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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 ACTIAN CORPORATION,
18 Plaintiff,
19 v.
20 ELECTRIFAI, LLC,
21 Defendant.

CIVIL ACTION NO. 5:20-CV-5197

JURY TRIAL DEMANDED

COMPLAINT FOR

- 1. **Breach of Contract; and**
- 2. **Trade Secret Misappropriation Under the United States Defend Trade Secrets Act, 18 U.S.C. § 1836, et seq.**

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23 Plaintiff Actian Corporation brings this Complaint against defendant
24 ElectrifiAi, LLC, alleging as follows:
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PARTIES

1. Plaintiff Actian Corporation (“Actian” or “Plaintiff”) is a Delaware corporation with its principal place of business at 2300 Geng Rd., Suite 150, Palo Alto, CA 94303

2. Defendant ElectrifiAi, LLC (“ElectrifiAi” or “Defendant”) is a Delaware Limited Liability Company having a headquarters at 10 Exchange Place, 11th Floor, Jersey City, NJ 07302, and a business office at 12230 El Camino Real, Suite 330, San Diego, CA 92130. ElectrifiAi may be served through its registered agent Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

JURISDICTION AND VENUE

3. This Court has jurisdiction because the subject matter of this action arises under the United States Defend Trade Secrets Act, 18 U.S.C. § 1836, because there is supplemental jurisdiction under 28 U.S.C. § 1367.

4. This Court also has jurisdiction under 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$75,000.

5. This Court has personal jurisdiction over the ElectrifiAi because, among other reasons, ElectrifiAi has established minimum contacts with the state of California. ElectrifiAi maintains a business office in the state of California, and ElectrifiAi, directly or through third-party intermediaries, has transacted business within the state of California and particularly within this District. ElectrifiAi has purposefully availed itself of the benefits of doing business in the state of California by, among other things, entering into business transactions in the State of California and in this district, including business transactions at issue in this Complaint. The exercise of jurisdiction over ElectrifiAi would not offend traditional notions of fair play and substantial justice.

6. Venue is proper in this District under at least 28 U.S.C. §§ 1391 (b) – (c) because this District is the location of a substantial part of the events or omissions

1 giving rise to the claims asserted herein, and a substantial part of the property that is
2 the subject of the action is situated in this District.

3 FACTUAL BACKGROUND

4 7. Plaintiff Actian is a computer software company headquartered in Palo
5 Alto, California, whose primary focus is hybrid data management, integration, and
6 analytics. Actian is renowned for its innovative data management and integration
7 technologies. Actian has an installed base of over 5,000 customers including large
8 global enterprises, public sector entities, and small to medium enterprises.

9 8. Defendant ElectrifiAi, formerly known as Opera Solutions, LLC, is a
10 technology and analytics company headquartered in Jersey City, New Jersey.
11 ElectrifiAi is a former licensee of Actian's valuable software and source code. Actian
12 terminated ElectrifiAi's license on November 1, 2019, but ElectrifiAI continues to use
13 and benefit from the licensed technology.

14 9. The parties' Partner Agreement was originally entered into on April 5,
15 2012 between Pervasive Software, Inc. ("Pervasive") and Opera Solutions LLC
16 ("Opera"), and was amended on March 11, 2014 by the "Assignment and
17 Assumption and Amendment No. 1 to the Partner Agreement" ("Amendment No.
18 1"), and again on March 31, 2016 by the "Amendment No. 2 to Partner Agreement"
19 ("Amendment No. 2") and Order Confirmation No. 478268 ("Order Confirmation").
20 The Partner Agreement, Amendment No. 1, Amendment No. 2, and Order
21 Confirmation are referred to collectively herein as the "Agreement," attached hereto
22 as Exhibit A.

23 10. Under the Agreement, Pervasive provided Opera with a limited license
24 to its valuable and proprietary software products in object code form (the
25 "Software"), and a limited license to its source code for certain products and modules
26 (the "Source Code"). In exchange, Opera agreed to make payments to Pervasive and
27 agreed to undertake other duties as set forth in the Agreement.

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1 11. The Agreement is binding on the parties, and was entered into by them
2 or their respective predecessors-in-interest. Plaintiff Actian is the successor in
3 interest to Pervasive and was assigned all rights under the Agreement. Defendant
4 ElectrifiAi is Opera’s successor-in-interest for purposes of the Agreement or
5 otherwise was assigned Opera’s rights and assumed Opera’s duties and liabilities
6 under the Agreement.

7 12. Actian terminated the Agreement on November 1, 2019 due to the
8 wrongful conduct of ElectrifiAi, including failure to make required payments and
9 other material breaches.

10 **FIRST CLAIM FOR RELIEF**
11 **(Breach of Contract)**

12 13. Actian restates and incorporates by reference every allegation of the
13 preceding paragraphs.

14 14. A contract exists between Actian and ElectrifiAi, as embodied in the
15 Agreement. Despite termination, the ongoing obligations of ElectrifiAi referenced
16 herein survive and remain in effect.

17 15. ElectrifiAi breached the Agreement by engaging in wrongful conduct,
18 including without limitation all of the following (collectively, the “ElectrifiAi
19 Breaches”):

- 20 a. Failing to provide end-user agreements at Actian’s request, as required
- 21 under Section 3.2 of the Agreement;
- 22 b. Failing to pay maintenance fees from at least March 11, 2017 through
- 23 July 31, 2020, as required under Section 4.2 and Section 4 of
- 24 Attachment 1 of the Agreement, and under Attachment 2 of the
- 25 Agreement;
- 26 c. Failing to report past royalties from at least April 1, 2015 through March
- 27 31, 2016, as required under Section 4.5 of the Agreement and the Order
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- 1 Confirmation, and additionally failing to pay such royalties as required
2 under Section 4.2 and Section 3(e) of Attachment 1 of the Agreement, as
3 amended in Section 2.10 of Amendment No. 1 and Section 1.2 of
4 Amendment No. 2;
- 5 d. Failing to pay royalties from at least July 1, 2019 to March 31, 2020 as
6 required under Section 4.2 and Section 3(e) of Attachment 1 of the
7 Agreement, as amended in Section 2.10 of Amendment No. 1 and
8 Section 1.2 of Amendment No. 2;
- 9 e. Failing to report and pay royalties from April 1, 2020 through July 31,
10 2020, as required under Section 4.5, Section 4.2 and Section 3(e) of
11 Attachment 1 of the Agreement, as amended in Section 2.10 of
12 Amendment No. 1 and Section 1.2 of Amendment No. 2;
- 13 f. Failing to permit audits, as required under Section 4.6 of the Agreement;
- 14 g. Failing to return Source Code to Actian upon termination and upon
15 demand as required under Section (3)(d) of Attachment 3 of the
16 Agreement, as amended by Amendment No. 1;
- 17 h. Failing to pay the \$60,000 annual maintenance fee for the period ending
18 March 10, 2021, as required under, e.g., Section 4.2 of Attachment 1;
- 19 i. Failing to pay the \$200,000 annual minimum license fee for the period
20 ending March 10, 2021, as required by Section 4.2, Section 3.f of
21 Attachment 1 of the Agreement and Section 1.1 of Amendment No. 2;
- 22 j. Continuing to reproduce, distribute copies and otherwise exploit the
23 Software and the Source Code after the Agreement was terminated, in
24 violation of Sections 2 and 3 and Attachment 3 of the Agreement, as
25 amended by Amendment No. 1, and Section 1.4 of Amendment No. 2;
- 26 and
- 27 k. Other breaches as may be identified by Actian.
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1 16. As a direct and proximate result of the ElectrifiAi Breaches, Actian has
2 suffered harm and damages in an amount exceeding \$525,556.79. This sum includes
3 late payment interest to which Actian is entitled under Section 4.2 of the Agreement
4 on all past due amounts, at a rate of 1.5% or the highest rate permitted by law per
5 month, whichever is lower. This is not the only damage that Actian has suffered, and
6 Actian’s damages include other amounts to be determined at trial. For example, that
7 amount does not include damages based on information withheld from Actian, or not
8 in Actian’s possession.

9 17. Actian is entitled to damages for the ElectrifiAi Breaches, including but
10 not limited to compensatory damages, indirect and consequential damages, and
11 prevailing party attorneys’ fees as set forth Section 15.11 of the Agreement and under
12 relevant law.

13 **SECOND CLAIM FOR RELIEF**

14 **(Violation of the United States Defend Trade Secrets Act,**
15 **18 U.S.C. § 1836, et seq.)**

16 18. Actian restates and incorporates by reference every allegation of the
17 preceding paragraphs.

18 19. By and through the acts described herein, Actian obtained access to
19 numerous categories of trade secret information belonging to Actian, including
20 without limitation the following (collectively, the “Actian Confidential
21 Information”):

- 22 a. Actian’s DataFlow Product Source package containing Actian’s
23 DataFlow source code, unit and integration tests, and application
24 images;
- 25 b. Actian’s DataFlow Dependencies package containing Actian’s
26 DataFlow third party and dependency lists;

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- 1 c. Actian’s DataFlow Documentation package containing Actian’s
- 2 DataFlow development environment and setup, source code hierarchy,
- 3 overview and conceptual information, use cases and examples,
- 4 development design specifications and architecture, and production
- 5 deployment and system configuration information including installation
- 6 and configuration, system requirements, supported Hadoop distributions,
- 7 and build and deployment information;
- 8 d. Actian’s DataFlow Product User Documentation package containing a
- 9 link to Actian’s DataFlow product help documentation;
- 10 e. Actian’s DataFlow Test package containing Actian’s DataFlow
- 11 performance tests, samples, sample data, and test notes;
- 12 f. Actian’s DataRush source code;
- 13 g. Actian’s DataRush Analytics source code;
- 14 h. Actian’s DataRush AWS source code;
- 15 i. Actian’s DataRush Block API source code;
- 16 j. Actian’s DataRush Cluster source code;
- 17 k. Actian’s DataRush Clustermgr source code;
- 18 l. Actian’s DataRush Commons source code;
- 19 m. Actian’s DataRush Hadoop source code;
- 20 n. Actian’s DataRush Jetty source code;
- 21 o. Actian’s DataRush KNIME source code;
- 22 p. Actian’s DataRush Matching source code;
- 23 q. Actian’s DataRush Maven source code;
- 24 r. Actian’s DataRush Paraccel source code;
- 25 s. Actian’s DataRush Parent source code;
- 26 t. Actian’s DataRush Script source code;
- 27 u. Actian’s DataFlow Product Distribution source code;
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- 1 v. Actian’s DataFlow Product Source source code;
- 2 w. Actian’s Vector Transfer source code;
- 3 x. Actian’s pom.xml source code;
- 4 y. Actian’s DataRush Analytics Operators;
- 5 z. Actian’s DataRush Data Connectors;
- 6 aa. Actian’s DataRush Data Prep Operators;
- 7 bb. Actian’s DataRush Core Engine;
- 8 cc. Actian’s DataRush Hive Query Intercept;
- 9 dd. Actian’s DataRush Hadoop Integration; and
- 10 ee. Actian’s KNIME Interfacing / Embedding.

11 20. The Actian Confidential Information is related to products and services
12 embodied in the Software and Source Code.

13 21. ElectrifiAi acquired the Actian Confidential Information through
14 improper means, for example by refusing to return and continuing to use that Actian
15 Confidential Information after its right to do so under the Agreement terminated.

16 22. Actian’s trade secrets, including the Actian Confidential Information,
17 have independent economic value. For example, Actian receives fees and valuable
18 consideration for providing access, on a temporary basis, to trade secrets to third
19 parties, just as it did with ElectrifiAI for a period of time.

20 23. Actian’s trade secrets are also the subject of reasonable and adequate
21 measures to protect their secrecy. For example, Actian only disclosed the Actian
22 Confidential Information to ElectrifiAi pursuant to stringent confidentiality
23 obligations as set forth in the Agreement.

24 24. ElectrifiAi is liable for damages, including but not limited to
25 compensatory damages, disgorgement of all profits obtained through
26 misappropriation, punitive damages for willful and malicious misappropriation,
27 injunctive relief, and prevailing party attorneys’ fees and costs.

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PRAYER FOR RELIEF

Wherefore, in consideration of the foregoing, Plaintiff prays for judgment against the ElectrifiAi as follows:

1. For actual and compensatory damages in an amount to be proven at trial;
2. Indirect and consequential damages in an amount to be proven at trial;
3. Prevailing party attorneys’ fees as set forth Section 15.11 of the Agreement and under relevant law;
4. Disgorgement of all profits obtained through trade secret misappropriation;
5. Punitive damages for willful and malicious trade secret misappropriation;
6. For prejudgment interest on all damages awarded at the maximum legal rate;
7. An award of all costs in this action;
8. An order finding that the Defendant is liable for breach of contract;
9. An order finding that the Defendant is liable for trade secret misappropriation;
10. A preliminary injunction against Defendant enjoining Defendant and all of their officers, directors and personnel from further breaches of the Agreement and further acts of trade secret misappropriation;
11. For all such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff requests a trial by jury of any issues so triable by right.

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Dated: July 28, 2020

Respectfully submitted,

By: /s/ Ryan E. Hatch

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