

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

SOFTCHOICE CORPORATION,
a New York Corporation,

Plaintiff,

v.

Case No. CL07-5777

HOLLY L. GRIFFIN,

and

ANDREW CLEMENTS,

Defendants.

MOTION FOR LEAVE TO AMEND

Now comes Plaintiff, Softchoice Corporation, by counsel, pursuant to Rule 1:8 of the Rules of the Virginia Supreme Court, for leave to amend its Complaint to add defendant En Pointe Technologies and its related companies, and in support of this motion, states:

1. Plaintiff filed its original complaint on September 26, 2007, seeking damages for the unlawful use by defendants Griffin and Clements, on behalf of their employer, En Pointe Technologies (En Pointe), of Softchoice's confidential information.
2. In the course of discovery both in Virginia and in similar lawsuits filed by Softchoice in other jurisdictions, Softchoice has developed an understanding of En Pointe's business model. This model calls for En Pointe's systematic and aggressive interference with Softchoice's business interests through En Pointe's solicitation of Softchoice employees and their confidential Softchoice knowledge.
3. Plaintiff did not fully understand the active role of En Pointe at the time it instituted this action.

4. Plaintiff seeks leave to amend the original complaint to add En Pointe as a defendant and to add various claims against En Pointe, Clements, and Griffin that accurately reflect Softchoice's realization that En Pointe's active solicitation and successful recruitment of both defendants was a part of their ongoing national scheme to promote their own business interests through the unlawful undermining of Softchoice's business.

5. Rule 1:8 of the Rules of the Virginia Supreme Court states that "leave to amend shall be liberally granted in furtherance of the ends of justice." Permitting the amendment of the Complaint here would not prejudice defendants. First, trial is not scheduled in this matter for approximately six months. Second, while formal discovery is underway, it is far from complete. Only three party depositions have been taken, along with one third-party deposition that has been initiated but not completed. Third, defendants will not be surprised at the addition of En Pointe as a defendant. Defendants' depositions, the deposition of Plaintiff's corporate representative, and the incomplete deposition of the En Pointe manager who recruited defendants to En Pointe have all been filled with discussion of the interplay between En Pointe, the two defendants, and the business interests of Softchoice. Indeed, the addition of En Pointe will aid or in some ways make possible the complete narrative of the defendants.

6. Therefore, full justice cannot be done in this matter without the addition of En Pointe. Virginia Code § 8.01-7.

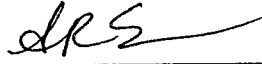
7. Defendants also will not be surprised at the nature of the proposed additional claims. They all relate to the facts as described in the original Complaint, consistent with the requirements of Virginia Code § 8.01-6.1: they arose out of En Pointe's conduct in soliciting defendants as employees and defendants' use of Softchoice confidential information at the request of En Pointe.

8. Softchoice has been diligent in discovering the information supporting the additional claims, through use of discovery directed at understanding the full scope of En Pointe's national program to recruit Softchoice employees, including defendants Clements and Griffin.

9. The proposed amended Complaint is filed with this motion.

Therefore, Softchoice respectfully requests that this Court grant its Motion for Leave to Amend the original Complaint in this matter to add En Pointe and various claims against it.

SOFTCHOICE CORPORATION


By: 
Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June, 2008, a true copy of the foregoing document was hand-delivered to:

Jeremiah A. Denton III, Esq.
477 Viking Drive, Suite 170
Virginia Beach, VA 23452



VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

SOFTCHOICE CORPORATION,
a New York Corporation,

Plaintiff,

v.

Case No. CL07-5777

HOLLY L. GRIFFIN,

and

ANDREW CLEMENTS,

and

En POINTE TECHNOLOGIES SALES, INC.,
A Foreign Corporation,

SERVE: Registered Agent
Corporation Service Company
11th South 12th Street
Richmond, VA 23218

and

En POINTE TECHNOLOGIES, INC.
A Foreign Corporation,

SERVE: Clerk, Secretary of the Commonwealth
Service of Process Department
P.O. Box 2452
Richmond, VA 23218,

(last known address of En Pointe Technologies, Inc.:
2381 Rosecrans Avenue
Suite 325
El Segundo, CA 90245)

Defendants.

FIRST AMENDED COMPLAINT

1. This is a civil action alleging a civil claim for statutory conspiracy, violation of the Virginia Computer Crimes Act, breach of fiduciary duty, breach of contract, and other claims. Plaintiff seeks preliminary and permanent injunctive relief as well as compensatory and punitive damages and costs of litigation, including reasonable attorneys' fees.

2. While employed by the plaintiff, the individual defendants misappropriated confidential materials belonging to the plaintiff (including "computer data" as defined by the Computer Crimes Act); contacted the plaintiff's vendors and customers in order to solicit their business away from the plaintiff, and encouraged other employees of the plaintiff to leave in order to work for the corporate defendants.

3. Certain of the claims in this case arise out of a nationwide concerted attempt by defendants and others to enable En Pointe to compete unfairly against Softchoice in the marketplace for value-added information technology products and services. By their actions, the members of this conspiracy (including the defendants and other persons) acted in concert to misappropriate Softchoice's confidential information, trade secrets, and customer relationships, and use them to injure Softchoice. EnPointe has orchestrated and effected this conspiracy through such improper methods as hiring former Softchoice employees in the expectation they will use confidential Softchoice data and trade upon protected relationships Softchoice established with its clients at substantial expense; encouraging, permitting, and benefitting from the violation of confidentiality and other agreements Softchoice legitimately entered into with its employees; counseling Softchoice employees that they did not need to comply with their lawful obligations to Softchoice, and in other manners. All defendants conspired with each other, and the corporate defendants conspired with other persons not party to this action, maliciously to injure the business and property of Softchoice.

THE PARTIES

4. Plaintiff Softchoice Corporation (“Softchoice”) is a New York corporation with its principle place of business in Chicago, Illinois. Softchoice is a wholly-owned subsidiary of Softchoice Corporation, a Canadian corporation. Softchoice is authorized to do business in the Commonwealth of Virginia. Through its Virginia regional and local offices, Softchoice does business throughout the Commonwealth, including in the City of Norfolk.

5. Defendant Andrew Clements is a resident and citizen of the Commonwealth of Virginia, and a former employee of Softchoice. At the time of his resignation in August 2007, Clements was Branch Manager for the Hampton Roads office of Softchoice. As a former employee of Softchoice, Clements was responsible for doing business throughout the Commonwealth, including in the City of Norfolk.

6. Defendant Holly Griffin is a resident and citizen of the Commonwealth of Virginia, and a former employee of Softchoice. At the time of her resignation in September 2007, Griffin was a Sales Representative in the Hampton Roads office of Softchoice. As a former employee of Softchoice, Griffin was responsible for doing business throughout the Commonwealth, including in the City of Norfolk.

7. Defendant En Pointe Technologies Sales, Inc., is a foreign corporation registered to do business in the Commonwealth of Virginia. This defendant is the employer of the individual defendants, and is a wholly-owned subsidiary of defendant En Pointe Technologies, Inc., a Delaware corporation with its principal place of business in California. En Pointe Technologies, Inc., is not registered or authorized to do business in the Commonwealth of Virginia, but regularly does business in the Commonwealth through its subsidiary. These defendants are referred to collectively as “En Pointe.”

BACKGROUND

8. Softchoice is a single-source, value-added reseller of Information Technology equipment and services. Softchoice was founded in 1989, and in 2006 had annual revenues in excess of \$700 million. Softchoice has its U.S. headquarters in Chicago, and maintains twenty-nine regional offices throughout the United States, including in the Commonwealth of Virginia. Softchoice has been named “Value Added Reseller of the Year” by *VARBusiness Magazine*.

9. Defendants Clements and Griffin worked for Softchoice in its Hampton Roads office. Clements worked for Softchoice for over nine years, and Griffin worked for Softchoice for over two years.

10. During the course of their employment by Softchoice, the individual defendants were responsible for direct contact with Softchoice’s clients in the City of Norfolk, throughout the Commonwealth, and with branch offices of those clients throughout the nation. The individual defendants also were responsible for, and regularly engaged in, contact with Softchoice’s vendors and suppliers (including Microsoft Corporation, Softchoice’s largest single supplier).

11. The individual defendants were privy to confidential and proprietary information belonging to Softchoice, which is of substantial value to Softchoice by virtue of its not being generally known in the business. Such information includes, but is not limited to, confidential price and cost information; confidential internal client and vendor contact information; data on internal Softchoice operations, and other data. This information was subject to measures, reasonable under the circumstances, to maintain its confidential nature.

12. On August 27 and September 17, 2007, Clements and Griffin, respectively, resigned from Softchoice to work for En Pointe. En Pointe is a direct competitor of Softchoice.

CONFIDENTIAL INFORMATION AND THE EN POINTE BUSINESS MODEL

13. During the early years of En Pointe's operations, it experienced rapid growth in net sales. However, 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. 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.

14. En Pointe has admitted that its success and plans for future growth depend on its ability to attract and retain highly skilled personnel, including sales personnel. En Pointe has represented that competition for qualified personnel in the information technology industry is intense, and that a failure in its efforts to attract and retain qualified personnel could have a material adverse effect upon its business.

15. En Pointe's internal General Terms of Employment represent that customer identity, contractual terms, pricing and sourcing information, and business planning data are all confidential.

16. En Pointe's internal Business Conduct rules represent that confidential information includes information regarding the peculiarities, preferences, and manner of doing business of a subsidiary, affiliate, supplier or customer.

17. En Pointe's counsel has represented, in the course of this litigation, that En Pointe's customer identities are confidential.

18. En Pointe's counsel has represented, in the course of this litigation, that even whether En Pointe considers its customers' identities to be confidential, is itself confidential.

19. Notwithstanding En Pointe's own recognition of this information as confidential, En Pointe has conspired with the individual defendants in this case, and with other individuals elsewhere, to obtain and trade upon precisely this type of information from Softchoice, to the benefit of En Pointe and its conspirators, and with the intention, purpose, and effect, of injuring the business and property of Softchoice. Unable to create sufficient revenue through organic growth of its business, En Pointe has chosen to increase its revenue by stealing the very kind of confidential business relationships it forbids its own employees even to discuss with others.

20. En Pointe's Vice President of Sales, Michael Rapp, spoke with defendants Griffin or Clements between six and a dozen times prior to their leaving Softchoice and joining En Pointe. Other En Pointe personnel met with the individual defendants in Virginia and worked together with them to attempt to divert business from Softchoice's existing and potential customers to En Pointe.

21. In hiring the individual defendants, it was En Pointe's expectation that Griffin and Clements would use their existing relationships (which include, of a necessity, their knowledge, gained while employed by Softchoice, of confidential information including client identities, contractual terms, pricing, source information, "peculiarities, preferences, and manner of doing business" of clients and suppliers, and other confidential information) to benefit En Pointe and accordingly injure Softchoice.

22. Subsequent to their hiring by En Pointe, the individual defendants did in fact use their existing relationships (which include, of a necessity, their knowledge, gained while employed by Softchoice, of confidential information including client identities, contractual

terms, pricing, source information, “peculiarities, preferences, and manner of doing business” of clients and suppliers, and other confidential information) to benefit En Pointe and accordingly injure Softchoice.

23. En Pointe knew, or should have known, of Softchoice’s contracts with Griffin and Clements protecting Softchoice’s confidential information.

24. En Pointe knew of Griffin and Clements’ common law and statutory duties to preserve the confidences and trade secrets of Softchoice.

25. En Pointe and other persons, including the individual defendants and other persons not parties to this litigation but employees or former employees of Softchoice, combined together to misappropriate and use confidential information and trade secrets belonging to Softchoice, to the detriment of Softchoice, both inside and outside the Commonwealth of Virginia.

26. As a major factor in Softchoice’s efforts to ensure the integrity of its own trade secrets and confidential and proprietary information, Softchoice requires its employees to confirm in writing that they will maintain the confidentiality of Softchoice information.

27. Defendant Clements executed a written acknowledgement that he would abide by the “rules, policies, and standards” set forth in the Softchoice Employee Handbook. The written acknowledgement specifically requires Clements to “read and understand the Statement of Confidentiality” and to affirm that he “will abide by its terms and conditions.” A copy of the agreement signed by Clements is appended to and incorporated into this Complaint.

28. Defendant Griffin executed a written acceptance of her offer of employment, agreeing to comply with the terms and conditions of that offer. A copy of the offer letter, as well

as the signed agreement by Griffin, is appended to and incorporated into this Complaint. Among those terms and conditions is a provision respecting confidentiality:

[I]nformation you acquire during your employment with Softchoice Corporation is considered confidential and proprietary and cannot be utilized for any other purposes other than conducting business on behalf of Softchoice and you agree not to violate any obligation with respect to such information, whether during your employment with Softchoice or thereafter.

29. The Softchoice Statement of Confidentiality is set forth in the Softchoice Handbook section on “Protecting Softchoice Assets,” imposes specific confidentiality requirements on both defendants:

Confidential & proprietary information . . . is information that belongs to Softchoice. And we need to keep it that way. Company business and financial plans, the identity of customers and their contact information, employee records and salary data, marketing and pricing strategies, agreements with vendors, product design specifications, any of this confidential and proprietary information would be very useful to Softchoice competitors.

* * * * *

In short, all confidential information belongs to Softchoice and you are not to disclose this information to anyone, except in the performance of your job or as required by law, whether during your employment at Softchoice or at any time after you leave.

30. The individual defendants, who were employees at will, contracted to abide by Softchoice’s rules, policies and standards, including specifically the Softchoice Statement of Confidentiality.

**THE DEPARTURE OF CLEMENTS AND
GRIFFIN AND THEIR ATTEMPTS TO MISAPPROPRIATE
INFORMATION, BUSINESS, AND PERSONNEL FROM SOFTCHOICE**

31. Late in the Spring of 2007, Clements mentioned to a subordinate that he intended to leave Softchoice by the end of 2007. Clements did not, however, inform Softchoice itself or

any Softchoice manager of his intentions. Rather, for several months thereafter, Clements continued to work at Softchoice, maintaining his access to Softchoice employees and to its confidential and proprietary information.

32. On information and belief, Clements recruited Griffin to leave Softchoice and to go to work for En Pointe during the Summer of 2007.

33. During the time he was employed by Softchoice and owed Softchoice a fiduciary duty of loyalty, defendant Clements actively attempted to recruit other employees for En Pointe, in addition to Griffin. For example, early in August 2007, Clements attempted to recruit a former Softchoice employee, Michael Sampson, to work for En Pointe.

34. In August 2007, while he was a Softchoice employee and owed Softchoice a fiduciary duty of loyalty, defendant Clements made Microsoft Corporation, a critical supplier to both Softchoice and En Pointe, aware of his imminent departure for En Pointe. This was done for the benefit of En Point and Clements, and to the detriment of Softchoice. Clements undertook such actions as part of an effort to divert business relationships from Softchoice to En Pointe.

35. In a meeting with Softchoice personnel in the week before defendant Clements submitted his resignation to Softchoice, Microsoft personnel confirmed their belief that Clements had already accepted a position with En Pointe. This meeting was prior to the time Clements informed Softchoice that he was leaving.

36. During August 2007, Clements approached Griffin to recruit her to leave Softchoice and work for En Pointe.

37. In August 2007, while she was a Softchoice employee and owed Softchoice a fiduciary duty of loyalty, defendant Griffin set up a meeting for September 25, 2007 with

Softchoice's client CF Sauer. The purpose of this meeting was to divert CF Sauer's business away from Softchoice and to En Pointe.

38. Softchoice became aware of Clements's anticipated departure. Robert O'Sullivan, a Softchoice regional manager, traveled from his office in Boston to Hampton Roads on August 27, 2007, to meet with Clements and attempt to convince him to stay. O'Sullivan was aware of En Pointe's policy of raiding competitors, including Softchoice, of experienced sales personnel, in order to have access to and use their former employer's confidential information against the former employer. O'Sullivan was, in fact, recruited by En Pointe himself, but refused to join En Pointe when En Pointe told him he would be expected to raid his existing customer and client base, using Softchoice's confidential information.

39. Immediately before his scheduled meeting with Mr. O'Sullivan, Clements sent a detailed proprietary document from his work computer at Softchoice to his home computer. This confidential file was prepared by Adam Burton, Softchoice's Mid-Atlantic District Sales Manager, on August 15, 2007. The document listed Softchoice sales representative responsibilities, Softchoice territorial assignments, the alignment of various accounts, internal Softchoice account allocation information, and detailed customer and source information regarding Microsoft. This document contained trade secrets belonging to Softchoice.

40. After misappropriating this confidential and proprietary document, Clements met with Mr. O'Sullivan, and assured Mr. O'Sullivan that he would consider remaining with Softchoice. Nevertheless, Clements resigned later that day, August 27, 2007.

41. Immediately thereafter, Clements redoubled efforts to solicit Softchoice customers to leave Softchoice and retain En Pointe. For example, on August 28, 2007, and using Softchoice's confidential and proprietary client and contact information, Clements called the IT

Strategic Sourcing Manager at Performance Food Group to solicit that client away from Softchoice. Performance Food Group is a client of Softchoice in Virginia, including in the City of Norfolk.

42. On or about August 29, 2007, defendant Clements spoke by telephone with defendant Griffin and with another Softchoice sales representative, Megan Kennett, while those persons were in the Softchoice office. The purpose of this telephone call was to recruit Kennett to come to work for En Pointe. Clements told both Griffin and Kennett that they would be contacted by an En Pointe director to discuss potential jobs.

43. Also late in August 2007, Clements inquired about returning to the Softchoice office to retrieve personal belongings. Softchoice told Clements when his manager would be present to meet him in the office. Clements avoided the office when a manager was present; he visited the office to speak with Griffin on Thursday, August 30, 2007, when the Softchoice manager and Kennett were out on a sales call. However, Clements did not retrieve his personal belongings at that time.

44. Clements returned to the Softchoice office on Friday, August 31, 2007, a time when he knew the Softchoice manager would be absent a time other than that specified by Softchoice for Clement's visit. He again spoke with defendant Griffin, and spoke with Megan Kennett about the benefits of coming to work for En Pointe. Clements solicited Kennett to leave Softchoice and go to work for En Pointe. Clements reiterated that a director from En Pointe would contact Griffin and Kennett.

45. During the week of September 3, 2007, while she was a Softchoice employee and owed Softchoice a fiduciary duty of loyalty, defendant Griffin set up a meeting for September 18, 2007 with Softchoice's client Pliant Corporation. Pliant is a leading supplier of

film and plastics; Pliant is a customer of Softchoice in Virginia, including in the City of Norfolk. The purpose of this meeting was to solicit Pliant Corporation's business away from Softchoice and to En Pointe.

46. During the late August and early September time period when she was being recruited by En Pointe, Griffin demanded and obtained access to detailed confidential computer account information respecting a large number of Softchoice customers and clients. Griffin had no legitimate business reason to access this information. Griffin demanded and obtained access to this information for purposes inimical to Softchoice, and accordingly in excess of any legitimate authorization she may have possessed in accessing the information.

47. On or about Saturday, September 8, 2007, Clements received a letter from Softchoice's California counsel which, among other things, apprised Clements that Softchoice knew he had transmitted confidential information from his work computer to his home computer.

48. During the week of September 10, 2007, defendant Griffin was almost entirely absent from the Softchoice offices. Softchoice managers attempted many times during the week to contact Griffin on Softchoice business, but Griffin was unresponsive.

49. On September 13, 2007, the one occasion she did report to the office that week during working hours, Griffin spent substantial time and effort printing documents from Softchoice's computer system, including confidential customer, account, and vendor contact information. Griffin had no legitimate need to create a hard-copy of this information, since it was readily available to her on the Softchoice office computer system.

50. Although Griffin was largely absent from Softchoice during the week of September 10, 2007 and Softchoice managers were unable to reach her, Softchoice later learned Griffin had been engaged in detailed communications that week with Microsoft about continuing

to service CF Sauer, a Softchoice client in Virginia. The purpose of these communications was to divert CF Sauer's business away from Softchoice and to En Pointe.

51. During the week of September 10, 2007, while she was a Softchoice employee and owed Softchoice a fiduciary duty of loyalty, defendant Griffin set up a meeting for September 17, 2007 with Softchoice's client Owens & Minor, Inc. Owens & Minor is the nation's leading distributor of brand name medical and surgical supplies. Owens & Minor is a customer of Softchoice in Virginia. The purpose of this meeting was to solicit Owens & Minor's business away from Softchoice and to En Pointe. Griffin falsely informed Owens & Minor that the purpose of the meeting was to "inform [Owens & Minor] of some organizational changes within Softchoice." When she contacted Owens & Minor after leaving Softchoice, defendant Griffin urged Owens & Minor to follow her to En Pointe because she knew Softchoice's information about their account: "I know the ins and outs of your specific agreement and have an understanding of the history of the account."

52. On September 14, 2007, Griffin was hospitalized. While she was in the hospital, Griffin contacted Kennett at Softchoice and requested she be provided contact information on Softchoice customers. Kennett offered to contact the customers, given Griffin's ostensible medical condition. Griffin refused, insisting that she needed to contact the Softchoice customers personally.

53. On or before September 17, 2007, while she was a Softchoice employee and owed Softchoice a fiduciary duty of loyalty, defendant Griffin called Microsoft's Strategic Engagement Manager. The purpose of this contact was to attempt to divert business with Electrical Components International from Softchoice to En Pointe. On information and belief, defendant Griffin was successful in obtaining this business for En Pointe.

54. On or before September 17, 2007, while she was a Softchoice employee and owed Softchoice a fiduciary duty of loyalty, defendant Griffin contacted Softchoice's client Apex Systems, Inc., to schedule a meeting. Apex is a leading provider of technical and professional staffing solutions. Apex is a customer of Softchoice in Virginia, including in Hampton Roads. The purpose of this meeting was to solicit Apex System's business away from Softchoice and to En Pointe.

55. Late in the day on September 17, 2007, Griffin submitted her resignation to Softchoice.

56. Immediately after her departure from Softchoice and using Softchoice's confidential and proprietary client and contact information, on September 18, 2007 defendant Griffin contacted the International Mission Board. The International Mission Board is an entity of the Southern Baptist Convention, and is a client of Softchoice in Virginia. The purpose of this call was to solicit the International Mission Board's business away from Softchoice to En Pointe.

57. The actions of En Pointe, and of Griffin and Clements acting in combination with En Pointe, were and are part of a concerted effort made by En Pointe and others (including other individuals not made party to this action) to injure the business and property of Softchoice.

COUNT ONE
VIRGINIA COMPUTER CRIMES ACT (GRIFFIN)

58. The allegations of the foregoing paragraphs are incorporated as if re-alleged herein in their entirety.

59. By the actions described above, Griffin converted the property of Softchoice, embezzled the property of Softchoice, and obtained the property of Softchoice by false pretenses, using a computer or computer network, including "computer data" within the meaning of 18.2

Va. Code § 152.2. These actions were taken intentionally and without authority. By these actions, Griffin has committed computer fraud within the meaning of Va. Code § 18.2-152.3.

60. By the actions described above, Griffin made unauthorized copies of computer data residing on a computer or computer network. These actions were taken intentionally and without authority. By these actions, Griffin has committed computer trespass within the meaning of Va. Code § 18.2-152.4.

61. By reason of the actions of defendant Griffin, Softchoice has suffered, and is threatened with, injury and damage.

COUNT TWO
VIRGINIA COMPUTER CRIMES ACT (CLEMENTS)

62. The allegations of the foregoing paragraphs are incorporated as if re-alleged herein in their entirety.

63. By the actions described above, Clements converted the property of Softchoice, embezzled the property of Softchoice, and obtained the property of Softchoice by false pretenses, using a computer or computer network, including “computer data” within the meaning of 18.2 Va. Code § 152.2. These actions were taken intentionally and without authority. By these actions, Clements has committed computer fraud within the meaning of Va. Code § 18.2-152.3.

64. By the actions described above, Clements made unauthorized copies of computer data residing on a computer or computer network. These actions were taken intentionally and without authority. By these actions, Clements has committed computer trespass within the meaning of Va. Code § 18.2-152.-4.

65. By the actions described above, Clements converted the property of Softchoice, including but not limited to computer data and computer software owned by Softchoice. These

actions were taken intentionally and without authority. By these actions, Clements has committed computer fraud within the meaning of Va. Code § 18.2-152.3.

66. By the actions described above, Clements made unauthorized copies of computer data, computer programs, and computer software residing on a computer or computer network. These actions were taken intentionally and without authority. By these actions, Clements has committed computer trespass within the meaning of Va. Code § 18.2-152.-4(A).

67. By reason of the actions of defendant Clements, Softchoice has suffered, and is threatened with, injury and damage.

COUNT THREE
BREACH OF FIDUCIARY DUTY (GRIFFIN)

68. The allegations of the foregoing paragraphs are incorporated as if re-alleged herein in their entirety.

69. As an employee of plaintiff Softchoice, defendant Griffin owed to Softchoice a fiduciary duty of good faith and fair dealing during the course of her employment. As a former employee, Griffin continues to owe to Softchoice a limited fiduciary duty, including the duty not to misuse confidential or proprietary information.

70. By the actions described above, Griffin violated, continues to violate, and threatens to violate her fiduciary duty to Softchoice.

71. Defendant Griffin acted willfully, wrongfully, with deliberate indifference to the rights of Softchoice, and with actual malice.

72. By reason of the actions of the defendant Griffin, Softchoice has suffered, and is threatened with, injury and damage.

COUNT FOUR
BREACH OF FIDUCIARY DUTY (CLEMENTS)

73. The allegations of the foregoing paragraphs are incorporated as if re-alleged herein in their entirety.

74. As an employee of plaintiff Softchoice, defendant Clements owed to Softchoice a fiduciary duty of good faith and fair dealing during the course of his employment. As a former employee, Clements continues to owe to Softchoice a limited fiduciary duty, including the duty not to misuse confidential or proprietary information.

75. By the actions described above, Clements violated, continues to violate, and threatens to violate his fiduciary duty to Softchoice.

76. Defendant Clements acted willfully, wrongfully, with deliberate indifference to the rights of Softchoice, and with actual malice.

77. By reason of the actions of the defendant Clements Softchoice has suffered, and is threatened with, injury and damage.

COUNT FIVE
UNIFORM TRADE SECRETS ACT (ALL DEFENDANTS)

78. The allegations of the foregoing paragraphs are incorporated as if re-alleged herein in their entirety.

79. By the actions described above, all defendants misappropriated trade secrets belonging to Softchoice, in violation of Va. Code §§ 59.1-336 *et seq.*

80. En Pointe's efforts to misappropriate Softchoice's trade secrets and confidential business information, which violates Softchoice's agreements with its employees and interfered with Softchoice's relationships with its customers, is not confined to Virginia. En Pointe representatives have misappropriated trade secrets and confidential business information in

markets throughout the United States, including but not limited to, in Minnesota, North Carolina, and Nebraska, in violation of the Uniform Trade Secrets Act as currently in effect in those jurisdictions. As a direct and proximate result of En Pointe's improper actions, Softchoice has lost accounts and revenue.

81. All defendants acted willfully, wrongfully, with deliberate indifference to the rights of Softchoice, and with actual malice.

82. All defendants acted using improper means.

83. By reason of the actions of the defendants Softchoice has suffered, and is threatened with, injury and damage.

84. By reason of the actions of the defendants, Defendants have been unjustly enriched.

COUNT SIX
BREACH OF CONTRACT (INDIVIDUAL DEFENDANTS)

85. The allegations of the foregoing paragraphs are incorporated as if re-alleged herein in their entirety.

86. The individual defendants were parties to written agreements to preserve and protect the confidentiality of proprietary information belonging to Softchoice.

87. The individual defendants' agreements and their initial and continued employment by Softchoice constituted a binding contract requiring the defendants to preserve and protect the confidentiality of proprietary information belonging to Softchoice, in accordance with the terms of their respective agreements.

88. By the actions described above, the individual defendants breached their contracts with Softchoice.

89. By reason of the actions of these defendants Softchoice has suffered, and is threatened with, injury and damage.

COUNT SEVEN
TORTIOUS INTERFERENCE WITH
BUSINESS AND CONTRACTS (ALL DEFENDANTS)

90. The allegations of the foregoing paragraphs are incorporated as if re-alleged herein in their entirety.

91. By the actions described above, (a) all defendants interfered with, conspired together to interfere with, and threaten to interfere with Softchoice's existing business relationships with its customers and suppliers; (b) defendants En Pointe and Clements interfered with Softchoice's confidentiality agreement with its employees Griffin and Kennett; (c) defendant En Pointe interfered with Softchoice's contracts with Griffin and Clements, and (d) all defendants interfered with Softchoice's reasonable future business expectancies. Defendants had actual knowledge of these existing and future business relationships, contracts, and expectancies.

92. En Pointe's improper interference with Softchoice's agreements with its employees and relationships with its customers is not confined to Virginia. En Pointe representatives have misappropriated trade secrets and confidential business information, and interfered with such agreements, contracts, relationships, and business expectancies, in markets throughout the United States, including, but not limited to, in Minnesota, North Carolina, Nebraska, California, and Illinois. En Pointe representatives have tortiously interfered with Softchoice's agreements with its employees in Missouri. As a direct and proximate result of En Pointe's improper actions, Softchoice has lost accounts and revenue in all of these areas.

93. By his solicitation of Griffin and of Kennett, defendant Clements and, derivatively, defendant En Pointe interfered with Softchoice's contract of employment with Griffin and with Kennett.

94. Defendants utilized improper methods.

95. Defendants acted willfully, with actual malice, and a deliberate indifference to the rights of Softchoice.

96. By reasons of the actions of the defendants Softchoice has suffered, and is threatened with, injury and damage.

COUNT EIGHT
CIVIL CONSPIRACY (ALL DEFENDANTS)

97. The allegations of the foregoing paragraphs are incorporated as if re-alleged herein in their entirety.

98. Defendants, acting among themselves and also together in concert with other persons not named as parties, have combined, conspired, and agreed maliciously to injure Softchoice in its business and property, in violation of the Virginia civil conspiracy statute, Va. Code § 18.2-499, et seq.

99. Defendants, acting among themselves and also together in concert with other persons not named as parties, have attempted to combine, conspire, and agree maliciously to injure Softchoice in its business and property, in violation of the Virginia civil conspiracy statute, Va. Code § 18.2-499, et seq.

100. Defendants acted willfully, with actual malice, and a deliberate indifference to the rights of Softchoice.

101. By reasons of the actions of the defendants Softchoice has suffered, and is threatened with, injury and damage.

WHEREFORE plaintiff Softchoice Corporation requests that this Court enter judgment in its favor, and against the Defendants Holly L. Griffin, Andrew Clements, En Pointe Technologies, Inc., and En Pointe Technologies Sales, Inc., and against each of them, and in addition:

- (a) Award temporary, preliminary, and permanent injunctive relief;
- (b) Award Softchoice its actual damages incurred in the amount of ten million dollars;
- (c) Award Softchoice punitive damages in the amount of \$350,000 from each Defendant;
- (d) Award Softchoice double damages pursuant to the Virginia Trade Secrets Act;
- (e) Award Softchoice treble damages pursuant to the Virginia civil conspiracy statute;
- (f) Award Softchoice a reasonable royalty pursuant to the Virginia Trade Secrets Act;
- (g) Impose a constructive trust on monies wrongfully earned by defendants;
- (h) Award Softchoice its costs and attorneys' fees; and

- (i) Award such other and further relief as is appropriate under the circumstances.

June __, 2008

SOFTCHOICE CORPORATION

By: _____
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