

CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Kimberlite Corporation, a California Corporation

DEFENDANTS

John Does 1-20

E-filing ADR

(b) County of Residence of First Listed Plaintiff Fresno, CA

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Scott G. Lawson
Quinn Emanuel Urquhart Oliver & Hedges, LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
415-875-6600

JL

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
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IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, PERSONAL PROPERTY, SOCIAL SECURITY.

Handwritten note: 108-10447-76X

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

18 U.S.C. §1030

Brief description of cause:

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ 10,000.00 UNDER F.R.C.P. 23 CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions) JUDGE DOCKET NUMBER

DATE April 24, 2008 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

FILED
03 APR 24 PM 4:32
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
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6 Attorneys for Plaintiff Kimberlite Corporation

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 CV 08

2147 TEH

11 Kimberlite Corporation, a California Corporation

CASE NO.

12 Plaintiff,

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF FOR TRESPASS TO CHATTELS AND BREACH OF THE COMPUTER FRAUD AND ABUSE ACT

13 vs.

14 John Does 1-20

JURY TRIAL DEMANDED

15 Defendants.

18 Plaintiff Kimberlite Corporation, for its complaint, hereby alleges as follows:

20 **THE PARTIES**

21 1. Kimberlite Corporation is a California S corporation with its
22 primary place of business in California. The Company is the world's largest
23 independent dealer of Sonitrol brand security systems, and does business in 20
24 counties throughout California.

25 2. The true names and capacities of the defendants sued herein as
26 Does 1 through 20 are not known to the plaintiffs at this time. Defendants, and each
27 of them, are responsible in some manner for the conduct alleged herein and are
28 liable to plaintiffs as a result. Plaintiffs will seek leave of the Court to amend this

1 Complaint to set forth the true names and capacities of such defendants when they
2 have been ascertained.

3 3. In doing the things hereinafter alleged, each defendant was
4 acting as a duly authorized agent, employee, representative, joint venturer or
5 co-conspirator of each of the other defendants and was acting within the course and
6 scope of such agency, employment, representation, joint venture or conspiracy.

7
8 **JURISDICTION AND VENUE**

9 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C.
10 § 1331. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

11 5. This Court has personal jurisdiction over defendants by virtue of
12 their business activities in this jurisdiction.

13 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391

14
15 **NATURE OF THE ACTION**

16
17 7. The Company and its Computer Network. Kimberlite owns and
18 maintains an internal computer network system in its office buildings for the
19 purpose of furthering its business objectives (the "Computer Network"). Within the
20 Computer Network, there is an electronic mail program ("Kimberlite e-mail").
21 Kimberlite e-mail is used by Kimberlite employees for business purposes only.
22 Also within the Computer Network, in various programs and files, Kimberlite stores
23 certain highly sensitive and proprietary data and information including, but not
24 limited to, client lists and customer lists, as well as private and sensitive information
25 about its employees and customers.

26 8. First E-mail Break-in. On April 7, 2008, defendants, using the
27 IP address 71.135.177.158, knowingly accessed the Computer Network and
28 Kimberlite e-mail in order to view the email messages of Gloria Watson, an

1 employee of Kimberlite Corporation. Kimberlite is informed and believes and on
2 that basis alleges that the IP address 71.135.177.158 was associated with a computer
3 located in the San Francisco Bay Area. Defendants accessed Watson's account
4 without her knowledge or permission, or the permission of Kimberlite. The
5 defendants remained logged into Watson's account from 6:48 PM-7:22 PM, during
6 which time they viewed several of her email messages.

7 9. Second E-Mail Break-in. On April 14, 2008, defendants, again
8 using the IP address 71.135.177.158, knowingly accessed the Computer Network
9 and Kimberlite e-mail in order to view the email accounts of Kimberlite employees
10 John Rouchanian, S. Brucker, Gloria Watson, Kevin McCracken, Michael Joiner,
11 and Susan Lee (collectively "Second Victims"). Kimberlite is informed and
12 believes and on that basis alleges that the IP address 71.135.177.158 was associated
13 with a computer located in the San Francisco Bay Area. Defendants accessed the
14 Second Victims' accounts without their knowledge or permission, or the permission
15 of Kimberlite. Defendants remained logged into the Computer Network from 6:38
16 PM-8:22 PM, during which time they viewed several email messages intended for
17 the Second Victims.

18
19 **FIRST CAUSE OF ACTION**

20 **For Trespass to Chattels**

21 (By Kimberlite Against All Defendants)

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23 10. Kimberlite hereby realleges and incorporates by reference
24 paragraphs 1-9 above, as though fully set forth at length.

25 11. Kimberlite owns and operates valuable chattels, i.e., the
26 Kimberlite Computer Network, including the Kimberlite e-mail system. Defendants
27 committed trespass to Kimberlite's chattel by viewing e-mail messages sent by or
28 intended for Kimberlite employees without Kimberlite's knowledge or consent.

1 12. By these acts, defendants intended to interfere with, and cause
2 harm to, Kimberlite's chattels and these acts were the direct and proximate cause of
3 harm to Kimberlite's chattels.

4 13. As the proximate result of defendants' unjustified and wrongful
5 conduct, Kimberlite suffered damages as alleged above, according to proof at trial.

6 14. Plaintiff Kimberlite is entitled to a preliminary and permanent
7 injunction prohibiting defendants from using, interfering or intermeddling with the
8 Kimberlite Computer Network and Kimberlite e-mail system.

9
10 **SECOND CAUSE OF ACTION**

11 **For Breach of The Computer Fraud and Abuse Act, 18 U.S.C. § 1030**

12 (By Kimberlite Against All Defendants)

13
14 15. Kimberlite hereby realleges and incorporates by reference
15 paragraphs 1-14 above, as though fully set forth at length.

16 16. Both Kimberlite's Computer Network and Kimberlite e-mail are
17 protected computers involved in interstate commerce for the purposes of the CFAA.

18 17. By their actions, defendants knowingly accessed Kimberlite's
19 Computer Network and Kimberlite e-mail. Defendants accessed these materials
20 without the authorization of Kimberlite or its employees.

21 18. As the proximate result of defendants' unjustified and wrongful
22 conduct, Kimberlite suffered damages as alleged above, according to proof at trial.

23
24 **PRAYER FOR RELIEF**

25 WHEREFORE Kimberlite respectfully requests the following relief:

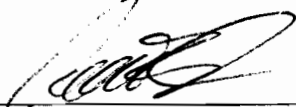
26 1. That preliminary and permanent injunctions be entered
27 prohibiting defendants from using or intermeddling with Kimberlite's Computer
28 Network and/or Kimberlite's e-mail systems;

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2. Compensatory damages in an amount to be proved at trial;
3. Attorneys' fees and costs;
3. Punitive damages; and
5. Such other relief as the Court may deem proper.

DATED: April 24, 2008

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

By 

Scott G. Lawson
Attorneys for Kimberlite Corporation

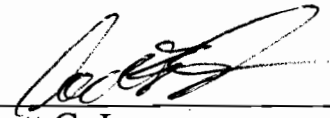
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JURY DEMAND

Kimberlite demands a trial by jury as to all claims so triable.

DATED: April 24, 2008

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

By 

Scott G. Lawson
Attorneys for Kimberlite Corporation