

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Contract

Softchoice, Inc.,

Court File No. 27-CV-08-1354

Judge John L. Holahan

Plaintiff,

v.

Martin Schmidt and Michael Johnson,

**NOTICE OF MOTION AND MOTION
TO AMEND THE COMPLAINT AND
THE CASE CAPTION**

Defendants.

TO: Defendants above-named and their attorneys, Daniel Wilczek, Esq., John Gordon, Esq., Joel Schroeder, Esq., and Trey Roberts, Esq., Faegre & Benson, 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-3901:

TAKE NOTICE THAT at a date and time to be determined, before the Honorable John L. Holahan, in Courtroom 810 of the Hennepin County Government Center, Plaintiff herein, Softchoice, Inc., shall move the above Court to amend the complaint and the case caption, as reflected in the Proposed Amended Complaint attached as Exhibit A.

Plaintiff shall move the above Court for an Order:

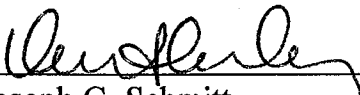
1. allowing Plaintiff to add claims against En Pointe Technologies, Inc. and En Pointe Technologies Sales, Inc.; and
2. allowing Plaintiff to amend the case caption to reflect that the Plaintiff's name is "Softchoice Corporation," not "Softchoice, Inc."

This motion is made pursuant to Rule 15 of the Minnesota Rules of Civil Procedure, and is based upon all the files, records and proceedings herein, including the

affidavits and the Memorandum of Law in Support of Plaintiff's Motion to Amend the Complaint and the Case Caption, which will be filed according to the Minnesota General Rules of Practice for the District Courts.

Dated: June 24, 2008

HALLELAND LEWIS NILAN & JOHNSON, P.A.

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ATTORNEYS FOR PLAINTIFF

ACKNOWLEDGMENT

Plaintiff, by and through its undersigned counsel, hereby acknowledges that costs, disbursements, reasonable attorneys' fees and witness fees may be awarded to the opposing party or parties pursuant to Minn. Stat. § 549.211 if the statute is violated.




EXHIBIT A

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Contract

Softchoice Corporation,

Court File No. 27-cv-08-1354

Judge John L. Holahan

Plaintiff,

v.

PROPOSED AMENDED COMPLAINT

En Pointe Technologies, Inc., En Pointe
Technologies Sales, Inc., Martin Schmidt and
Michael Johnson,

Defendants.

For its Complaint, Plaintiff Softchoice Corporation ("Softchoice") states and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Softchoice is a New York corporation doing business in Minnesota.
2. En Pointe Technologies, Inc. is a Delaware corporation doing business in Minnesota through its subsidiary, En Pointe Technologies Sales, Inc. (together, "En Pointe").
3. On information and belief, defendant Martin Schmidt is a resident of the State of Minnesota and resides at 13220 45th Avenue South, Plymouth, Minnesota 55442.
4. On information and belief, defendant Michael Johnson is a resident of the State of Minnesota and resides at 10520 33rd Avenue North, Plymouth, Minnesota 55441.
5. Venue is proper in this Court under Minn. Stat. § 542.09 because Mr. Schmidt and Mr. Johnson both live in Hennepin County.

BACKGROUND INFORMATION

6. This case arises out of a nationwide concerted attempt by En Pointe to compete unfairly against Softchoice in the marketplace.

7. Softchoice and En Pointe sell sophisticated and complex software, hardware and information technology services to commercial accounts throughout the United States. Softchoice and En Pointe are direct competitors.

8. Since 1999, En Pointe's sales have declined sharply; sales in fiscal year 2006 were less than half of what they were in fiscal year 1999. Unable to create sufficient revenue through organic growth of its business, En Pointe has chosen to increase its revenue by hiring Softchoice employees for the purpose of stealing the very kind of confidential information it forbids its own employees even to discuss with others.

9. Accordingly, and upon information and belief, over the past several years En Pointe has relied on a "business model" of raiding competitors in general, and Plaintiff Softchoice in particular, of experienced sales representatives. That model has permitted En Pointe to reap the benefits of an experienced, knowledgeable sales force without making the investment in time and resources required to develop such a sales force.

Softchoice and Software Plus

10. Besides En Pointe, Softchoice competes with a number of similar companies offering similar products and services. Prior to December 2007, one of Softchoice's competitors was Software Plus, Ltd ("Software Plus" or "SWP").

11. On December 11, 2007, Softchoice bought all of the stock of Software Plus. Softchoice purchased Software Plus outright, including all of its assets and liabilities.

Martin Schmidt's Employment with Software Plus and Softchoice

12. At the time of the acquisition, Mr. Schmidt worked for Software Plus as a sales representative. Mr. Schmidt had been employed by Software Plus for approximately seven years in that capacity at the time of the acquisition.

13. Mr. Schmidt entered into a Confidentiality and Non-Compete agreement ("Schmidt Agreement") with Software Plus on November 28, 2006, a copy of which is attached to this Complaint as Exhibit A. In return for signing this Agreement, Mr. Schmidt was allowed to participate in the Software Plus Employee Retention Plan ("Plan"), which provided a significant opportunity for profit sharing, based upon the company's success and Mr. Schmidt's individual success. Employees who were included in the Plan, including Mr. Schmidt, were then eligible to receive profit sharing after five years if they complied with the terms of the Plan and the Confidentiality and Non-Compete agreement.

14. In the Schmidt Agreement, Mr. Schmidt promised that he would not, during his employment with Software Plus and for a period of one year following termination, "actually undertake or attempt to engage in any business, without the consent of SWP, either directly or indirectly, acting alone or as a member of a partnership, or as a director, officer, employee, agent, consultant or representative which competes with SWP within the state of Minnesota."

15. Mr. Schmidt also agreed that he would not, during his employment and for a period of two years following termination, undertake or attempt:

- a. To market, offer or provide products or services substantially similar to those marketed, offered or provided by SWP, to any person or entity who has received such services from SWP or who has been solicited by you and/or SWP at any time during the Nonsolicitation Period whether or not you were involved in providing such products or services or involved in soliciting such person or entity;
- b. To solicit, divert, take away or interfere with SWP's relationship, affiliation or association with any person or entity which is an agent, supplier, or customer of SWP at any time in which you were employed by SWP.

16. The agreement also prohibited Mr. Schmidt from acquiring any interest in, or being employed by or otherwise associated with or affiliated with, any person who is a Large Account Reseller ("LAR") as such term is defined by Microsoft, Inc.

17. On December 11, 2007, as a result of its purchase of Software Plus, Softchoice became the successor and assign of Software Plus' non-compete agreements, including Mr. Schmidt's agreement.

Michael Johnson

18. Mr. Johnson began his employment with Softchoice on March 12, 2001 as a sales representative.

19. On January 16, 2007, Mr. Johnson was offered a promotion to Branch Manager of the Softchoice branch in Minneapolis. As Branch Manager, Mr. Johnson would have increased access to Softchoice's confidential and trade secret information and would also have increased client contact.

20. In consideration of the promotion, Mr. Johnson was required to sign a non-solicitation agreement. The agreement stated in pertinent part that:

I agree that I shall not, during my employment at the Company and for a period of twelve (12) months immediately following the termination of my relationship with the Company for any reason (whether voluntarily or involuntarily), either directly or indirectly, on my own behalf or in the service or on behalf of others:

(i) Directly or indirectly solicit, entice, or induce any client or vendor referral source whom I solicited or did business with on behalf of the Company, or with whom I otherwise became acquainted as a result of my employment with the Company, to become a client, of any other person, firm or corporation with respect to products and/or services then sold or under development by the Company or competitive with the products and/or services then sold or under development by the Company, or to cease doing business with the Company, and I shall not contact or approach any such person, firm or corporation for such purpose or authorize or knowingly approve the taking of such actions by any other person...

21. Mr. Johnson signed the letter on January 17, 2007, and then signed another copy on January 18, 2007. He returned at least one copy to Softchoice on January 18, 2007, within the

three business days set forth in the letter. A copy of Mr. Johnson's agreement is attached hereto as Exhibit B.

22. Mr. Johnson would not have been allowed to assume the position of Branch Manager if he had not signed the January 16, 2007 letter, including the non-solicitation agreement.

Softchoice's Confidential and Trade Secret Information

23. The identity of Softchoice's customers, their contacts, the customers' product mix, and pricing are highly-guarded secrets and are not publicly available.

24. For example, there is no publicly available method for obtaining the information that Softchoice maintains about its customers, including their hardware systems, software needs, product mix and pricing.

25. If a competitor of Softchoice had access to Softchoice's customers and their specific needs, the competitor would have a short-cut to competing with Softchoice's contracts and a competitive advantage over Softchoice.

26. Moreover, the pricing, rebates and other arrangements that Softchoice negotiates with its suppliers, like Microsoft, is highly confidential and proprietary information. This information guides Softchoice's pricing strategy and profit margin. This information is not available from either the supplier or Softchoice.

27. If a competitor of Softchoice had access to Softchoice's supplier pricing, pricing strategy, and profit margin, the competitor could easily undercut Softchoice's pricing in a way that would otherwise be unavailable to them.

28. During their employment with Softchoice, Mr. Schmidt and Mr. Johnson had access to all of this information. As sales representatives, Mr. Schmidt and Mr. Johnson

ultimately set the prices for their customers. In order to be able to set prices for their customers, Softchoice provided Mr. Schmidt and Mr. Johnson with supplier pricing and other information regarding their profit margins.

29. Additionally, Mr. Schmidt and Mr. Johnson were intimately familiar with the specific product mix and pricing for each of their customers, because they were usually the only sales representative who serviced those customers.

30. Mr. Johnson, as a Branch Manager, was familiar with the product mix and pricing for all of the Minneapolis Branch's customers.

31. Both Software Plus and Softchoice took numerous measures to maintain the safety of their confidential and trade secret information, including confidentiality agreements, noncompetition and non-solicitation agreements such as those executed by Mr. Schmidt and Mr. Johnson, password protection for access to all computer-based applications, physical security measures to protect hard files, firewalls, and by limiting access to confidential information to only certain authorized users.

32. For example, Mr. Schmidt and Mr. Johnson were required to use a password to access Softchoice information and only had access to customer information for those customers with whom they had relationship.

En Pointe Hires Schmidt and Johnson For the Purpose of Trading on Schmidt's and Johnson's Customer Relationships and Trade Secret Knowledge

33. On December 21, 2007, shortly after Softchoice purchased all of Software Plus' stock on December 11, 2007, Mr. Schmidt resigned his employment.

34. On the same day, Mr. Schmidt accepted a position as an Account Executive with En Pointe.

35. On December 27, 2007, Mr. Johnson resigned his employment.

36. The next day, Mr. Johnson accepted a position with En Pointe.
37. Prior to their resignations, En Pointe actively recruited Schmidt and Johnson.
38. Before Schmidt and Johnson resigned from Softchoice, Schmidt and Johnson sent their respective Softchoice employment agreements to En Pointe for review.
39. En Pointe reviewed the agreements. After reviewing the agreements, En Pointe told Schmidt and Johnson that their agreements with Softchoice were unenforceable.
40. Despite its awareness of the agreements, En Pointe made offers to Schmidt and Johnson and told them that because their agreements with Softchoice were unenforceable, Schmidt and Johnson were free to work for En Pointe. En Pointe also told Schmidt and Johnson that they could solicit the customers with whom they worked at Softchoice on behalf of En Pointe.
41. After Schmidt and Johnson started working at En Pointe, En Pointe worked closely with Schmidt and Johnson to solicit their Softchoice accounts using the trade secret information Schmidt and Johnson learned as Softchoice employees.
42. En Pointe representatives attended meetings with Softchoice customers and Schmidt or Johnson for the purpose of causing the customers to switch their business from Softchoice to En Pointe.
43. After the meeting, En Pointe representatives made additional personal solicitations to Schmidt's and Johnson's Softchoice customers for the purpose of causing the customers to switch their business from Softchoice to En Pointe.
44. As of the time of the filing of this Complaint, Softchoice has lost at least two major accounts in Minnesota due to Defendants' actions.

En Pointe's Hiring of Other Softchoice Employees For the Purpose of Gaining Access to Softchoice's Customers and Trade Secrets

45. En Pointe's efforts to misappropriate Softchoice's trade secrets and confidential business information, to violate Softchoice's agreements with its employees, and to interfere with Softchoice's relationships with its customers is not confined to Minnesota.

46. En Pointe representatives have misappropriated trade secrets and confidential business information in Arizona, California, Illinois, Indiana, Missouri, Nebraska, Nevada, North Carolina, Oregon, Virginia, Washington, and the District of Columbia. En Pointe representatives have also tortiously interfered with Softchoice's agreements with its employees in Missouri. As a result of En Pointe's improper actions, Softchoice has lost accounts and revenue in all of these areas.

COUNT I: BREACH OF CONTRACT

47. Softchoice realleges and incorporates by reference each and every allegation stated above.

48. Mr. Schmidt's agreement prohibits him from undertaking to act as an employee of a business which competes with Softchoice, the entity which purchased his former employer within the State of Minnesota.

49. Mr. Schmidt's agreement also prohibits him from undertaking or attempting to market, offer, or provide products or services substantially similar to those marketed, offered, or provided by Softchoice, to a person or entity who has received such services from Software Plus or Softchoice or who has been solicited by Mr. Schmidt or Software Plus or Softchoice during Mr. Schmidt's employment and for the two years following his termination.

50. Mr. Schmidt's agreement further prohibits him from soliciting, diverting, taking away or interfering with Softchoice's relationship, affiliation, or association with any person or

entity that is an agent, supplier, or customer of Softchoice at any time during Mr. Schmidt's employment with Software Plus.

51. As a result of Mr. Schmidt's employment with En Pointe and his actions as an En Pointe employee, Softchoice has suffered, continues to suffer, and will suffer irreparable injury for which there is no adequate remedy at law and has suffered and will suffer actual money damages.

52. Mr. Johnson's agreement prohibits Mr. Johnson, for a period of twelve (12) months immediately following the termination of his relationship with the Softchoice for any reason (whether voluntarily or involuntarily), either directly or indirectly, on his own behalf or in the service or on behalf of others:

(i) Directly or indirectly solicit, entice, or induce any client or vendor referral source whom [he] solicited or did business with on behalf of the Company, or with whom [he] otherwise became acquainted as a result of [his] employment with the Company, to become a client, of any other person, firm or corporation with respect to products and/or services then sold or under development by the Company or competitive with the products and/or services then sold or under development by the Company, or to cease doing business with the Company, and [he] shall not contact or approach any such person, firm or corporation for such purpose or authorize or knowingly approve the taking of such actions by any other person...

53. As a result of Mr. Johnson's employment with En Pointe and his actions as an En Pointe employee, Softchoice has suffered, continues to suffer, and will suffer irreparable injury for which there is no adequate remedy at law and has suffered and will suffer actual money damages.

COUNT II: TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS

54. Softchoice realleges and incorporates by reference all of the allegations stated above.

55. Softchoice had valid and enforceable contracts with Schmidt, Johnson and other former Softchoice employees.

56. Before En Pointe hired Schmidt, Johnson and other former Softchoice employees, it knew of Softchoice's contracts with those employees, in which they had agreed not to compete with Softchoice and/or to solicit Softchoice's customers.

57. En Pointe intentionally procured the breach of the agreements referenced in paragraph 53.

58. En Pointe's interference with the agreements referenced in paragraph 53 was not justified.

59. As a result of En Pointe's unlawful acts, Softchoice has sustained damages.

**COUNT III: TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL
RELATIONSHIPS**

60. Softchoice realleges and incorporates by reference all of the allegations stated above.

61. Mr. Schmidt has interfered with Softchoice's prospective contractual relationships with at least two of Softchoice's customers, by causing the customers, Alliant Tech Systems, Inc. and Fastenal, to discontinue their relationships with Softchoice.

62. Mr. Johnson has interfered with Softchoice's prospective contractual relationships with at least one other Softchoice customer.

63. En Pointe has interfered with Softchoice's prospective contractual relationships with its customers by inducing Alliant Tech Systems, Inc., Fastenal and other entities to discontinue their relationships with Softchoice.

64. Mr. Schmidt's, Mr. Johnson's, and En Pointe's interference was improper in motive or means and was solely for their own pecuniary benefit, to Softchoice's detriment.

65. As a result of Mr. Schmidt's and Mr. Johnson's unlawful acts, Softchoice has sustained damages, and unless Mr. Schmidt and Mr. Johnson are enjoined, Softchoice will continue to suffer actual money damages and irreparable harm.

66. As a result of En Pointe's unlawful acts, Softchoice has sustained damages.

**COUNT IV: MISAPPROPRIATION OR THREATENED
MISAPPROPRIATION OF TRADE SECRETS**

67. Softchoice realleges and incorporates by reference all of the allegations stated above.

68. Softchoice owns numerous trade secrets as defined by Minn. Stat. §325C.01, subd. 5, including its supplier pricing, profit margin information, pricing strategies, and customer pricing.

69. Softchoice's trade secrets are not known to the public, and Softchoice has taken numerous steps to protect their secrecy.

70. Softchoice derives economic value from the continued secrecy of its trade secrets.

71. In the course of their employment with Softchoice, Mr. Schmidt and Mr. Johnson had access to trade secrets belonging to Softchoice.

72. Upon information and belief, Mr. Schmidt, Mr. Johnson and other former Softchoice employees have used and disclosed to En Pointe the trade secrets that they obtained from Softchoice.

73. Mr. Schmidt, Mr. Johnson and other former Softchoice employees inevitably will use and/or disclose the trade secrets they obtained from Softchoice on behalf of En Pointe.

74. As a result of the misappropriation of trade secrets, Softchoice has suffered and/or will suffer irreparable injury and actual money damages.

75. As a result of En Pointe's misappropriation of trade secrets referenced in paragraphs 69 and 71, Softchoice has suffered damages.

COUNT V: BREACH OF DUTY

76. Softchoice realleges and incorporates by reference all of the allegations stated above.

77. As employees of Softchoice, Mr. Schmidt and Mr. Johnson owed duties to Softchoice both before and after they terminated their employment, including but not limited to the duty of loyalty and the duty of confidentiality.

78. Upon information and belief, Mr. Schmidt and Mr. Johnson have breached one or more of the duties owed to Softchoice.

79. As a result of Mr. Schmidt's and Mr. Johnson's breach of duty, Softchoice has sustained damages. Unless Mr. Schmidt and Mr. Johnson are enjoined, Softchoice will continue to suffer actual money damages and irreparable harm.

COUNT VI: CLAIM FOR EQUITABLE RELIEF

80. Softchoice realleges and incorporates by reference all of the allegations stated above.

81. As a direct and proximate consequence of the acts of Mr. Schmidt and Mr. Johnson, Softchoice will suffer damage and injury to its business. Softchoice is in danger of losing or has lost customer contacts developed at its expense, and confidential, trade secret information pertaining to its business, and Mr. Schmidt and Mr. Johnson will be unjustly enriched at the expense of Softchoice. Unless restrained, Mr. Schmidt and Mr. Johnson will commit the acts complained of herein.

82. Softchoice has no plain, speedy or adequate remedy at law and requires the aid of a court of equity so that Mr. Schmidt and Mr. Johnson may be enjoined and restrained from

continuing to engage in illegal acts harmful to Softchoice and to restore the status quo that existed between, in and among the parties prior to Mr. Schmidt's and Mr. Johnson's wrongful actions. Unless Mr. Schmidt and Mr. Johnson are enjoined, Softchoice will be irreparably damaged.

WHEREFORE, Plaintiff prays that the Court enter judgment against Mr. Schmidt, Mr. Johnson, and En Pointe as follows:

1. Enjoining Mr. Schmidt and Mr. Johnson preliminarily and permanently from using or disclosing any Softchoice trade secret or confidential information;
2. Enjoining Mr. Schmidt preliminarily and permanently from employment with En Pointe or any other person or entity that competes with Softchoice within the State of Minnesota for a period of two years after termination of his employment with Softchoice;
3. Enjoining Mr. Schmidt preliminarily and permanently from marketing, offering, or providing products or services substantially similar to those marketed, offered or provided by Softchoice, to any person or entity who has received such services from Softchoice or who has been solicited by Mr. Schmidt and/or Softchoice at any time during Mr. Schmidt's employment and for a period of two years following the termination of his employment, whether or not Mr. Schmidt was involved in the providing such products or services or involved in soliciting such person or entity;
4. Enjoining Mr. Schmidt preliminarily and permanently from soliciting, diverting, taking away, or interfering with Softchoice's relationship, affiliation, or association with any person or entity which is an agent, supplier, or customer of Softchoice at any time in which Mr. Schmidt was employed by Softchoice;

5. Enjoining Mr. Schmidt preliminarily and permanently from acquiring any interest in, or being employed by or otherwise associated with or affiliated with, any person who is a Large Account Reseller ("LAR") as such term is defined by Microsoft, Inc.;

6. Enjoining Mr. Johnson from directly or indirectly soliciting, enticing, or inducing any client or vendor referral source whom he solicited or did business with on behalf of the Company, or with whom he otherwise became acquainted as a result of his employment with the Company, to become a client, of any other person, firm or corporation with respect to products and/or services then sold or under development by Softchoice or competitive with the products and/or services then sold or under development by Softchoice, or to cease doing business with the Company, and enjoining him from contacting or approaching any such person, firm or corporation for such purpose or authorize or knowingly approve the taking of such actions by any other person;

7. Enjoining Mr. Schmidt and Mr. Johnson from further violating any other restrictive covenant contained in their agreements with Softchoice;

8. Enjoining Mr. Schmidt and Mr. Johnson from any further tortious interference with Softchoice's actual or prospective contractual relationships;

9. Ordering Mr. Schmidt and Mr. Johnson to deliver up for destruction all materials embodying any Softchoice trade secret or confidential information;

10. Granting restitution and compensatory damages against Mr. Schmidt, Mr. Johnson, and En Pointe in such amount as the Court may deem appropriate after consideration of the evidence;

11. For such other and further relief as the Court may deem just; and

12. For its costs and disbursements herein.

Dated: _____, 2008

HALLELAND LEWIS NILAN & JOHNSON, P.A.

By: _____

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Katie M. Connolly Reg. No. 0338357

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