

CAUSE NO. 2026-70357

**622 SOFI LAKES, LP,
GO-M REALTY LLC, and
DAMAC INVESTMENTS
LLC,**

Plaintiffs,

v.

**JONATHAN GARCIA,
Defendant.**

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**IN THE DISTRICT
COURT OF**

**HARRIS COUNTY,
TEXAS**

**515TH JUDICIAL
DISTRICT**

**DEFENDANT JONATHAN GARCIA’S RULE 91a MOTION TO DISMISS BASELESS
CAUSES OF ACTION (CONVERSION, HARMFUL ACCESS BY COMPUTER,
TORTIOUS INTERFERENCE WITH PROSPECTIVE RELATIONS, AND
DECLARATORY RELIEF AS TO TORT LIABILITY)**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Jonathan Garcia (“Garcia”), appearing pro se, moves under Texas Rule of Civil Procedure 91a to dismiss the following causes of action in Plaintiffs’ Original Petition and Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction (the “Petition”): (1) conversion (Petition Part III.D, ¶¶ 43–44, 46); (2) harmful access by computer under Civil Practice and Remedies Code § 143.001 (Part III.D, ¶ 45); (3) tortious interference with prospective business relations (Part III.B, ¶¶ 38–40); and (4) the request for a declaratory judgment that Garcia’s conduct “constitute[s] tortious interference ... misappropriation ... and conversion” (Prayer ¶ 62(1)). Each has no basis in law, no basis in fact, or both, on the face of the Petition. In support, Garcia shows:

I. RULE 91a STANDARD AND TIMELINESS

1. A party may move to dismiss a cause of action on the ground that it has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. It has no basis in fact if no reasonable person could believe the facts pleaded. Tex. R. Civ. P. 91a.1. The Court may not consider evidence and must decide the motion on the pleading of the cause of

action, together with any permitted exhibits. Tex. R. Civ. P. 91a.6; *City of Dallas v. Sanchez*, 494 S.W.3d 722, 724–25 (Tex. 2016) (per curiam). A defense that is conclusively established on the face of the plaintiff’s own pleading may support dismissal. *Bethel v. Quilling, Selander, Lownds, Winslett & Moser, P.C.*, 595 S.W.3d 651, 656 (Tex. 2020).

2. This motion is filed within 60 days after service of the Petition, is set for hearing at least 21 days after filing, and must be ruled on within 45 days of filing. Tex. R. Civ. P. 91a.3. Plaintiffs may amend or nonsuit the challenged claims at least three days before the hearing. Tex. R. Civ. P. 91a.5.

II. CONVERSION (PART III.D) HAS NO BASIS IN LAW

A. Texas does not recognize conversion of intangible property.

3. Plaintiffs allege conversion of “the sofilakes.com domain name, its associated registrar and hosting accounts, the website files and credentials, and the Digital Assets,” the “go-mreality.com domain name and its associated registrar and hosting accounts, website files, and credentials,” and the “Media Assets,” which the Petition defines as “logos, renderings, brand and color direction, signage artwork, photographs and video, social media accounts and content, website files and design, domain names, hosting accounts, and lead data.” (Petition ¶¶ 18, 43–44.) Every item on that list is intangible.

4. Conversion in Texas is the wrongful exercise of dominion and control over the personal property of another. *Waisath v. Lack’s Stores, Inc.*, 474 S.W.2d 444, 447 (Tex. 1971). The tort applies to tangible personal property. Texas courts have consistently refused to extend it to intangible property, rights, or electronic data except where the underlying right has been merged into a physical document, such as a stock certificate or a negotiable instrument, that is itself taken. *Express One Int’l, Inc. v. Steinbeck*, 53 S.W.3d 895, 901 (Tex. App.—Dallas 2001, no pet.) (no conversion of intangible contract rights); *Carson v. Dynegy, Inc.*, 344 F.3d 446, 456 (5th Cir. 2003) (applying Texas law; no conversion claim for electronic spreadsheets and data); *Neles-Jamesbury, Inc. v. Bill’s Valves*, 974 F. Supp. 979, 982 (S.D. Tex. 1997) (same for electronic business information). Domain names, hosting accounts, login credentials, website files, lead data, and social-media accounts are intangible. The Petition does not allege that any of them was merged into a document that Garcia took. The claim has no basis in law.

B. Conversion of logos, renderings, photographs, video, and website design is preempted by the Copyright Act.

5. Logos, renderings, signage artwork, photographs, video, website design and files, and “social media ... content” are works of authorship within the subject matter of copyright. 17 U.S.C. § 102(a). A state-law claim is preempted when (1) the work falls within the subject matter of copyright and (2) the state right asserted is equivalent to any of the exclusive rights of copyright — reproduction, distribution, display, or the right to control the work. 17 U.S.C. § 301(a). A conversion claim that seeks to recover possession or control of intangible creative work, rather than a specific physical object, is equivalent to the copyright owner’s exclusive rights and is preempted. *Daboub v. Gibbons*, 42 F.3d 285, 289–90 (5th Cir. 1995); *Carson*, 344 F.3d at 456–57. Plaintiffs do not allege that Garcia took any physical object; they allege he “retain[s]” and “administer[s]” the creative work and the accounts that hold it. (Petition ¶¶ 18, 44.) That claim lives, if anywhere, under federal copyright law, where it would face a further problem of Plaintiffs’ own making: a work created by an independent contractor is not a “work made for hire” unless the parties expressly so agree in a signed writing, 17 U.S.C. § 101, and a transfer of copyright ownership requires a signed writing, 17 U.S.C. § 204(a). The Petition pleads that Garcia was an outside “consultant” engaged under a “month-to-month information technology contract” (Petition ¶¶ 10, 23) and pleads no written assignment.

C. To the extent Count D claims conversion of “Confidential Information,” it is displaced by TUTSA.

6. Plaintiffs allege in the same count that Garcia converted “the Digital Assets,” “lead data,” and credentials, which they elsewhere define as their trade secrets and “Confidential Information.” (Petition ¶¶ 20, 41, 43.) The Texas Uniform Trade Secrets Act “displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.” Tex. Civ. Prac. & Rem. Code § 134A.007(a). A conversion claim premised on the taking or retention of information alleged to be a trade secret is preempted. See *Embarcadero Techs., Inc. v. Redgate Software, Inc.*, No. 1:17-cv-444-RP, 2018 WL 315753, at *3 (W.D. Tex. Jan. 5, 2018) (collecting cases). Count D has no basis in law on any theory pleaded.

III. THE § 143.001 CLAIM (PART III.D, ¶ 45) HAS NO BASIS IN LAW OR FACT

7. Civil Practice and Remedies Code § 143.001 gives a cause of action to a person injured by a violation of Penal Code Chapter 33, committed knowingly or intentionally. Every Chapter 33 offense requires access to a computer, network, or system “without the effective consent of the owner.” Tex. Penal Code § 33.02(a). The Petition pleads the opposite. It alleges that “the domain registrar accounts, hosting accounts, and administrative credentials at issue were delivered to Garcia” (¶ 8); that Garcia “received ... administrative control of the sofilakes.com and go-mrealty.com domains, their hosting accounts, and the associated login credentials” (Summary of Relief); and that “on April 21, 2026 he accepted an invitation to become an administrator of Plaintiffs’ GoDaddy account” (¶ 22). An invited administrator using credentials the owner delivered to him is not accessing a computer without the owner’s effective consent.

8. Nor does the Petition plead any specific access after consent was withdrawn. It alleges that the engagement was terminated on September 18, 2026 and that Garcia “has altered the content of Plaintiffs’ websites without authorization” (¶ 23), but it identifies no date, no website, no page, and no alteration. The only website activity pleaded with any particularity is that Garcia “accepted an invitation to become an administrator.” A conclusory assertion that access was “without authorization,” contradicted by the pleader’s own allegations of delivered credentials and an accepted invitation, is not a fact a reasonable person could believe. Tex. R. Civ. P. 91a.1. The claim should be dismissed.

IV. TORTIOUS INTERFERENCE WITH PROSPECTIVE RELATIONS (PART III.B) HAS NO BASIS IN LAW

9. To recover for interference with prospective business relations, a plaintiff must plead and prove that the defendant’s conduct was independently tortious or unlawful — that is, conduct that would itself be actionable under a recognized tort. *Wal-Mart Stores, Inc. v. Sturges*, 52 S.W.3d 711, 726 (Tex. 2001); *Coinmach Corp. v. Aspenwood Apartment Corp.*, 417 S.W.3d 909, 923 (Tex. 2013). Plaintiffs plead exactly three predicates: “his misappropriation of Plaintiffs’ trade secrets, his conversion of Plaintiffs’ domains, hosting accounts, and credentials, and his unauthorized alteration of Plaintiffs’ websites.” (Petition ¶ 39.)

10. The second and third predicates fail for the reasons in Parts II and III: conversion of intangibles is not a tort in Texas, and the “unauthorized alteration” theory is contradicted by the

pleaded consent. That leaves trade-secret misappropriation. But a tort claim whose sole predicate is misappropriation of a trade secret is a claim “providing civil remedies for misappropriation of a trade secret,” and TUTSA displaces it. Tex. Civ. Prac. & Rem. Code § 134A.007(a). Plaintiffs already plead a TUTSA count (Part III.C); they may not plead the same misappropriation a second time under a common-law label to obtain exemplary damages TUTSA conditions on a showing of willful and malicious misappropriation by clear and convincing evidence. *Id.* § 134A.004(b). Count B has no basis in law.

V. THE REQUEST FOR A DECLARATION OF TORT LIABILITY (PRAYER ¶ 62(1)) HAS NO BASIS IN LAW

11. Plaintiffs ask for “[a] declaratory judgment that the actions, conduct, and practices of Defendant constitute tortious interference with Plaintiffs’ existing and prospective contracts, misappropriation of Plaintiffs’ trade secrets, and conversion of Plaintiffs’ property.” (Petition ¶ 62(1).) The Uniform Declaratory Judgments Act is not available to decide whether a defendant is liable in tort; those questions are resolved by the tort claims themselves, and a declaratory request that merely duplicates the relief sought on pending claims — typically to reach the Act’s fee provision — is improper. *MBM Fin. Corp. v. Woodlands Operating Co.*, 292 S.W.3d 660, 669–70 (Tex. 2009); *Universal Printing Co. v. Premier Victorian Homes, Inc.*, 73 S.W.3d 283, 296 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). The request should be dismissed, and no attorney’s fees may be awarded under § 37.009 on account of it.

VI. WHAT REMAINS, AND WHY IT MATTERS NOW

12. If this motion is granted, Plaintiffs’ live claims are reduced to: tortious interference with existing contracts (Part III.A), which still identifies no contract, no counterparty, and no breach; a TUTSA claim (Part III.C) that must identify an actual trade secret; and Damac’s declaratory claim (Part III.E), which is the subject of Garcia’s Rule 12 Motion to Show Authority and of his own counterclaim for the mirror-image declaration. The temporary restraining order and the pending application for temporary injunction rest in substantial part on the conversion and “unauthorized access” theories dismissed here. (Petition ¶¶ 52–53; TRO ¶¶ (ii), (v)–(viii).) Garcia asks that this motion be heard with his Motion to Dissolve (No. 39) and Supplemental Motion (No. 76).

VII. PRAYER

Garcia respectfully asks the Court to set this motion for hearing not less than 21 days after filing and to rule within 45 days as Rule 91a.3 requires; to dismiss Plaintiffs' causes of action for conversion, for harmful access by computer under Civil Practice and Remedies Code § 143.001, and for tortious interference with prospective business relations, and Plaintiffs' request for a declaratory judgment of tort liability; to award Garcia his costs under Rule 91a.7; and to grant him all other relief to which he is entitled.

Respectfully submitted,

/s/ Jonathan Garcia

JONATHAN GARCIA, pro se

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DEFENDANT, COUNTER-PLAINTIFF, AND
THIRD-PARTY PLAINTIFF

CERTIFICATE OF CONFERENCE

I certify that on October 7, 2026, I emailed Connor J. Smith, counsel for Plaintiffs, at csmith@dorelaw.com, identifying the causes of action challenged in this motion and the grounds, and asking whether Plaintiffs would nonsuit or amend them. Counsel did not agree before this motion was filed. This motion is opposed.

/s/ Jonathan Garcia

Jonathan Garcia

NOTICE OF HEARING

This motion is set for hearing on _____, 2026, at _____ .m., in the 515th District Court of Harris County, Texas, [REDACTED], [REDACTED], or by remote appearance as the Court directs. Under Rule 91a.3, the hearing date is at least 21 days after the date this motion was filed, and any response is due no later than 7 days before the hearing (Tex. R. Civ. P. 91a.4).

CERTIFICATE OF SERVICE

I certify that on the 7th day of October, 2026, a true and correct copy of this motion was served on all counsel of record through the electronic filing manager under Texas Rule of Civil Procedure 21a, including Connor J. Smith, Doré Rothberg Law, P.C., [REDACTED], Suite 700, [REDACTED], csmith@dorelaw.com.

/s/ Jonathan Garcia
Jonathan Garcia