

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

BARRY EPSTEIN,	)	
Plaintiff,	)	
	)	No. 1: 14-cv-8431
vs.	)	
	)	Hon. Judge Thomas M. Durkin
PAULA EPSTEIN,	)	
Defendant.	)	<b>Jury Trial Demanded</b>

---

**PLAINTIFF’S VERIFIED THIRD AMENDED COMPLAINT**

Comes now the Plaintiff, Barry Epstein (“Plaintiff”), by and through his attorneys, LANE KEYFLI LAW, Ltd., and for his Third Amended Complaint against Defendant Paula Epstein (“Defendant”) alleges as follows:

**NATURE OF PLAINTIFF’S CLAIMS AND PARTIES**

1. This is an action to recover damages caused by Defendant’s violation of the Electronic Communications Privacy Act of 1968, 18 U.S.C. § 2510 *et seq.* (the “ECPA”), the United States Stored Communications Act, 18 U.S.C. § 2701 *et seq.* (the “SCA”), and Illinois common law in her attempts to use the accessed e-mails to affect the parties’ underlying divorce action, styled *In re the Marriage of: Paula Epstein vs. Barry Epstein*, currently pending before the Circuit Court of Cook County, bearing a docket number of 2011 D 005245 (“underlying divorce”).

2. Plaintiff Barry Epstein is, and at all times relevant hereto has been, a resident of the City of Chicago, County of Cook, State of Illinois, and presently resides therein.

3. Defendant Paula Epstein is, and at all times relevant times hereto has been, a resident of the County of Cook, State of Illinois.

4. Defendant no longer resides with Plaintiff, but did so when the actions hereafter complained of occurred.

### **JURISDICTION AND VENUE**

5. This Court has original jurisdiction over Counts I – Electronic Communications Privacy Act (ECPA) and II – Stored Communications Act (SCA) and VI – Temporary and Permanent Injunctive Relief of Plaintiff’s Third Amended Complaint pursuant to 28 U.S.C. § 1331, because these Counts rest upon alleged violations of a federal statute, and thus arise under federal law.

6. This Court has supplemental jurisdiction over Counts III – Unreasonable Intrusion Upon Seclusion of Another, IV – Intentional Infliction of Emotional Distress (IIED), and V – Trespass to Chattels pursuant to 28 U.S.C. § 1367, because Counts I, II and VI arise under federal law.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendant resides in the Northern District of Illinois and a substantial part of the alleged events giving rise to the claims occurred in the Northern District of Illinois.

### **GENERAL ALLEGATIONS**

8. Plaintiff and Defendant were married on June 21, 1970, in Chicago, Illinois, and Defendant filed her Petition for Dissolution of Marriage on May 23, 2011, after forty (40) years of marriage. Plaintiff and Defendant were married over forty-six (46) years until a Judgment for Dissolution of Marriage was entered, effective August 26, 2016, legally divorcing the parties.<sup>1</sup>

9. Plaintiff and Defendant at all times maintained separate computers in separate rooms in their marital residence.

---

<sup>1</sup> The underlying divorce was bifurcated, and the judgement of dissolution was entered while reserving the issues of property division and maintenance, which have yet to be resolved.

10. Plaintiff's computers were mostly located in the basement, and in his home office on the home's second floor, from which he conducted his daily business.

11. During the parties' entire marriage neither were authorized to use each other's computers or access each other's e-mail accounts without prior express consent from the other spouse.

12. Plaintiff utilized his computers in the marital residence not only for private and personal matters, but also to conduct his regular business, and other work-related matters, including but not limited to communicating with his business partners, his attorneys in the underlying divorce, and his Wills, Trust and Estate Planning attorney.

13. Plaintiff accessed his personal and work e-mail accounts from his computers.

14. Defendant intentionally accessed one or more of Plaintiff's computers and gained access to Plaintiff's personal and work e-mail accounts (hereinafter B@) B@yahoo.com, B@rnco.com, and B@att.net without his permission, knowledge, or prior consent.

15. Upon information and belief, Defendant first accessed Plaintiff's e-mail accounts on or before the year 2007.

16. Upon information and belief, Defendant also secretly placed a "rule" into Plaintiff's e-mail accounts, causing his incoming and/or outgoing e-mails to be automatically forwarded to one or more of Defendant's e-mail addresses (hereinafter "auto-forwarding rule").

17. Upon information and belief, Defendant's auto-forwarding rule functioned without Plaintiff's knowledge, and Plaintiff was unaware that his e-mails were being automatically and simultaneously transmitted to Defendant.

18. Defendant caused to be forwarded Plaintiff's either sent and/or received e-mails from his B@yahoo.com, B@rnco.com, and B@att.net e-mail addresses.

19. Defendant caused Plaintiff's sent and/or received e-mails to be forwarded to her e-mail accounts (hereinafter P@) P@gmail.com and P@colum.edu.

20. Some of the e-mails that Defendant intercepted or otherwise obtained were:

A. Personal communications between Plaintiff and some of his female colleagues, coworkers, and friends;

B. Personal communications between Plaintiff and his other family members;

C. Confidential attorney-client communications between Plaintiff and his divorce attorneys, which contained privileged information and legal strategies regarding the parties' underlying divorce.

D. Work and business communications between Plaintiff and his clients, employers, coworkers, colleagues, business partners, and financial advisors.

21. Defendant intercepted and/or otherwise accessed and obtained these e-mails without the prior consent or knowledge of Plaintiff or any of the other parties to these conversations.

22. Defendant intentionally obtained these e-mails in order to use some or all of the information contained therein to gain an unfair financial and tactical advantage in the underlying divorce, and to leverage and extort Plaintiff into agreeing to an inequitable property settlement.

23. On or about May 9, 2011, Defendant hired Jay Frank ("Frank") of Aronberg Goldgehn Davis & Garmisa to represent her in the underlying divorce action with Plaintiff.

24. On May 23, 2011, Defendant filed a Petition for Dissolution of Marriage in the Circuit Court of Cook County, Illinois, Domestic Relations Division, naming Jay Frank of Aronberg, Goldgehn, Davis, & Garmisa as her attorney of record.

25. Upon information and belief, Defendant disclosed the e-mails that she unlawfully intercepted from Plaintiff's e-mail accounts, and/or the information from said e-mails, to Frank during or after her initial consultation.

26. Upon information and belief Defendant informed Frank as to how she intercepted Plaintiff's personal e-mails.

27. Frank has written, among other articles, at least one article advising potential divorcees about how to use their spouse's infidelity against their spouse and/or to use the allegations of possible infidelity to embarrass and pressure the other spouse into a favorable divorce settlement for their clients. (*See Exhibit A, also available at <http://www.divorcemag.com/articles/jay-frank-answers-my-spouse-has-had-several-affairs>*) ("Your husband's affairs might, however, have some practical effect on the case. He might be more willing to agree to a good financial settlement with you to avoid the embarrassment of a trial exposing his affairs.")<sup>2</sup>

28. Upon information and belief, Frank advised Defendant that he would use the unlawfully intercepted e-mails between Plaintiff and other female colleagues and/or friends to obtain a better financial settlement in the underlying divorce action.

29. Upon information and belief, Frank advised Defendant that he would use the information from Plaintiff's confidential attorney-client, work, and business e-mails to gain a tactical advantage in the underlying divorce action.

30. Upon information and belief, Frank encouraged and instructed Defendant to continue intercepting and otherwise collecting Plaintiff's e-mails to use against him in the underlying divorce.

---

<sup>2</sup> Since 2016, Frank has removed most of these articles and/or said language in his from his online profile pages.

31. Upon information and belief, Defendant continued intercepting or otherwise accessing Plaintiff's e-mails through November of 2013, when she moved out of the marital home.

32. On or before October 2014, Defendant and/or Frank printed some of the intercepted e-mails on paper and annotated them by hand.

33. Upon information and belief, they did this in preparation to use them against Plaintiff in the underlying divorce action and/or in their settlement negotiations.

34. Defendant, through her attorney, began using the information from the intercepted e-mails in the underlying divorce as early as 2011, to wit:

- A. Upon information and belief, conveying the information from Plaintiff's confidential attorney-client, business, financial, and other e-mails to Frank to gain an unfair tactical advantage;
- B. Naming several individuals identified in said intercepted e-mails and accusing Plaintiff of having inappropriate extramarital relations with them in a combined interrogatory and production request. The production request specifically demanded that Plaintiff produce his e-mails with them – the very e-mails that Defendant unbeknownst to Plaintiff had already intercepted.
- C. Naming several such individuals identified in said intercepted e-mails as witnesses for trial in her witness disclosure statement, so to intimidate, threaten or blackmail Plaintiff;
- D. Subpoenaing to depose one of the females from said intercepted e-mails. The Rider that was attached to the Subpoena insinuated that Plaintiff had an inappropriate relationship with the deponent;

E. Using allegations of infidelity, as derived from said intercepted e-mails, to support Defendant's claims of maintenance and dissipation.

35. Plaintiff was extremely humiliated by Defendant's allegations of infidelity, including the above subpoena to one of his former coworkers from approximately thirty (30) years prior.

36. On October 8, 2014, Plaintiff's attorney in the underlying divorce action, Nejla Lane (hereinafter "Lane") of Lane Legal Services, P.C., propounded upon Frank an updated Request to Produce Documents in the underlying divorce.

37. The said Request to Produce Documents asked for "[a]ny *and all* communications, documents, e-mails, text messages, photographs, notes, credit card slips, bank statements, or other document whatsoever, which allegedly relate to infidelity as alleged by Paula Epstein or otherwise extramarital relationship."

38. In response to said Request to Produce, Frank and Defendant disclosed printed copies of some of the e-mails she intercepted from Plaintiff, which were annotated and "Bates stamped" by Frank's law firm.

39. The produced photocopies did not include all of the original e-mails, such as the e-mails showing when Defendant had caused them to be forwarded from one of Plaintiff's accounts to her own e-mail account.

40. Plaintiff was enraged after learning his private e-mail conversations were intruded into and disclosed to third persons.

41. Due to the foregoing, highly offensive and objectionable conduct by Defendant and Frank, Plaintiff suffered severe mental anguish and could not stop thinking about this gross violation of his rights.

42. Upon learning that his personal, private, and confidential communications with third parties had been taken and disclosed to other individuals, including Frank, Plaintiff could not concentrate on anything other than protecting and enforcing his rights, and specifically was largely unable to conduct his normal career activities, resulting in a material diminution of his income earning ability.

43. Plaintiff filed the instant lawsuit on October 27, 2014 — three days after learning of the foregoing actions.

**COUNT I**  
**(Violation of 18 U.S.C. § 2511 – The Electronic Communications Privacy Act)**

44. Plaintiff incorporates Paragraphs 1 through 43 as though fully set forth herein.

45. At all relevant times herein, The Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et seq.* was in full force and effect and governed the acquisition and disclosure of electronic communications transmitted by electronic communications services.

46. At all relevant times herein, 18 U.S.C. § 2511 prohibited the intentional interception, disclosure, use, or endeavoring to use the contents of any electronic communications between two parties without the consent of one or both of the parties to that communication.

47. Defendant intentionally intercepted Plaintiff's electronic communications, i.e., e-mail, without his consent or the consent of any other parties to said communications, thereby violating 18 U.S.C. § 2511(1)(a).

48. Defendant intentionally disclosed or endeavored to disclose Plaintiff's electronic communications, i.e. e-mails, to Frank and, upon information and belief, to others, without Plaintiff's consent, while knowing or having reason to know that the information was obtained



through the interception of wire, oral or electronic communication in violation of 18 U.S.C. § 2511(1)(c).

49. Defendant intentionally used, or endeavored to use, the contents of Plaintiff's electronic communications, i.e., e-mail, in helping Frank prepare her case in the underlying divorce action, while knowing or having reason to know that the information was obtained through the interception of wire, oral or electronic communications in violation of 18 U.S.C. § 2511(1)(d).

50. Pursuant to 18 U.S.C. § 2520, Plaintiff is entitled to relief for the Defendant's violations of 18 U.S.C. § 2511(1)(a), (c), and (d).

**COUNT II**  
**(Violation of 18 U.S.C. § 2701 – The Stored Communications Act)**

51. Plaintiff incorporates Paragraphs 1 through 43 as though fully set forth herein.

52. At all relevant times herein, The Stored Communications Act, 18 U.S.C. § 2701 *et seq.* was in full force and effect and governed the accessing of facilities through which electronic communication service is provided.

53. At all relevant times herein, 18 U.S.C. § 2701(a) prohibited the intentional unauthorized accessing of a facility through which an electronic communication service is provided whereby an individual obtains access to an electronic communication which is in electronic storage in such system.

54. From June 2007 through at least 2013, Defendant violated 18 U.S.C. § 2701(a) by intentionally and without Plaintiff's authorization repeatedly accessing his electronic communications, i.e. e-mails, while said communications were in electronic storage with the e-mail providers.

55. Pursuant to 18 U.S.C. § 2707, Plaintiff is entitled to relief for the Defendant's violations of 18 U.S.C. § 2701(a).

**COUNT III**  
**(Unreasonable Intrusion Upon the Seclusion of Another)**

56. Plaintiff incorporates Paragraphs 1 through 43 as though fully set forth herein.

57. Defendant intentionally and without authorization intruded upon Plaintiff's seclusion by her above-described conduct in unlawfully intercepting and obtaining Plaintiff's private conversations with third parties.

58. Plaintiff had an expectation of privacy in his e-mail servers because he reasonably believed they were secure and that only authorized users could access the e-mails.

59. Defendant's intentional intrusion upon Plaintiff's seclusion was offensive and highly objectionable to him and would be offensive or objectionable to any reasonable person.

60. That the intrusion caused Plaintiff mental and physical health issues, including but not limited to humiliation, anguish, and suffering such that he could not concentrate on anything besides the intrusion.

61. The effects of this intrusion are on-going and Plaintiff continues to feel humiliated and uncertain as to the extent to which his private messages are being viewed and transmitted to third parties.

62. Plaintiff was particularly anguished such that he was unable to focus on his work because it was none other than his wife who illegally obtained access to these private e-mails, which proximately caused material harm to his professional career, which since has ended.

63. Plaintiff is entitled to relief for Defendant's tortious intrusion upon his seclusion.

**COUNT IV**  
**(Intentional Infliction of Emotional Distress)**

64. Plaintiff incorporates Paragraphs 1 through 43 as though fully set forth herein.

65. Defendant's unauthorized access, use, and disclosure of Plaintiff's personal e-mails was extreme and outrageous.

66. Defendant intended to cause emotional distress to Plaintiff by using or causing his e-mails to be used against him to embarrass and humiliate him and third parties in the parties' underlying divorce action as described above.

67. As mentioned *supra* Plaintiff did in fact suffer severe and extreme emotional distress upon learning of the unauthorized access of his e-mails and Defendant's use and disclosure.

68. Defendant's unauthorized access, use, and disclosure of said e-mails actually and proximately caused Plaintiff's emotional distress, and Plaintiff is entitled to relief.

**COUNT V**  
**(Trespass to Chattels)**

69. Plaintiff incorporates Paragraphs 1 through 43 as though fully set forth herein.

70. At all relevant times herein, Plaintiff held a possessory interest in his e-mails, the intrinsic value of which was based in part upon the confidential and private nature of the communications.

71. Through her actions, Defendant intentionally intermeddled with Plaintiff's possessory interest in his e-mails.

72. By intermeddling with Plaintiff's e-mails, Defendant dispossessed Plaintiff of the confidential and private aspects of said communications and used the information contained

therein for her personal and professional gain thereby impairing the condition, quality and value of Plaintiff's property.

73. By reason of the said trespass, Defendant conducted herself in a manner that was malicious, oppressive, outrageous, willful, wanton, reckless, and abusive so as to entitle Plaintiff to compensatory and punitive damages.

**COUNT VI**  
**(Temporary and Permanent Injunctive Relief Pursuant to  
18 U.S.C. § 2520(b) and 18 U.S.C. § 2707(b))**

74. Plaintiff incorporates Paragraphs 1 through 43 as though fully set forth herein.

75. As direct and proximate result of Defendant's conduct as described herein, Plaintiff has suffered irreparable harm through the loss of his confidential and private electronic communications. Given that the parties are currently litigating the marital property division portion of the underlying divorce, Defendant's misappropriation, possession and continued use and disclosure of the confidential information gained in violation of state and federal law poses a substantial risk of irreparable harm. The total loss to Plaintiff in economic terms cannot be accurately measured at this time.

76. Plaintiff has a substantial likelihood of success on the merits of his claims. In addition, the magnitude of the injury being suffered due to Defendant's unlawful conduct heavily outweighs whatever hardship Defendant could allege or prove from being restrained as requested.

77. The granting of the injunctive relief requested herein will not adversely affect any public policy or public interest.

78. Injunctive relief, as an equitable remedy, is authorized by 18 U.S.C. § 2520(b), and 18 U.S.C. § 2707(b), and as such Plaintiff need not demonstrate an irreparable injury or inadequacy of other remedies, but merely show a *prima facie* case of illegality and that an injunction would

fulfill the legislative purpose of the statute. A temporary restraining order and preliminary injunction will fulfill the purposes of these statutes.

79. At this point, Plaintiff has no adequate remedy at law and is suffering immediate, imminent, and irreparable harm. Should Defendant's actions in using and disclosing the communications and information illegally obtained continue unabated, they will continue to harm Plaintiff's ability to proceed in the underlying divorce as well impact his privacy interests.

80. Further, a substantial risk exists that in the absence of an appropriate order directing Defendant to preserve material evidence, Defendant will destroy or conceal evidence supporting the claims contained in this Complaint. Specific items at risk of spoliation include, but are not limited to: digital storage devices; computer hard drives; files stored on-line; stored e-mails; downloaded e-mails and any attachments thereto; correspondence or memoranda summarizing the contents of Plaintiff's e-mails. Given that much of the evidence at issue is likely to be in digital format, the risk of loss through inadvertence, accident, or deliberate action is heightened. In the event that such evidence is lost, mishandled or destroyed, Plaintiff's ability to establish his claims and damages will be threatened with irreparable harm.

81. Issuance of a temporary restraining order requiring Defendant to preserve all material evidence in their care, custody or control would aid in fulfilling the remedial purposes articulated in 18 U.S.C. § 2520(c) and 18 U.S.C. § 2707(c).

82. As to the requirement of a bond, the Court should set a minimum bond amount of no more than \$100.00 on the grounds that the relief being sought will not cause damage to Defendant in that Defendant have no legal right to possess, disclose or use Plaintiff's electronic communications or materials derived therefrom.

83. Accordingly, Plaintiff requests a temporary restraining order and temporary injunction against Defendant, her agents, servants, employees and those persons in active concert or participation with her, from:

- A. Deleting, altering, destroying or removing any e-mails or electronic communications directly or indirectly originating from Plaintiff's e-mail accounts, i.e., B@yahoo.com, B@rnco.com, and B@att.net;
- B. Deleting, altering, destroying or removing any e-mails or electronic communications directly or indirectly originating from Defendant's e-mail accounts, i.e., P@gmail.com and P@colum.edu;
- C. Deleting, altering, destroying or removing any hard copy of any e-mails or electronic communications or attachments thereto which directly or indirectly originated from Plaintiff's e-mail accounts, i.e., B@yahoo.com, B@rnco.com, and B@att.net;
- D. Deleting, altering, destroying or removing any summary of any e-mails or electronic communications or attachments thereto which directly or indirectly originated from Plaintiff's e-mail accounts, i.e., B@yahoo.com, B@rnco.com, and B@att.net;
- E. Directly or indirectly using or disclosing any information contained within any of Plaintiff's electronic communications or documents attached to any such electronic communications that Defendant may have received;

84. Plaintiff further requests that the Court enter Temporary Restraining Orders requiring:

- A. Defendant to preserve any and all evidence of any disclosure or dissemination of Plaintiff's electronic communications or any information contained therein;
- B. Defendant to preserve any and all portable or fixed electronic storage devices, including but not limited to, hard drives, floppy disks, on-line storage, thumb or zip drives, compact disks or flash drives, containing e-mails or electronic communications directly or indirectly originating from Plaintiff's e-mail accounts, i.e., B@yahoo.com, B@rnco.com, and B@att.net, or any e-mail account utilized by Defendant, or any summaries of information derived from Plaintiff's e-mails or electronic communications which may contain evidence of any disclosure or dissemination of Plaintiff's electronic communications or any information contained therein;
- C. That pending further order of this Court, all items and materials covered by this order shall be preserved in such a manner as to maintain the integrity of the data, including all associated meta-data existing as of the date of this order;

85. The Temporary Restraining Order, as requested above, is warranted in that it would be of assistance in preserving the status quo.

**WHEREFORE**, Plaintiff requests a judgment in his favor and against Defendant as follows:

- A. Compensatory damages;
- B. Statutory damages pursuant to 18 U.S.C. § 2520 (c) and 18 U.S.C. § 2707(c);
- C. Punitive damages pursuant to 18 U.S.C. § 2520(b) and 18 U.S.C. § 2707(c) and the common law;
- D. Attorney's fees and costs pursuant to 18 U.S.C. § 2520(b), 18 U.S.C. § 2707(b) and 42 U.S.C. § 1988;

- E. A temporary and permanent order, pursuant to 18 U.S.C. § 2520(b) and 18 U.S.C. § 2707(b), directing Defendant to return to Plaintiff all copies of all electronic communications, whether stored in an electronic format or printed;
- F. A temporary and permanent order, pursuant to 18 U.S.C. § 2520(b) and 18 U.S.C. § 2707(b), barring Defendant from disclosing the contents of any electronic communications obtained in violation of federal law.
- G. A temporary and permanent order, pursuant to 18 U.S.C. § 2520(b) and 18 U.S.C. § 2707(b), directing Defendant to cease and desist from engaging in any electronic monitoring, surveillance or wiretapping of Plaintiff;
- H. A temporary restraining order issue pursuant to 18 U.S.C. § 2520(b) and 18 U.S.C. § 2707(b), ordering the Defendant to preserve all documentary and physical evidence in their care, custody or control, including all electronic devices that may contain any evidence of Plaintiff's electronic communications; and,
- I. Such further and additional relief as this Court may find to be just and equitable.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury for all claims so triable.

Respectfully Submitted,

By: /s/ Nejla K. Lane  
Nejla K. Lane, Esq.  
LANE KEYFLI LAW, LTD.  
*Attorneys for Plaintiff*  
ARDC: 6290003  
info@LaneKeyfli.com  
5901 North Cicero Avenue, Suite 200  
Chicago, Illinois 60646-5701  
Phone: (773) 777-4440



**VERIFICATION BY CERTIFICATION**

Pursuant to Title 28, Section 1746 of the US Code, the undersigned certifies under penalty of perjury that the statements set forth in the foregoing instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that I verily believe the same to be true. I further state that the statements made in the foregoing answer as to want of knowledge sufficient to form a belief are true.



\_\_\_\_\_  
Barry J. Epstein

**CERTIFICATE OF SERVICE**

I, Nejla K Lane, an attorney of record in this matter, hereby state that on **May 17, 2017**, I caused to be electronically filed the foregoing Plaintiff's Third Amended Verified Complaint, using the CM/ECF SYSTEM, which will send notification to all attorneys of record.

/s/ Nejla K Lane  
Attorney for Plaintiff