UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REIS, INC. and REIS SERVICES, LLC,

Plaintiffs,

-against-

LENNAR CORP., RIALTO CAPITAL MANAGEMENT, LLC, and RIALTO CAPITAL ADVISORS OF NEW YORK, LLC,

Defendants.

MEMORANDUM DECISION AND ORDER

15 Civ. 7905 (GBD)

GEORGE B. DANIELS, United States District Judge:

Plaintiffs Reis, Inc. and Reis Services, LLC (together "Reis") bring this action against Defendants Lennar Corporation ("Lennar"), Rialto Capital Management, LLC ("Rialto"), and Rialto Capital Advisors of New York, LLC ("Rialto NY") under the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030; the Copyright Act, 17 U.S.C. § 101, *et seq*. (Compl., ECF No. 1, ¶¶ 41-90.) Plaintiffs also bring common law claims for fraud, breach of contract, conversion, theft, misappropriation, unjust enrichment, and quantum meruit, as well as civil conspiracy and/or aiding and abetting claims based on the above predicate causes of action. (*Id.* ¶¶ 91-171.)

This action arises out of two separate sets of alleged data piracy by Defendants. The first involves a Rialto employee's unauthorized use of Plaintiffs' proprietary database to allegedly download approximately $1.6 million worth of real estate market analysis reports at the behest of Lennar and its subsidiary, Rialto. (*Id.* ¶¶ 4-5, 11, 31-35.) The second involves about $277,000 of reports downloaded between May 2013 and August 2015 by two unknown IP addresses using the credentials of database subscriber Rialto NY, another subsidiary of Lennar. (*Id.*, ¶¶ 6–7, 12, 36–37.) Plaintiffs seek, *inter alia*, payment of compensatory, statutory, and punitive damages, attorney's fees and expenses, as well as any other "just and proper" relief. (*Id.*, at 29.)

Defendants move to dismiss the Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). (Mot. to Dismiss, ECF No. 17; Defs.' Mem. in Supp. of Mot. to Dismiss ("Mem."), ECF No. 18, at 1.)

Defendants' motion to dismiss Plaintiffs' claims under the CFAA and for secondary federal copyright infringement is GRANTED. This Court declines to exercise supplemental jurisdiction over Plaintiffs' remaining state law claims.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Defendant Lennar is a Delaware corporation based in Florida with a focus on building single-family homes throughout the United States. (Mem., at 2.) Defendant Rialto, an "indirect subsidiary of Lennar," is a real estate investment and asset management company headquartered in Florida. (Compl. ¶ 11; Mem., at 2.) Defendant Rialto NY is "an investment adviser firm and is also a subsidiary of Lennar." (Mem., at 3; *see also* Compl. ¶ 12.)

Plaintiffs are proprietors of a database containing detailed commercial real estate market information encompassing 275 of the largest metropolitan markets in the United States. (Compl. ¶¶ 2, 19-20.) Plaintiffs compile and sell this data to real estate professionals in the form of subscription plans or individual reports that "quantify and assess the risks of default and loss associated with mortgages, properties, portfolios, and real-estate-backed-securities." (*Id.* ¶¶ 2-3, 16-17.) Plaintiffs own copyrights in a number of their reports, and those copyrights are registered with the United States Copyright Office. (*See id.* ¶¶ 24-25; *id.*, Ex. A ("List of Copyrighted Reports").)

There are various subscription levels to the database, priced according to the amount of data purchased, number of licenses associated with a subscription, and frequency of its access by subscribers. (*Id.* ¶ 20.) According to Plaintiffs, since "[m]ost professional real estate investors do

not want to devote the resources to creating an in-house infrastructure capable of performing [Reis'] work," those investors subscribe to Reis' services. (*Id.* ¶ 17.) Plaintiffs also contend that because the information in these reports is highly valuable, the database has become a target for data pirates[1] and others who wish to benefit from this data without paying. (*Id.* ¶ 3.)

Plaintiffs allege that they protect their database with a firewall that requires secure passwords tailored to the level of access a subscriber has purchased. (*Id.* ¶ 25.) "To protect its proprietary rights, Reis also relies on, among other things, restrictive license agreements" that allow a company to purchase licenses for "an agreed number of employees or other users associated with the company." (*Id.* ¶¶ 25-26.) Each employee receives her own login credentials—a unique username and password—to access the database. (*Id.* ¶ 26.)

According to Plaintiffs, users may not share passwords with anyone, not even colleagues who work for the same subscriber. (*Id.*, ¶ 27.) Once employment with a subscriber ends, a person may not take their credentials with them to use at her new employment. (*Id.*) Specifically, Reis' Terms of Service ("TOS") and its subscriber agreements "explicitly prohibit its licensees to 'resell or transfer . . . use of or access to' the Reis Database." (*Id.*) The TOS also states that "'[t]ransfer or assignment of your password and user name to another individual is strictly prohibited.'" (*Id.*; Decl. of Kuangyan Huang in Supp. of Defs.' Mot. to Dismiss ("Huang Decl."), ECF No. 20, Ex. A, at 2.) Plaintiffs maintain the TOS, as well as the Anti-Piracy Policy, is "prominently displayed" on the database sign-in page under the heading "LEGAL" to provide users with notice that they are legally bound when they agree to use the service. (*Id.* ¶ 30.)

[1] Reis' Anti-Piracy Policy defines piracy as "using our service without a license to do so, enabling or trying to enable a third party who is not authorized to use our service to use our service, or exceeding the scope of uses permitted [to] you under a license agreement between you and Reis." (Compl. ¶ 29.)

Plaintiffs further allege that they started a general ongoing investigation of suspicious access patterns as early as June 2014. (*See id.* ¶¶ 49, 54.) According to Plaintiffs, their Compliance Group, which "investigates unusual patterns of use and other signs of possible [data] theft[,]" (*id.* ¶ 33), discovered the first instance of unauthorized usage on which they base their claims against Rialto and Lennar in June 2015. (*Id.* ¶¶ 3, 33.) Specifically, Plaintiffs contend that between December 2009 and October 2010, a Rialto employee, Harvey Lederman, used Reis database credentials issued by his previous employer, GE Capital (who is not a party to this action), to log in 871 times and download 4,548 Reis reports (with an alleged retail value of $1,629,948[2]) "in support of Lennar and Rialto's business." (*Id.* ¶¶ 4, 32.) Plaintiffs allege that during this timeframe, "Lennar was in the process of launching Rialto" and announced that the 2010 fourth quarter and fiscal year was marked by the "first closing of our Rialto real estate investment fund with initial equity commitments of approximately $300 million (including $75 million committed by us)." (*Id.* ¶ 34.) According to Plaintiffs, neither Rialto nor Lennar had legitimate access to the Reis database until Rialto NY purchased a subscription in November 2010—about a month after Lederman stopped downloading reports with his GE Capital-issued credentials. (*Id.* ¶ 35.) Therefore, Plaintiffs allege that Rialto and Lennar's intrusion into the database using Mr. Lederman's GE Capital credentials was "knowing and willful because Defendants and their employees knew that Lennar and Rialto were not authorized licensees of Reis . . . [and] knew that Lennar and Rialto had not paid for access to the Reis Database . . . ." (*Id.* ¶ 38.)

Plaintiffs contend that their June 2015 discovery of the allegedly illegal usage led them to more closely investigate the database usage associated with Rialto NY's credentials. (*Id.* ¶ 6.)

[2] According to Plaintiffs, the alleged loss of approximately $1.6 million is based on the individual retail value of each of the 4,548 reports if those reports were downloaded without a subscription. (*See* March 31, 2016 Oral Arg. Tr. ("Tr."), at 76:10-77:11.)

According to Plaintiffs, this investigation revealed a second act of alleged piracy, this time by unidentified individuals from two IP addresses—67.136.101.2 and 173.11.106.97—who accessed the database through Rialto NY's credentials. (*Id.*) These unknown users used Rialto NY's credentials "to download at least 747 proprietary Reis reports," worth $277,412 in retail value and some in which Plaintiffs own copyrights, between May 2013 and August 2015. (*Id.* ¶ 36.) Plaintiffs therefore allege that Lennar, Rialto, and Rialto NY all "knew that the unidentified users with whom [Rialto NY] shared its credentials were not authorized licensees of Reis . . . [,]" in violation of Rialto NY's contract with Plaintiffs, as well as Plaintiffs' Terms of Service. (*Id.* ¶¶ 7, 38-39.)

II. LEGAL STANDARD

To survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The plaintiff must demonstrate "more than a sheer possibility that a defendant has acted unlawfully"; stating a facially plausible claim requires pleading facts that enable the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Thus, the factual allegations pleaded "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

A district court must first review a plaintiff's complaint to identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth." *Iqbal*, 556 U.S. at 679. The court then considers whether Plaintiff's remaining well-pleaded factual allegations, assumed to be true, "plausibly give rise to an entitlement to relief." *Id.*; *see also Targum v. Citrin Cooperman & Co., LLP*, No. 12 CIV. 6909, 2013 WL 6087400, at *3 (S.D.N.Y.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.