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16 **UNITED STATES DISTRICT COURT**  
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18 DENNIS NOWAK, an individual,  
19 Plaintiff,  
20 v.

21 XAPO, INC., a Delaware corporation;  
22 XAPO (GIBRALTAR) LIMITED, a foreign  
23 corporation; INDODAX, a foreign company;  
24 and JOHN DOE NOS. 1-10, individuals,

25 Defendants.

**COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff DENNIS NOWAK, an individual (“Plaintiff”), brings this  
2 action against XAPO, INC., a Delaware corporation, XAPO (GIBRALTAR)  
3 LIMITED, a foreign corporation, INDODAX, a foreign company, and JOHN  
4 DOE NOS. 1-10, individuals. Plaintiff alleges the following:

5 **INTRODUCTION**

6 Plaintiff alleges in this Complaint claims for: (i) Violation of California  
7 Penal Code § 496 (Possession of Stolen Property); (ii) Aiding and Abetting Violation  
8 of 18 U.S.C. § 1030(a)(4) (Computer Fraud and Abuse Act); and (iii) Violation of  
9 California Penal Code § 502 et seq. (Assisting Unlawful Access To Computer), based  
10 upon his own knowledge and acts, and based on facts obtained upon investigation  
11 by his counsel, which include, *inter alia*: (a) documents and account records  
12 maintained by Plaintiff or for his benefit, and (b) blockchain tracing and  
13 analytical reports prepared by international investigative firm Kroll.

14 Plaintiff believes that further substantial evidentiary support will exist for  
15 the allegations set forth herein after a reasonable opportunity for discovery. Many of  
16 the facts supporting the allegations contained herein are known only to Defendants or  
17 are exclusively within their control.

18 **PARTIES**

19 1. Plaintiff DENNIS NOWAK is a natural person and is a resident  
20 of Germany.

21 2. Defendant XAPO, INC. is a Delaware corporation with its principal place  
22 of business in Palo Alto, California. XAPO, INC. provides each of its accountholders a  
23 bitcoin wallet combined with a cold storage vault and a bitcoin-based debit card. XAPO,  
24 INC. holds client bitcoins following a full reserve banking and fully segregated model,  
25 which allows for verification that funds held by XAPO, INC. are in an individual multi-  
26 signature bitcoin address and not pooled or co-mingled with other users’ funds.

27 3. Defendant XAPO (GIBRALTAR) LIMITED is a foreign corporation  
28 registered and incorporated in Gibraltar with Company No. 111928. According to

1 information published on its own website, XAPO (GIBRALTAR) LIMITED is licensed  
2 and regulated by the Gibraltar Financial Services Commission under the Financial  
3 Services (Electronic Money) Regulations 2011 as an “Electronic Money  
4 institution” with License No. FSC0063BNK. Notwithstanding its Gibraltar  
5 registry, XAPO (GIBRALTAR) LIMITED has extensive ties to the United States  
6 -- including this jurisdiction -- and is essentially a United States-based entity, as  
7 management of the company’s affairs are greatly guided by its team of advisors,  
8 including Lawrence H. Summers (former Secretary of the U.S. Department of the  
9 Treasury under President Bill Clinton), Dee Hock (founder of Visa), and John Reed  
10 (former Chairman and Chief Executive Officer of Citibank).

11 4. XAPO, INC. and XAPO (GIBRALTAR) LIMITED commonly  
12 operate with their sibling entities around the world under the shared tradename  
13 “XAPO”; and XAPO, INC. and XAPO (GIBRALTAR) LIMITED will be  
14 collectively referred to herein simply as “XAPO,” as their own website does not  
15 differentiate between the separate corporate entities. Upon information and belief,  
16 the entities are all dominated by the same individuals, use the same corporate  
17 decision-makers, the same resources, and the same business connections. Thus,  
18 they are essentially one-and-the-same business, regardless of the particular name  
19 under which each company’s operations are conducted.

20 5. Defendant INDODAX is a cryptocurrency exchange headquartered  
21 in Indonesia. With more than a million users on a 24-hour trading platform,  
22 INDODAX allows its accountholders to trade bitcoin to other digital assets such  
23 as Ethereum, Litecoin, Dogecoin, DASH, Ripple, Stellar, XEM, NXT, and Bitshares.

24 6. Defendants JOHN DOE NOS. 1-10 are a collection of hackers and  
25 thieves whose identities are presently unknown but who were instrumental in stealing  
26 Plaintiff’s assets, storing those stolen assets in accounts held at XAPO and  
27 INDODAX, and exposing Plaintiff to the harm alleged in this action. Plaintiff is  
28 working with multiple

1 law enforcement agencies to identify the hacker(s) involved in this matter, the XAPO  
2 and INDODAX accountholders, and others involved in this theft.

3 7. In addition to those persons and entities set forth as Defendants herein, there  
4 are likely other parties who may well be liable to Plaintiff but respecting whom Plaintiff  
5 currently lacks specific facts to permit him to name such person or persons as a party  
6 defendant. By not naming such persons or entities at this time, Plaintiff is not waiving his  
7 right to amend this pleading to add such parties, should the facts warrant the addition of  
8 such parties.

9 **JURISDICTION AND VENUE**

10 8. This Court has subject matter jurisdiction over this action pursuant to 28  
11 U.S.C. § 1332 because the amount in controversy exceeds Seventy-Five Thousand  
12 Dollars (\$75,000.00), exclusive of interest, costs and attorneys' fees, and is an action  
13 between citizens of different states.

14 9. Furthermore, this Court has subject matter jurisdiction over this action  
15 pursuant to 28 U.S.C. § 1331 because it arises under the Constitution, laws, or treaties of  
16 the United States. Additionally, the Court has supplemental jurisdiction over the  
17 California statutory and common law claims pursuant to 28 U.S.C. § 1337.

18 10. This Court has personal jurisdiction over Defendants because: (a) at least  
19 one Defendant is operating, present, and/or doing business within this District, and (b)  
20 Defendants' breaches and unlawful activity occurred within this District.

21 11. Upon information and belief, Defendants each service accountholders in  
22 this jurisdiction and reap from those accountholders large sums of money and other  
23 assets, including valuable cryptocurrency.

24 12. Moreover, Defendants each either conduct business in and maintain  
25 operations in this District -- including operating computer servers and storage vaults -- or  
26 have sufficient minimum contacts with this District as to render the exercise of  
27 jurisdiction by this Court permissible under traditional notions of fair play and  
28 substantial justice.

1 13. Venue is proper pursuant to 28 U.S.C. § 1391 in that: (a) the conduct  
2 at issue took place and had an effect in this District; (b) a substantial portion of  
3 the transactions and wrongs complained of herein occurred in this District; and  
4 (c) Defendants have received substantial compensation and other transfers of money  
5 and digital assets in this District by doing business here and engaging in activities  
6 having an effect in this District.

7 **GENERAL ALLEGATIONS**

8 **I. Background on Cryptocurrency**

9 14. Bitcoin (“BTC”) and Ether (“ETH”) are virtual currencies that may be  
10 traded on online exchanges for conventional currencies, including the U.S. Dollar,  
11 Euros, and the Japanese Yen, or used to purchase goods and services online. Bitcoin  
12 and Ether have no single administrator or central authority or repository.

13 15. Bitcoin and Ether are but two of the cryptocurrencies that investors  
14 typically use to trade on cryptocurrency exchanges -- both in spot transactions and in  
15 leveraged margin trading.

16 **II. Plaintiff’s Assets Were Stolen from his Cryptocurrency Exchange Account**

17 16. At all times relevant hereto, Plaintiff maintained an account at a Northern  
18 California-based cryptocurrency exchange (“U.S.A. EXCHANGE”) in which Plaintiff  
19 held, among other digital currencies, bitcoin.

20 17. On September 18, 2018, to prevent unauthorized access to his U.S.A.  
21 EXCHANGE account, Plaintiff secured his account with a new login two-factor  
22 authentication through Google Authenticator.

23 18. On or about November 20, 2018, Plaintiff deposited into his  
24 U.S.A. EXCHANGE account 500 bitcoin (500 BTC) in three separate deposits: (1) a  
25 200 BTC deposit, (2) a second 200 BTC deposit, and (3) a 100 BTC deposit.  
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1 19. At the time Plaintiff made those deposits, the 500 BTC were valued  
2 at approximately Two Million Three Hundred Thousand Dollars (\$2,300,000.00).<sup>1</sup>

3 20. Just a few days after he had deposited the 500 BTC into his  
4 account, Plaintiff's account at U.S.A. EXCHANGE was infiltrated by JOHN DOE  
5 NOS. 1-10, who withdrew all 500 BTC over the course of slightly more than two days  
6 in November 2018, *to wit*:

<b>Date/Time of Cryptocurrency Theft</b>	<b>Cryptocurrency Assets Stolen</b>	<b>Approximate Value of Funds/Assets Stolen on Date of Theft<sup>2</sup></b>
November 21, 2018 10:54 a.m.	66.99950 BTC	\$305,000.00
November 22, 2018 11:31 a.m.	67.499950 BTC	\$310,000.00
November 23, 2018 11:49 a.m.	66.99950 BTC	\$305,000.00
November 23, 2018 4:44 p.m.	298.19950 BTC	\$1,380,000.00
TOTAL	499.69845 BTC <sup>3</sup>	\$2,300,000.00

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19 21. Undersigned counsel has engaged international investigative firm Kroll  
20 to trace the BTC transferred and withdrawn from Plaintiff's U.S.A. EXCHANGE  
21 account in or about November 21-23, 2018.

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24 <sup>1</sup> As of the date of this filing, those 500 BTC are valued at approximately Four Million Five Hundred  
25 Thousand Dollars (\$4,500,000.00).

26 <sup>2</sup> Valuation of the stolen funds/assets is calculated using market data compiled by  
27 [www.CoinMarketCap.com](http://www.CoinMarketCap.com), which takes the volume weighted average of all prices reported at several  
dozen cryptocurrency markets serving investors in the United States and abroad.

28 <sup>3</sup> Transaction fees assessed on each of these unauthorized withdrawals increased the total amount  
withdrawn to 500 BTC.

22. As concluded by Kroll, 479.69 BTC of the 499.69845 BTC transferred from Plaintiff's U.S.A. EXCHANGE account were transferred to two deposit addresses controlled by INDODAX.

23. From those two deposit addresses, the funds were then moved to a hot wallet<sup>4</sup> at INDODAX where, upon information and belief, the assets are still located.

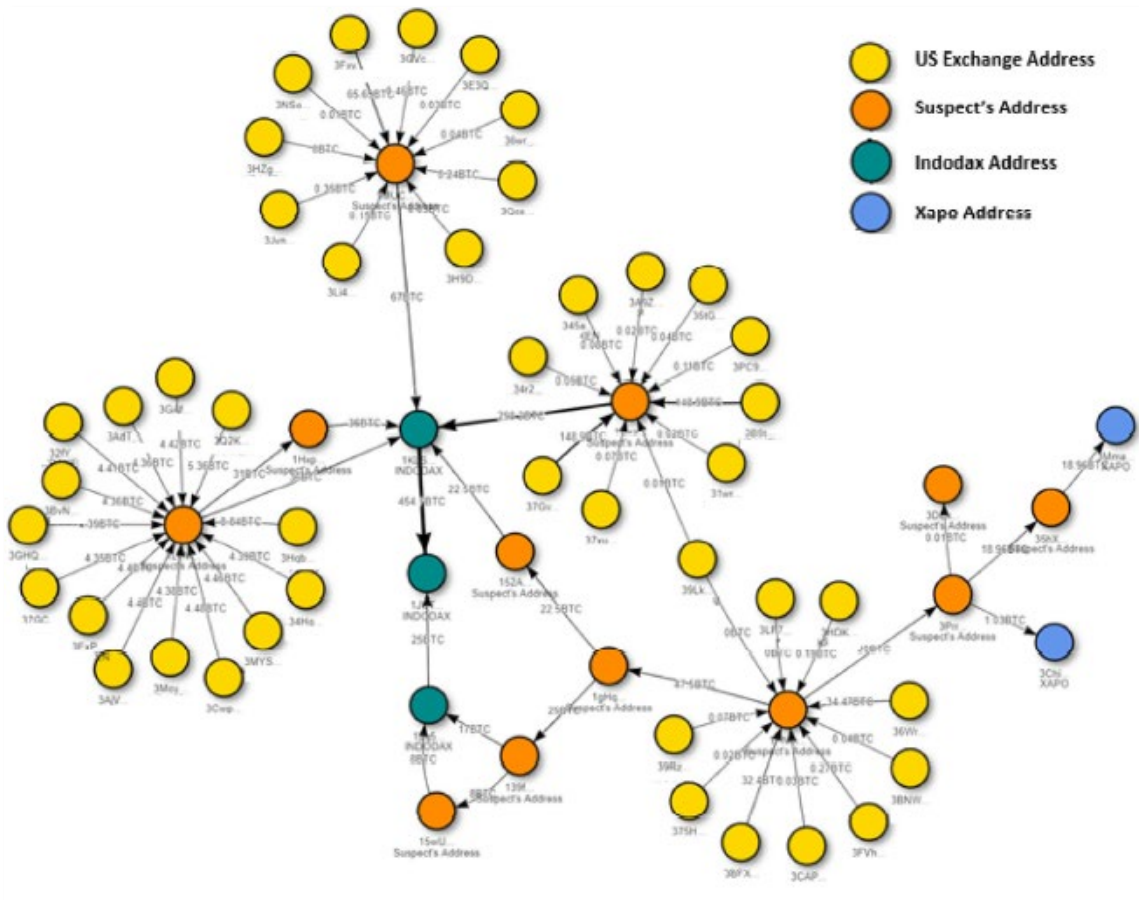
24. The Kroll analysis further shows that as of February 7, 2020, an additional 19.99 BTC of Plaintiff's original 499.69 BTC are held in two hot wallet addresses controlled by XAPO.

25. As such, 499.68 of the 499.69845 BTC pilfered from Plaintiff's U.S.A. EXCHANGE account have been located, *to wit*:

Owner of Source Addresses	Owner of Destination Addresses	Number of Destination Addresses	Total Estimated Amount of Funds Involved in the Event which were Sent from Source Addresses and Reached Destination Addresses
U.S.A. EXCHANGE	INDODAX ( <i>deposit addresses and hot wallets</i> )	3	479.69 BTC
U.S.A. EXCHANGE	XAPO ( <i>hot wallets</i> )	2	19.99 BTC
TOTAL			499.68 BTC

<sup>4</sup> A "hot wallet" refers to a cryptocurrency wallet that is online and connected in some way to the Internet. A "hot wallet" stands in contrast to "cold storage," which refers to a method for electronically storing cryptocurrency in a location that is not connected to the Internet.

26. The Kroll analysis further suggests that there has been no obvious attempt to layer the transaction in such a way as to obfuscate the destination of the funds. Plaintiff's BTC was transferred from his U.S.A. EXCHANGE account to addresses at INDODAX and XAPO in less than half-a-dozen steps, as shown below, where nodes represent individual addresses and arrows represent groups of transactions between those addresses:



27. Neither Plaintiff nor any person or entity under Plaintiff's control owns or controls any of the destination addresses at INDODAX or XAPO referenced above.

**III. Due to Faulty Security or Knowing Indifference, Stolen Cryptocurrency is Often Stored at Xapo and Indodax**

28. In addition to Plaintiff's losses, Kroll also traced the origin of other BTC transferred to the two INDODAX deposit addresses and the two XAPO hot wallet



1 addresses to which Plaintiff's stolen BTC were sent; and Kroll concluded that the  
2 majority of the transfers into those four addresses came from U.S.A. EXCHANGE.

3 29. Of the estimated 1,258.85 BTC transferred from attributable sources to the  
4 two INDODAX deposit addresses, 698.72 BTC (including Plaintiff's 479.69 BTC), or  
5 over 55%, was transferred from U.S.A. EXCHANGE.

6 30. Of the estimated 105.4 BTC transferred from attributable sources to the two  
7 XAPO hot wallet addresses, 56.97 BTC (including Plaintiff's 19.99 BTC), or over 54%  
8 of those funds, were transferred from U.S.A. EXCHANGE.

9 31. As such, a further 256.01 BTC were transferred from U.S.A. EXCHANGE  
10 to the same addresses that hold Plaintiff's stolen BTC.<sup>5</sup>

11 32. As of the date of this filing, those 256.01 BTC are valued at approximately  
12 \$2,300,000.00 USD, bringing the total value of the 755.69 BTC from U.S.A.  
13 EXCHANGE addresses currently held in the four INDODAX and XAPO addresses to  
14 approximately \$6,800,000.00.<sup>6</sup>

15 33. The methodology of the specific theft identified by Kroll -- with funds  
16 leaving U.S.A. EXCHANGE and a small split going to two XAPO wallets and the rest  
17 going to two INDODAX wallets -- appears to have been followed on more occasions  
18 than just the theft from Plaintiff, given the sums above.

19 34. In the cryptocurrency industry -- just as in the financial and banking  
20 industries -- it is standard for custodial firms and exchanges like XAPO and INDODAX  
21 to employ rigorous "Know Your Customer" (KYC) and "Anti-Money-  
22 Laundering" (AML) policies and procedures.

23 35. The general goal of AML is to ensure that firms are able to detect and  
24 prevent money laundering and to protect themselves and the financial systems in which  
25 they operate from the damage it causes.

26  
27 <sup>5</sup> 219.03 BTC transferred to the INDODAX addresses and 36.98 BTC transferred to the XAPO  
28 addresses.

<sup>6</sup> Using a conversion of 1 BTC = \$9,000.00 USD.

1           36.       KYC is important because the risk-based approach to AML is  
2 predicated upon firms knowing who their customers are and what level of money  
3 laundering risk they present.

4           37.       Failing to implement and utilize adequate KYC and AML policies  
5 and procedures is tantamount to inviting, and then turning a blind eye to,  
6 fraudulent and criminal activity.

7           38.       In the instant matter, it appears that XAPO and INDODAX have  
8 permitted, whether intentionally or not, criminal activity by allowing their  
9 custodial vaults and exchanges to serve as shelters for thieves like Defendants  
10 JOHN DOE NOS. 1-10 to store purloined assets.

11           39.       Beyond the four addresses at INDODAX and XAPO, Kroll's  
12 initial analysis shows that more than 2,900 BTC have been transferred from over  
13 24,000 U.S.A. EXCHANGE addresses to over 500 INDODAX addresses since  
14 January 2017 -- thus demonstrating that the U.S.A. EXCHANGE-to- INDODAX  
15 movement of the BTC stolen from Plaintiff is far from an isolated incident.

16           40.       XAPO and INDODAX each knew that their KYC and AML policies and  
17 procedures -- including any tracing analysis of where funds originated --  
18 were inadequate, yet the firms ignored those inadequacies and failed to  
19 adopt appropriate measures to remedy those dangerous shortcomings. For  
20 example, U.S.A. EXCHANGE knew the funds were stolen while the funds  
21 remained at XAPO and INDODAX; and any reasonable compliance  
22 standards would have revealed that.

23           41.       Moreover, XAPO and INDODAX each know or should have known  
24 that the assets stolen from Plaintiff and stored within their custody were indeed  
25 stolen; however, XAPO and INDODAX have undertaken no efforts to return those  
26 stolen assets to Plaintiff.

27           42.       Plaintiff brings this action to hold XAPO and INDODAX liable for aiding  
28 and abetting Defendants JOHN DOE NOS. 1-10's misappropriation of Plaintiff's assets

1 and for creating and maintaining systems that unjustly allow thieves to hide stolen  
2 property in XAPO's and INDODAX's custodial vaults.

3 43. Plaintiff has duly performed all of his duties and obligations, and  
4 any conditions precedent to Plaintiff bringing this action have occurred, have  
5 been performed, or else have been excused or waived.

6 44. To enforce his rights, Plaintiff has retained undersigned counsel and  
7 is obligated to pay counsel a reasonable fee for its services, for which Defendants are  
8 liable as a result of their bad faith and otherwise.

9 **COUNT I**  
10 **Violation of California Penal Code § 496**  
11 **(Possession of Stolen Property)**  
12 **(By Plaintiff Against All Defendants)**

13 45. Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 44  
14 above, and further alleges:

15 46. This cause of action asserts a claim against XAPO, INDODAX, and  
16 JOHN DOE NOS. 1-10 for the actual theft of Plaintiff's property as well as for  
17 receiving, aiding in concealing, and withholding from Plaintiff the stolen property.

18 47. In pertinent part, Cal. Penal Code sec. 496(a) imposes liability upon  
19 "[e]very person who buys or receives any property that has been stolen or that has  
20 been obtained in any manner constituting theft or extortion, knowing the property to  
21 be so stolen or obtained or who conceals, sells, withholds, or aids in concealing,  
22 selling, or withholding any property from the owner, knowing the property to be so  
23 stolen or obtained" and provides that "[a] principal in the actual theft of the property  
24 may be convicted pursuant to this section."

25 48. Furthermore, Cal. Penal Code sec. 496(c) provides: "Any person who has  
26 been injured by a violation of subdivision (a) or (b) may bring an action for three  
27 times the amount of actual damages, if any, sustained by the plaintiff, costs of suit,  
28 and reasonable attorney's fees."

49. Plaintiff's cryptocurrency assets were stolen from him, or were obtained  
by, Defendants JOHN DOES NO. 1-10 in a manner constituting theft.

1 by, Defendants JOHN DOE NOS. 1-10 in a manner constituting theft.

2 50. Defendants JOHN DOE NOS. 1-10 knew the property was stolen.

3 51. Likewise, Defendants XAPO and INDODAX knew or should have known  
4 the property was so stolen or obtained.

5 52. Defendants received and had (and, upon information and belief, still have)  
6 possession of the property stolen from Plaintiff.

7 53. Defendants are liable to Plaintiff for three times the amount of Plaintiff's  
8 actual damages, the costs of this suit, and all reasonable attorney's fees incurred  
9 by plaintiff in connection herewith.

10 **COUNT II**

11 **Aiding and Abetting Violation of 18 U.S.C. § 1030(a)(4)**  
12 **(Computer Fraud and Abuse Act)**  
13 **(By Plaintiff Against All Defendants)**

14 54. Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 - 44  
15 above, and further alleges:

16 55. This cause of action asserts a claim against XAPO and INDODAX for  
17 violations of 18 U.S.C. § 1030(a)(4) (the "Computer Fraud and Abuse Act") for aiding  
18 an abetting unauthorized access to a protected computer to obtain property, done  
19 with an intent to defraud, and for furthering fraudulent activity thereby to obtain  
20 something of value.

21 56. The computer Plaintiff used to access and manage his cryptocurrency  
22 accounts is a "protected computer" as defined in 18 U.S.C. § 1030(e)(2)(B) because it is  
23 used in interstate or foreign commerce or communication, including sending  
24 and receiving electronic mail and accessing and interacting with the internet.

25 57. Defendants JOHN DOE NOS. 1-10, without authorization or by exceeding  
26 authorization conditionally granted to any of them, accessed, knowingly and with  
27 intent to defraud Plaintiff, Plaintiff's protected computer.

28 58. By their conduct, the unknown and unauthorized Defendants JOHN DOE  
NOS. 1-10 intentionally furthered a fraud upon Plaintiff and obtained Plaintiff's valuable

1 cryptocurrency.

2 59. Defendants XAPO and INDODAX provided the unknown and  
3 unauthorized persons vital assistance in carrying out the fraud by providing them safe  
4 havens -- and continue to do so through the date of this filing -- that allowed the unknown  
5 and unauthorized Defendants JOHN DOE NOS. 1-10 to hide stolen property in XAPO's  
6 and INDODAX's custodial vaults.

7 60. Defendants XAPO and INDODAX knew or should have known the  
8 property was so stolen or obtained.

9 61. As a consequence of Defendants' actions and omissions, Plaintiff has  
10 suffered damages.

11 **COUNT III**  
12 **Violation of California Penal Code § 502 *et seq.***  
13 **(Assisting Unlawful Access To Computer)**  
14 **(By Plaintiff Against All Defendants)**

15 62. Plaintiff re-alleges, and adopts by reference herein, Paragraphs 1 -44  
16 above, and further alleges:

17 63. This cause of action asserts a claim against XAPO and INDODAX for  
18 violations of California Penal Code § 502 *et seq.* for knowingly and without permission  
19 allowing an unauthorized third party(ies) to access Plaintiff's computers, computer  
20 systems, and computer networks.

21 64. As alleged herein, XAPO and INDODAX, in or about November-  
22 December 2018, provided safe haven to unauthorized parties Defendants JOHN DOE  
23 NOS. 1-10 -- and continue to do so through the date of this filing -- that allowed them to  
24 hide stolen property in XAPO's and INDODAX's custodial vaults.

25 65. At the time XAPO and INDODAX provided safe harbor and secure  
26 vaulting of the funds stolen from Plaintiff, XAPO and INDODAX were aware of the  
27 prevalence of money laundering and the need to prevent such activity from taking  
28 place under, or with the assistance of, their custodianship.



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E. An award granting other relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury of all claims so triable.

**REIF LAW GROUP, P.C.**

Dated: June 1, 2020

By: Brandon S. Reif  
Brandon S. Reif

David C. Silver (to be admitted *pro hac vice*)  
Jason S. Miller (to be admitted *pro hac vice*)  
**SILVER MILLER**

*Attorneys for Plaintiff Dennis Nowak*