

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

BidPrime, LLC;	§	
	§	
<i>Plaintiff</i>	§	
v.	§	CIVIL ACTION 18-CV-478-RP
	§	
Jeffrey Rubenstein and	§	
SmartProcure, Inc.	§	
	§	
	§	
<i>Defendants</i>	§	

**PLAINTIFF’S FIRST AMENDED COMPLAINT**

Plaintiff BIDPRIME, LLC (“Plaintiff” or “BidPrime”) files this First Amended Complaint against Defendants JEFFREY RUBENSTEIN and SMARTPROCURE, INC. (collectively, “Defendants”), and shows the following:

**NATURE OF THE CASE**

1. This is a suit to stop Defendants’ illegal and unauthorized access of BidPrime’s website to engage in corporate espionage. For nearly two months before this lawsuit was filed, Defendants, which operate a rival company, used software and other methods to hack into BidPrime’s website in order to illegally access, search, copy, and download, without authorization, BidPrime’s proprietary data and trade secrets in order to gain a commercial advantage. BidPrime seeks an injunction, monetary damages, and statutory penalties to stop Defendants’ illegal actions.

**PARTIES**

2. Plaintiff BidPrime, LLC is a limited liability company organized and existing under the laws of Texas, with its principal place of business in Austin, Texas.

3. SmartProcure, Inc., also doing business under the fictitious name GovSpend, (“SPGS”), is a corporation organized under Delaware law with its principal place of business at 700 W. Hillsboro Blvd, Suite 4-100, Deerfield Beach, FL 33441. SPGS may be served with process through the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, or by its registered agent Friedman, Rosenwasser & Goldbaum, P.A., International Plaza, 7280 W. Palmetto Park Rd. Suite 202, Boca Raton, FL 33433.

4. Defendant Jeffrey Rubenstein is the CEO, President and Founder of SPGS and an individual resident of Florida. Rubenstein may be served with process through the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, at his residence located at 17534 Grand Este Way, Boca Raton, FL 33496, his office at 700 W. Hillsboro Blvd, Suite 4-100, Deerfield Beach, FL 33441, or any other place he may be found.

## **JURISDICTION AND VENUE**

### **A. Jurisdiction**

5. This Court has subject matter jurisdiction over the federal statutory claims in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because this action alleges violations of federal statutes, including the Computer Fraud and Abuse Act (18 U.S.C. § 1030), and the Stored Communications Act (18 U.S.C. §§ 2701 and 2707).

6. This Court has supplemental jurisdiction over the claims in this Complaint that arise under the laws of the State of Texas pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they form a part of the same case or controversy and derive from a common nucleus of operative facts.

7. In addition, this Court has diversity jurisdiction over the action pursuant to 28 U.S.C. § 1332. This controversy is between citizens of different states, and the matter in controversy exceeds \$75,000.

8. This Court has personal jurisdiction over Defendants. This Court's exercise of personal jurisdiction over Defendants is consistent with due process and would not offend traditional notions of fair play and substantial justice. Defendant SPGS advertises, markets, and sells bid request aggregation services (as that term is defined below) through a website to customers in the State of Texas. On information and belief, Defendant SPGS has customers in Texas. As a result, Defendant SPGS has engaged in continuous and systematic activities within Texas and is doing business in Texas sufficient to establish jurisdiction in Texas.

9. Defendant Rubenstein is the founder, CEO, and President of SPGS. Further, Defendant Rubenstein personally advertises, markets, and sells SPGS' services to customers and potential customers, nationwide, and on information and belief, Defendant Rubenstein has done so to customers and potential customers in this State. Defendant Rubenstein also contacted BidPrime in Texas personally to discuss a potential business deal with the Texas company. Defendant Rubenstein sent emails to BidPrime in Texas, and made phone calls to BidPrime in Texas, seeking to "work together" with the intent of ultimately acquiring the Texas company before Defendants began to hack into BidPrime's website and engaged in the illegal activities described below. Defendant Rubenstein later claimed that his illegal activities were part of his continuing evaluation of that potential business deal with BidPrime.

10. In addition, Defendants' internet activities, including their intentional and improper unauthorized access to the BidPrime.com website and use of automated web-scraping

software (as that term is defined below) to access and copy proprietary information from the website, specially complained of herein, are sufficient to establish personal jurisdiction over Defendants. As the CEO and President of SPGS, Defendant Rubenstein orchestrated the hacking of BidPrime's website, personally conducted many of the hacking activities (as described below), and further directed his conduct toward BidPrime in Texas. By targeting BidPrime—a Texas resident—Defendants are knowingly directing their conduct toward BidPrime in Texas with the intent to cause injury to BidPrime in Texas, the location of BidPrime's principal place of business. Further, BidPrime stores information on servers housed in Oregon and Texas. BidPrime, whose office is located in Texas, responded to Defendants' internet conduct from Texas and was harmed by Defendants' conduct in Texas. Defendants should anticipate being hauled into court in this State.

11. Further, Defendants contractually agreed to submit to the personal jurisdiction and venue of courts located within Travis County, Texas. As described herein, each of the Defendants used the website BidPrime.com, and by doing so, agreed to the terms and conditions governing use of the website, of which one express term is that the user consents to the personal jurisdiction and venue of courts located within Travis County, Texas.<sup>1</sup>

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<sup>1</sup> Specifically the First Terms provide:

Jurisdiction: This Agreement shall be governed by and construed under the laws of the State of Texas, U.S.A. Approving these terms, the User consents to the exclusive jurisdiction and venue of the courts located in and serving Travis County, in Austin, Texas.

Similarly, the Second Terms provide:

Courts. In any circumstance where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Travis County, Texas, for such purpose.

**B. Venue**

12. Venue is proper in this judicial district under 28 U.S.C. § 1391(b). The claims asserted in this action arose in this district; a substantial part of the activities, conduct, and/or damages giving rise to the claims occurred in this district; and Defendants have substantial contacts with the district.

13. Further, by using BidPrime.com, Defendants contractually agreed to the venue of courts located within Travis County, Texas, as such venue is a term of use of BidPrime.com.

**FACTS**

**A. BidPrime’s Operations and Website**

14. BidPrime is an Austin-based data company that was founded in 2009, remains self-funded, and has grown to 25 employees. As part of its core business, BidPrime uses technology and software to monitor and aggregate real-time requests for proposals, bids, bid specification documents, contracts, contract terms, and awards (collectively, “bid requests”) issued by federal, state, and local governments and private entities throughout the United States and Canada (collectively, “bid sources”). BidPrime aggregates bid requests for projects in a wide range of industries, including education, healthcare, cybersecurity, aerospace, and national defense.

15. BidPrime’s core business also includes its proprietary website, BidPrime.com, through which BidPrime markets and provides a subscription service to customers. Customers who use the BidPrime.com website are generally government contractors who seek to find new

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Governing Law. . . . Subject to the Arbitration provision above, you agree and consent to the exclusive jurisdiction of the state or federal courts located in Travis County, Texas and waive any defense of lack of personal jurisdiction or improper venue or forum non conveniens to a claim brought in such court . . . .

business opportunities—*i.e.*, bid requests for the services they provide (the “bid industry”). Without BidPrime’s proprietary website and technology, its customers would have to spend significant man-hours searching tens of thousands of websites *daily* for this information.

16. One of BidPrime’s core products is its ability to give its customers notifications of bid requests in real time. Monitoring and aggregating bid requests are not easy. Bid requests often have very short lifespans, existing only for a window of days. Additionally, nearly every bid source has a different process that must be followed to obtain its bid requests. BidPrime offers its customers comprehensive aggregation, quick-turnaround, and real-time notification, which is very valuable in the bid industry. BidPrime also offers its customers bid specification documents and the ability to customize searches so that its customers can receive only relevant bids.

17. BidPrime estimates it has spent in excess of 100,000 man-hours—valued at millions of dollars—prototyping, developing, coding, testing, deploying and modifying its proprietary technology that efficiently and effectively monitors bid sources in real-time and obtains and aggregates bid requests quickly (“aggregation technology”). The proprietary aggregation technology built by BidPrime scales efficiently to cover *tens of thousands of unique bid sources*. This proprietary aggregation technology, the real-time aggregated bid requests, and BidPrime’s unique dataset of bid sources are three of BidPrime’s core intellectual property assets that distinguish BidPrime from its competitors.

18. BidPrime has also developed “BidPrime.com,” a proprietary and privately-owned computer system that includes the BidPrime.com website and numerous supporting servers, databases, routers, networks, bandwidth, cabling, appliances, switches, filers, and firewalls

(“BidPrime.com”). BidPrime has invested substantial time and money in developing, compiling, and maintaining BidPrime.com.

19. Except for the landing pages, BidPrime.com is a closed environment, meaning that only BidPrime’s paying customers may access the website’s contents.

20. On the restricted-access portion of BidPrime.com, customers can conduct searches for aggregated, real-time bid requests that are relevant to their businesses. For each search conducted, bid request results will be displayed. A “bid request result” generally contains the following information: bid agency reference number, bid title, bid description, entity name, entity type, state, issue date, and expiration date. In addition, a bid request result is accompanied by a “bid source URL.”

21. On the public landing page of BidPrime.com, potential customers can perform a “teaser” search. The information that can be accessed via the “teaser” search is limited. Unlike the search function of the restricted-access portion of BidPrime.com, the “teaser” search function only displays 50 bid request results, and, for those bid request results, the only information displayed is (1) the bid title, (2) the state in which the bid originates, and (3) the bid’s expiration date. Although limited, this information could be used by a prospective customer to spot check data. No bid source URLs accompany bid request results from the “teaser” search function.

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SIMPLE USER INTERFACE  
to search, manage, and share bids with colleagues.

Instant access to the widest network of government contract opportunities.

BidPrimes tracks government entities across the United States and Canada to offer the largest database of active government contract opportunities.

The technology is built to navigate and capture bids in real-time from government websites. This proprietary technology gives our clients first access to bids in their market, as well as access to more public bids than any other source.

**Figure 1:** A screenshot of a portion of the BidPrime.com website that describes some of BidPrime’s services. BidPrime provides comprehensive aggregation and real-time notification of bid requests—from tens of thousands of bid sources to customers.

22. To use BidPrime’s website and service, a consumer must register for an account with BidPrime and either obtain a free trial, if available, or pay for a subscription. Customers are assigned login credentials (*i.e.*, usernames and passwords) when they register for an account. Customers are then granted a limited license to access the website, use BidPrime’s offered services like real-time notification, and view a limited amount of the real-time bid request results

aggregated by BidPrime and the accompanying bid source URLs. Customers must use their login credentials to access the customer-restricted portions of BidPrime.com.

**B. BidPrime's Trade Secret Bid Source Database**

23. Bid source coverage is a key characteristic that separates BidPrime from its competitors. Thus, an item that is fundamental to BidPrime's business and success is its unique—and secret—compilation of bid sources. This compilation, or bid source database, is essentially BidPrime's Rolodex of suppliers for the bid request information that BidPrime aggregates and markets. BidPrime has invested substantial time and money in developing, compiling, and maintaining its bid source database. BidPrime uses this secret bid source database to monitor and collect new bid requests and then relay and market bid request information to customers. BidPrime's unique database of bid sources is proprietary and trade secret and BidPrime does not share this database in whole to either customers or competitors. To prevent reverse-engineering of its database, BidPrime monitors and limits customer access to the individual bid source URLs that accompany individual bid request results returned from searches in the restricted-access portion of the website. No bid source URLs are available on the public-facing portion of BidPrime.com. Competitors are not given any access to bid source URLs or data. To BidPrime's knowledge, no competitor in the industry publicly shares its respective secret collection of bid sources either, since these collections are critical to being able to compete in the market.

24. To protect its trade secrets, BidPrime has taken aggressive steps to defend against attempts to scrape bid source URLs from its website. For example, and as later detailed below, in response to the bid source URL scraping conducted by Defendants, BidPrime manually

dummied bid source URLs so that real bid source URLs would not be stolen. BidPrime has implemented numerous security measures to prevent and stop its bid source URLs from being scraped. These security measures include, but are not limited to, hardware monitoring alarms; auto-suspension, flagging, review, and/or banning of suspicious email accounts and suspicious IP addresses; open search alarms; and throttle response mechanisms that trigger returns of blank results for user searches. BidPrime security has prevented, caught, and stopped other scraping activity on its website. Despite BidPrime's aggressive measures, Defendants, through their nefarious acts, were still able to take approximately 10,525 real bid source URLs, which could be used to reverse-engineer BidPrime's bid source database.

**C. BidPrime.com Terms of Service**

25. Limited access to BidPrime.com and selected proprietary content is available to consumers subject to certain terms and conditions of service and use. Two versions of the terms of service have been in effect during the time period relevant to this case: (1) the "First Terms" and (2) the "Second Terms." Both versions make it clear that BidPrime.com cannot be accessed by competitors or for competitive purposes.

26. In addition, both versions of the terms of service conspicuously state that use of BidPrime.com constitutes acceptance of the terms. Thus, users must adhere to the governing terms of service in order to use BidPrime.com.

27. The First Terms were posted on BidPrime.com on July 26, 2016. A true and correct copy of the First Terms is attached hereto as **Exhibit A**.

28. The First Terms conspicuously state that use of login credentials to enter BidPrime's restricted-access website constitutes acceptance of the terms:

USE OF THIS USERNAME AND PASSWORD TO ACCESS BIDPRIME'S MEMBER AREA REPRESENTS AN AGREEMENT BETWEEN THE USER AND BIDPRIME GOVERNED BY THE TERMS AND CONDITIONS CONTAINED HEREIN.

29. The First Terms expressly prohibit competitors like Defendants from accessing BidPrime.com. Specifically, the First Terms state the following restrictions:

Registration: BidPrime precludes employees, management, consultants, or agents of companies offering services whose purpose it is to collect, redistribute, or sell government bid information and sales leads from signing up for any use of BidPrime's service without express written permission from BidPrime's management. Subscriptions to BidPrime for a free trial or paid subscription by any employee, management, consultant, or agent of a similar government lead notification service or bid aggregation company—done with accurate or false information—constitutes a violation of BidPrime's Terms of Service and will result in immediate termination with no refund. Furthermore, any government bids, awards, general data, product theft, or idea theft occurring [sic] from the company or user in violation may result in legal action for damages.

30. The Second Terms were posted on BidPrime.com on May 19, 2018. A true and correct copy of the Second Terms is attached hereto as **Exhibit B**.

31. Like the First Terms, the Second Terms conspicuously state that use of login credentials to enter BidPrime's restricted-access website constitutes acceptance of the terms:

IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST NOT USE THE SERVICE. BY USING THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS AGREEMENT AND YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.

32. The Second Terms also expressly prohibit use of BidPrime.com for competitive purposes. Specifically, the Second Terms state the following restrictions:

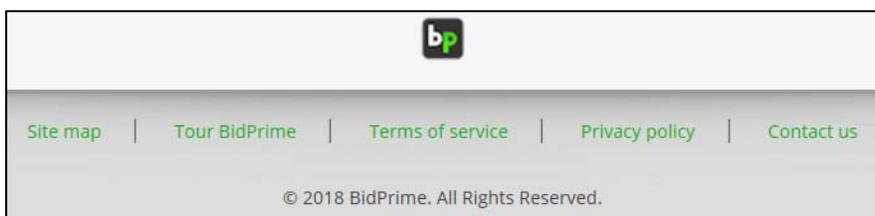
(a) you shall not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Site or the Services, whether in whole or in part, any content displayed on the Site, or use more than 10% of the entire database of the Site;

(b) you shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Site;

(c) you shall not access the Site or the Services in order to build or improve a similar or competitive website, product, or service; and

(d) except as expressly stated herein, no part of the Site or the delivered Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means without the prior written consent of BidPrime.

33. At all times relevant to this suit, a clearly-marked link on each page of the BidPrime.com website has provided access to the terms of service.

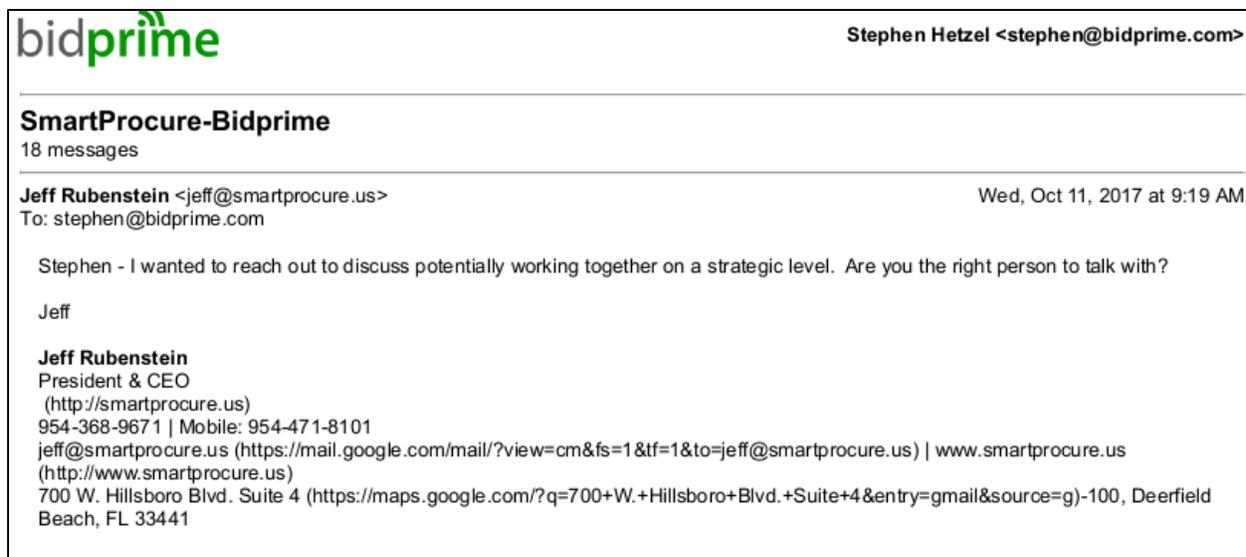


**Figure 2:** A screenshot of the link to BidPrime’s terms and conditions of use. The link is displayed on every page of the BidPrime.com website and the terms govern all website access.

34. On May 24, 2018, the BidPrime.com login page was updated so that a customer also received a notification that it was accepting the Second Terms upon clicking the sign-in button.

#### **D. Defendants Seek Unlimited Access to BidPrime.com, But Are Refused**

35. On or about October 11, 2017, Rubenstein—the CEO, President and Founder of SPGS, one of BidPrime’s largest competitors—contacted BidPrime on behalf of SPGS “to discuss potentially working together” and presented a sales pitch to BidPrime. According to Rubenstein, SPGS has grown to 200 employees and has benefitted from several rounds of venture capital funding plus private equity investments from GovTech Fund.



**Figure 3:** An email to BidPrime from Defendant Jeff Rubenstein, founder of SPGS (aka SmartProcure)—BidPrime’s competitor—first seeking to pitch his unlimited access idea, which BidPrime later rejected.

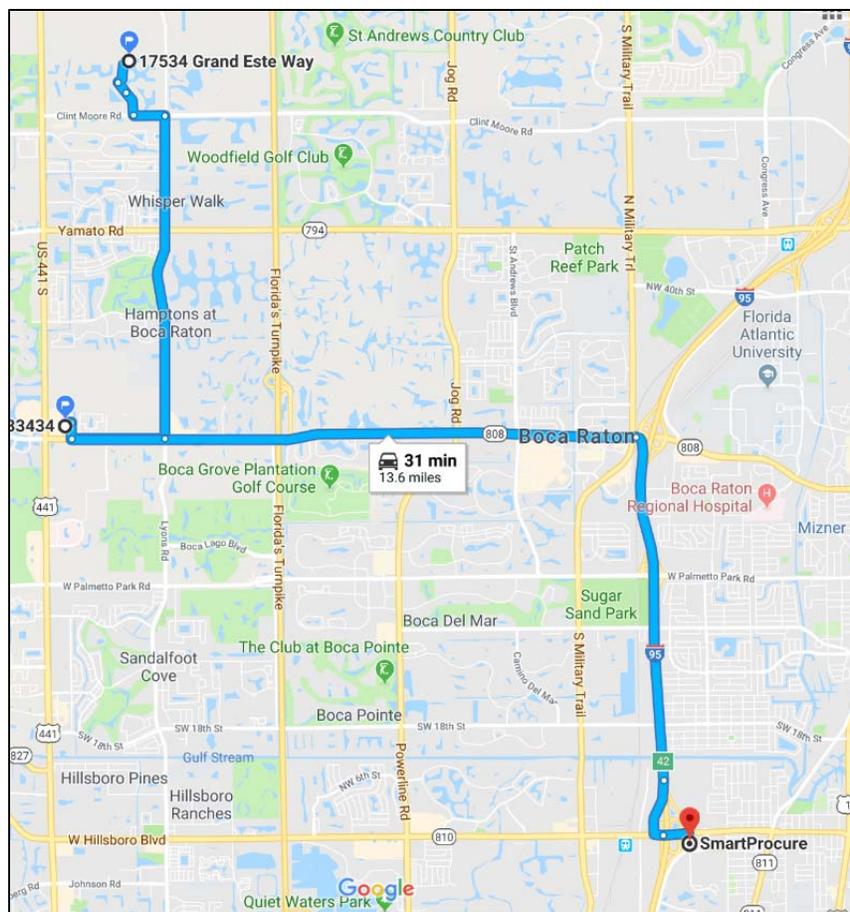
36. As part of that sales pitch, and in exchange for a sum of money that SPGS would pay to BidPrime, SPGS sought unlimited access to the BidPrime.com website. Rubenstein was adamant that SPGS would only enter an agreement if it was given unlimited access to BidPrime’s real-time aggregated bid requests, but also the bid documents and BidPrime’s bid source data. BidPrime’s unique database of bid sources is trade secret, and BidPrime does not allow competitors to access its bid source data, not even the individual bid source URLs that accompany bid request results.

37. During the ensuing negotiations, on October 26, 2017, Rubenstein signed up for a free trial to access BidPrime.com while on the phone with BidPrime. In signing up, Rubenstein used his computer, and in doing so gave BidPrime a verifiable “fingerprint” of his computer (“Rubenstein’s computer”), and the network of his company SPGS at IP address 12.238.122.226 (“SPGS Office IP Address”). A printout of the IP address registration for the SPGS Office IP Address is attached as **Exhibit C**. Rubenstein also accessed BidPrime.com via the internet from

IP address 73.125.77.132, which was later determined to be a personal Comcast IP address (“Rubenstein’s Comcast IP Address”).

IP Information for 12.238.122.226	
— Quick Stats	
IP Location	United States Deerfield Beach Smartprocure
ASN	AS7018 ATT-INTERNET4 - AT&T Services, Inc., US (registered Jul 30, 1996)
Resolve Host	226.224/27.122.238.12.in-addr.arpa
Whois Server	whois.arin.net
IP Address	12.238.122.226
<pre> NetRange: 12.0.0.0 - 12.255.255.255 CIDR: 12.0.0.0/8 NetName: ATT NetHandle: NET-12-0-0-1 Parent: NET12 (NET-12-0-0-0) NetType: Direct Allocation OriginAS: Organization: AT&amp;T Services, Inc. (ATTW-Z) </pre>	
...	
<pre> NetRange: 12.238.122.224 - 12.238.122.255 CIDR: 12.238.122.224/27 NetName: SMARTPRO75-122-224 NetHandle: NET-12-238-122-224-1 Parent: ATT (NET-12-0-0-1) NetType: Reassigned OriginAS: Organization: SMARTPROCURE (SMART-145) RegDate: 2017-02-24 Updated: 2017-02-24 Ref: https://whois.arin.net/rest/net/NET-12-238-122-224-1  OrgName: SMARTPROCURE OrgId: SMART-145 Address: 700 W HILLSBORO BLVD City: DFLD StateProv: FL PostalCode: 33441 Country: US RegDate: 2017-02-24 Updated: 2017-02-24 Ref: https://whois.arin.net/rest/org/SMART-145 </pre>	

**Figure 4:** A “whois” printout, the result of a database that stores the registered users of an IP address, showing that IP Address 12.238.122.226, which Rubenstein used to access his free trial, and which Defendants later used to gain unauthorized access to BidPrime.com, is registered to the SPGS office (SmartProcure). See **Exhibit C** for a full printout.



**Figure 5:** A Google Maps printout showing the location of the SPGS office (SmartProcure) and Rubenstein’s home (17534 Grand Este), two of the locations at which IP address and computer fingerprint evidence indicate Rubenstein used his free trial. Evidence developed later during BidPrime’s investigation indicates that, from these same locations, Rubenstein and SPGS used computers to gain unauthorized access to BidPrime.com and stole large amounts of BidPrime’s proprietary data.

38. BidPrime allowed Rubenstein to have free trial access while the negotiations were ongoing, but monitored his activity to ensure there were no attempts to steal data from or reverse engineer BidPrime.com or BidPrime’s other proprietary assets.

39. Ultimately, BidPrime rejected the Rubenstein/SPGS sales pitch—later believed to be an attempt to acquire BidPrime—and Rubenstein’s free trial, and the only authorized access to BidPrime.com he had, ended on November 30, 2017.

40. On December 7, 2017, Rubenstein attempted to log into BidPrime.com through his free trial account and received a notification that his access to BidPrime.com had expired.

**E. Defendants' Wrongful Conduct: Defendants Hack Onto BidPrime.com and Then Use Web-Scraping Software to Steal Large Amounts of BidPrime's Information and Trade Secrets**

41. Earlier this year, after Defendants' sales pitch and acquisition attempt were rejected by BidPrime, Defendants decided to illegally take what BidPrime would not agree to give them: Defendants began hacking to illegally gain access to BidPrime's restricted-access website.<sup>2</sup> Defendants then stole information from BidPrime's website, and exponentially multiplied the amount of information they were able to steal by employing "web-scraping" software and "bots."

42. "Web-scraping" software and "bots" refer to automated programs that extract large amounts of data from websites, far more than could be obtained from manually printing out screenshots of webpages. For internet-based companies like BidPrime, the threat that a competitor could hack in and engage in "web-scraping" is a major concern.<sup>3</sup>

43. The first unauthorized access attempt now known to BidPrime was on February 25, 2018. On that day Defendants used Rubenstein's Computer from Rubenstein's Comcast IP Address to visit BidPrime.com and attempt to register for a new free trial under the false identity "John Jones." BidPrime's security automatically blocked and suspended the false account.

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<sup>2</sup> "Hacking" means any unauthorized access, including but not limited to social engineering efforts to gain passwords by manipulating or deceiving a BidPrime customer or agent, circumventing access control mechanisms to evade detection of unauthorized use, modifying website behaviors and restrictions to gain access to unauthorized information.

<sup>3</sup> BidPrime maintains good standing with the Payment Card Industry Data Security Standard (PCI DSS) audits and follows standard industry security practices to ensure the protection of customer data. BidPrime has not detected any breach of its customers' data.

44. On or about March 2018, Rubenstein hired Michal Kras, a freelance web developer in Poland who specializes in “data scraping and data manipulation” (the “Polish developer”), through UpWork.com to build a “bot” or script to download or scrape data from BidPrime.com.

45. Screenshots of his former profile<sup>4</sup> and Rubenstein’s job posting are shown below.

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<sup>4</sup> After BidPrime filed the original Complaint, Michal Kras deleted his profile on UpWork.com.

The figure consists of two screenshots of an Upwork profile for Michal K. The top screenshot shows the profile header with a bio, skills (C#, Python, Developer, Web Scraper, Crawler, Data Miner), and statistics (\$20.00/hr, \$10k+ earned, 144 jobs, 32 hours worked). The bottom screenshot shows the 'Work History and Feedback' section with a highlighted job: 'Scrape bid information from website' for \$540.00, completed from March to June 2018 with a 5.00 rating.

**Figure 6:** Screenshots from the Polish developer’s former profile on UpWork.com, showing his profile description and full name in the URL (top) and his work history (bottom), which includes a job to “[s]crape bid information from website” from March 2018 to June 2018.

## Job Details

! This job is no longer available ✕

### Looking to find other pages from a competitor's website

**Data Mining & Management**

Posted 5 months ago

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I'd like someone to scrape Google, Bing and/or another search engine to find any other pages matching these two sites:

Site 1: \*/bso/external/bidDetail.sdo  
Site 2: \*.ionwave.net/CurrentSourcingEvents.aspx

For Site 1 I've already found these:  
[www.commbuys.com](http://www.commbuys.com), emaryland.buyspeed.com, tucsonaz.gov, [www.njstart.gov](http://www.njstart.gov), [www.baltimorecitybuy.org](http://www.baltimorecitybuy.org), procure.az.gov, [www.bidbuy.illinois.gov](http://www.bidbuy.illinois.gov), bids.htcx.net, ebids.huntsvilleal.gov, [www.purchaseconnection.com](http://www.purchaseconnection.com), [www.nttmarketplace.org](http://www.nttmarketplace.org), kcpurchase.knoxcounty.org, bso.cr.k12.ia.us, buyprod.ci.lompoc.ca.us, bso.wrga.gov, camps.texasagriculture.gov, bso.fortworthtexas.gov, buyspeed.poha.com, procure.portlandoregon.gov

#### About the Client

✔ **Payment Method Verified**

★★★★★ 5.00 of 22 reviews

**United States**  
Deerfield Beach 06:03 PM

**27 jobs posted**  
93% hire rate, 1 open job

**\$4k+ total spent**  
28 hires, 0 active

Member since May 21, 2012

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### Client's recent history (22)

<b>Questcdn URL's</b> <span style="color: green;">★★★★★</span> To freelancer: Dima S. <span style="color: green;">★★★★★</span>	Jun 2018 - Jun 2018 Fixed Price \$5.00
<b>Find URL's</b> <span style="color: green;">★★★★★</span> To freelancer: Dima S. <span style="color: green;">★★★★★</span>	Jun 2018 - Jun 2018 Fixed Price \$5.00
<b>Scrape bid information from website</b> <span style="color: green;">★★★★★</span> Amazing person to work for To freelancer: Michal K. <span style="color: green;">★★★★★</span>	Mar 2018 - Jun 2018 Fixed Price \$540.00
<b>Scrape contacts from bidnetdirect</b> <span style="color: green;">★★★★★</span> It was great experience working with Jeff for the second time. He always gives a precise requirements and appreciate good work. Hope to work on many more projects together. <span style="color: green;">less</span> To freelancer: Sweta A. <span style="color: green;">★★★★★</span>	Feb 2018 - Feb 2018 Fixed Price \$125.00

**Figure 7:** Screenshots from Rubenstein’s client profile on UpWork.com, showing his Deerfield Beach location (top), his hiring of the Polish developer Michal Kras to “[s]crape bid information from website” from March 2018 to June 2018 (middle), and other bid scrapers referring to him as “Jeff” (bottom).

46. Beginning on April 11, 2018, Defendants used Rubenstein's Computer from Rubenstein's Comcast IP Address, to gain access to BidPrime.com through the unauthorized use of an existing BidPrime customer account ("Customer Account #1"). Defendants gained access by obtaining and using the customer's login credentials, without BidPrime's authorization. Defendants repeated this unauthorized access from Rubenstein's Comcast IP Address, the SPGS Office IP Address and from other IP addresses on numerous occasions through May 11, 2018.

47. Defendants further disseminated Customer Account #1's login credentials to the Polish developer who, at Defendants' direction, also illegally accessed BidPrime.com from at least May 9, 2018 to May 11, 2018.

48. Through this unauthorized access to BidPrime.com, Defendants accessed, scraped, copied, and/or downloaded large amounts of information from the restricted-access portions of BidPrime.com, including bid source URLs, which reveal a large chunk of BidPrime's unique and trade secret bid source database. For example, beginning on May 9, 2018 to May 11, 2018, Defendants, using Rubenstein's computer from the SPGS Office IP Address and Rubenstein's Comcast IP Address, ran searches and accessed, scraped, copied, and/or downloaded approximately 1,050 bid request results and accompanying bid source URLs. From Poland IP address 78.31.143.84 (the "Poland IP Address"), Defendants accessed, scraped, copied, and/or downloaded another 9,225 bid request results and accompanying bid source URLs.

49. To put this theft of bid source data in perspective, the total number of bid sources that Defendants claim to have in their existing database is only approximately "22,000 government agencies." In just three days, Defendants' illegal activities gave them access to

10,275 bid source URLs on BidPrime.com. By illegally accessing BidPrime’s unique bid source database—its curated Rolodex of suppliers—Defendants stole BidPrime’s trade secrets.

50. Defendants admit that they used automated “web-scraping” software and “bots” to increase the amount of data they were able to steal through their illegal hacking. Defendants further admit that they placed the data they stole in text files for their later use. The speed and frequency of the searches—at some points peaking at about 500 search records per minute—confirm that Defendants deployed such web-scraping software.

51. During these hacking and web-scraping events, as well as the subsequent events described below, Defendants attempted to hide their identities. Most obviously, Defendants did not use their true names, but gained backdoor access to the website improperly through the accounts of other customers or accounts created under fake names. Defendants sometimes disguised their computers by altering their user agent identities and attempting to alter the computers’ “fingerprints.” Defendants obscured their hacking trail by changing their locations and IP addresses.” BidPrime’s analysis later linked these disguises to Defendants.

52. Were BidPrime.com a brick-and-mortar office with file cabinets, Defendants’ actions would equate to (1) stealing an employee’s key, (2) putting on ski-masks and gloves as a disguise (but inadvertently removing them while on camera), (3) using the key to obtain illegal access to the office, (4) copying and stealing the files, but (5) despite their efforts, leaving inadvertent mug shots and traceable DNA evidence behind.

53. During these events, BidPrime security investigated these constantly-evolving suspicious activities, tracked down and identified Defendants as being responsible for the hacks, and responded to their unauthorized actions. BidPrime expended significant resources, building

new security systems and alarms, consulting outside security contractors, hiring private investigators, and obtaining outside legal counsel.

54. Later on May 11, 2018, BidPrime had been able to trace the illegal hacking to Defendants' use of Customer Account #1 and blocked their access. Defendants repeatedly attempted to log into Customer Account #1, trying to regain their backdoor-entry into the website from various computers and IP addresses, but were unsuccessful.

55. During this time, Defendants continued to run their web-scraping software on the public portion of BidPrime.com, performing searches in BidPrime's more limited "teaser" search. Although limited, this information could be used by Defendants to analyze BidPrime's data and bid coverage.

56. Through their "teaser" searches, Defendants accessed, scraped, copied, and/or downloaded title, state, and expiration information for 57,800 bid request results.

57. On May 11, 2018, the same day and soon after Defendants' access to Customer Account #1 was blocked, Michael Kras, the Polish developer, attempted to sign up for a free trial from Poland IP address 94.254.178.156. The free trial was denied and access was blocked based on suspicious factors and heightened security measures.

58. Approximately ten minutes later, Defendants attempted to register for another fake free trial account under the false identity "Morc Drady." This attempt was made from the SPGS Office IP Address, using a new computer that was later identified as belonging to Marc DiGeronimo, Director of Sales at SPGS ("DiGeronimo's computer"). BidPrime's security automatically blocked and suspended the false account. The activities on May 11, 2018, taken

together, demonstrate that Defendants were willing to take whatever steps possible to access BidPrime's website and steal BidPrime's data.

59. Then, on May 16, 2018, Defendants created a new account and signed up for a free trial under the false identity, "Chris Edward," using what was later identified as DiGeronimo's computer. Later that day, Defendants attempted to log into BidPrime.com using the new "Chris Edward" account from Rubenstein's computer using Rubenstein's Comcast IP Address, but the account was not set up yet. Defendants eventually logged into BidPrime.com using the "Chris Edward" account from the SPGS Office IP Address and accessed and copied approximately 25 bid request results and accompanying bid source URLs.

60. BidPrime's security alerts subsequently detected Defendants' unauthorized access. Upon discovering that Defendants had created yet another fake trial account, BidPrime security realized that Defendants were not going to stop trying to find ways to hack into BidPrime.com—if put on notice that they had been detected, Defendants would resort to even more subversive measures. Triaging, BidPrime's security team decided to quickly substitute scrambled archive data for the data that would be displayed for the bid request results returned for searches performed under the "Chris Edward" account. Thus, real, but older, data was still displayed for searches performed under the "Chris Edward" account, and the data was mixed up. For example, a bid request result would display a real bid request title and a real bid request expiration date but, due to BidPrime's defensive scrambling, the expiration data may not have belonged with that particular bid title. In addition, to protect its trade secret bid source database, BidPrime dummed the bid source URLs that accompanied the scrambled bid requests.

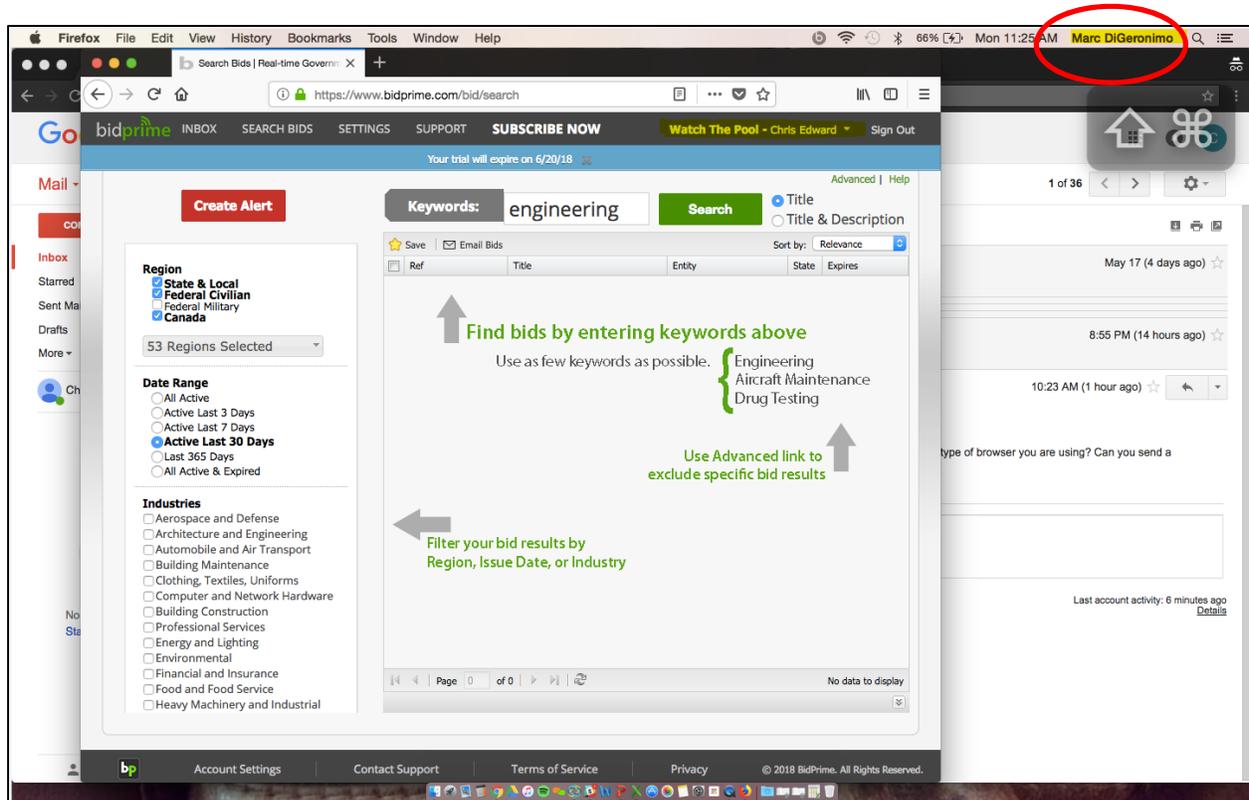
BidPrime's defensive measures also further hindered Defendants' scraping by resulting in some of Defendants' searches returning a "white screen."

61. From May 19, 2018 to May 20, 2018, while encountering white screens, Defendants repeatedly attempted to hack and steal from BidPrime.com under the fake "Chris Edward" account. Defendants made attempts from Rubenstein's Comcast IP Address using Rubenstein's computer. Defendants also made attempts from IP address 108.251.236.93 in Delray Beach, Florida<sup>5</sup> (the "Delray Beach IP Address") using DiGeronimo's computer. Defendants were still able to access and scrape 850 scrambled bid request results and dummied bid source URLs.

62. On May 21, 2018, "Chris Edward" emailed BidPrime tech support twice and sent a screenshot of his computer. The screenshot shows the computer's true identity as belonging to DiGeronimo. The screenshot also shows the clearly-visible link to BidPrime's terms of service, right next to the link to "Contact Support."

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<sup>5</sup> Delray Beach, Florida is located approximately 15 minutes (by car) north of Deerfield Beach, Florida, where the SPGS office is located. DiGeronimo's residence is in Delray Beach, FL.



**Figure 8:** A screenshot sent to BidPrime from Defendants under the false identity “Chris Edward.” The upper right-hand corner shows the computer belongs to Marc DiGeronimo, an SPGS employee. The terms of service link is clearly visible at the bottom of the BidPrime.com webpage.

63. On May 21, 2018 to May 22, 2018, Defendants again entered BidPrime.com under the “Chris Edward” account. Defendants did so from the Delray Beach IP Address and from IP address 98.85.175.14 in Boyton Beach, Florida<sup>6</sup> (the “Boyton Beach IP Address”) and accessed and scraped 1,100 scrambled bid request results and dummied bid source URLs. Defendants used DiGeronimo’s computer from both IP addresses to conduct some of the scraping.

64. On May 22, 2018, “Chris Edward” sent an email to BidPrime support requesting an extension of the “Chris Edward” trial, stating that his “boss has asked if it would be possible

<sup>6</sup> Boyton Beach, Florida is located approximately 20 minutes (by car) north of Deerfield Beach, Florida, where the SPGS office is located.

to extend the trial for lost time.” Upon information and belief, this email reflects that DiGeronimo was being directed by Rubenstein to extend the “Chris Edward” fake account in order to steal BidPrime’s data.

65. On May 25, 2018 at 12:59 AM CST, an email containing the Second Terms, which govern the use of BidPrime.com, was sent to the email account attached to the “Chris Edward” account. It was viewed that same day at 5:11 AM CST. Despite this email, Defendants continued to access BidPrime.com through the “Chris Edward” account and steal from BidPrime. Rubenstein admits that on May 25, 2018 he gave the developer he was working with a copy of the “Chris Edwards” log-in credentials and asked him to run the web-scraping bot on BidPrime.com. That day, after viewing the email of the Second Terms, Defendants accessed and scraped 800 scrambled bid request results and dummied bid source URLs. The scraping occurred from the Poland IP Address and from IP address 76.108.156.33 in Boca Raton, Florida<sup>7</sup> (the “Boca Raton IP Address”). Defendants used Rubenstein’s computer when they logged into the “Chris Edward” account from the Boca Raton IP Address.

66. Defendants then took advantage of the Memorial Day holiday weekend and accessed and scraped another 550 scrambled bid request results and dummied bid source URLs on May 26, 2018, another 2,950 scrambled bid request results and dummied bid source URLs the following day, and another 4,900 scrambled bid request results and dummied bid source URLs the next, all from the Boca Raton IP Address and the Poland IP Address and under the “Chris Edward” account. Defendants used Rubenstein’s computer to conduct some of this scraping.

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<sup>7</sup> Boca Raton, Florida is located approximately 10 minutes (by car) northwest of Deerfield Beach, Florida, where the SPGS office is located.

67. On or about May 31, 2018 to June 1, 2018, while “Chris Edward” was accessing scrambled bid request results and dummied bid source URLs, Defendants gained unauthorized access to BidPrime.com using another customer’s legitimate free trial account (“Customer Account #2”) and accessed, scraped, copied, and/or downloaded 225 bid request results (unscrambled) and accompanying bid source URLs before BidPrime security detected the breach and blocked access. Customer Account #2 belonged to a BidPrime customer that had used a free trial in the past; because the free trial account was reinitiated on May 22, 2018, it was subject to the Second Terms. Defendants obtained and used the customer’s username and password to gain this unauthorized access.

68. Around that same time, Defendants also accessed, scraped, copied and/or downloaded another 75 scrambled bid request results and dummied bid source URLs from the “Chris Edward account” using Rubenstein’s computer from the Boca Raton IP Address.

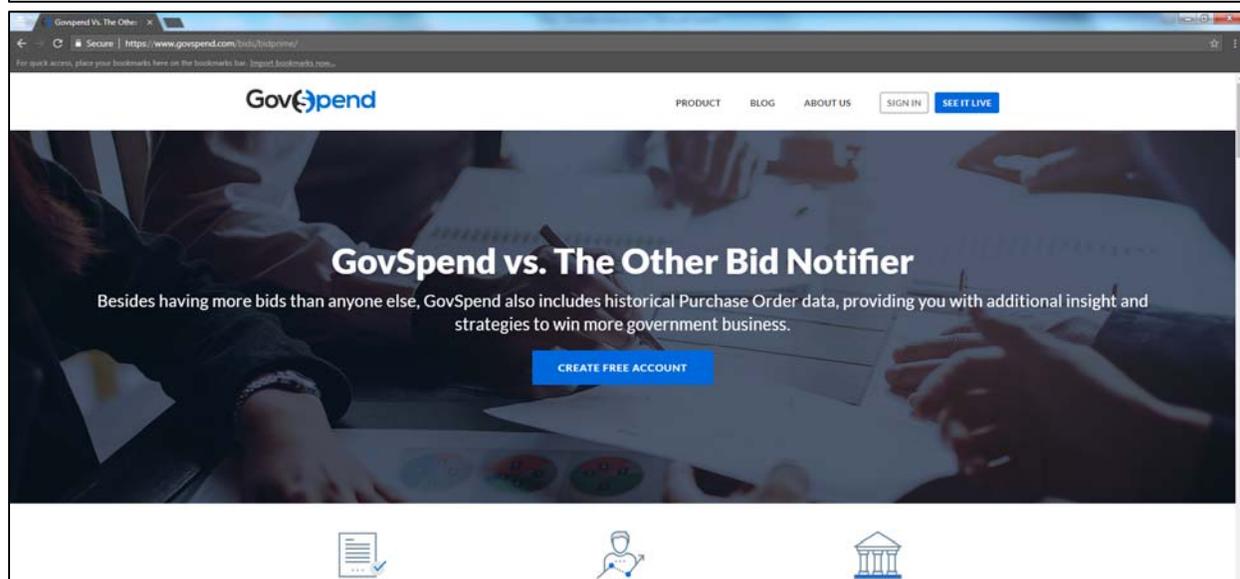
69. On June 5, 2018, BidPrime filed this lawsuit so that court action would put a final stop to Defendants’ illegal activities.

70. To date, BidPrime estimates that Defendants have scraped over 68,300 bid request results. Upon information and belief, Defendants have attempted or gained unauthorized access to BidPrime.com and scraped and stolen more information on other occasions, and BidPrime continues its investigation of those hacking incidents. BidPrime continues to expend resources responding to, and attempting to thwart a resumption of, Defendants’ illegal activity.

71. Defendants also scraped approximately 10,525 bid source URLs. BidPrime’s unique bid source database—its curated Rolodex of suppliers—is trade secret. Defendants ripped out and stole a thick section of that Rolodex.

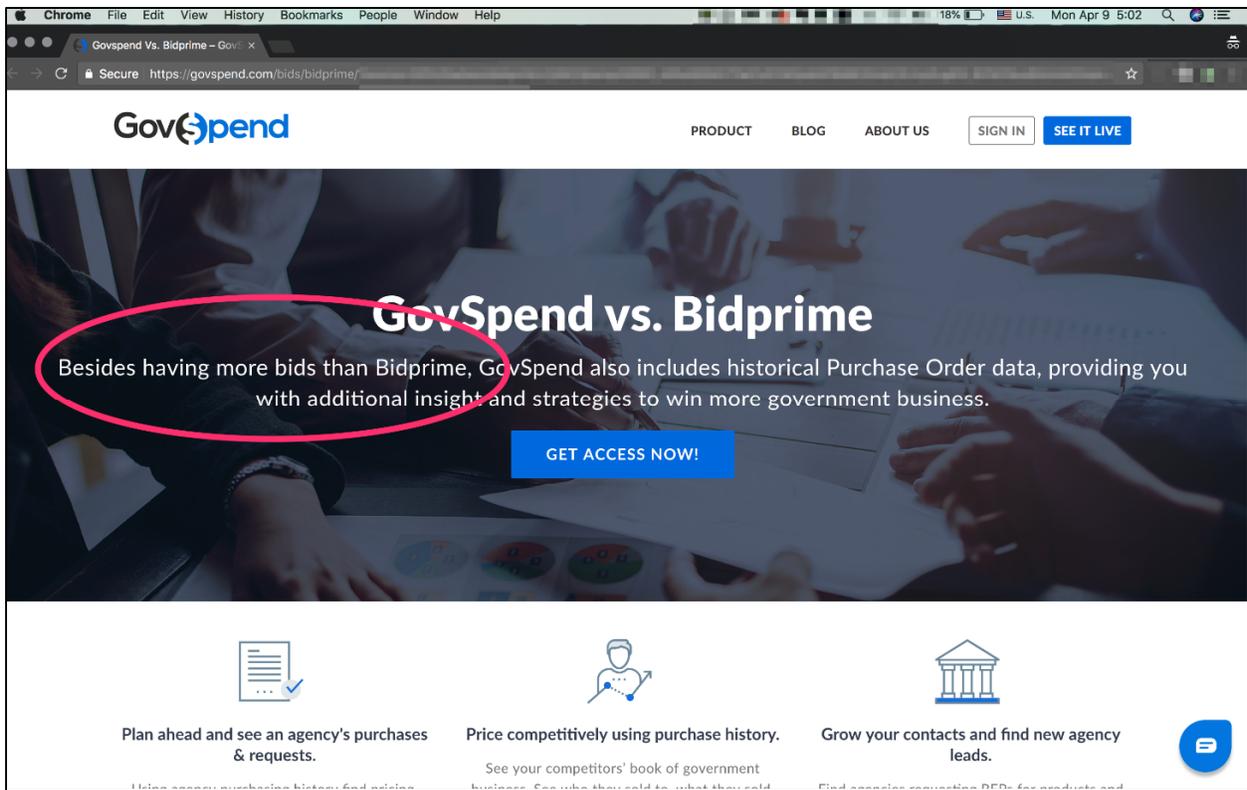
72. That Defendants' desired to misappropriate and reverse engineer BidPrime's trade secret bid source database is evident from their actions, notably their persistence in gaining and regaining entry into the restricted-access portion of BidPrime.com, the only area of the website that houses bid source data.

73. On GovSpend.com, SPGS currently advertises that GovSpend has "more bids than anyone else." This advertisement is directly targeted against BidPrime. The advertisement link is <https://www.govspend.com/bids/bidprime>. Because SPGS has embedded the word "bidprime" in the URL tag for this webpage advertisement, this makes SPGS's advertisement the #1 result (e.g., Bing) or #2 result (e.g., Google) of the non pay-per-click results when a customer or prospective customer searches for both GovSpend and BidPrime together: "govspend bidprime."



**Figure 9:** Top, a screenshot showing SPGS’s BidPrime-targeted advertisement as the #1 search result (non pay-per-click) for the term “govspend bidprime.” Bottom, a screenshot of SPGS’s “more bids” advertisement on GovSpend.com.

74. Prior to this lawsuit, and during the time that Defendants were accessing and scraping information from BidPrime.com, Defendants targeted their competitive advertisements against BidPrime even more directly. At that time, rather than claiming to have “more bids than anyone else,” Defendants expressly claimed to have “more bids than BidPrime.”



**Figure 10:** A screenshot of SPGS’s “more bids than BidPrime” advertisement that was on GovSpend.com during the time Defendants were hacking onto and scraping data from BidPrime.com.

75. Due to their illegal access, scraping, and tampering with BidPrime’s security restrictions, Defendants got away with thousands of bid source URLs that they can use to build their fledging bid request aggregation business or other competitive purposes. Due to this theft, BidPrime suffers and continues to suffer irreparable harm.

**COUNT I -- VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT  
(18 U.S.C. § 1030(A)(2)(C), (A)(4), (A)(5)(B)-(C), & (G))**

76. BidPrime incorporates in the foregoing paragraphs of its Complaint as if fully set forth herein.

77. On numerous occasions, Defendants violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(2)(C), by intentionally accessing a protected computer used for interstate commerce or foreign communication, without authorization or exceeding authorized access, and thereby obtaining information from the protected computer and causing loss to one or more persons during a one-year period aggregating at least \$5,000 in value.

78. In addition, on numerous occasions, Defendants violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(4), by knowingly and with intent to defraud, accessing a protected computer without authorization or exceeding authorized access, and by means of such conduct furthering the intended fraud and obtaining BidPrime's (i) valuable and confidential information and/or (ii) use of the protected computer, with the value of such use being more than \$5,000 in any one-year period, and causing loss to one or more persons during a one-year period aggregating at least \$5,000 in value.

79. In addition, on numerous occasions, Defendants violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(5)(B) and (C), by intentionally accessing a protected computer without authorization, and as a result of their conduct, causing and/or recklessly causing damage and loss to one or more persons during a one-year period aggregating at least \$5,000 in value.

80. BidPrime.com, a BidPrime computer system, is used to conduct business nationwide and therefore is "used in or affecting interstate or foreign commerce or communication" and meets the definition of a "protected computer" set forth in 18 U.S.C. §1030(e)(2)(B).

81. After Rubenstein's free trial expired and the limited access that had been granted to Defendants during that period was revoked, Defendants had no authorization to access

BidPrime.com. Notably, for all of those accesses, Defendants concealed their identities. In addition, each of Defendants' accesses of BidPrime.com violated the terms of service that governed Defendants' use of BidPrime.com, often in multiple ways. For example, both versions of the terms of service prohibit use of the website by competitors or for competitive purposes. As direct competitors, Defendants' use of BidPrime.com was expressly prohibited by the terms of service.

82. Through their unauthorized access of BidPrime.com, Defendants "obtained information." The information obtained includes all the information displayed on the webpages viewed by Defendants. It also includes the 68,300 bid request results that Defendants accessed, scraped, copied and/or downloaded. In addition, Defendants accessed and took 10,525 bid source URLs, revealing a significant chunk of BidPrime's unique bid source database—which is trade secret.

83. Defendants' unauthorized access and use of BidPrime.com has required BidPrime to incur significant costs in (a) detecting and responding to Defendants' unauthorized access and web-scraping, (b) assessing the potential damage to BidPrime that has been caused by such unauthorized access and use, (c) responding to the loss of trade secrets and confidential information caused by Defendants' actions, and (d) mitigating the loss of goodwill among BidPrime's customers that has resulted from such unauthorized access and use. Thus, Defendants' actions have caused loss to one or more persons, including, but not limited to, BidPrime, in a one year period aggregating at least \$5,000 in value for the purposes of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(g).

84. Defendants' conduct has caused harm and threatens to cause irreparable harm to BidPrime, and, unless enjoined, will continue to cause irreparable harm for which BidPrime has no adequate remedy at law.

85. BidPrime is entitled to relief provided by 18 U.S.C. § 1030(g), including (i) injunctive relief, (ii) compensatory damages, and (iii) other equitable relief.

**COUNT II -- VIOLATION OF THE STORED WIRE AND ELECTRONIC COMMUNICATIONS AND  
TRANSACTIONAL RECORDS ACCESS ACT  
(18 U.S.C. §§ 2701(A)(1) & 2707)**

86. BidPrime incorporates in the foregoing paragraphs of its Complaint as if fully set forth herein.

87. On numerous occasions, Defendants violated the Stored Communications Act, 18 U.S.C. § 2701(a)(1), by knowingly and intentionally accessing, without authorization, a facility through which an electronic communication service is provided and thereby obtained, altered, or prevented authorized access to a wire or electronic communication while it was in electronic storage.

88. Specifically, on numerous occasions, Defendants violated the Stored Communications Act, 18 U.S.C. §§ 2701, *et. seq.*, by accessing BidPrime's computer systems, accessing BidPrime customer accounts, and obtaining bid request and bid source information, email notifications, and other electronic communications prepared by BidPrime and/or its customers while that information was in electronic storage.

89. BidPrime.com is a website that allows BidPrime and its customers to send electronic communications and that meets the definition of an "electronic communication

service” set forth in 18 U.S.C. § 2711(1) and 18 U.S.C. § 2510(15). Thus, BidPrime’s computer systems are facilities through which an electronic communication service is provided.

90. BidPrime uses intricate privacy and security safeguards to ensure that the information on its computer systems and the facility through which BidPrime’s electronic communication service is provided is restricted to authorized individuals acting within the scope of their authority.

91. Defendants were not authorized to access or use BidPrime’s computer systems and the facility through which BidPrime’s electronic communication service is provided.

92. BidPrime is a “person aggrieved” by Defendants’ violation of the Stored Communications Act, 18 U.S.C. §§ 2701, *et. seq.*, as it is a person against whom the interception was directed.

93. BidPrime has suffered and continues to suffer damages as a result of Defendant’s violation of the Stored Communications Act and is entitled to recover their actual damages and revenues and/or gains made by Defendants as a result of the violation in accordance with 18 U.S.C. § 2707(c).

94. Pursuant to 18 U.S.C. § 2707(c), BidPrime is also entitled to recover exemplary damages for Defendants’ willful and/or intentional violation of the Stored Communications Act as described above.

95. Pursuant to 18 U.S.C. § 2707(c), BidPrime is also entitled to recover its court costs and reasonable and necessary attorneys’ fees for Defendants’ violation of the Stored Communications Act as described above.

**COUNT III -- VIOLATION OF THE TEXAS HARMFUL ACCESS BY COMPUTER ACT  
(TEX. CIV. PRAC. & REM. CODE §§ 143.001, ET. SEQ.)**

96. BidPrime incorporates in the foregoing paragraphs of its Complaint as if fully set forth herein.

97. On numerous occasions, Defendants knowingly and intentionally accessed a computer, computer network, or computer system without the effective consent of the owner, BidPrime, in violation of Section 33.02 of the Texas Penal Code.

98. BidPrime has been and continues to be injured by Defendants' illegal hacking, as BidPrime has had to incur significant costs in (a) continuous efforts to detect and respond at all hours to Defendants' unauthorized access and web scraping, (b) assessing the potential damage to BidPrime that has been caused by such unauthorized access, (c) responding to the loss of trade secrets and confidential information caused by Defendants' actions, and (d) mitigating the loss of goodwill among BidPrime's customers that has resulted from such unauthorized access. BidPrime has also been injured by the reduction in BidPrime's competitive advantages and the effect of Defendants' unauthorized access on BidPrime's ability to compete effectively in the marketplace.

99. BidPrime is entitled to relief under TEX. CIV. PRAC. & REM. CODE § 143.002(a)-(b), including (i) actual damages and (ii) reasonable attorneys' fees and costs.

**COUNT IV -- VIOLATION OF THE TEXAS UNIFORM TRADE SECRETS ACT  
(TEX. CIV. PRAC. & REM. CODE §§ 134A.001, ET. SEQ.)**

100. BidPrime incorporates in the foregoing paragraphs of its Complaint as if fully set forth herein.

101. BidPrime's unique database of bid sources constitutes trade secret information within the meaning of the Texas Uniform Trade Secrets Act. BidPrime's unique bid source database is generally unknown information that BidPrime has employed reasonable efforts to protect and keep secret and has economic value to competitors such as SPGS. It is not readily ascertainable by proper means.

102. Defendants misappropriated BidPrime's trade secret information. With knowledge that the information was being acquired by improper means and being accessed and used without BidPrime's consent, Defendants acquired large swaths of BidPrime's bid source data—specifically, approximately 10,525 bid source URLs. The acquired data reveals a significant portion of BidPrime's trade secret bid source database. Without permission, Defendants unlawfully accessed and transferred BidPrime's trade secret information, for their own advantage and to the detriment of BidPrime. Defendants acquired knowledge of BidPrime's trade secrets in violation of federal and state laws and further, by violating the terms of service that govern use of BidPrime.com.

103. Defendants' acts constitute willful and malicious misappropriation.

104. As a result of the misappropriation, BidPrime has suffered and continues to suffer injury.

105. BidPrime is entitled to relief under TEX. CIV. PRAC. & REM. CODE § 134A.004 including (i) damages, including but not limited to damages its actual loss caused by Defendants' misappropriation and Defendants' unjust enrichment; and (ii) exemplary damages.

106. In addition, BidPrime is entitled under TEX. CIV. PRAC. & REM. CODE § 134A.005 to recover its court costs and reasonable and necessary attorneys' fees for Defendants' willful and malicious misappropriation.

**COUNT V—UNFAIR COMPETITION**

107. BidPrime incorporates in the foregoing paragraphs of its Complaint as if fully set forth herein.

108. BidPrime has created products through extensive time, labor, skill, and money. These products include, but are not limited to, BidPrime's website BidPrime.com and the information displayed thereon, and further include, but are not limited to, BidPrime's real-time aggregated bid request results and the bid source URLs accompanying those results.

109. Defendants used BidPrime's products to gain a special advantage in their competition with BidPrime. Defendants admit that they accessed BidPrime.com and then accessed, copied, scraped, and/or downloaded BidPrime's bid request results and bid source URLs. Defendants further admit that they used BidPrime's property for competitive purposes, and claim to have used the information to evaluate their bid coverage in comparison to BidPrime's, claiming to have done so both for competitive valuation purposes and for customers and/or potential customers. Defendants were relentless in finding ways to obtain access to the restricted-access portion of BidPrime.com—the only area of BidPrime's website where Defendants could access and take full bid request results and bid source URLs, which they could then use to build their competitive business.

110. BidPrime has suffered, and continues to suffer, commercial damage as a result of Defendants' actions.

### COUNT VI--CONVERSION

111. BidPrime incorporates in the foregoing paragraphs of its Complaint as if fully set forth herein.

112. Through their conduct, Defendants acquired, used, and controlled BidPrime's assets and property for their own benefit, constituting conversion.

113. Without limitation, BidPrime estimates that Defendants unlawfully converted—via copying, downloading, and/or scraping—over 68,300 of BidPrime's bid request results. In addition, Defendants unlawfully converted approximately 10,525 bid source URLs. Defendants admit that they accessed BidPrime.com, downloaded the JSON<sup>8</sup> files containing BidPrime's bid request results and bid source URLs, and further merged those JSON files into an electronic text file. Defendants then exercised dominion and control over this information in an unlawful and unauthorized manner that was inconsistent with BidPrime's rights. As a result of Defendants' conduct, BidPrime has been damaged.

114. As to the element of demand, Defendants' obtained BidPrime's assets and property by illegally accessing BidPrime.com and by committing violations of state and federal law, as well as by committing violations of BidPrime's terms of service. At no time was Defendants' possession of BidPrime's above-described property legal; rather, Defendants' acts in obtaining BidPrime's property amounted to a clear repudiation of BidPrime's rights and are tantamount to a refusal after demand. In the alternative as to the element of demand, the facts and circumstances of Defendants' conversion render demand useless. In the further alternative,

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<sup>8</sup> "JSON" is an acronym for "JavaScript Object Notation" and is a type of file format. JSON presents data in text format and is commonly used to transmit data between a server and a web application.

BidPrime made demand on Defendants to return BidPrime's property as part of this lawsuit, and Defendants have refused to return the property, claiming that they unilaterally disposed of it.

115. The conduct above was deliberate and intentional, or in the alternative, grossly negligent and in reckless disregard for BidPrime's rights, giving rise to liability for exemplary damages.

#### **COUNT VII—TRESPASS TO CHATTELS**

116. BidPrime incorporates in the foregoing paragraphs of its Complaint as if fully set forth herein.

117. On multiple occasions, Defendants knowingly, willfully, intentionally and maliciously gained unlawful access to BidPrime's servers and BidPrime.com with the intention to acquire the information and data contained therein in excess of the permitted uses described in the BidPrime.com website's terms of service.

118. Through their conduct, Defendants interfered with BidPrime's possession of its property and/or injured BidPrime's property when Defendants unlawfully took, used, and intentionally exercised wrongful control over BidPrime's assets for their own benefit, constituting trespass to chattels. By Defendants' unlawful accesses, BidPrime estimates that Defendants unlawfully took—via copying, downloading, and/or scraping—over 68,300 of BidPrime's bid request results. In addition, approximately 10,525 of those taken results contained un-dummied bid source URLs. Defendants admit that they accessed BidPrime.com on multiple occasions, downloaded BidPrime's JSON files for BidPrime's bid request results, and further merged those JSON files into an electronic text file that Defendants controlled. Defendants unlawfully interfered with BidPrime's right to exclude Defendants from

BidPrime.com and BidPrime's servers, and, as a direct result of that interference, dispossessed BidPrime of its data contained in the JSON (and text) files that is housed on BidPrime.com and BidPrime's servers.

119. Defendants' accesses of BidPrime's servers and appropriations of BidPrime's property were not authorized.

120. As a result of Defendants' unauthorized interference with BidPrime's property, BidPrime has been and will continue to be damaged, and Defendants have been unjustly enriched by Defendants' unlawful trespass of BidPrime's computer servers and BidPrime.com in an amount to be proven at trial.

121. BidPrime is entitled to damages including, but not limited to, compensatory and exemplary damages as a result of Defendants' malice or actual fraud.

#### **COUNT VIII--BREACH OF CONTRACT**

122. BidPrime incorporates in the foregoing paragraphs of its Complaint as if fully set forth herein.

123. During the time period relevant to this lawsuit, the use of BidPrime's website BidPrime.com has been governed by and subject to terms of service. Two versions of terms of service have been in effect: (1) the First Terms, which were posted on BidPrime.com on July 26, 2016 and (2) the Second Terms, which were posted on BidPrime.com on May 19, 2018. Both versions of the terms of service conspicuously state that use of BidPrime.com constitutes acceptance of the terms.

124. Defendants first assented to the First Terms when they used Rubenstein's free trial to access BidPrime.com, and repeatedly further assented to the First Terms or Second Terms each time they used the website.

125. Prior to each use of the website, Defendants had actual and/or constructive knowledge of and an opportunity to review BidPrime's terms of service. During each of Defendants' accesses of BidPrime.com, a clearly-marked link on each page of the BidPrime.com website provided access to the version of the terms of service that was posted on the website at that time. Since May 24, 2018, the BidPrime.com login page further provided Defendants with notification that they were accepting BidPrime's terms of service upon clicking the sign-in button.

126. On May 25, 2018 at 12:59 AM CST, an email containing the Second Terms was sent to Defendants' email account attached to the Chris Edward account. It was viewed that same day at 5:11 AM CST.

127. Defendant SPGS, which is a competitor of BidPrime, has published its own terms of service on both SmartProcure.com and GovSpend.com. Thus, Defendants had further constructive knowledge that BidPrime's website was similarly governed by terms of service.

128. The terms of service are binding on Defendants.

129. Defendants have, as described above, repeatedly, willfully, and systematically breached BidPrime's terms of service. These breaches include, but are not limited to, the following breaches:

- a. On February 25, 2018, Defendants breached the First Terms by accessing BidPrime.com and attempting to register for a free trial under the false identity John Jones.
- b. On multiple occasions beginning on April 11, 2018 through May 11, 2018, Defendants breached the First Terms by accessing BidPrime.com and the restricted portions thereof through Customer Account #1, and further breached the terms by accessing, copying, downloading and/or scraping bid request results and accompanying bid source URLs.
- c. On May 11, 2018, Defendants breached the First Terms by accessing, running searches in, and copying, downloading, and/or scraping bid request results from BidPrime.com and its “teaser” search.
- d. On May 11, 2018, Defendants breached the First Terms by accessing BidPrime.com and attempting to register for a free trial under the false identity Morc Drady.
- e. Beginning on May 16, 2018 through May 22, 2018, Defendants breached the First Terms by accessing BidPrime.com and registering for a free trial under the false name Chris Edward, further breached the terms by accessing the restricted portions of BidPrime.com through the Chris Edward account, and further breached the terms by accessing, copying, downloading and/or scraping bid request results and accompanying bid source URLs.

- f. Beginning on May 25, 2018 through June 1, 2018, Defendants assented to and breached the Second Terms by continuing to access BidPrime.com and the restricted portions thereof through the Chris Edward account after receiving email notification of the Second Terms, and further breached the terms by accessing, copying, downloading and/or scraping bid request results and accompanying bid source URLs. Alternatively, Defendants breached the First Terms through these actions.
- g. Beginning on or about May 31, 2018, Defendants breached the Second Terms by accessing BidPrime.com and the restricted portions thereof through Customer Account #2, and further breached the terms by accessing, copying, downloading and/or scraping bid request results and accompanying bid source URLs. Alternatively, Defendants breached the First Terms through these actions.

130. BidPrime has performed all conditions and obligations required of it in accordance with the corresponding terms of service.

131. Defendants' breaches of the terms of service have and continue to damage BidPrime, and have caused and continue to cause irreparable harm to BidPrime.

132. BidPrime is entitled to injunctive relief, as well as damages as a result of Defendants' breaches of the terms of service.

133. Defendants are engaged in activities competitive to BidPrime, and Defendants used, and attempted to use, BidPrime.com and BidPrime's services to obtain information on multiple occasions. Pursuant to the Second Terms, for each of Defendants' violations and

attempted violations of the Second Terms, BidPrime is entitled to a minimum of \$25,000 in damages.

**COUNT IX -- UNJUST ENRICHMENT**

134. BidPrime incorporates in the foregoing paragraphs of its Complaint as if fully set forth herein.

135. Defendants have derived benefit, including commercial advantage and private financial gain, from the willful and unauthorized web scraping, copying, downloading, and/or sale of valuable BidPrime property and products, including individual pages contained within BidPrime's restricted-access website, approximately 68,300 bid request results, and approximately 10,525 bid source URLs.

136. Defendants have accepted and retained the benefits of their unauthorized web scraping, copying, downloading, and/or sale of valuable BidPrime property and products in situations which render it inequitable for them to retain those benefits at BidPrime's expense without payment to BidPrime. Defendants obtained BidPrime's property by illegally accessing BidPrime.com in violation of state and federal law, as well as under violations of BidPrime's terms of service. Defendants admit that they used BidPrime's property for competitive purposes, and claim to have used the information to evaluate their bid coverage in comparison to BidPrime's.

**JURY DEMAND**

137. BidPrime hereby demands a jury trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, BidPrime, prays that this Court:

1. Grant a preliminary and permanent injunction enjoining and restraining Defendants, their employees, representatives, agents, and all persons or entities acting in concert with them, during the pendency of this action and thereafter perpetually from:
  - a. Manufacturing, developing, creating, adapting, modifying, exchanging, offering, distributing, selling, providing, importing, making available, trafficking in, or using any automated device, computer program, or other technology (including but not limited to spiders, robots, web crawlers, data mining tools, and data scraping tools) to download or otherwise obtain data from BidPrime and/or its successors in interest, and from inducing, encouraging, causing, or materially contributing to any other person or entity doing the same;
  - b. Accessing the BidPrime.com website, or any other website owned or operated by BidPrime or its successors in interest, without authorization or in excess of authorized access, including but not limited to access in violation of the applicable Terms of Service, and from inducing, encouraging, causing, or materially contributing to any other person or entity doing the same;
  - c. Engaging in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionalities of BidPrime's services or the BidPrime.com website, and from inducing, encouraging, causing, or materially contributing to any other person or entity doing the same;
  - d. Copying, distributing, displaying, creating derivative works, or otherwise using information or data contained on the BidPrime.com website including proprietary information, trade secret information, confidential information, and protected

elements of BidPrime's copyrighted website, and from inducing, encouraging, causing, or materially contributing to any other person or entity doing the same;

- e. Circumventing technological measures that control access to BidPrime's proprietary website and/or portions thereof (including but not limited to user name, registration and password requirements), and from inducing, encouraging, causing, or materially contributing to any other person or entity doing the same;
- f. Deleting, wiping, clearing, resetting, or otherwise destroying their computers, computer systems, servers, hardware, software, software accounts, cloud accounts, IP accounts, host accounts, proxy accounts, and any data or information contained therein or thereon, and from inducing, encouraging, causing, or materially contributing to any other person or entity doing the same.

BidPrime respectfully requests that this Court's preliminary and permanent injunctions require each Defendant to file with the Court and serve on BidPrime within 30 days after the service on each Defendant of such injunction, or such extended period as the Court may direct, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction.

2. Order:

- a. The impoundment and destruction of all BidPrime information obtained and retained by Defendants in violation of the BidPrime.com website Terms of Service and/or other law, including, but not limited to, the Computer Fraud and Abuse Act;

- b. The impoundment of the computers in Defendants' possession or use during the time period of their unlawful conduct;
  - c. Certification within 14 calendar days by each Defendant (or, if an entity, by a responsible officer, partner, or managing member acting on behalf of the entity), under penalty of perjury, that the Defendant has impounded and destroyed the copies, works, and information as ordered by the Court.
3. Award Plaintiff BidPrime damages, including but not limited to compensatory damages, statutory damages, lost profits, and disgorgement of Defendants' profits, and interest; and exemplary damages pursuant to applicable laws, including without limitation the Stored Communication Act.
  4. Award BidPrime its prejudgment and postjudgment interest.
  5. As to all claims, award BidPrime its reasonable legal fees and costs in preparing, filing, and prosecuting this action.
  6. Order Defendants to account for, hold in constructive trust, pay over to BidPrime, and otherwise disgorge all profits realized by Defendants during the time period of their unlawful conduct and unjust enrichment, as permitted by law.
  7. Award BidPrime such other and further relief as the Court deems just and proper.

Dated this 17<sup>th</sup> day of July, 2018.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of July 2018, I electronically filed the foregoing First Amended Complaint using the Court's ECF system, which will electronically service the same upon all counsel of record.

/s/ Santosh Aravind  
Santosh Aravind