold to access stolen account credentials for Microsoft then-existing domains and for the protection of Microsoft customers in order to prevent harm to Microsoft customers.

3.5 On February 26, 2014, Microsoft and Hold entered into a Non-Disclosure Agreement (the "NDA") in furtherance of Microsoft's requests stated above.

3.6 Contemporaneously with the execution of the NDA, Pope transmitted an email to Mr. Holden summarizing Microsoft's promises, representations and intentions in connection with the parties' relationship and Microsoft's treatment of the recovered stolen account credentials Hold agreed to access and provide (the "Pope Email").

3.7 In the Pope Email, Microsoft represents to Hold that it will "limit use of the data to activities that are designed to prevent or mitigate harm to our customers." Microsoft further represents that "the data will not be used for any other purpose." Finally, Microsoft represents: "Microsoft will ensure that after the data has been used to mitigate any harm to its customers, we will securely destroy all copies of the data."

3.8 From February 2014 to February 2015, Hold provided Microsoft access to the stolen account credentials under the NDA.

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3.9 On February 6, 2015, Microsoft and Hold executed a Master Supplier Services Agreement (the "2015 MSSA"), which incorporates various Statements of Work.

3.10 On the same day, Microsoft and Hold executed a Statement of Work (the "2015 SOW") stating: "Microsoft has asked [Hold] to deliver compromised "Account Credential Data" that have been recovered by [Hold] from sites on the Internet in order to reveal and protect against threats to services, brands, and domains owned by Microsoft."

3.11 Under these agreements between Hold and Microsoft, Hold used its products and services to access and recover stolen Microsoft account credentials. The purpose of the parties' agreements, and specifically Hold's services, was for Microsoft to match the received stolen credentials with their own customers' account credentials (in connection with agreed-upon domains) in order to alert these customers of the compromised information.

3.12 As set out from the beginning by Pope – and as understood by Hold – any stolen credentials that did not match a Microsoft account were not to be used by Microsoft and were to be destroyed by Microsoft.

3.13 Unmatched stolen credentials are credentials that do not relate to any Microsoft customers and do not belong to Microsoft. This was a critical aspect of the parties' understandings and agreement. Neither Microsoft nor Hold contemplated or communicated a use for the stolen account credentials outside of only protecting Microsoft's then-existing customers.

3.14 Microsoft's use of stolen account credentials that do not relate to Microsoft's then-existing customers, specifically those not utilizing domains identified in the Statements of Work (e.g. hotmail, live, outlook, etc.), is a violation of the parties' agreements and of Microsoft's promises and representations.

3.15 Hold and Microsoft continued their respective performance pursuant to the 2015 MSSA and 2014 NDA, without amendment to these agreements, through and until at least 2020.

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3.16 Beginning in or about 2018, and without Hold's prior knowledge, Microsoft has employed an updated version of its Active Directory Federation Service (AD FS) enabling federated identity and access management. Microsoft improperly and without authorization utilized stolen account credentials accessed through Hold in creating this service.

3.17 Further, Microsoft acquired LinkedIn, which had 200 million additional users. Microsoft at some point in or about 2018 improperly and without authorization, utilized stolen account credentials accessed through Hold in its administration of LinkedIn.

3.18 Microsoft during this period also acquired Github, which had 50 million additional users. Microsoft improperly and without authorization utilized stolen account credentials accessed through Hold in its administration of Github.

3.19 Hold was not aware of Microsoft's improper use of the stolen account credentials in the AD FS, LinkedIn, and Github transactions, and, upon information and belief, believes there may have been additional misuse of the data outside of those delineated above.

3.20 In June of 2020, Microsoft and Hold renewed its relationship and executed an additional Master Supplier Services Agreement (the "2020 MSSA").

3.21 On July 1, 2020, Microsoft and Hold executed a Statement of Work in furtherance of the 2020 MSSA (the "2020 SOW").

3.22 In July of 2020, Microsoft representatives contacted Hold with the hopes of purchasing historical stolen account credentials as well as on-going access services. As the data is, by its own nature, stolen, Hold was ethically and legally unable to *sell* the data itself despite Microsoft's requests. There had been prior discussions about Microsoft licensing Hold's service. However, Microsoft unilaterally cut off those negotiations and instead chose to commandeer the historical data.

3.23 Hold then learned that Microsoft was allowing third parties to use the commandeered data, and Hold's access services, through Microsoft's web browser Edge.

3.24 In Fall of 2020, Microsoft (and the U.S. Department of Defense) attempted to

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disrupt or destroy a cyber-security threat known as TrickBot. Microsoft declared a premature victory over the entities that created TrickBot in October 2020.

3.25 Mr. Holden, a respected figure in the cyber security world, commented to an industry publication that while Microsoft's activities had achieved a level of success, the threat of TrickBot was not yet a "decisive victory." As Mr. Holden predicted, the TrickBot network attacked and overwhelmed U.S. Hospitals in late October 2020.

3.26 Microsoft seemingly took issue with Mr. Holden's public comments and decided to retaliate against Hold. Microsoft employee, Richard Bosovich, on behalf of Microsoft, directed Microsoft employees to cease work with Hold. This resulted in a significant loss of business for Hold.

3.27 Further, Kevin Beaumont, Microsoft's Senior Threat Intelligence Analyst, on behalf of Microsoft, tweeted false information about Hold, which resulted in Hold losing a key member of its board of advisors – Brian Krebs. This resulted in additional loss of business for Hold.

3.28 Sometime in approximately 2019/2020, unbeknownst to Plaintiff at the time, Microsoft began and continued to wrongfully retain stolen account credentials in contravention of the parties' agreement.

3.29 In early 2021, Hold discovered that Microsoft was using accessed stolen account credentials outside of the scope allowed by the 2014 NDA, the 2015 MSSA, the 2015 SOW, the 2020 MSSA, and the 2020 SOW.

3.30 In early 2021, Alex Holden, the owner of Hold, contacted Microsoft regarding Microsoft's out-of-scope use of the accessed stolen account credentials.

3.31 Microsoft refused to adhere to the agreed scope of use. Microsoft continued to utilize the accessed stolen account credentials, both matched and unmatched, for its own purposes.

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IV. FIRST CLAIM FOR RELIEF: Breach of the 2015 MSSA

4.1 Hold incorporates all prior Paragraphs of this Complaint as if fully set forth herein.

4.2 Microsoft and Hold entered into a written contract known as the 2015 MSSA. The 2015 MSSA was renewed in 2020.

4.3 Pursuant to the terms of the contract, and the parties' mutually expressed intentions in entering into the contract, Microsoft was to utilize the accessed stolen credentials strictly for the purposes of protecting customers of Microsoft domains owned at that time.

4.4 Pursuant to the terms of the contract, and the parties' mutually expressed intentions in entering into the contract, Microsoft would destroy any accessed stolen credentials that did not match to the personal information of customers of Microsoft domains owned at that time.

4.5 Hold and Microsoft mutually assented to the terms of the 2015 MSSA.

4.6 Microsoft breached the 2015 MSSA by improperly retaining customer credentials accessed by Hold that did not match to the personal information of customer of Microsoft domains owned at that time.

4.7 Microsoft breached the 2015 MSSA by utilizing the accessed stolen credentials for purposes outside of the accepted scope.

4.8 Hold has been damaged and is entitled to monetary damages in an amount to be determined at trial.

V. SECOND CLAIM FOR RELIEF: Breach of the NDA

5.1 Hold incorporates all prior Paragraphs of this Complaint as if fully set forth herein.

5.2 Microsoft and Hold entered into a written contract known as the 2014 NDA.

5.3 The 2014 NDA is ongoing, and neither party has terminated the contract.

5.4 Pursuant to the terms of the contract, Microsoft agreed to not utilize, transmit,

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or otherwise communicate information about the accessed stolen credentials to any third party or for any other use outside of the uses contemplated by the parties in the 2014 NDA.

5.5 Hold and Microsoft mutually assented to the terms of the 2014 NDA.

5.6 Microsoft breached the 2014 NDA by, among other things, utilizing the accessed stolen account credentials to serve Edge users, new customers from the acquisitions of LinkedIn and Github, and through the creation of AD FS.

5.7 Hold has been damaged as a result of Microsoft's breach and is entitled to monetary damages in an amount to be determined at trial.

VI. THIRD CLAIM FOR RELIEF: Unjust Enrichment

6.1 Hold incorporates all prior Paragraphs of this Complaint as if fully set forth herein.

6.2 Hold conferred a benefit on Microsoft by, among other things, providing Microsoft access to stolen account credentials relating to non-Microsoft domains.

6.3 Microsoft was able to filter the non-Microsoft domain credentials from the Microsoft domain credentials.

6.4 Microsoft promised to destroy the non-Microsoft domain credentials.

6.5 Microsoft elected to not destroy the non-Microsoft domain credentials.

6.6 Microsoft has knowledge of the benefit received.

6.7 As Hold provided access to the non-Microsoft domain credentials with the expectation and agreement that the credentials would be destroyed, and Microsoft wrongfully retained the credentials, Microsoft is retaining the benefit under circumstances that make it inequitable for them to retain them.

6.8 Microsoft has been unjustly enriched and Hold is entitled to damages arising out of that unjust enrichment.

VII. FOURTH CLAIM FOR RELIEF: Promissory Estoppel

7.1 Hold incorporates all prior Paragraphs of this Complaint as if fully set forth

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herein.

7.2 Microsoft promised Hold that it would destroy non-Microsoft domain credentials.

7.3 Microsoft could reasonably have expected to cause Hold to rely on this representation.

7.4 Hold did in fact rely on this representation.

7.5 Hold's reliance on this representation was reasonable.

7.6 As a result of that justifiable reliance, Hold has suffered damages.

7.7 Hold is entitled to damages in an amount to be determined at trial.

VIII. FIFTH CLAIM FOR RELIEF: Tortious Interference with a Business Expectancy

8.1 Hold incorporates all prior Paragraphs of this Complaint as if fully set forth herein.

8.2 Hold reasonably had business expectancies, and expected future opportunities and profits, arising from Brian Krebs' involvement with Hold.

8.3 Microsoft through its agent tortiously and intentionally interfered with these expectations by retaliating against Hold for Mr. Holden's factual statements regarding TrickBot.

8.4 Microsoft tortiously and intentionally interfered with these expectations when its agent and representative (Kevin Beaumont) tweeted false information in retaliation for Mr. Holden's factual statements regarding TrickBot.

8.4 Mr. Beaumont's tweet caused Mr. Krebs to resign from Hold, leading to lost revenue and profits to Hold.

8.5 As a result of Microsoft's tortious and intentional interference, Hold has suffered damages in the form of lost revenues and profits.

8.6 Hold is entitled to damages in an amount to be determined at trial.

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IX. REQUEST FOR RELIEF

WHEREFORE, Plaintiff Hold Security requests the following:

1. Judgment against Defendant in an amount to be proven at trial;

2. Pre-Judgment interest to the fullest extent allowed by law;

3. Post-Judgment interest from the date of entry of judgment until the judgment is paid in full at the highest rate of interest allowed by law;

4. For Plaintiff's reasonable attorney fees and costs incurred in this action to the fullest extent allowed by law; and

5. For any other relief this Court deems just and equitable.

Dated this 15th day of May, 2023.

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