

EXHIBIT I

ENDORSED

2015 APR 21 A 11:41

By: _____
Of: _____
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14 Attorneys for Plaintiff
 BRIGHTEDGE TECHNOLOGIES, INC.

15
 16 **SUPERIOR COURT OF CALIFORNIA**
 17 **COUNTY OF SANTA CLARA**

18 BRIGHTEDGE TECHNOLOGIES, INC.,

Case No. 113 C V 256794

19 Plaintiff,

FIRST AMENDED COMPLAINT FOR:

20 v.

- (1) MISAPPROPRIATION OF TRADE SECRETS (CIVIL CODE § 3426 ET SEQ.)
- (2) CIVIL CONSPIRACY TO COMMIT MISAPPROPRIATION OF TRADE SECRETS
- (3) INDUCING BREACH OF CONTRACT
- (4) BREACH OF CONTRACT
- (5) CIVIL CONSPIRACY

21 GABRIEL MARTINEZ, an individual;
 SEARCHMETRICS, INC.; CULLEN
 22 MCALPINE, an individual; SHAUN SILER,
 an individual, and DOES 1 through 10,
 23 inclusive,

24 Defendants.

[UNLIMITED: EXCEEDS \$25,000]

28

1 Plaintiff BrightEdge Technologies, Inc. alleges as follows:

2 **INTRODUCTION**

3 1. Plaintiff BrightEdge Technologies, Inc. (“BrightEdge”) brings this action against
4 Defendants Gabriel Martinez, Searchmetrics, Inc. (“Searchmetrics”), Cullen McAlpine, Shaun
5 Siler, and Does 1 through 10 arising out of the misappropriation of BrightEdge’s trade secrets by
6 Defendants.

7 **THE PARTIES**

8 2. BrightEdge is, and at all times mentioned herein was, a Delaware corporation with
9 its principal place of business in San Mateo County, California.

10 3. On information and belief, Defendant Martinez is a California resident who resides
11 at 623 Rebecca Way, Apt. 1, San Jose, California 95117-1934, Martinez is a former employee of
12 BrightEdge and a current employee of Searchmetrics where he holds the title of Regional Director.

13 4. On information and belief, Defendant Searchmetrics is a Delaware corporation with
14 offices in New York, New York and San Mateo, California that conducts business in California.

15 5. On information and belief, Defendant Cullen McAlpine is a California resident
16 who resides at 248A Harbor Boulevard, Belmont, California 94002-4017. McAlpine is a former
17 employee of BrightEdge and a current employee of Searchmetrics where he holds the title of
18 Senior Sales Manager.

19 6. On information and belief, Defendant Shaun Siler is a California resident who
20 resides at 148 Hop Ranch Road, Santa Rosa, California 95403-7529. Siler is an employee of
21 Searchmetrics and holds the title of Director of Sales. Siler is an officer of Searchmetrics and was,
22 at all times discussed in this Complaint, acting as an agent of Searchmetrics.

23 7. Doe Defendants are persons and/or entities acting in concert or participating with
24 any of the named Defendants, who have participated in or aided and abetted the acts described
25 herein, BrightEdge is ignorant of the true names and capacities of these Defendants and therefore
26 sues them by fictitious names. BrightEdge will amend this Complaint to allege the true names of
27 these Defendants once their identities are properly disclosed by Searchmetrics. On information
28

1 and belief, each Doe Defendant is responsible in some manner for the wrongdoing and events
2 alleged herein.

3 8. BrightEdge is informed and believes that each defendant acted as an agent, director,
4 officer, employee, partner, or co-conspirator of the remaining defendants and that each defendant
5 acted within the course and scope of such agency, directorship, officership, employment,
6 partnership, or conspiracy. BrightEdge is further informed and believes that the conduct of each
7 Defendant was known, authorized, and ratified by each of the other Defendants.

8 9. Whenever in this Complaint an act or omission of Searchmetrics is alleged, said
9 allegation shall be deemed to include an allegation that Searchmetrics acted through its authorized
10 partners, officers, directors, or employees and that the act or omission was authorized by the
11 officers and directors of the corporation, partnership, or company

12 **JURISDICTION AND VENUE**

13 10. Jurisdiction and venue are proper in this County based on Searchmetrics's
14 conducting of business in this County and committing the tortious acts alleged herein within this
15 County by using BrightEdge's trade secrets within this County, intentionally interfering with
16 contract within this County, inducing breach of contract within this County, interfering with
17 economic advantage and prospective economic advantage within this County, and conspiring to
18 commit trade secret misappropriation and intentional interference with economic advantage and
19 prospective economic advantage within this County, and because the individual defendants are
20 California residents or conduct business in the state of California. Cal. Code Civ. Proc. § 395.5.

21 **JURY TRIAL DEMAND**

22 11. BrightEdge hereby requests a jury trial on all issues in this lawsuit.

23 **FACTUAL BACKGROUND**

24 **A. BrightEdge and Searchmetrics compete to provide search engine optimization**

25 12. BrightEdge provides to customers search engine optimization ("SEO") and
26 analytical tools. It developed its technology over several years, resulting in multiple issued U.S.
27 and foreign patents so far, as well as dozens of patent applications currently pending. Its SEO
28 Platform became generally available in June 2010. Critical to BrightEdge's operations is its

1 commitment to customer service. BrightEdge is the largest SEO software platform provider to
2 thousands of major commercial brands and global consumer and business-to-business companies
3 around the world, with hundreds of direct customers and many of the top professional digital
4 marketing agencies.

5 13. Defendant Searchmetrics competes with BrightEdge in at least the field of SEO
6 technology. Searchmetrics's competing SEO software platform includes at least products
7 marketed as "Searchmetrics Essentials" and "Searchmetrics Suite," in addition to all the
8 components and features thereof. In early 2014, Searchmetrics opened an office in San Mateo,
9 California, directly across the street from BrightEdge's headquarters. Exhibit A at 1 ("[N]ow a
10 new office in San Mateo . . ."); Exhibit B ("About Us" page from www.searchmetrics.com);
11 Exhibit C ("Locations" page from www.searchmetrics.com). Indeed, on Searchmetrics's website,
12 the map for Searchmetrics's San Mateo location actually identifies and shows the location of
13 BrightEdge's headquarters. *Id.* Searchmetrics disclosed to BrightEdge that it wanted to follow
14 BrightEdge in the marketplace. Searchmetrics has hired at least five former BrightEdge
15 employees to perform services for Searchmetrics nearly identical to the services they performed at
16 BrightEdge.

17 14. Searchmetrics has sold and/or is selling to customers in California its SEO software
18 platform, including customers in this County.

19 **B. Gabriel Martinez and Cullen McAlpine signed confidentiality agreements as**
20 **BrightEdge employees**

21 15. Gabriel Martinez was hired by BrightEdge as an Account Executive in May 2012.
22 At BrightEdge, the role of an Account Executive is to convert sales leads or opportunities,
23 generated by other BrightEdge employees, into BrightEdge customers by presenting BrightEdge's
24 products.

25 16. Cullen McAlpine was hired by BrightEdge as an Enterprise Business
26 Representative Trainee on January 23, 2012. At BrightEdge, the role of an Enterprise Business
27 Representative is to generate sales opportunities to provide to Account Executives. McAlpine
28 worked as an Account Executive beginning on January 1, 2013.

1 17. In connection with Martinez’s employment with BrightEdge, he entered into a
2 Proprietary Information and Inventions Agreement (“PIIA”), which is attached hereto as
3 Exhibit D. The PIIA signed by Martinez states:

4 I agree that all Inventions and all other business, technical and
5 financial information (**including, without limitation, the identity
6 of and information relating to customers** or employees) I
7 develop, learn or obtain during the term of my employment that
8 relate to Company or the business or demonstrably anticipated
9 business of Company or that are received by or for Company in
10 confidence, constitute “Proprietary Information.” I will hold in
11 confidence and not disclose or, except within the scope of my
employment, use any Proprietary Information. . . . Upon
termination of my employment, I will promptly return to Company
all items containing or embodying Proprietary Information
(including all copies), except that I may keep my personal copies
of (i) my compensation records, (ii) materials distributed to
shareholders generally and (iii) this Agreement.

12 Exhibit D, ¶ 4 (emphasis added). Martinez therefore knew of the importance to BrightEdge of
13 information relating to customers and their identities.

14 18. In connection with McAlpine’s employment with BrightEdge, he entered into the
15 same PIIA. McAlpine’s PIIA is attached hereto as Exhibit E. The PIIA signed by McAlpine
16 states:

17 I agree that all Inventions and all other business, technical and
18 financial information (**including, without limitation, the identity
19 of and information relating to customers** or employees) I
20 develop, learn or obtain during the term of my employment that
21 relate to Company or the business or demonstrably anticipated
22 business of Company or that are received by or for Company in
23 confidence, constitute “Proprietary Information.” I will hold in
24 confidence and not disclose or, except within the scope of my
employment, use any Proprietary Information. . . . Upon
termination of my employment, I will promptly return to Company
all items containing or embodying Proprietary Information
(including all copies), except that I may keep my personal copies
of (i) my compensation records, (ii) materials distributed to
shareholders generally and (iii) this Agreement.

25 Exhibit E, ¶ 4 (emphasis added). McAlpine therefore knew of the importance to BrightEdge of
26 information relating to customers and their identities.

27 19. BrightEdge expends substantial effort and resources on developing sales leads or
28 opportunities and converting those leads or opportunities into BrightEdge customers. The

1 identities and specific contact persons for its customers are therefore key to BrightEdge’s business
2 and the secrecy of that information is paramount to its success. BrightEdge maintains this
3 information as a trade secret and marks printouts of any contents or sub-lists as confidential.
4 Because BrightEdge’s product is software as a service, much of its expenses consist of locating
5 and bringing on new customers. BrightEdge therefore relies on its current customers to renew
6 their subscriptions as a focus of its business model. The timing and amount of BrightEdge’s
7 contracts with its existing customers and the secrecy of that information is therefore also of great
8 importance to BrightEdge. BrightEdge also maintains this information as a trade secret. All of
9 this information and BrightEdge’s records thereof derive independent economic value from not
10 being generally known to the public or to BrightEdge’s competitors.

11 20. BrightEdge maintains a customer relationship database (its “Salesforce database”)
12 to store information such as customer lists, contact information for key contact persons at
13 customers, and the amount and expiration date of existing customers’ contracts. This Salesforce
14 database is a record of compiled information about BrightEdge’s current and prospective
15 customers. This unique record, compiled and maintained by BrightEdge and kept confidential by
16 BrightEdge, constitutes proprietary information its employees agree, and agreed, to hold in
17 confidence. This record includes information such as the identity of key contacts within the
18 organizations that BrightEdge services, direct and personal telephone numbers of those contacts,
19 pricing and terms of BrightEdge’s contracts with its customers, and information regarding contract
20 renewal and other information regarding the timing of contract changes.

21 21. While employed by BrightEdge, Martinez and McAlpine had access to its
22 Salesforce database. This record constitutes Proprietary Information under the PIIA, and is a trade
23 secret of BrightEdge.

24 **C. Searchmetrics hires Gabriel Martinez**

25 22. On information and belief, on March 27, 2013, Tom Schuster, Searchmetrics’s
26 CEO, formally offered Martinez employment as a “Senior Sales Manager” at Searchmetrics.
27 While seeking employment at Searchmetrics, Martinez had e-mailed to Searchmetrics’s Shaun
28

1 Siler a list of Martinez's most recent closed deals at BrightEdge:

2 > Hi Shaun,
>
3 > It was great speaking with you yesterday. I am thrilled at the opportunity to join the team at Search Metrics and use my experience
and industry knowledge to drive revenue for the team quickly.
>
4 > I am sorry we weren't able to meet in person today. Attached is the spreadsheet I created detailing my most recent wins. I look
forward to connecting next week on next steps and getting feedback from your CEO. Thanks Shaun!
>
5 > Regards,
> Gabe
>
6 > Gabriel Martinez
> 408-410-0159
7 >

8 Exhibit F (highlighting added).

9 23. After Searchmetrics's employment offer, between March 27 and April 17, 2013,
10 Martinez logged into his BrightEdge account on Salesforce.com to execute thousands of events
11 and access numerous BrightEdge summary reports, sales dashboards and customer account files.
12 The summary reports, sales dashboards, and customer account files pertain to multiple customer
13 accounts for which Martinez had no responsibility or involvement. Searchmetrics contacted at
14 least one such customer after Martinez left BrightEdge.

15 24. Unknown to BrightEdge at the time, Martinez also connected to his BrightEdge-
16 issued laptop a personal external hard drive, a Western Digital My Book 1110 USB Drive. (This
17 was revealed by a later analysis of his work laptop.) Martinez did so for the first time on March
18 30, 2013. After the drive was attached to his computer, Martinez's Salesforce account was used to
19 access BrightEdge's Salesforce database. Martinez conducted numerous activities in the
20 Salesforce database to retrieve information and generate copies of that information. Martinez also
21 accessed on his BrightEdge computer numerous online cloud storage websites.

22 25. On April 3, 2013, Martinez accepted the offer from Searchmetrics's CEO to join
23 Searchmetrics as a Senior Sales Manager. Martinez was still employed by BrightEdge as of this
24 date and did not inform BrightEdge that he had accepted an employment offer from a direct
25 competitor.

26 26. Searchmetrics hired and employed Martinez with knowledge of and because of his
27 access to BrightEdge's confidential customer and other information. This was part of a pattern by
28

1 Searchmetrics of seeking to acquire BrightEdge information through deceptive and/or illegal
2 tactics.

3 27. After accepting the offer with Searchmetrics, Martinez used his BrightEdge
4 Salesforce account to: download BrightEdge data sheets; view and export information about
5 clients and prospects; and download and then send a list of BrightEdge's "Active Clients" to his
6 personal email. These materials are BrightEdge's trade secrets. For example, on April 3, the day
7 he accepted the offer with Searchmetrics, Martinez downloaded BrightEdge's trade secret data
8 sheets entitled "BrightEdge Content Optimizer.pdf," "BrightEdge Share of Voice Datasheet.pdf,"
9 and "Travelocity Content Optimizer success story.pdf."

10 28. Between March 27 until the time Martinez gave notice, there was a considerable
11 increase in his activity in BrightEdge's Salesforce database. From March 27 through April 7,
12 Martinez accessed account and sales information from numerous entries in BrightEdge's
13 Salesforce database, leaving behind evidence of at least 1,160 instances of retrieving information
14 from the database.

15 29. On April 8, 2013, Martinez gave notice of termination of employment. His last day
16 in the BrightEdge offices was April 9, 2013. He transitioned his accounts and returned his
17 BrightEdge-issued laptop the same day.

18 30. To induce BrightEdge to keep him on the payroll for another two weeks after he
19 announced his resignation, Martinez maliciously lied to his supervisor, telling him when asked
20 that Martinez was definitely not going to work for a competitor. When other colleagues asked
21 Martinez where he was going to work, he gave various evasive or noncommittal answers, such as
22 telling his colleagues that he was "taking a break." Martinez flatly refused to inform BrightEdge's
23 head of Human Resources where he was going to work when asked.

24 31. On April 8 and 9, Martinez's last two days at BrightEdge's offices, Martinez's
25 SalesForce account shows that Martinez accessed account and sales information from numerous
26 entries in BrightEdge's Salesforce database, with 1,304 instances of retrieving information.
27 Martinez accessed account information for accounts that Martinez had no responsibility for while
28 at BrightEdge.

1 32. Based on the above and on information and belief, Martinez intended to, and did,
2 begin working on behalf of Searchmetrics while he was still employed by BrightEdge and
3 accessing BrightEdge’s Salesforce database and other confidential information and trade secrets.
4 Martinez began working for Searchmetrics while still accepting pay from BrightEdge after having
5 lied to BrightEdge about his job plans.

6 33. Searchmetrics knew of Martinez’s intent and actions to begin working on behalf of
7 Searchmetrics while still employed by BrightEdge.

8 34. On April 9, Martinez sent an e-mail from one of his personal e-mail addresses to
9 another of his personal e-mail addresses with a record from BrightEdge’s Salesforce database
10 containing BrightEdge’s active clients with a monthly revenue of greater than \$0. Exhibit G. In
11 other words, Martinez downloaded a list of all actively paying customers of BrightEdge. *Id.* This
12 record contained 517 clients of BrightEdge and was marked with the Salesforce.com copyright
13 and stated “Confidential Information - Do Not Distribute” as shown below:

14

Confidential Information - Do Not Distribute Copyright © 2000-2013 salesforce.com , inc. All rights reserved. Privacy Statement Security Statement Terms of Use 508 Compliance

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16
17 *Id.* at 14. This record constitutes a BrightEdge trade secret and is hereinafter referred to as the
18 “Salesforce.com 517 Client List.”

19 35. Searchmetrics uses a database to manage its customer information similar to
20 BrightEdge’s Salesforce database. Searchmetrics records its customer information using software
21 called SugarCRM or Sugar. Exhibit H (Wolf Declaration). Its database is referred to herein as the
22 Sugar database. This database tracks the entry of information about customers and prospective
23 customers, including when particular information was entered into the database and, possibly, who
24 entered the information. On information and belief, some or all of the Salesforce.com 517 Client
25 List has been uploaded into the Searchmetrics Sugar database.

26 36. After April 9, Martinez had no reason to access BrightEdge’s Salesforce database
27 for any purpose, including the Salesforce.com 517 Client List. All of Martinez’s accounts had
28 already been transferred to other Account Executives at BrightEdge. Martinez nonetheless

1 remotely accessed BrightEdge’s Salesforce database and performed 67 “export” or “report” events
2 in the database after April 9. On April 17, Martinez downloaded seven datasheets from
3 BrightEdge’s Salesforce database. *Id.*

4 37. On information and belief, at a Searchmetrics training in New York City on or
5 around April 23, 2013, Martinez sent a text message to a BrightEdge employee asking how
6 BrightEdge split its sales territory responsibilities in New York.

7 38. On April 30, 2013, Searchmetrics received the BrightEdge PIIA, which obligated
8 BrightEdge employees not to disclose BrightEdge proprietary information. On information and
9 belief, Searchmetrics knew that both Martinez and McAlpine had signed such agreements with
10 BrightEdge.

11 39. After Martinez departed BrightEdge in April 2013, Martinez, with the knowledge
12 of Searchmetrics, used BrightEdge’s Salesforce.com customer information including the
13 Salesforce.com 517 Client List. Martinez used BrightEdge’s confidential trade secret information
14 to target BrightEdge customers for Searchmetrics. In October 2013, Searchmetrics called a
15 BrightEdge customer on the customer’s personal mobile number—a number contained in
16 BrightEdge’s Salesforce database, but not generally known. The customer later questioned how
17 Martinez or Searchmetrics could have obtained the private phone number. Searchmetrics also sent
18 an email to the customer. The contents of the email demonstrated access to and improper use of
19 BrightEdge’s confidential information five to six months after Martinez’s departure.

20 40. Martinez also provided confidential BrightEdge information to other Searchmetrics
21 employees to assist them in targeting BrightEdge customers on behalf of Searchmetrics. Martinez
22 did so with the knowledge, approval, and authorization of Searchmetrics’s management and
23 officers.

24 41. On information and belief, Searchmetrics and Martinez used BrightEdge’s
25 confidential information, including confidential information about BrightEdge’s products,
26 BrightEdge’s internal sales structure, and BrightEdge’s customers’ contract renewal period.

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1 **D. Searchmetrics Hires Cullen McAlpine**

2 42. Cullen McAlpine resigned from BrightEdge on September 5, 2013. On
3 information and belief, he began employment with Searchmetrics on or about September 20,
4 2013.

5 43. While still employed by BrightEdge, McAlpine downloaded a Microsoft Excel
6 spreadsheet record of trade secret customer sales and contact information from BrightEdge's
7 confidential Salesforce database on April 25, 2012 at 11:52 a.m. The record contained
8 information of 264 clients of BrightEdge and was downloaded from BrightEdge's Salesforce
9 database. (hereinafter the "Salesforce.com 264 Client List"). In addition, this record may have
10 been updated in April 2013. In violation of his PIIA, McAlpine took this record with him when he
11 left employment at BrightEdge on September 5, 2013.

12 44. Approximately a year and a half later, after McAlpine had quit working at
13 BrightEdge and started working at Searchmetrics, McAlpine provided the Salesforce.com 264
14 Client List record to Defendant Siler. Siler was Director of Sales at Searchmetrics and
15 McAlpine's supervisor, as well as an officer of Searchmetrics and was acting at all times as an
16 agent of Searchmetrics. The trail of the record stolen from BrightEdge's Salesforce database and
17 transferred to Searchmetrics's Sugar database is confirmed by the following email sent by
18 McAlpine to Siler on September 30, 2013:

19 *[continued on next page]*

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From: Cullen McAlpine <c.mcalpine@searchmetrics.com>
Sent: Monday, September 30, 2013 12:16 PM
To: Shaun Siler <s.siler@searchmetrics.com>
Subject: BE Customer List
Attach: Excel workbook.xlsx

7
8

Hi Shaun,

9
10

Here is a that was updated in April. Let me know how the upload into Sugar goes.

11

Best,
Cullen

12 Exhibit I. The e-mail had an attachment named “Excel workbook.xlsx.”

13 45. The file attached to McAlpine’s e-mail, entitled “Excel workbook.xlsx,” was a
14 Microsoft Excel spreadsheet that listed 264 BrightEdge customers. At the bottom of the Excel
15 spreadsheet there is a legend that states:

16
17
18
19
20

Customer By Industry
Copyright (c) 2000-2012 salesforce.com, inc. All rights reserved.
Confidential Information - Do Not Distribute
Generated By: Cullen McAlpine 4/25/2012 11:52 AM
BrightEdge

21 Exhibit J. Therefore, both Siler and McAlpine knew that this information was BrightEdge’s
22 confidential trade secret information and consciously and willfully disregarded that fact.

23 46. Siler and Searchmetrics hired McAlpine because of his access to confidential
24 BrightEdge information.

25 47. The information was clearly marked as “Confidential Information” and came from
26 BrightEdge. Siler knew this information came from BrightEdge and that any use was improper.
27 Siler uploaded this information into Searchmetrics’s Sugar database for the benefit of
28 Searchmetrics, McAlpine, and himself. Siler and Searchmetrics used this information to harm

1 BrightEdge directly.

2 48. Cullen McAlpine used BrightEdge information to target BrightEdge clients on
3 behalf of Searchmetrics with the knowledge of Searchmetrics's upper management and directors,
4 including Siler.

5 49. After Siler hired McAlpine, both McAlpine and Siler sought to acquire more
6 BrightEdge trade secret information by recruiting more employees from BrightEdge. McAlpine
7 did so knowing that such acquisition of trade secret information was illegal.

8 **E. Searchmetrics Uses BrightEdge's Trade Secrets to Compete with BrightEdge**

9 50. Searchmetrics had also hired another former BrightEdge employee, Louis Bunya.
10 Bunya began his employment at Searchmetrics in February 2014 as a Regional Director of Sales.
11 Bunya had previously been employed by BrightEdge in a similar role as an Account Executive
12 and had the benefit of knowing what was in the BrightEdge Salesforce database when he first saw
13 the contents of the Searchmetrics Sugar database. Regarding his time at Searchmetrics, Bunya
14 stated in a sworn affidavit:

15 8. In Searchmetrics's Sugar CRM database, I recognized data that I thought could
16 have only come from BrightEdge. When I saw this information, I thought, "Wow, there's a lot
17 of data here" and noted what an advantage this information would be in selling. This
18 information was entered for four specific, existing clients of BrightEdge, which Mr. Martinez
19 had claimed as "his." This information was for specific BrightEdge clients that I know had not
20 been Mr. Martinez's clients at BrightEdge. I am certain that these prospective clients had not
21 been Mr. Martinez's clients at BrightEdge because I know the actual account executives at
22 BrightEdge who had closed those sales. Some of the prospects Mr. Martinez were going after
included accounts I had closed deals with.

23 Exhibit K. Bunya left Searchmetrics in May 2014.

24 51. On information and belief, Searchmetrics has contacted and continues to contact
25 the customers and prospects whose information, which is contained in records held as a trade
26 secret by BrightEdge, was improperly downloaded by Martinez, McAlpine, and/or the Doe
27 Defendants at the encouragement and/or direction of Searchmetrics.

28

1 63. Defendants were not authorized to use BrightEdge’s trade secrets. Despite this,
2 Defendants improperly used, copied, and otherwise misappropriated confidential information.

3 64. At the time Defendants misappropriated BrightEdge’s trade secrets, Defendants
4 knew or had reason to know that the trade secrets were acquired by improper means, and were
5 being disclosed and/or used without BrightEdge’s authorization. As detailed above, Searchmetrics
6 knew Mr. Martinez was a party to a Proprietary Information and Inventions Agreement (“PIIA”)
7 with BrightEdge. Defendants were also aware, from the nature of the information that BrightEdge
8 did not authorize the disclosure or use of the information for the benefit of BrightEdge’s
9 competitors.

10 65. On information and belief, Defendants have acquired, disclosed, and/or used
11 BrightEdge’s trade secrets and confidential information without BrightEdge’s consent and
12 threatens to continue to improperly use and disclose BrightEdge’s trade secrets and confidential
13 information to its benefit.

14 66. Defendants’ unauthorized acquisition of, disclosure of, retention of, and/or use of
15 BrightEdge’s trade secret information is a misappropriation of the information, and violates trade
16 secret law including the Act.

17 67. As a result of Defendants’ violations of the Act, BrightEdge has been damaged in
18 an amount to be proven at trial. BrightEdge is also entitled to recover for the unjust enrichment
19 caused by the misappropriation of its trade secrets information. In the alternative to damages or
20 unjust enrichment, BrightEdge is entitled to a reasonable royalty.

21 68. Additionally, BrightEdge has been harmed in non-monetary ways that can be
22 remedied only by injunctive relief. BrightEdge has no adequate remedy at law. Unless enjoined
23 by an order of this Court, BrightEdge will continue to be harmed by Defendants’ wrongful acts.

24 69. BrightEdge is also entitled to an award of exemplary and punitive damages and
25 attorneys’ fees pursuant to the Act based on Defendants’ willful and malicious misappropriation of
26 BrightEdge’s trade secrets information.

27 WHEREFORE, BrightEdge prays for relief as set forth below.

28

1 **SECOND CAUSE OF ACTION**

2 **Civil Conspiracy to Commit Trade Secret Misappropriation**

3 **(against Martinez, Searchmetrics, McAlpine, Siler, and the Doe Defendants)**

4 70. BrightEdge realleges and incorporates by reference paragraphs 1–69.

5 71. Each Defendant had knowledge of and agreed to the actions taken by the other
6 Defendants to misappropriate BrightEdge’s trade secrets in violation of California’s Uniform
7 Trade Secrets Act (“Act”), Cal. Civ. Code §§ 3426.1–3426.11.

8 72. As a result of Defendants’ civil conspiracy to commit trade secret
9 misappropriation, BrightEdge has been damaged in an amount to be proven at trial.

10 73. Additionally, BrightEdge has been harmed in non-monetary ways that can be
11 remedied only by injunctive relief. BrightEdge has no adequate remedy at law. Unless enjoined
12 by an order of this Court, BrightEdge will continue to be harmed by Defendants’ wrongful acts.

13 WHEREFORE, BrightEdge prays for relief as set forth below.

14 **THIRD CAUSE OF ACTION**

15 **Inducing Breach of Contract**

16 **(against Searchmetrics and Siler)**

17 74. BrightEdge realleges and incorporates by reference paragraphs 1–73.

18 75. As part of the consideration for his employment by BrightEdge, Martinez and
19 McAlpine each entered into a PIIA with BrightEdge. These were valid and enforceable contracts
20 between BrightEdge and Martinez and BrightEdge and McAlpine.

21 76. On information and belief, Searchmetrics and Siler knew about BrightEdge’s
22 contracts with Martinez and with McAlpine.

23 77. On information and belief, Searchmetrics and Siler engaged in acts to intentionally
24 induce Martinez to breach his contract with BrightEdge by, *inter alia*, disclosing and utilizing
25 BrightEdge’s Proprietary Information outside the scope of his employment duties at BrightEdge.

26 78. On information and belief, Searchmetrics and Siler engaged in acts to intentionally
27 induce McAlpine to breach his contract with BrightEdge by, *inter alia*, disclosing and utilizing
28 BrightEdge’s Proprietary Information outside the scope of his employment duties at BrightEdge.

1 79. On information and belief, Searchmetrics and Siler caused actual breach of the
2 contract by Martinez.

3 80. On information and belief, Searchmetrics and Siler caused actual breach of the
4 contract by McAlpine.

5 81. As a direct and proximate result of Searchmetrics and Siler's acts in causing actual
6 breach of the PIIA, BrightEdge has been and continues to be damaged in an amount to be proven
7 at trial.

8 WHEREFORE, BrightEdge prays for relief as set forth below.

9 **FOURTH CAUSE OF ACTION**

10 **Breach of Contract (against Martinez and McAlpine)**

11 82. BrightEdge realleges and incorporates by reference paragraphs 1–81.

12 83. As part of the consideration for his employment by BrightEdge, Martinez and
13 McAlpine entered into a PIIA with BrightEdge.

14 84. Martinez and McAlpine breached the PIIA by, inter alia, disclosing and utilizing
15 BrightEdge's Proprietary Information outside the scope of their employment duties at BrightEdge.

16 85. As a direct and proximate result of Martinez's and McAlpine's breach of the PIIA,
17 BrightEdge has been and continues to be damaged in an amount to be proven at trial.

18 86. In addition, unless Martinez and McAlpine are restrained from further breaches of
19 the PIIA, BrightEdge will be permanently and irreparably harmed. BrightEdge therefore requests
20 and is entitled to injunctive relief and/or specific performance of the PIIA.

21 WHEREFORE, BrightEdge prays for relief as set forth below.

22 **FIFTH CAUSE OF ACTION**

23 **Civil Conspiracy (against all Defendants)**

24 87. BrightEdge realleges and incorporates by reference paragraphs 1–86.

25 88. Defendants conspired with each other to commit the tortious acts described above.

26 89. The conspiracy and the acts undertaken by Defendants in furtherance of the
27 conspiracy caused BrightEdge to suffer damages, for which Defendants are jointly and severally
28 liable.

1 WHEREFORE, BrightEdge prays for relief as set forth below.

2 **PRAYER FOR RELIEF**

3 BrightEdge therefore prays for relief as follows:

- 4 1. For damages according to proof at trial;
- 5 2. To recover for the unjust enrichment cause by misappropriation that is not taken
6 into account in computing damages for actual loss;
- 7 3. In the alternative to damages or unjust enrichment, a reasonable royalty;
- 8 4. For disgorgement of the profits made by Defendants;
- 9 5. For exemplary and punitive damages according to proof at trial;
- 10 6. For pre- and post-judgment interest on the forgoing amounts at the maximum rate
11 permitted by law;
- 12 7. For reasonable attorneys' fees and costs of suit;
- 13 8. For an accounting as required or needed to account for any period of damages,
14 profits, unjust enrichment, interest, exemplary damages, or royalty not otherwise
15 awarded by the jury;
- 16 9. For injunctions that:
 - 17 a. Preliminarily and permanently enjoin Defendants, and all persons acting in
18 concert or participating with Defendants, from directly or indirectly
19 copying, distributing, opening, obtaining, accessing, using, modifying,
20 deleting, publishing, or disclosing any of BrightEdge's confidential,
21 proprietary, and/or trade secret information;
 - 22 b. Require Defendants, and all persons acting in concert or participating with
23 Defendants, to return any documents, data, compilations, or information in
24 their possession which contains, or makes reference to any of BrightEdge's
25 confidential, proprietary, and/or trade secret information;
 - 26 c. Enjoin Defendants, and all persons acting in concert or participating with
27 Defendants, from any further contact with any customer listed in or
28 contained in any of BrightEdge's confidential, proprietary, and/or trade

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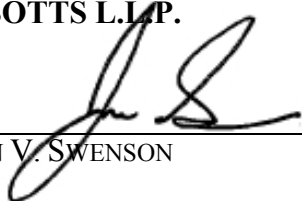
secret information, for such period of time as would have been required to
create the BrightEdge confidential information through proper means;

10. For such other and further relief as the Court deems just and proper.

DATED: April 21, 2015

BAKER BOTTS L.L.P.

By



JON V. SWENSON

Attorneys for Plaintiff
BRIGHTEDGE TECHNOLOGIES, INC.

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VERIFICATION

I, the undersigned, certify and declare that I have reviewed all of the foregoing **First Amended Complaint**.

I am the Vice President, Sales of BrightEdge Technologies, Inc., and am authorized to make this verification as its agent, and I make this verification for that reason. I am informed and believe, and on that ground allege, that the factual matters stated in the document described above are true and correct based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 10th day of April, 2015, at San Mateo, California.


[Name] Barrett Foster
[Title] Vice President, Sales