IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JOSHUA LAPIN,	:	
	:	
Plaintiff,	:	
	:	C.A. No.: K26C-03-004 JJC
v.	:	
	:	
WHITE COLLAR MEDIA LLC,	:	
	:	
	:	
Defendant.	:	

Submitted: August 27, 2026
Decided: November 10, 2026

OPINION & ORDER

Joshua Lapin, Kalispell, Montana, *Pro Se Plaintiff*.

Josiah Wolcott, Esquire, CONNOLLY GALLAGHER LLP, Newark, Delaware, *Attorney for Defendant White Collar Media, LLC*.

CLARK, R.J.

Plaintiff Joshua Lapin styles himself as a dedicated enforcer of South Dakota's anti-spam e-mail statute found at SDCL § 37-24-4, *et seq.* (hereinafter, the "South Dakota Statute" or the "Statute"). He has filed over a dozen lawsuits around the country using the South Dakota Statute. Recently, he sued Defendant White Collar Media LLC (hereinafter, "White Collar") in South Dakota state court for violations of the Statute. South Dakota's Supreme Court affirmed a trial court dismissal of that suit because South Dakota lacked personal jurisdiction over White Collar.[1]

Mr. Lapin now sues White Collar in this Court because Delaware is White Collar's state of formation. In the suit, he seeks statutory damages because White Collar sent him and another individual forty-two allegedly prohibited e-mails.

Presently, White Collar moves to dismiss Mr. Lapin's Delaware suit on three bases. First, White Collar contends that Mr. Lapin filed his complaint outside the relevant statute of limitations. Second, it contends that Mr. Lapin has no standing to bring the action under the South Dakota Statute because he was not a South Dakota resident at the time he received the e-mails. Third and finally, White Collar argues that Mr. Lapin has no standing regarding eight of the subject e-mails because the assignment of rights he relies upon is invalid.

For the reasons to follow, under Superior Court Civil Rule 12(b)(6)'s lens, Mr. Lapin filed suit within the applicable statute of limitations. In addition, his amended complaint adequately pleads standing for claims that thirty-four of the challenged emails violated the Statute. Finally, the assignment of rights that Mr. Lapin relies upon for the other eight e-mails is invalid. Accordingly, White Collar's motion to dismiss must be granted, in part, and denied, in part.

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[1] *Lapin v. White Collar Media LLC*, 15 N.W.3d 871, 2025 WL 250951 (S.D. Jan. 21, 2025) (TABLE).

I. BACKGROUND

Mr. Lapin's suit seeks liquidated damages under the South Dakota Statute for a total of forty-two prohibited e-mails. As background, the Court first summarizes the South Dakota Statute's relevant provisions. The Court then highlights the relevant facts alleged in the amended complaint that bear upon the issues of timeliness, standing, and real party in interest.

A. THE SOUTH DAKOTA E-MAIL STATUTE

The South Dakota Statute prohibits persons from sending deceptive commercial e-mails to "a South Dakota electronic mail address."[2] Substantively, the Statute applies to e-mail spam that meets one of the following three categories of prohibited commercial e-mail advertisements:

> (1) [one that] contains or is accompanied by a third-party's domain name without the permission of the third party; (2) [one that] contains or is accompanied by falsified, misrepresented, or forged header information; [or] (3) [one that] has a subject line that a person knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.[3]

Under the Statute, "recipients" are provided a private cause of action to recover for monetary damages caused by each e-mail.[4] The Statute alternatively provides for liquidated damages of $1,000 per e-mail.[5]

In addition, the Statute provides a detailed definition of what qualifies as a "South Dakota e-mail address." It includes any of the following:

> (a) [one] furnished by an electronic mail service provider that sends bills for furnishing and maintaining that e-mail address to a mailing address in this state; (b) [one] ordinarily accessed from a computer

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[2] S.D. Codified Laws § 37-24-47 (2026) ("SDCL").
[3] *Id.* § 37-24-47(1)–(3). For ease of reference, the emails that Mr. Lapin contends fit into one or more of these categories will be referred to as "the spam e-mails" or simply "the e-mails."
[4] *Id.* § 37-24-48.
[5] *Id.* § 37-24-48(2).

located in this state; or (c) [one] furnished to a resident of this state[.]"[6]

Criteria (b) and (c) are relevant here because Mr. Lapin relies upon both as a basis to sue under the South Dakota Statute.

Finally, as to the statute of limitations, the Statute provides a four-year limitation on actions and defines the accrual date as either the time of occurrence or discovery.[7] Notably, that four-year limitation period applies to South Dakota's entire Deceptive Trade Practices and Consumer Protection Chapter which includes the relevant e-mail prohibitions that are found within that chapter.[8]

B. FACTUAL BACKGROUND

Mr. Lapin's amended complaint and attached exhibits provide the facts relevant to White Collar's motion to dismiss. They are considered true for purposes of this motion.

In Mr. Lapin's amended complaint, he alleges that he, and another person who assigned claims to him, received a total of forty-two prohibited emails from White Collar. The amended complaint further alleges that all forty-two emails violated the South Dakota Statute. The pleading divides the e-mails into two relevant groups. The first group contains thirty-four e-mails received between March 2023 and February 2025. Germanely, Mr. Lapin filed this suit in March 2026 – within three years of the receipt of the first of those e-mails. The amended complaint further alleges that Mr. Mustafa Godi assigned Mr. Lapin the rights to sue for eight additional e-mails which Mr. Godi received between October 2024 and March 2025.

The amended complaint further alleges that Mr. Lapin was a South Dakota resident from January 2023 through March 2025 – which encompasses the time of receipt of all forty-two e-mails. Specifically, the pleading asserts that Mr. Lapin

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[6] *Id.* § 37-24-41(14).
[7] *Id.* § 37-24-33.
[8] *See id*. (providing that this limitation period applies to the entire Chapter).

"was a Sioux Falls, South Dakota resident at all times material to his receipt of the complained-of spam emails that were sent to him."[9] It further alleges that he signed two, one-year leases in Sioux Falls, South Dakota which he maintained as his sole residence throughout that period. In addition, the amended complaint recites that he (1) opened a bank account in Sioux Falls, (2) attended services at the Chabbad of South Dakota, (3) went on Tinder dates in Sioux Falls, (4) frequented a number of Thai and Sushi restaurants there, (5) rented a co-working space, (6) lifted weights at the local YMCA, (7) attended trivia nights at a local brewery, and (8) regularly filed documents in-person at the Minnehaha County Courthouse for previous anti-spam lawsuits.[10]

The amended complaint also addresses Mr. Lapin's previous references to his "digital nomad" status. The pleading contrasts that status with what he alleges to be his South Dakota residency during times relevant to this filing. Specifically, the pleading alleges that he maintained his nomadic status between February 2012 and December 2022.[11] In contrast, the amended complaint alleges his South Dakota residency from January 2023 through April 2025.[12]

The amended complaint further alleges where Mr. Lapin accessed his e-mails. He contends he "accessed [his] e-mail addresses regularly in Sioux Falls on [his] laptop and cell-phone in Sioux Falls, South Dakota, and sent and/or received email from those email addresses during my time living there."[13]

Thus, the amended complaint specifically alleges Mr. Lapin possesses standing under the Statute to sue for thirty-four prohibited e-mails because he met two of the three criteria for a "South Dakota e-mail" address. More particularly, he

[9] First Am. Compl. ¶ 2 (D.I. 35).
[10] *Id.* ¶ 2(5)(A)–(H).
[11] *Id.* ¶ 2(7).
[12] *Id.* ¶ 2.
[13] *Id.* ¶ 2(9).

alleges (1) his South Dakota residency at all relevant times, and (2) his receipt of thirty-four of the e-mails at an email address that he ordinarily accessed from South Dakota.

Finally, the amended complaint recites that Mr. Godi assigned Mr. Lapin the right to sue for eight additional e-mails.[14] The pleading has the two assignments attached as exhibits.[15]

II. THE PARTIES' CONTENTIONS

First, White Collar emphasizes that statutes of limitations questions are normally questions of procedure which require application of the forum state's law—here, Delaware's.[16] To that end, White Collar contends that Delaware's borrowing statute, 10 *Del. C.* § 8121 (hereinafter "Section 8121"), requires the Court to apply a one-year limitation period, under 10 *Del. C.* § 8115 ("Section 8115") rather than the longer four-year bar supplied by the South Dakota Statute.[17] White Collar emphasizes that Section 8115's limitation applies to "forfeiture[s] upon a penal statute" and contends that the Statute creates such a cause of action.[18]

Second, White Collar contends that Mr. Lapin was not a South Dakota resident when he received the thirty-four e-mails and thus had no standing to bring an action under the Statute.[19] In support, White Collar emphasizes that Mr. Lapin currently resides in Montana, appears to have recently lived in Florida, and that South Dakota courts dismissed his prior suit against White Collar because he did not meet South Dakota requirements for residency. In addition, White Collar separately contests the validity of Mr. Godi's assignments referencing the other eight e-mails.

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[14] *Id.* ¶ 13.
[15] D.I. 36, Ex. C–1.
[16] Def.'s Opening Br. at 12 (D.I. 22).
[17] *Id.*
[18] *Id.* at 14.
[19] *Id.* at 16.

Mr. Lapin responds to White Collar's standing argument regarding the thirty-four e-mails by emphasizing Delaware's notice pleading/reasonable conceivability pleading standard. He contends that the facts he alleged in the amended complaint exceed that standard as to residency. Mr. Lapin also emphasizes that White Collar focuses too narrowly on only residency and ignores the Statute's independent qualification for a South Dakota e-mail address, i.e., an e-mail address routinely accessed from within South Dakota.

Finally, Mr. Lapin contends that Mr. Godi validly assigned his claims regarding the other eight e-mails under South Dakota law. To this end, he argues that Mr. Godi's rights under the Statute are more akin to a contract or property right than a personal injury claim. The former, he emphasizes, are assignable while the latter is not. Accordingly, he contends that he is now the proper party in interest to bring those claims.

III. APPLICABLE STANDARDS

A motion to dismiss is a procedural matter so Delaware law provides the standard.[20] Delaware courts apply notice pleading standards, and under Superior Court Rule 12(b)(6), the Court may not dismiss a complaint unless the "plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof."[21] Furthermore, the complaint—in this case an amended complaint—must be read in the light most favorable to the plaintiff, and all reasonable inferences must be drawn in the plaintiff's favor.[22] The universe of relevant facts for such a motion include the allegations in the complaint and those

[20] *See W.D.C. Holdings, LLC v. IPI Partners, LLC*, 2022 WL 2235005, at *13 (Del. Ch. June 22, 2022) ("Delaware's procedural law, however, governs the standard of review for the motion to dismiss.").
[21] *Fontana v. CSX Transp., Inc.*, 330 A.3d 967, 975 (Del. Super. 2025); *see also Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*, 27 A.3d 531, 537 n.13 (Del. 2011) (explaining that conceivability standard is "more akin to 'possibility'").
[22] *Fontana*, 330 A.3d at 975.

contained in any documents integral to the complaint.[23] Those recited facts are accepted as true at this stage.[24]

Turning to the more specific, first, White Collar seeks dismissal under the applicable statute of limitations which is an affirmative defense. On one hand, a plaintiff is not expected to plead responses to affirmative defenses in his or her complaint because those defenses have not yet been raised.[25] Nevertheless, Superior Court Civil Rule 9(f) makes time a material element of an initial pleading when pleaded.[26] Because "time" may then be material, a Rule 12(b)(6) motion may be the appropriate mechanism to determine if the time for bringing the claim has passed when a time-bar is apparent on the face of the complaint.[27] In a motion to dismiss based on a statute of limitations, Rule 12(b)(6)'s relaxed lens nevertheless applies.[28]

Second, White Collar challenges Mr. Lapin's capacity to bring claims regarding the e-mails he received because he lacks standing under the Statute. That question—whether Mr. Mr. Lapin adequately alleges he received White Collar's e-mails at a South Dakota e-mail address—must be examined under a Rule 12(b)(6) lens as well.

Third, and finally, the question of whether Mr. Godi validly assigned his claims for the eight emails raises what is best considered to be a real party in interest challenge under Superior Court Civil Rule 17(a). That question is one of law under

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[23] *Windsor I, LLC v. CWCCapital Asset Mgmt. LLC*, 238 A.3d 863, 873 (Del. 2020) (quoting *Vanderbilt Income & Growth Assoc., LLC v. Arvida/JMB Managers, Inc.*, 691 A.2d 609, 613 (Del. 1996)).
[24] *Deuley v. DynCorp Int'l, Inc.*, 8 A.3d 1156, 1160 (Del. 2020).
[25] *Dyton v. Ahern*, 2025 WL 3232911, at *3 (Del. Super. Nov. 19, 2025); *see also McNair v. Taylor*, 2007 WL 1218681, at *1 n.3 (Del. Super. Mar. 30, 2007) ("[T]he plaintiff is not required to anticipate affirmative defenses in his complaint.").
[26] *Dyton*, 2025 WL 3232911, at *3.
[27] *Id.* at * 3.
[28] *See id.*; *see also Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319–20 (Del. 2004) (discussing a statute of limitations inquiry on a motion to dismiss).

the circumstances of this case. Here, because Mr. Lapin attached both assignments to his complaint, the court can consider the validity of those assignments in this motion to dismiss.

IV. DISCUSSION

White Collar moves to dismiss the amended complaint alleging the (1) expiration of the statute of limitations, and (2) Mr. Lapin's lack of standing. For the reasons to follow, the Court need not determine whether South Dakota or Delaware's statute of limitations applies because Mr. Lapin's claims meet Rule 12(b)(6)'s standard for either. Namely, he contends he filed suit regarding all forty-two e-mails within three years of receiving them. As a result, at this stage, he satisfies either South Dakota Statute's four-year statute of limitations or the only possible Delaware alternative – a three-year statute. Furthermore, his pleading adequately alleges that Mr. Lapin has standing to sue regarding thirty-four of the e-mails. The two purported assignments regarding the other eight e-mails are not valid, however. Mr. Lapin is not the proper party in interest to bring those claims.

A. Timeliness

The parties identify three possible statutes of limitations that could apply – one under South Dakota law and two under Delaware law. The South Dakota Statute provides a four-year limitation period for claims under the Statute.[29] The two Delaware alternatives include 10 *Del. C.* §8115's one-year limitation, and 10 *Del. C.* § 8106's three-year limitation.

Generally, the law of the forum state—here Delaware—determines what limitation period applies.[30] To that end, the analysis begins with an application of

[29] SDCL § 37-24-33.
[30] *Machala v. Boehringer Ingelheim Pharms., Inc.*, 2017 WL 2814728, at *3 (Del. Super. June 29, 2017).

Delaware's borrowing statute, 10 *Del. C.* §8121, which addresses causes of action that arise outside the State. Section 8121 provides in relevant part:

> [w]here a cause of action arises outside of this State, an action cannot be brought in a court of this State to enforce such cause of action after the expiration of whichever is shorter, the time limited by the law of this State, or the time limited by the law of the state or country where the cause of action arose, for bringing an action upon such cause of action.[31]

In this case, both Delaware's three-year and one-year limitations are shorter than South Dakota's four-year time-bar. Accordingly, a direct application of Section 8121 eliminates South Dakota Statute's four-year statute from further consideration because either Delaware alternative provides a shorter limitation period.[32]

Thus, the focus turns to determining which Delaware statute applies – the one-year or the three-year. Section 8115 provides a one-year time-bar for claims seeking "a forfeiture upon a penal statute."[33] Alternatively, Section 8106 provides that "no action based on a statute . . . shall be brought after the expiration of 3 years from the accruing of such cause of action."[34]

White Collar urges the Court to apply Delaware's one-year limitation because the phrase "civil action for a forfeiture upon a penal statute" found in Section 8115 should apply to the South Dakota statutory claims.[35] At the outset, a plain reading

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[31] 10 *Del. C.* § 8121.

[32] In certain cases, the analysis becomes more complicated if a question arises regarding whether the limitation period in the foreign statute becomes part and parcel of the substantive claim itself – in other words when the time limitation is integral to the cause of action because it is an element of the claim. That does not appear to be the case in the South Dakota Statute. Regardless, the Court declines to address the unlikely application of South Dakota Statute's limitation period further because (1) Delaware's penal forfeiture one-year statute is inapplicable, and (2) Mr. Lapin filed his initial complaint regarding all of the e-mails within Delaware's shorter limitation period under Section 8106.

[33] 10 *Del. C.* § 8115.

[34] 10 *Del. C.* § 8106(a).

[35] 10 *Del. C.* § 8115.

of Section 8115 and the South Dakota Statute resolves the matter. Namely, the Statute provides a private cause of action to recover (1) actual damages, or (2) liquidated damages of one thousand dollars for each e-mail.[36] A statutorily created claim that provides for damages—whether they are actual *or* liquidated because of difficulty of proof—does not provide for a *forfeiture* upon a penal statute. For that reason, Section 8115's one-year bar should be eliminated from consideration at the outset.

White Collar relies on a California appellate decision, *Hypertouch, Inc. v. ValueClick, Inc*., for the opposite proposition.[37] That decision analyzed a California anti-spam statute similar to the South Dakota Statute.[38] There, the court determined that a claim for liquidated damages under California's anti-spam statute provided for a civil forfeiture and fell under California's civil forfeiture statute of limitations.[39] Granted, an application of *Hypertouch* would support White Collar's argument.

The Delaware Supreme Court, however, has addressed Section 8115's scope differently than *Hypertouch*. Our Supreme Court construed the type of claims that qualify as a "forfeiture upon a penal statute" much more narrowly. In *State v. Rossitto*, the Court limited Section 8115 to only two types of claims: (1) ones that follow a *criminal conviction* that becomes a condition precedent to a forfeiture claim, and (2) actions brought by a governmental entity.[40] Claims seeking actual *or*

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[36] SDCL § 37-24-48(1)–(2).
[37] *Hypertouch, Inc. v. ValueClick, Inc.*, 192 Cal. App. 4th 805, 843 (Cal. Ct. App. 2011); *see also Hypertouch, Inc. v. Azoogle.com, Inc.*, 386 F. App'x 701, 702–03 (9th Cir. 2010) (affirming dismissal based on same argument).
[38] Cal. Bus. & Prof. Code § 17529.5.
[39] *Hypertouch, Inc.*, 192 Cal.App.4th at 845.
[40] *See State v. Rossitto*, 331 A.2d 385, 387 (Del. 1974) (confirming that "[a]t common law a conviction was a condition precedent to forfeiture and although some states have abandoned that requisite, Delaware has not. Thus before [a forfeiture] statute may be invoked there must be a 'conviction' and that means a verdict based upon a finding of guilt made by either a judge or a jury" and further qualifying that only such proceedings fall under Section 8115).

liquidated damages qualify as neither. Under *Rossitto*, Section 8115 does not apply because (1) White Collar was not criminally convicted for sending a prohibited e-mail, and (2) Mr. Lapin is not a governmental entity.[41]

Eliminating the possible application of Section 8115 leaves the only other Delaware limitation period—Section 8106's three-year limitation for "action[s] based on a statute."[42] The Delaware Supreme Court applies a two-part test to determine whether a claim is based upon a statute for purposes of Section 8106.[43] The action (1) must have the object of recovering either money or property, and (2) must base that recovery on "a new right created by statute, as opposed to a right enforceable by action in the courts which [sic] finds its roots in the common law."[44]

In this case, Mr. Lapin's statutorily created claims are subject to Section 8106's three-year limitation. First, the object of Mr. Lapin's action is to recover money – he seeks liquidated damages from White Collar. Second, the South Dakota Statute creates a new right that did not exist at common law. Fraud and other personal torts exist at common law. There is no common law cause of action, however, that provides for liquidated damages of $1,000 for receipt of a statutorily defined e-mail that causes no other identified harm. Mr. Lapin's claims under the South Dakota Statute derive from statute and do not exist at common law.

For these reasons, Section 8106's limitation period applies to Mr. Lapin's claims. For Rule 12(b)(6) purposes, the amended complaint adequately alleges that

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[41] Notably, while Delaware law controls this particular issue, the South Dakota Supreme Court has also described the South Dakota Statute as "a remedial statute." *See Lapin v. Zeetogroup, LLC*, 24 N.W.3d 541, 548 (S.D.), *reh'g denied* (Sept. 3, 2025).

[42] 10 *Del. C.* § 8106.

[43] *See Butler v. Butler*, 222 A.2d 269, 272 (Del. 1966) (interpreting "action based on a statute" to exclude nonmonetary divorce proceedings and reach only monetary or property actions where the right to recover is based on a newly created statutory right, rather than having its roots grounded in common law).

[44] *GWG DLP Master Tr. Dated 03/01/06 v. Est. of Frank*, 361 A.3d 31, 37 (Del. 2026) (quoting *Butler v. Butler*, 222 A.2d 269, 272 (Del. 1966)).

he received those e-mails within three years of filing. Accordingly, his claims are timely for purposes of White Collar's motion to dismiss.

B. STANDING UNDER THE SOUTH DAKOTA STATUTE

White Collar next contends that Mr. Lapin has no standing under the South Dakota Statute because he lacks a "South Dakota e-mail address" as that phrase is defined in the Statute. White Collar contends that Mr. Lapin did not have a qualifying e-mail address because he was not a South Dakota resident when he received the spam e-mails. In support, White Collar relies on a South Dakota Supreme Court decision that affirmed the dismissal of an earlier suit Mr. Lapin filed because Mr. Lapin lacked South Dakota residency.[45] White Collar further emphasizes—outside the four corners of the amended complaint and integral documents—that Mr. Lapin has more recently moved to Florida in April 2025. In addition, White Collar further asserts—again, outside the four-corners record—that Mr. Lapin now uses a Montana address. In summary, White Collar contends Mr. Lapin has no standing because he lacked South Dakota residency which means he lacked a South Dakota e-mail address.

The parties agree that South Dakota law controls this issue because South Dakota has the most significant relationship to the interpretation of its own statute.[46] Granted, South Dakota has somewhat heighted requirements to establish residency.[47] Even so, Delaware's Rule 12(b)(6) standards apply and the Court accepts all facts alleged in the amended complaint as true. Thus, the standing question distills to

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[45] *See Zeetogroup, LLC*, 24 N.W.3d at 543 (affirming summary judgment for advertiser on the grounds that Lapin did not possess a "South Dakota electronic mail address").

[46] *See Crawford v. Syngenta Crop Prot., LLC*, 2024 WL 2831554, at *4 (Del. Super. May 31, 2024) (stating that Delaware courts apply the law of the foreign state where the injuries occurred to substantive issues).

[47] *See Zeetogroup, LLC*, 24 N.W. 3d at 547 (rejecting the idea that "residency" is synonymous with "domiciliary" and requiring plaintiffs to prove actual residency to be "considered a 'resident of the State'" within the statue's meaning).

whether the amended complaint alleges facts that provide a conceivable basis to support Mr. Lapin's standing under the South Dakota Statute.

In this case, the amended complaint does so on two alternative bases. First, Mr. Lapin contends that he has "[a]n e-mail address furnished to a resident of [South Dakota]" under SDCL 37-24-41(14)(c). Second, regardless of whether he is a South Dakota resident, he contends that he had "[a]n e-mail address ordinarily accessed from a computer located in . . . state" under SCDL 37-24-41(14)(b). For the reasons below, Mr. Lapin adequately pleads standing based upon residency and his regular access to e-mail in South Dakota.

As to the first basis, the question of South Dakota residency is a fact-specific inquiry under South Dakota law. As the South Dakota Supreme Court explained in *Lapin v. Zeetogroup*, the requirement that the plaintiff possesses a "South Dakota e-mail address" becomes a substantive element of the claim.[48] In *Zeetogroup*, the court examined Mr. Lapin's *past* residency when he referred to himself as a "digital nomad." In contrast, Mr. Lapin's amended complaint now asserts that he subsequently became "a Sioux Falls, South Dakota resident at all times material to his receipt of the complained-of spam emails that were sent to him."[49] The pleading also alleges he entered two year-long residential leases in South Dakota during the time he received the thirty-four emails. As such, the amended complaint sufficiently alleges his South Dakota residency.

In addition, White Collar declines to address Mr. Lapin's alternative basis for standing under the South Dakota statute: that he "accessed his email and receives his email routinely from his cell phone and laptop in [Sioux Falls], South Dakota."[50] On this point, Mr. Lapin emphasizes that the definition of a "South Dakota e-mail

[48] *Id.* at 543.
[49] Pl.'s Compl. ¶ 2 (D.I. 1).
[50] *Id.* ¶ 28.

address" under SCDL 37-24-41(14)(b) is residency independent.[51] Thus, Mr. Lapin contends that he possessed a South Dakota email address under SCDL 37-24-41(14)(b) because he "ordinarily accesse[d]" his email "from a computer located in this state[.]" That assertion, when accepted as true, independently supports that he possessed a "South Dakota e-mail address."

C. THE VALIDITY OF THE ASSIGNMENTS OF RIGHTS

Finally, White Collar moves to dismiss Mr. Lapin's eight assigned claims because South Dakota does not permit one to assign such claims to another. The parties approach the question as one of standing. It is more appropriately considered a question of real party in interest.

Here, the parties agree that South Dakota law applies to this issue because South Dakota has the most significant relationship to the attempted assignment of claims created by a South Dakota statute. Recognizing that South Dakota law controls this inquiry does not immediately settle the matter, however. Neither the parties nor the Court identify South Dakota case law that directly addresses whether statutorily-created causes of action, not available at common law, are assignable. Given such absence, this Court must predict how the South Dakota Supreme Court would decide that issue. For three reasons, the South Dakota high court would not find the assignment valid.

First, South Dakota statutory law permits the assignment of claims that are based only upon property or contract rights. Specifically, SDCL 43-42-2, which addresses the issue of assignability in conjunction with the survivorship of actions, provides, that "[a] thing in action arising out of the violation of a right of property or out of an obligation may be transferred by the owner." On one hand, a "thing in action" is defined quite broadly as a "right to recover money or other personal

[51] Pl.'s Answering Br. at 36 (D.I. 24).

property by a judicial proceeding."[52] On the other hand, the South Dakota Supreme Court has significantly limited the application of that phrase by clarifying that the word "obligation"—the object of the potential transfer—does not include all legal obligations. Instead, the South Dakota Supreme Court defines obligations as only those generated by contract.[53] In that way, property damage and contract claims are assignable under South Dakota law. Others are not.

Second, the Statute itself gives the right to sue to the e-mail's recipient. Namely, SDCL 37-24-48 provides that "[t]he *recipient* of an unsolicited commercial e-mail advertisement . . . may bring an action against any person that violates … [§] 37-24-47." Mr. Lapin is not the "recipient" of the claims assigned to him by Mr. Godi.

Third, South Dakota's rationale for not permitting the assignment of personal injury claims is broadly based. To this end, the South Dakota Supreme Court analysis strongly disfavors champerty.[54] The South Dakota court reasoned that permitting an assignment of such claims violates public policy by encouraging speculation which inappropriately incentivizes increased litigation and fewer settlements.[55] Here, the attempted assignment of such statutory claims smacks of the mercenary and invokes many of the same concerns as would an attempted

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[52] SDCL § 43-42-2.
[53] *See Simons v. Kidd*, 41 N.W.2d 280, 287 (S.D. 1950) ("[T]he legislature intended that word to comprehend only those obligations which arise from contracts, or from particular transactions by operation of law, and that it did not intend the word to embrace obligations imposed by law on all persons.").
[54] *See A. Unruh Chiropractic Clinic v. De Smet Ins. Co. of S. Dakota*, 782 N.W.2d 367, 374 (S.D. 2010) ("Consequently, we are compelled to align ourselves with those cases recognizing that the vestiges of maintenance and champerty, the common-law concerns underlying those doctrines, and the considerations recognized in more recent decisions prohibited the assignments of proceeds of these personal injury claims.").
[55] *Id.* at 373.

assignment of personal injury claims.[56] For this additional reason, the South Dakota Supreme Court would not likely sanction as assignment of claims under the Statute. Mr. Lapin's claims for the eight e-mails subject to those attempted assignments must be dismissed because he is not the real party in interest. Such dismissal is subject to potential revival only if Mr. Godi joins the suit as the proper party in interest.

V. CONCLUSION

WHEREFORE, for the reasons stated above, Defendant White Collar's motion to dismiss is **GRANTED-IN-PART** and **DENIED-IN-PART.** The claims for the eight e-mails purportedly assigned to Mr. Lapin are dismissed because they are not brough by the proper party in interest. The remainder of White Collar's motion to dismiss is denied, and the stay of discovery imposed by the Court is lifted.

IT IS SO ORDERED.

/s/ Jeffrey J Clark
Resident Judge

[56] Courts in other jurisdictions have mixed approaches to this issue. As previously mentioned, South Dakota's e-mail cause of action falls under South Dakota's Deceptive Trade Practices Act. Particularly persuasive are opinions issued by the Supreme Courts of Texas and North Carolina which prohibit assignment of claims under their states' deceptive trade practices acts. *See, e.g.*, *PPG Indus., Inc. v. JMB/Houston Ctrs. Partners Ltd. P'ship*, 146 S.W.3d 79, 87 (Tex. 2004) ("Courts addressing assignability have often distinguished between claims that are property-based and remedial and claims that are personal and punitive, holding that the former are assignable and the latter are not. The DTPA claims here . . . clearly fall into the latter category."); *Invs. Title Ins. Co. v. Herzig*, 413 S.E.2d 268, 271 (N.C. 1992) (explaining that causes of actions alleging unfair or deceptive practices are not assignable because they are "personal in nature.").