

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: SEARCHMETRICS, INC., ¹ Debtor.	Chapter 11 Case No. 17-11032 (CSS)
Searchmetrics, Inc. and Searchmetrics GmbH, Plaintiffs, v. BrightEdge Technologies, Inc., Defendant.	Adv. No. 17-50478 (CSS)

PLAINTIFFS' MOTION TO EXPEDITE ADVERSARY PROCEEDING

Searchmetrics, Inc., the debtor and debtor-in-possession (the “**Debtor**”) in the above-captioned chapter 11 case (the “**Chapter 11 Case**”) and Searchmetrics GmbH (“**GmbH**” and together with the Debtor, the “**Plaintiffs**” or “**Searchmetrics**”), hereby move this Court (the “**Motion**”) for an order in the above captioned adversary proceeding (the “**Adversary Proceeding**”) expediting the briefing schedule, discovery schedule, and hearing on the merits pursuant to the proposed Scheduling Order attached hereto as **Exhibit A**. In support of this Motion, Searchmetrics incorporates by reference the statements contained in the *Declaration of Wayne P. Weitz in Support of Chapter 11 Petition and First Day Pleadings* (the “**First Day Declaration**”)² filed on the Petition Date.

¹ The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s federal tax identification number, is: Searchmetrics, Inc. (1635). The mailing address for the Debtor, solely for purposes of notices and communications, is c/o EisnerAmper LLP, 750 Third Avenue, New York, New York 10017, *Attn:* Wayne P. Weitz.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

INTRODUCTION

1. On May 8, 2017 (the “**Petition Date**”), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On May 8, 2017, Searchmetrics filed a Complaint and Claim Objection (the “**Complaint**”) against defendant BrightEdge Technologies, Inc. (“**BrightEdge**”) in this Adversary Proceeding seeking, among other things, to estimate all of BrightEdge’s claims in this case.

2. As this Court is aware, through this Chapter 11 Case, the Debtor seeks to restructure its business, pay all obligations in full, and estimate all claims asserted and that could have been asserted by BrightEdge so that the Debtor may successfully reorganize and operate unencumbered by the onus of the BE Litigation. As more fully set forth in the First Day Declaration, absent the expeditious resolution of all of the BE Litigation under the protection of chapter 11, the Debtor will be forced to terminate all of its employees and liquidate.

3. To that end, the Debtor filed a chapter 11 plan (the “**Plan**”) on the Petition Date, which contains two alternatives. Under the first alternative, the Debtor proposes to pay in full all allowed claims, contingent upon the Court’s estimation and determination that BrightEdge’s claims in the aggregate do not exceed \$250,000.00 (the “**BE Cap**”). Under the second alternative, if the Court estimates BrightEdge’s claims in excess of the BE Cap, holders of allowed general unsecured claims will receive their pro rata share from a capped amount of cash provided by GmbH in order that GmbH may retain its interest in the Debtor.

4. Plaintiffs do not believe that BrightEdge has any valid claims against them and has attributed zero value to the Patent Litigation and a nuisance value to the State Court Litigation. A critical component of saving the Debtor’s business is the swift and global resolution, through

estimation or otherwise, of, all of BrightEdge's claims against the Debtor. To achieve this goal, Searchmetrics initiated the Adversary Proceeding seeking, among other things, declaratory relief with respect to the claims asserted by BrightEdge in the BE Litigation, an objection to all claims asserted by BrightEdge in connection with the Chapter 11 Case, and a request to estimate BrightEdge's claims in the Chapter 11 Case for all purposes.

5. Through the Adversary Proceeding, the Debtor will ask the Court first to estimate the BrightEdge claims relating to the state court litigation issues, assuming, but not determining, liability, and to consider Searchmetrics' *Motion for Judgment on the Pleadings that U.S. Patent Nos. 8,135,706; 8,478,700; 8,478,746; 8,577,863; and 8,671,089 do not Claim Patentable Subject Matter* (the "**Alice Motion**"), filed contemporaneously herewith, and then if necessary, a "prior use" motion concerning certain issues raised in the Patent Litigation.

THE PATENT CLAIMS

6. On March 4, 2014, BrightEdge sued Searchmetrics GmbH and Searchmetrics, Inc. in the United States District Court for the Northern District of California for allegedly infringing five (5) United States patents held by BrightEdge. Case No. 3:14-cv-01009-HSG.

7. In June 2014, the U.S. Supreme Court issued its decision in *Alice*³ which greatly narrowed the scope and validity of software patents. Approximately 70% of decisions regarding software patents challenged following the *Alice* decision determined that the patents at issue were invalid. Searchmetrics believes all five (5) of BrightEdge's patents will be invalidated through the *Alice* Motion.

8. The *Alice* Motion is a motion for a judgment on the pleadings filed in the patent litigation and does not require any discovery. If the *Alice* Motion is granted by this Court, the

³ *Alice v. CLS Bank*, 134 S. Ct. 2347 (2014).

patent piece of the Adversary Proceeding is done. If a patent claim survives the *Alice* Motion, Searchmetrics believes it may be extinguished with a motion for summary judgment that the patent is invalid because of earlier prior use. There will only be a need to assess patent infringement and damages if a patent claim survives the *Alice* Motion and a prior use motion.

STATE COURT CLAIMS

9. On November 26, 2013, BrightEdge commenced an action in the Santa Clara County Superior Court for the State of California against one of its former employees, Gabriel Martinez, who was an employee of the Debtor at the time. Case No. 1:13-cv-256794.

10. On April 21, 2015, BrightEdge amended its lawsuit against Mr. Martinez. BrightEdge's amended complaint added Searchmetrics, Inc. as a defendant, as well as two additional individuals, Shaun Siler and Cullen McAlpine, both of whom at the time were Debtor employees.

11. The only claims against Searchmetrics, Inc. that survived the pleading stage are misappropriation of trade secrets and conspiracy. BrightEdge alleges that the Debtor misappropriated fifteen (15) trade secrets in May 2013 when it hired the first of two former BrightEdge employees.

12. Since May 2013, the Debtor has only added roughly 100 new companies as customers from the list of 634 companies that BrightEdge claims were improperly obtained in competition with Debtor using those trade secrets.

13. The measure of damages for a trade secret case is the plaintiff's lost profit or the defendant's ill-gotten profit. The Debtor has never had any profit. The Debtor does not believe BrightEdge has any lost profit. If this is true, then BrightEdge would not have a claim.

14. Given the narrow universe of potential companies at issue and the minimal potential damages, Searchmetrics is willing, for purposes of estimation only, to assume liability and have an estimation hearing on causation and damages only. The Debtor believes, as more fully set forth in the First Day Declaration, that BrightEdge's lost profits could not be more than \$75,000.00.

15. The only discovery needed before an estimation hearing is conducted would relate to BrightEdge's claimed lost profits and causation, which was served upon BrightEdge on May 18, 2017 and is attached hereto as **Exhibit B**.

RELIEF REQUESTED

16. Through this Motion, Searchmetrics is seeking an expedited briefing schedule, discovery schedule and hearing for: (i) declaratory relief with respect to the claims asserted by BrightEdge in the Patent Litigation, and (ii) the estimation of all of BrightEdge's claims in the Chapter 11 Case for all purposes pursuant to section 502(c) of the Bankruptcy Code.

ARGUMENT

17. This Court has discretion to expedite these proceedings. "The decision to grant or deny a motion for expedited consideration is within the Court's discretion." *In re Tobacco Road Assoc., LP*, No. 06-CV-2637, 2007 WL 966507, at *12 (E.D. Pa. Mar. 30, 2007).

18. With the ultimate goal of saving the Debtor's business, the Debtor commenced this Chapter 11 Case to obtain a swift and global resolution, or estimation of, all of BrightEdge's claims against the Debtor.

19. Since BrightEdge commenced the BE Litigation, the Debtor has incurred defense costs of approximately \$2 million annually, and it anticipates that absent the filing of this Chapter 11 Case and the imposition of the automatic stay, the Company would spend between \$3 and \$4

million just in 2017 in connection with just the State Court Litigation and would likely spend at least another \$1 million in 2017 in the Patent Litigation.

20. The Debtor simply cannot afford to continue to spend this amount of money on the BE Litigation. Absent the expeditious and cost effective resolution of the BE Litigation, the Debtor will be forced to terminate all of its employees and liquidate.

21. Additionally, the Debtor's debtor in possession loan contains a limited amount of funds attributable to resolving or estimating the BrightEdge claims and expires at the end of September. Therefore, time is of the essence and resources are limited in order to be able to achieve a successful reorganization.

22. As set forth in the proposed Scheduling Order, a hearing in July on the declaratory relief with respect to the claims asserted by BrightEdge in the Patent Litigation, and a hearing in August on the estimation of all of BrightEdge's claims in the Chapter 11 Case for all purposes pursuant to section 502(c) of the Bankruptcy Code is both feasible and appropriate.

23. The estimation of BrightEdge's claims will require little in the way of discovery. As set forth above, the *Alice* Motion will likely resolve the Patent Claims and the Debtor is willing, for purposes of estimation only, to assume liability and have an estimation hearing on causation and damages on the State Court claims. In short, this is the type of dispute that the Court can readily resolve after briefing and a hearing on the merits in relatively short order.

24. Given the prejudice to Searchmetrics if these proceedings are delayed, Searchmetrics respectfully requests that the Court approve the discovery and briefing schedule attached as **Exhibit A** and schedule a hearing on the merits in July 2017.

Dated: May 24, 2017
Wilmington, Delaware

CHIPMAN BROWN CICERO & COLE, LLP

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*Proposed Special Litigation Counsel to Debtor/Plaintiff
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EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: SEARCHMETRICS, INC., ¹ Debtor.	Chapter 11 Case No. 17-11032 (CSS)
Searchmetrics, Inc. and Searchmetrics GmbH, Plaintiffs, v. BrightEdge Technologies, Inc., Defendant.	Adv. No. 17-50478 (CSS) Related Adv. Docket No(s). _____

ORDER EXPEDITING ADVERSARY PROCEEDING

Upon consideration of the *Plaintiffs' Motion to Expedite Adversary Proceeding* (the “**Motion**”) and the Court having found that: (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; (ii) venue is proper in this district pursuant to 28 U.S.C. § 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iv) notice of the Motion was sufficient under the circumstances; and after due deliberation and good and sufficient cause having been shown for the relief sought by the Motion;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.

¹ The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s federal tax identification number, is: Searchmetrics Inc. (1635). The mailing address for the Debtor, solely for purposes of notices and communications, is c/o EisnerAmper LLP, 750 Third Avenue, New York, New York 10017, *Attn:* Wayne P. Weitz.

2. BrightEdge's answer to Searchmetrics' Complaint must be filed by __:__ __.m. (prevailing Eastern Time) on _____, 2017.

3. BrightEdge's Response to Searchmetrics *Alice* Motion must be filed by __:__ __.m. (prevailing Eastern Time) on _____, 2017.

4. Searchmetrics' Reply to BrightEdge's Response must be filed by __:__ __.m. (prevailing Eastern Time) on _____, 2017.

5. BrightEdge's substantive responses to Searchmetrics' first set of discovery requests and document production must be served by __:__ __.m. (prevailing Eastern Time) on _____, 2017.

6. A hearing to consider the *Alice* Motion shall be held at __:__ __.m. (prevailing Eastern Time) on July _____, 2017.

7. A hearing to consider estimation of BrightEdge's trade secret claims shall be held at __:__ __.m. (prevailing Eastern Time) on August _____, 2017.

8. The Court shall retain jurisdiction with respect to any matters related to or arising from the implementation of this Order.

Dated: _____, 2017
Wilmington, Delaware

Honorable Christopher S. Sontchi
United States Bankruptcy Court

EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: SEARCHMETRICS INC., Debtor.	Chapter 11 Case No. 17-11032 (CSS)
Searchmetrics Inc. and Searchmetrics GmbH, Plaintiffs, v. BrightEdge Technologies, Inc., Defendant.	Adv. No. 17-50478 (CSS)

**PLAINTIFFS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS
TO DEFENDANT BRIGHTEDGE TECHNOLOGIES, INC.**

Searchmetrics Inc. and Searchmetrics GmbH (collectively, the “**Plaintiffs**” or “**Searchmetrics**”) request that the Defendant, BrightEdge Technologies, Inc. (the “**Defendant**” or “**BrightEdge**”) (a) answer the following interrogatories, and (b) produce the documents designated below at the offices of Chipman Brown Cicero & Cole, LLP, Hercules Plaza, 1313 North Market Street, Suite 5400, Wilmington, Delaware 19801, *on or before 4:00 p.m. (prevailing Eastern Time) on June 19, 2017*, or on such date as may be agreed to by the parties.

DEFINITIONS

1. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) by any means, including but not limited to any meeting, conversation, discussion, conference, correspondence, message, or other written or oral transmission, exchange, or transfer of information in any form between two or more persons, including in person or by telephone, facsimile, telegraph, telex, electronic mail or other medium.

2. The term “Complaint” means the *Complaint* that initiated this adversary proceeding [Adv. Docket No. 1.

3. The terms “describe in detail,” “state the factual basis,” “describe the basis,” “state all facts,” “state your understanding,” or similar phrases with respect to an allegation, contention or other reference, will mean to state in detail those underlying facts rather than ultimate facts or conclusions of fact or law: (a) to the extent of your present knowledge, whatever the source; (b) which you can ascertain by a diligent search; or (c) whose probable existence is known to you although you have not yet fully apprised yourself of the truth.

4. The term “Document” shall have the broadest meaning permitted by Fed. R. Bankr. P. 7034(a) and Fed. R. Civ. P. 34(a) and includes without limitation all originals, copies (if the originals are not available), non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts of the following items, whether printed or recorded (through a sound, video or other electronic, magnetic or digital recording system) or reproduced by hand, including but not limited to letters, correspondence, telegrams, telexes, memoranda, records, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, note pads, notebooks, postcards, “Post-It” notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced

interpretations or transcriptions thereof, electronically transmitted messages (“**Email**”), voice mail messages, interoffice communications, advertising, packaging and promotional materials and any other writings, papers and tangible things of whatever description whatsoever, including but not limited to any information contained in any computer, server, mainframe, or other storage device (including (i) information on or in computer memory, (ii) information on or in computer or network backup files, and (iii) information which has been “deleted” or “erased” but is recoverable) whether located on-site or at an off-site facility, within your possession, custody or control.

5. The terms “identify,” “describe,” or “state” mean:

- a. when applicable to a document, to state at a minimum and in the following order:
 - (1) the name of the document;
 - (2) the nature of the document (*e.g.*, letter, contract, memorandum) and any other information (*i.e.*, its title, index, or file number) which would facilitate in the identification thereof;
 - (3) the date the document was prepared or created;
 - (4) the identity of each person who performed any function or had any role in connection therewith (*i.e.*, author, contributor of information, recipient, *etc.*) or who has any knowledge thereof, together with a description of each such person’s function, role, or knowledge;
 - (5) its subject matter and substance, or, in lieu thereof, annex a legible copy of the document to the answers to these Interrogatories;
 - (6) identification of all persons who are in possession of the original and any copy of the document;
 - (7) the type of document (letter, memorandum, chart, photograph, tape recording, computer record, telegraph, *etc.*);
 - (8) its present location and the identity of its present custodian or, if its present location and custodian are not known, a description of its last known disposition;

- (9) where a document is other than a paper (*i.e.*, computer or recording tape, microfilm disk, microfiche, *etc.*), a full description of the tangible thing on which the information is recorded and the device or devices needed to read or listen to the document; and
 - (10) if the document has been destroyed or is otherwise no longer in existence or cannot be found, the reason why such document no longer exists, the identity of the people responsible for the document no longer being in existence and of its last custodian.
- b. When applicable to a natural person, to state at a minimum and in the following order:
 - (1) his/her full name;
 - (2) the present and/or last known business and residence address and telephone number;
 - (3) the present and/or last known business affiliation; and
 - (4) the present and/or last known business positions (including job title and a description of job functions, duties, and responsibilities).
- c. When applicable to any entity other than a natural person, to state at a minimum and in the following order:
 - (1) its full name;
 - (2) the address and telephone number of its principal place of business;
 - (3) the jurisdiction under the laws of which it has been organized or incorporated and the date of such organization or incorporation;
 - (4) the identity of all persons who acted and/or who authorized another to act on its behalf in connection with the matters referred to;
 - (5) in the case of a corporation, the names of its directors and principal officers; and

(6) in the case of an entity other than a corporation, the identities of its partners or principals or all individuals who acted or who authorized another to act on its behalf in connection with the matters referred to.

d. When applicable to an oral communication, to state the date, time, place, manner and substance of such communication, and to identify all persons who participated in, listened to, or had access to transcripts or summaries of such communication or copies thereof, and to identify each such person's function, role, or knowledge, and to identify all documents which memorialize, commemorate, summarize, record, or directly refer or relate, in whole or in part, to such communication.

6. The term "Interrogatories" or "Interrogatory" means an interrogatory or interrogatories propounded in the Requests.

7. The terms "Person" or "Persons" means natural persons, proprietorships, corporations, partnerships, trusts, joint ventures, groups, associations, organizations, and all other entities.

8. The term "Plaintiffs" means the plaintiffs in this adversary proceeding: Searchmetrics Inc. and Searchmetrics GmbH.

9. As the term "possession" pertains to web-sites, the term includes but is not limited to electronic content that is posted either publicly or privately on web-sites in your possession, custody or control.

10. As the terms "possession" and "document" pertain to Email these terms include but are not limited to Email contained in your electronic Email directories containing:

- a. "deleted" Emails which have not been permanently deleted, including all subdirectories irrespective of the title of such subdirectories;
- b. "sent" Emails, including all subdirectories irrespective of the title of such subdirectories;
- c. "received" Emails, including all subdirectories irrespective of the title of such subdirectories; and
- d. Emails stored in archives, tape back-ups, or other storage media.

11. The term “Request” refers generically to any of the separate enumerated requests to admit, interrogatories and requests for production of documents set forth herein.

12. The term “Requests” means this *Plaintiffs’ First Set of Requests for Production of Documents and Interrogatories Directed to Defendant, BrightEdge Technologies, Inc.*

13. The terms “you” and “your” mean BrightEdge Technologies, Inc. and all persons acting on its behalf.

INSTRUCTIONS

1. The use of the singular shall be deemed to include the plural, and the use of masculine, feminine or neutral gender shall include each gender, as appropriate in context.

2. The terms “all,” “any,” “each,” and “every” shall each be construed as all, any, each and every to bring within the scope of the Request or Requests all information that might otherwise be construed to be outside of its scope.

3. The terms “and” and “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of the Request or Requests all information that might otherwise be construed to be outside of its scope.

4. Each Request shall be construed independently and not with reference to any other Request for the purpose of limitation.

5. A request for a document shall be deemed to include a request for any and all transmittal sheets, cover letters, exhibits, enclosures, or attachments to the document, in addition to the document itself.

6. Please produce responsive documents as they have been kept in the usual course of business. Electronic documents must be produced in their native format with metadata intact (*i.e.*, without metadata “scrubbing” or “cleansing”). Each document shall be produced in such fashion

as to indicate clearly the identity of the file in which such document was located and the configuration in which such document was kept. If there is no document responsive to any particular Request, please so state in writing.

7. In the event that you interpose an objection to a Request, you should clearly indicate to which part or portion of the Request the objection is directed and provide all documents to which objection is not made as if such part or portion were propounded as a separate Request.

8. Please produce all documents in your possession, custody or control that are requested herein. The term “possession, custody or control” includes actual possession by you, actual possession by you with another or constructive possession by you in that you are legally entitled or able to obtain actual possession from another person (including counsel and former counsel).

9. Please produce documents in such a manner so that it is readily identifiable from which plaintiff the particular production is made.

10. As the Requests relate to Email, you are to review the text of each individual Email (*i.e.* not simply review the subject heading or utilize an electronic search device). As the Requests relate to web-sites and other electronic information, you are to review the electronic content posted either publicly or privately on web-sites in your possession, custody or control (*i.e.* not simply review the subject heading or utilize an electronic search device).

11. You are to preserve all electronic documents in your possession, which includes discontinuing any and all purging, deleting, erasing, overwriting or destroying of electronic documents in your possession irrespective of your normal business practice.

12. If any information requested herein is withheld under claim of privilege, or is not provided for whatever reason, you are requested at the time of responding to these Requests to (a)

describe in detail the claim of privilege or other reason used to withhold the information and (b) identify all information by date and subject matter, without disclosing its contents, in a manner sufficient to allow it to be described to the Court for ruling on the privilege or other reason asserted. You are further requested to provide all requested information that is not subject to a claim of privilege or other reason for nonproduction by excising or otherwise protecting the portions for which a privilege is asserted, if such a technique does not result in disclosing the contents of the portions for which some privilege is asserted.

13. If any of the requested information or documents were, but no longer are, in your possession or subject to your control, state whether such information or document: (a) is missing or lost; (b) has been destroyed; (c) has been transferred voluntarily or involuntarily to any other person or entity; or (d) has been otherwise disposed of, and, in each instance, explain the circumstances surrounding the disposition thereof and provide a description of the nature, content, date, author(s) and recipient(s) of the information or document.

14. If your answer to an Interrogatory or other Request is based upon information and belief, set forth the sources of the information and the grounds of the belief.

15. Each Request is deemed to be continuing in nature. If additional information or documents are obtained or discovered or are brought to your attention between the time of responding to these Requests and the final disposition of this adversary proceeding, the Noteholders request that you promptly supplement your response.

INTERROGATORIES

1. Identify each company from which you claim lost revenue as part of your \$8,554,074.00 loss of revenue claim for the period of May 2013 to June 2018, as stated in the Attachment to the BRIGHTEDGE PROOF OF CLAIM. Hereinafter, “BRIGHTEDGE PROOF OF CLAIM” shall mean the substantively identical Proof of Claims (Official Form 410) filed by BrightEdge Technologies, Inc. on December 29, 2016 in the matters of *In re Shaun S. Siler* (Case No. 16-10722) and *In re Gabriel Daniel Martinez* (Case No. 16-53296).

2. Identify each company from which you claim lost revenue as part of your \$1,466,787.00 loss of revenue claim for the period of June 2018 to June 2019, as stated in the Attachment to the BRIGHTEDGE PROOF OF CLAIM.

3. For each company identified in response to Interrogatory No. 1, identify your total lost revenue per year from each company for the years 2013 through 2016.

4. For each company identified in response to Interrogatory No. 1, identify the total expected lost revenue per month (for months in the future) or actual lost revenue per month (for months in the past) from each company from January 2017 through June 2018.

5. For each company identified in response to Interrogatory No. 2, identify the total expected lost revenue per month from each company from June 2018 through June 2019.

6. For each company identified in response to Interrogatory No. 1, state all facts in support of any contention that Searchmetrics, Inc. used a BrightEdge Technologies, Inc. trade secret to cause BrightEdge Technologies, Inc. to lose revenue from each company identified and in the amount claimed.

7. For each company identified in response to Interrogatory No. 2, state all facts in support of any contention that Searchmetrics Inc. used a BrightEdge Technologies, Inc. trade secret to cause BrightEdge Technologies, Inc. to lose revenue from each company identified and in the amount claimed.

8. State all facts in support of your claim for prejudgment interest totaling \$1,464,169.00 contained in the Attachment to the BRIGHTEDGE PROOF OF CLAIM.

9. State all facts in support of your calculation for prejudgment interest totaling \$1,464,169.00 contained in the Attachment to the BRIGHTEDGE PROOF OF CLAIM.

10. Describe the method used to calculate the sum of \$1,464,169.00 for prejudgment interest contained in the Attachment to the BRIGHTEDGE PROOF OF CLAIM.

11. State your earnings before interest and taxes (EBIT) for each of the years 2013, 2014, 2015, and 2016.

12. State your expected earnings before interest and taxes (EBIT) for each of the years 2017, 2018, and 2019.

13. State your earnings before interest, tax, depreciation and amortization (EBITDA) for each of the years 2013, 2014, 2015, and 2016.

14. State your expected earnings before interest, tax, depreciation and amortization (EBITDA) for each of the years 2017, 2018, and 2019.

15. State your net profit or net loss for each of the years 2013, 2014, 2015, and 2016.

16. State your expected net profit or expected net loss for each of the years 2017, 2018, and 2019.

17. State your total revenue for each of the years 2013, 2014, 2015, and 2016.

18. State your expected total revenue for each of the years 2017, 2018, and 2019.

19. State your total expenses for each of the years 2013, 2014, 2015, and 2016.
20. State your expected total expenses for each of the years 2017, 2018, and 2019.
21. Describe the method used to calculate the sum of \$113,172.00 for discount of future damages contained in the Attachment to the BRIGHTEDGE PROOF OF CLAIM.
22. State all facts in support of your calculation for discount of future damages totaling \$113,172.00 contained in the Attachment to the BRIGHTEDGE PROOF OF CLAIM.
23. For each company identified by you in your responses to Searchmetrics, Inc.'s Special Interrogatories, Set One, Special Interrogatory No. 4, served in the STATE COURT LAWSUIT (hereinafter, "STATE COURT LAWSUIT" shall mean Case No. 113-cv-256794 filed in the Santa Clara County Superior Court in the State of California, titled *BrightEdge Technologies, Inc. v. Gabriel Martinez, et al.*) state:
 - (a) the name of the company;
 - (b) the date you became the company's search engine optimization provider;
 - (c) the names of all search engine optimization providers besides you competing for the customer at the time you became the company's search engine optimization provider;
 - (d) the date the company changed search engine optimization providers from you to Searchmetrics, Inc.;
 - (e) the names of all search engine optimization providers besides you or Searchmetrics, Inc. competing for the customer at the time the company changed search engine optimization providers from you to Searchmetrics, Inc.;
 - (f) the amount of revenue and the amount of profit you claim to have lost as the result of the company changing search engine optimization providers from you to Searchmetrics, Inc.; and
 - (g) the means by which you calculated the amount of lost revenue and the amount of lost profit from each company as stated in response to (f).

24. For each company identified by you in response to Searchmetrics Inc.'s Special Interrogatories, Set One, Special Interrogatory No. 5, served in the STATE COURT LAWSUIT state:

- (a) the name of the company;
- (b) the date the company selected Searchmetrics Inc. as a search engine optimization provider over you;
- (c) the names of all search engine optimization providers besides you or Searchmetrics Inc. competing for the customer at the time the company selected Searchmetrics Inc. as a search engine optimization provider over you;
- (d) the amount of revenue and the amount of profit you claim to have lost as the result of the company selecting Searchmetrics Inc. as a search engine optimization provider over you; and
- (e) the means by which you calculated the amount of lost revenue and the amount of lost profit from each company as stated in response to (d).

REQUESTS FOR PRODUCTION

- 1. Your income statement for each of the years 2013, 2014, 2015, and 2016.
- 2. Documents sufficient to show an itemized calculation of each line-item listed in each income statement produced in response to Request for Production No. 1.
- 3. All documents used to prepare each income statement produced in response to Request for Production No. 1.
- 4. Your forecasted, budgeted, or projected income statements for each of the years 2017, 2018, and 2019.
- 5. Documents sufficient to show an itemized calculation of each line-item listed in each forecasted, budgeted, or projected income statement produced in response to Request for Production No. 4.

6. All documents used to prepare each forecasted, budgeted, or projected income statement produced in response to Request for Production No. 4.

7. All non-privileged documents you used to prepare your responses to Interrogatory Nos. 1 through 24.

8. For any company identified in response to Interrogatory No. 1 or 2, all communications regarding an actual or potential business relationship with each company from March 1, 2013 to the present, including without limitation, communications regarding all proposals, contracts, invoices, purchase orders, term sheets, negotiations, complaints, request for service, services provided, services desired, pricing, or competition.

9. For any company identified in response to Interrogatory No. 1 or 2, all internal BrightEdge Technologies, Inc. documents or communications regarding an actual or potential business relationship with each company from March 1, 2013 to the present, including without limitation, documents or communications regarding proposals, contracts, invoices, purchase orders, term sheets, negotiations, complaints, request for service, services provided, services desired, pricing, or competition.

10. All documents relating to your response to Interrogatory No. 23.

11. All documents relating to your response to Interrogatory No. 24.

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Dated: May 18, 2017
Wilmington, Delaware

CHIPMAN BROWN CICERO & COLE, LLP

/s/ William E. Chipman, Jr.

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*Proposed Special Litigation Counsel to
Debtor/Plaintiff Searchmetrics Inc. and Counsel for
Plaintiff, Searchmetrics GmbH*

File a Motion:

[17-50478-CSS Searchmetrics Inc. et al v. BrightEdge Technologies, Inc.](#)

Type: ap

Office: 1 (Delaware)

Judge: CSS

Lead Case: 1-17-bk-11032

U.S. Bankruptcy Court**District of Delaware**

Notice of Electronic Filing

The following transaction was received from William E. Chipman entered on 5/24/2017 at 11:36 AM EDT and filed on 5/24/2017

Case Name: Searchmetrics Inc. et al v. BrightEdge Technologies, Inc.

Case Number: [17-50478-CSS](#)

Document Number: [11](#)

Docket Text:

Motion for Leave */Plaintiffs' Motion to Expedite Adversary Proceeding* (related document(s)[7]) Filed by Searchmetrics GmbH, Searchmetrics Inc. (related document(s)[7]). (Attachments: # (1) Exhibit A - Proposed Scheduling Order # (2) Exhibit B - May 18, 2017 Discovery Requests) (Chipman, William)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:SM - Motion to Expedite Proceeding [TO FILE].pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=5/24/2017] [FileNumber=14514344-0]
] [24515f59c5567f5e8c8d315430e450dcda7243182d316574506903c00cba45be95a
7093dcc19be0579f172b5c7759d2defc9dbb3b70e08d28b825e3fac4453a8]]

Document description:Exhibit A - Proposed Scheduling Order

Original filename:C:\fakepath\SM - Ex A to Motion to Expedite [TO FILE].pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=5/24/2017] [FileNumber=14514344-1]
] [17b9e18f2d7786fc7e2993142822d3dde4fc58066cd03955f11f4267af71a27a95
1f42bf29f28cd2072bac6660ef597a57eaaba547f7fa7ca830825e2108bf2]]

Document description:Exhibit B - May 18, 2017 Discovery Requests

Original filename:C:\fakepath\SM - Ex B to Motion to Expedite [TO FILE].pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=5/24/2017] [FileNumber=14514344-2]
] [5950c35a3c1c502e8396ab384e0acce27d399c5349c8f71b6047dbd52db93c0f4f8
10581004e8e6151d5f7a7b281121dadd058750f67fb46d8d5f2ac690b23ed]]

17-50478-CSS Notice will be electronically mailed to:

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