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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Gen Dieu, Deputy Clerk

6 Attorneys for Defendant/Cross-Complainant
SAN DIEGO METROPOLITAN TRANSIT
7 SYSTEM and Defendants SANDRA BOBEK,
GARY DEXTER and JEFFREY M. STUMBO
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO, HALL OF JUSTICE**

11
12 IVAN AUGUSTINO, an individual,

13 Plaintiff,

14 v.

15 SAN DIEGO METROPOLITAN TRANSIT
SYSTEM, a California public agency;
16 SANDRA BOBEK aka Sandy Bobek, an
individual; GARY DEXTER, an individual;
17 JEFFREY M. STUMBO, an individual; and
DOES 1 through 100, Inclusive,

18 Defendants.
19

20 SAN DIEGO METROPOLITAN TRANSIT
SYSTEM,

21 Cross-Complainant,

22 v.
23

24 IVAN AUGUSTINO, and ROES 1 through 5,
Inclusive,

25 Cross-Defendants.
26
27
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Case No. 37-2018-00009620-CU-OE-CTL

Assigned for all purposes to Judge Eddie C.
Sturgeon, Department C-67

**FIRST AMENDED CROSS-COMPLAINT
FOR:**

1. Conversion
2. Misappropriation of Trade Secrets
3. Violation of Penal Code § 496(c)
4. Comprehensive Computer Data Access and Fraud Act – Penal Code § 502(c)
5. Unfair Business Practices – Business & Professions Code §§ 17200 et seq.

IMAGED FILE

Action Filed: February 26, 2018
Trial Date: Not Set

**EXEMPT FROM FEES
GOVT. CODE § 6103**

1 COMES NOW Defendant/Cross-Complainant SAN DIEGO METROPOLITAN
2 TRANSIT SYSTEM (“Cross-Complainant” or “MTS”) who alleges against Plaintiff/Cross-
3 Defendant IVAN AUGUSTINO (“Cross-Defendant” or “Augustino”) and ROES 1 through 5,
4 inclusive (collectively “Cross-Defendants”), as follows:

5 **PARTIES**

6 1. At all times mentioned in this Cross-Complaint, Augustino was a resident of San
7 Diego, California. Augustino was formerly employed by MTS and worked in the San Diego
8 office of MTS, which is within the County of San Diego, in the State of California.

9 2. MTS is a California public agency conducting business in the State of California,
10 with its principal place of business in the County of San Diego.

11 3. MTS does not know the true names or identities of ROES 1 through 5, inclusive,
12 and therefore sues them by those fictitious names.

13 4. MTS is informed and believes, and on that basis alleges, that at all times mentioned
14 in this Cross-Complaint, ROES 1 through 5 were the agents of Cross-Defendant or otherwise
15 responsible for the conduct complained of herein, and in doing the things alleged in this Cross-
16 Complaint, were acting within the course and scope of that agency and employment or were
17 otherwise responsible for the damages complained of by MTS.

18 **GENERAL ALLEGATIONS**

19 A. MTS’ Confidential Information

20 5. MTS provides public bus and rail services throughout San Diego County, and owns
21 and operates various subsidiaries including: San Diego Trolley, Inc.; San Diego Transit
22 Corporation; and the San Diego & Arizona Eastern Railway Company.

23 6. MTS develops and maintains proprietary technology and customer information for
24 use in the services it provides to the public (“Confidential Information”). For example, MTS
25 developed an enhancement to Cubic Transportation System’s Webtix application (“Webtix
26 Enhancement”), a software application that enables passengers to purchase a new Compass Card,
27 or to reload or manage their existing Compass Card on-line, and then utilize that card for
28 transportation on the MTS transportation system. MTS’ Webtix Enhancement is a trade secret and

1 is the sole and exclusive property of MTS. The Webtix Enhancement relies on source code that
2 was developed in part by Augustino that implements additional security protocols into the Webtix
3 application in order to prevent fraudulent credit card transactions online. Without the
4 development and maintenance of its Confidential Information, including the Webtix Enhancement,
5 MTS would not be able to efficiently perform its business functions or provide its services to the
6 public. MTS' Confidential Information, including the Webtix Enhancement, is a valuable and
7 critical asset of MTS' business. This information is not known by third parties outside of MTS
8 and cannot be compiled and organized through public resources.

9 7. MTS invested substantial time, effort and expense in order to develop its
10 Confidential Information, including the Webtix Enhancement. MTS derives economic value from
11 the fact that it is not known outside of MTS and is not available through public records and
12 information sources.

13 B. MTS' Efforts to Protect its Confidential Information.

14 8. Recognizing the economic value that it derives from its Confidential Information,
15 including the Webtix Enhancement, as well as the potential value of this information, MTS
16 requires that its Confidential Information be maintained in confidence by its employees.

17 9. MTS has taken steps and security measures to protect the confidentiality of its
18 Confidential Information, including the Webtix Enhancement, and prevent improper
19 dissemination. MTS does not give access to its Confidential Information to non-employees.

20 10. MTS has a company-approved information security policy and program. As part of
21 the program, MTS maintains comprehensive information security guidelines that set forth MTS'
22 efforts to ensure the integrity and security of its Confidential Information, including the Webtix
23 Enhancement.

24 11. MTS' security measures ensure both digital and physical security. For example,
25 logical security standards include encryption of computer and data transmissions, redundant
26 firewalls, full disk encryption and access rights based on position/rolling responsibilities.
27 Furthermore, employees are required to carry an Identification Card and use a Key Fob to access
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1 restricted areas. MTS also protects access to its Confidential Information through individual
2 computer passwords. MTS requires that each computer have a login and password.

3 12. MTS' Employee Handbook also advises employees of the need and importance of
4 preserving Confidential Information and bars employees from disclosing and otherwise
5 misappropriating any of the MTS' Confidential Information. Employees are also precluded from
6 uploading Confidential Information to external hardware or cloud storage without authorization.
7 The Employee Handbook includes a Technology Resources Policy that also informs employees
8 that MTS retains ownership and control of all data and information stored on any of MTS' servers
9 and electronic devices.

10 C. Augustino's Employment at MTS

11 13. MTS employed Augustino as a Senior Application Developer, commencing on or
12 about August 24, 2015.

13 14. MTS provided Augustino with a laptop computer (the "MTS Laptop") during his
14 employment, for use in the performance of his work duties. The MTS Laptop provided Augustino
15 access to and contained Confidential Information. At all times, MTS was and is the sole legal
16 owner of the MTS Laptop.

17 15. As a Senior Application Developer for MTS, one of Augustino's primary
18 responsibilities was to develop and/or modify the source code for MTS' Webtix Enhancement.
19 All of the source code and other work product Augustino prepared on the Webtix Enhancement is
20 the property of MTS.

21 16. In the course of his duties as Senior Application Developer for MTS, Augustino had
22 access to, and regularly worked with, Confidential Information. This included sensitive
23 information relating to the Webtix Enhancement, such as the source code for the customizations
24 that were created and/or modified by Augustino.

25 17. In or around February 2017, Augustino received a monetary bonus and direct
26 acknowledgement from MTS' Board of Directors to commend Augustino for his work on the
27 Webtix Enhancement.

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1 D. Augustino's Resignation, Misappropriation of the Webtix Enhancement and Conversion of
2 MTS' Property

3 18. On or about February 28, 2017, Augustino submitted a letter of resignation
4 indicating that his final day of work for MTS would be March 14, 2017.

5 19. In early March 2017, MTS set up a meeting between Augustino and other
6 employees in the IT department for Augustino to transfer his knowledge concerning the Webtix
7 application and other pending projects to the IT team. At the meeting, Augustino agreed to
8 prepare documentation to effect a knowledge transfer concerning Webtix, OneBusAway, and
9 other systems for which he was responsible. However, Augustino ultimately refused to do so.
10 Augustino remained employed by MTS through the date of his resignation on March 14, 2017, but
11 refused to cooperate in transferring his knowledge to his co-workers or MTS and did not provide
12 the agreed upon transfer documentation.

13 20. Following Augustino's resignation, MTS could not locate the Java source code or
14 documentation of the Webtix Enhancement. A search of MTS' servers and Augustino's MTS
15 Laptop produced no documentation pertaining to the work he did to complete the programming of
16 the Webtix Enhancement or information required to support the system. Additionally, there was
17 no record of the Webtix source code nor the customizations that he developed in the Team
18 Foundation Server, which is the platform MTS utilizes to manage versions of the source code.

19 21. Without the source code for the Webtix Enhancement, MTS was prevented from
20 making further modifications to support or enhance the Webtix application. Specifically, removal
21 of the source code from MTS' servers delayed the expansion of enhanced validation into the
22 "Reload Your Compass Card" and "Manage Your Compass Card" areas of the application.

23 22. Counsel for MTS retained a well-respected outside forensic consultant to analyze
24 Augustino's MTS Laptop. The forensic analysis found that MTS' Confidential Information was
25 downloaded by Augustino from the MTS Laptop to a private Google storage drive, that over
26 10,000 files were removed from the MTS Laptop 14 days before Augustino left his employment
27 with MTS, and that information from an external storage device titled "Virus" was uploaded to
28 MTS' systems from the MTS Laptop two days before Augustino's departure.

1 23. MTS is informed and believes, and thereon alleges, that Augustino copied more than
2 10,000 files (“MTS Property”) from the MTS Laptop and/or MTS’ servers onto an unauthorized
3 personal hard drive or cloud storage device before removing the MTS Property from the MTS
4 Laptop.

5 24. As a result of the removal of the Webtix Enhancement source code from MTS’
6 servers, MTS had to hire an outside contractor to recreate the Webtix Enhancement. MTS also
7 had to divert other employees and resources to repair damage and/or recreate files that were
8 removed from its systems.

9 25. Two days after Augustino’s departure, one of MTS’ applications, OneBusAway,
10 suffered repeated malware attacks, and had to be taken offline and repaired. MTS is informed and
11 believes and thereon alleges that Augustino intentionally downloaded a virus onto its computer
12 system to perform the malware attacks.

13 26. On or about April 17, 2017, counsel for MTS sent a cease and desist letter to
14 Augustino directing him to immediately return all MTS Property in his possession, including
15 specifically the Webtix Enhancement source code. Augustino responded through his counsel
16 approximately one month later denying any involvement in removing the Webtix Enhancement or
17 the MTS Property from MTS’ servers or the MTS Laptop.

18 **FIRST CAUSE OF ACTION**

19 **(Conversion Against all Cross-Defendants)**

20 27. MTS realleges and incorporates by reference each and every allegation contained in
21 the preceding paragraphs as though fully set forth herein.

22 28. At all relevant times, including at the time of Augustino’s resignation and at the
23 present, MTS had and has ownership of the MTS Property, including its Confidential Information
24 and other data and documents stored on its servers and the MTS Laptop, including the right to take
25 immediate possession of it.

26 29. MTS’ first cause of action for conversion is based on Augustino’s unlawful removal
27 of the MTS Property, with the exception of any trade secret information that was included therein.

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1 To be clear, this claim is not based on Augustino's removal of the source code for the Webtix
2 Enhancement, unless it is found that the Webtix Enhancement does not qualify as a trade secret.

3 30. During the month preceding his resignation from MTS, Augustino removed the
4 MTS Property from MTS servers and the MTS Laptop, and has continuously refused to return or
5 otherwise provide MTS with the MTS Property despite repeated requests and efforts by MTS to
6 facilitate its return. On information and belief, Augustino continues to possess the MTS Property
7 to his benefit and to the detriment of MTS, its employees, and its customers. Augustino's actions
8 are substantial and wrongful.

9 31. In or around February and March 2017, Augustino copied the MTS Property onto
10 unauthorized personal external and/or cloud storage devices without MTS' knowledge or
11 permission.

12 32. On or about February 14, 2017, after copying the MTS Property onto an external
13 hard drive, Augustino removed it from the MTS Laptop and/or MTS' servers.

14 33. By his knowing and intentional conduct alleged herein, Augustino substantially
15 interfered with MTS' ownership of the MTS Property by taking possession of the MTS Property,
16 preventing MTS from having access to the MTS Property, destroying the MTS Property, and/or
17 refusing to return the MTS Property.

18 34. As a direct and proximate result of Augustino's substantial and wrongful conduct in
19 converting the MTS Property, MTS has suffered, and continues to suffer, economic damages in
20 excess of \$50,000, with the exact amount to be determined according to proof at trial, including
21 but not limited to, expenses incurred to discover and determine the nature and extent of
22 Augustino's wrongful conduct, the expense of diverting staff to investigate and remedy
23 Augustino's wrongful conduct, consulting fees and attorneys' fees, all in an amount to be proven
24 at trial.

25 35. In committing the actions alleged above, Augustino acted with malice, oppression,
26 and with a conscious disregard of MTS' rights. As such, MTS is entitled to exemplary and
27 punitive damages from Augustino in an amount sufficient to punish him and to deter such
28 wrongful conduct in the future.

1 **SECOND CAUSE OF ACTION**

2 **(Misappropriation of Trade Secrets – Civil Code §§ 3426 et seq. – Against all Cross-**
3 **Defendants)**

4 36. MTS realleges and incorporates by reference each and every allegation contained in
5 the preceding paragraphs as though fully set forth herein.

6 37. MTS’ Webtix Enhancement, and other proprietary technologies and Confidential
7 Information constitute “trade secrets” within the meaning of Civil Code § 3426.1.

8 38. MTS’ trade secrets derive their economic value, both actual and potential, from not
9 being generally known to the public or to other persons who might obtain economic value from
10 their disclosure or use.

11 39. At all relevant times herein, MTS made reasonable efforts to ensure that its
12 confidential and proprietary information and trade secrets misappropriated by Augustino,
13 specifically including the Webtix Enhancement, remained proprietary, secret and available only
14 for MTS’ commercial use. Such efforts include, but are not limited to:

15 (a) disclosing such information only to employees with a need to know in order to
16 perform their jobs;

17 (b) utilizing password protection and unique log-in credentials to limit and protect
18 access to MTS’ Confidential Information;

19 (c) emphasizing to each employee through training and employee handbooks MTS’
20 need to keep such information confidential;

21 (d) prohibiting employees from copying such information for personal or unauthorized
22 uses; and

23 (e) implementing a company-approved information security policy and program,
24 including comprehensive information security guidelines that set forth MTS’ efforts to ensure the
25 integrity and security of such information.

26 40. As described above, Augustino misappropriated, acquired, disclosed and/or used
27 MTS’ confidential and proprietary information and trade secrets, including the Webtix
28 Enhancement, by improper means, without MTS’ express or implied consent. To be clear, this

1 cause of action is based on Augustino's misappropriation of the Webtix Enhancement, and any
2 other trade secret information that was included in the MTS Property.

3 41. Augustino knew or had reason to know at the time of disclosure, acquisition or use
4 of MTS' trade secrets that the information was acquired and maintained by improper means and/or
5 under circumstances giving rise to a duty to maintain its secrecy or limit its use.

6 42. These intentional and wrongful acts by Augustino proximately caused substantial
7 damages to MTS, including, but not limited to, loss of revenue and substantial expense incurred to
8 recreate, fix or otherwise resolve issues related to the Confidential Information removed by
9 Augustino, including the Webtix Enhancement, in excess of \$50,000, with the exact amount to be
10 determined according to proof at trial.

11 43. As a further proximate result of Augustino's trade secret misappropriation,
12 Augustino has been unjustly enriched.

13 44. Augustino's conduct was intentional, malicious and oppressive, justifying an award
14 of reasonable attorneys' fees and punitive damages, as provided by California Civil Code section
15 3426.4.

16 **THIRD CAUSE OF ACTION**

17 **(Violation of Penal Code section 496(c) Against All Cross-Defendants)**

18 45. MTS realleges and incorporates by reference each and every allegation contained in
19 the preceding paragraphs as though fully set forth herein.

20 46. In engaging in the conduct complained of herein, Augustino violated California
21 Penal Code section 496(a) by concealing, selling, withholding, and/or aiding in concealing, selling
22 or withholding the MTS Property from MTS, with knowledge that the MTS Property was owned
23 by MTS at the time that he received, concealed, sold, withheld, and/or aided in concealing, selling
24 or withholding the MTS Property.

25 47. As a result of Augustino's violation of Penal Code section 496(a), MTS has
26 suffered, and continues to suffer, economic damages in excess of \$50,000, with the exact amount
27 to be determined according to proof at trial, including but not limited to, the expense of recreating
28 the Webtix Enhancement, expenses incurred to discover and determine the nature and extent of

1 Augustino's wrongful conduct, the expense of diverting staff to investigate and remedy
2 Augustino's wrongful conduct, and consulting fees and attorneys' fees.

3 48. MTS is entitled to three times the amount of its actual damages, reasonable
4 attorneys' fees, and costs of suit under Penal Code section 496(c).

5 **FOURTH CAUSE OF ACTION**

6 **(Comprehensive Computer Data Access and Fraud Act – Penal Code § 502(c) – Against all**
7 **Cross-Defendants)**

8 49. MTS realleges and incorporates by reference each and every allegation contained in
9 the preceding paragraphs as though fully set forth herein.

10 50. In engaging in the conduct complained of herein, Augustino violated Penal Code
11 section 502(c)(1) by, without permission, knowingly accessing and using MTS' data, computers,
12 computer systems, and/or computer network in order to devise and/or execute a scheme to defraud
13 or deceive MTS.

14 51. Augustino violated Penal Code section 502(c)(2) by knowingly and fraudulently,
15 and without permission, accessing, taking, copying, and making use of programs, data, and files
16 from MTS' internal servers, computer system, and computer network.

17 52. Augustino violated Penal Code section 502(c)(7) by knowingly and fraudulently and
18 without permission accessing, or causing to be accessed, MTS' computers, computer systems, and
19 computer network.

20 53. MTS owns the data, information, servers, computers, and computer network
21 improperly and unlawfully accessed and obtained by Augustino, including, but not limited to,
22 Augustino's MTS Laptop and the MTS Property.

23 54. As a direct and proximate result of Augustino's violation of Penal Code section 502,
24 MTS has suffered, and continues to suffer, damages in excess of \$50,000, with the exact amount
25 to be determined according to proof at trial. Augustino's conduct has also caused irreparable and
26 incalculable harm and injuries to MTS and, unless enjoined, will cause further irreparable and
27 incalculable injury, for which MTS has no adequate remedy at law.

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PRAYER FOR RELIEF

WHEREFORE, Cross-Complainant prays for judgment against Cross-Defendants as follows:

1. For equitable and injunctive relief;
2. For disgorgement or restitution of any ill-gotten gains and profits;
3. Compensatory damages;
4. Treble damages pursuant to Penal Code section 496(c);
5. An award of reasonable attorneys' fees, as provided by Civil Code section 3426.4, Penal Code sections 496(c) and 502(e)(2), and any other applicable law;
6. Punitive damages;
7. MTS' costs of suit; and
8. For such other and further relief as the Court deems just and proper.

Dated: November 8, 2018

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP

By: 

J. ROD BETTS
 PHILLIP G. SIMPLER
 Attorneys for Defendant/Cross-Complainant
 SAN DIEGO METROPOLITAN TRANSIT
 SYSTEM and Defendants SANDRA BOBEK,
 GARY DEXTER, and JEFFREY M. STUMBO

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PROOF OF SERVICE

Ivan Augustino v. San Diego Metropolitan Transit System, et al.
San Diego Superior Court Case No. 37-2018-00009620-CU-OE-CTL

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 101 West Broadway, Ninth Floor, San Diego, CA 92101-8285.

On November 8, 2018, I served true copies of the following document(s) described as **FIRST AMENDED CROSS-COMPLAINT** on the interested parties in this action as follows:

Daniel J. Goularte
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Attorneys for Plaintiff
IVAN AUGUSTINO

Attorneys for Plaintiff
IVAN AUGUSTINO

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed above, with postage thereon fully prepaid. I placed each such envelope or package for deposit with United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 8, 2018, at San Diego, California.



Lisa Whitaker