

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DELPHI AUTOMOTIVE PLC,

Plaintiff,

v.

JOHN P. ABSMEIER,

Defendant.

Case No: 15-cv-13966

Hon. Gershwin A. Drain

Magistrate David R. Grand

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FIRST AMENDED COMPLAINT

PARTIES, JURISDICTION, AND VENUE

1. Delphi Automotive PLC (“Delphi” or “Plaintiff”) is incorporated in the United Kingdom and has its principal place of business in Troy, Michigan.

2. Defendant John P. Absmeier (“Absmeier”) is an individual who resides in Capitola, California. Absmeier was previously employed by Delphi, in a global executive position with an office at the facility known as “Delphi Labs @ Silicon Valley” in Mountain View, Santa Clara County, California. Absmeier has accepted employment with Samsung or a subsidiary of Samsung.

3. This Court has original subject-matter jurisdiction under 28 U.S.C. 1332, as the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states.

4. This Court has personal jurisdiction over Absmeier, as the parties’ dispute is subject to a forum-selection clause stating that the parties “irrevocably consent and submit to the jurisdiction of the federal and state courts located within the state of Michigan.” (Ex. 1 at D-5; Ex. 2 at p. 9; Ex. 3 at p. 9.)

5. This Court is the appropriate venue for this action as Absmeier has consented to the Michigan courts as an appropriate forum for the resolution of this dispute. Venue is also appropriate as a substantial part of the events or omissions giving rise to the claims herein occurred in this district, and a substantial part of the property that is the subject of the action is situated in this district. Among other

things, Absmeier negotiated and entered into the Agreements at issue with Delphi operating from its principal place of business in the Eastern District of Michigan; the Agreements were signed on Delphi's behalf by a Senior Vice President based out of Troy, Michigan; the trade secrets and confidential information at issue are the property of Delphi, with a principal place of business in the Eastern District of Michigan; and the injuries that Absmeier has caused, and will continue to cause, have been and will continue to be sustained in the Eastern District of Michigan.

GENERAL ALLEGATIONS

John Absmeier's Employment with Delphi

6. Delphi is a leading global vehicle components manufacturer that provides electrical and electronic powertrain, active safety and thermal technology solutions to the global automotive and commercial vehicle markets.

7. Based on recent headcount records, Delphi has approximately 165,000 employees worldwide. Approximately 1,500 of those employees work in Michigan; 230 work in New York; and 75 work in California.

8. Since September 2013, Delphi has operated a laboratory in Mountain View, California called "Delphi Labs @ Silicon Valley" that is a hub for Delphi's research and development into advanced vehicular technology and self-driving car technology. Among other things, Delphi Labs has developed technologies in

automated driving, automated safety features such as collision avoidance, in-vehicle communications, and in-vehicle information and entertainment.

9. The vehicular technology and autonomous vehicle field is intensely competitive, not only among major automotive companies, but also among technology companies such as Apple Inc. and Google.

10. Delphi hired Plaintiff John Absmeier on a full-time basis in 1999. Absmeier initially worked for Delphi in various engineering positions in Kokomo, Indiana. From 2001 to 2004, Absmeier worked for Delphi as a systems engineer in Rochester, New York. From 2004 to 2006, Absmeier worked for Delphi as a project manager in San Jose, California.

11. From 2006 until 2012, Absmeier worked for Delphi in Shanghai, China with the job title of Business Director, Electronic Controls Asia-Pacific. In that job, Absmeier was responsible for leading the growth, development, and execution of Delphi's Safety Electronics, Body & Security Electronics and Electrification product lines in Asia-Pacific. Those product lines include, among other things, crash sensing electronics that mitigate vehicle collisions, adaptive cruise control, and radar and camera systems.

12. In 2012, Absmeier was named the Technical Director Silicon Valley Innovation Center; in 2013, his title was changed to "Director" and the facility renamed "Delphi Labs @ Silicon Valley." In this position, Absmeier was

responsible for establishing and running Delphi's Silicon Valley presence, which consisted of approximately 20 engineers and programmers. He led all activities associated with Delphi Labs @ Silicon Valley related to advanced vehicular technology and automated driving.

13. Effective June 1, 2014, Absmeier was promoted to an executive level position, with the title Director of Delphi Labs @ Silicon Valley and Global Automated Vehicle Business Development. In this high-level executive position, Absmeier retained his responsibilities for all activities associated with Delphi Labs @ Silicon Valley, and added responsibilities for developing and growing Delphi's automated driving business on a global basis.

14. While Absmeier had an office in California at the Delphi Labs facility, his global executive duties frequently took him to locations throughout the country and abroad. Absmeier regularly attended meetings in Troy, Michigan and Auburn Hills, Michigan where key Delphi business decisions are made. His position was part of Delphi's Electronics & Safety Division, which was not operated from California, but from Michigan, Indiana, and elsewhere. And he was in regular contact with and worked under the direction and control of Delphi executives and managers in Michigan—including Jeffrey Owens, Delphi's Chief Technology Officer, and Michael Pozsar, Vice President of the Electronic Controls

business unit—and Indiana, including his direct superior Katherine Winter, Vice President of Software & Services, MyFi.

15. Delphi has developed and acquired its confidential information and trade secrets related to advanced vehicular technology and automated driving from multiple places around the world. For instance, the key automated driving software algorithms used by Delphi were developed in Pittsburgh, Pennsylvania. In the course of his global executive duties, Absmeier has travelled to, or worked with people from, places such as Michigan, New York, Pennsylvania, Indiana, Nevada, Germany, the United Kingdom, Sweden, Singapore, and Luxembourg.

16. By virtue of his position, Absmeier has had access to, and knowledge of, highly valuable and sensitive information relating to Delphi and its business including, but not limited to, information relating to its products and product development, pricing, engineering and design specifications, trade secrets, customers, suppliers, unique and/or proprietary software and source code, and marketing plans.

17. Absmeier was the highest-ranked executive employee at Delphi Labs @ Silicon Valley, one of the most significant global executives for Delphi's advanced vehicular technology and autonomous vehicle business, and in many respects he was the public face of Delphi Labs, including its autonomous vehicle business. *See, e.g.*, Innovation Leader, "Why Delphi planted a new innovation lab

in Silicon Valley,” at <https://www.innovationleader.com/how-delphi-automotive-set-up-its-new-silicon-valley-lab/> (“We got some insight into that challenge [of setting up an innovation-focused outpost in Silicon Valley] recently from John Absmeier”); BBC News, “Rival robot cars meet on California highway,” at <http://www.bbc.com/news/technology-33286811> (“Details of the encounter [between a Delphi self-driving car and a competitor’s self-driving car] were revealed to Reuters by John Absmeier, director of Delphi’s autonomous car driving unit.”); Mashable.com, “I cruised the streets of Las Vegas in a self-driving Audi,” at <http://mashable.com/2015/01/05/las-vegas-self-driving-audi/> (“Our guide for the day was Delphi Labs Director John Absmeier”).

18. As of April 2015, Absmeier’s base salary at Delphi was \$225,000 and he was eligible for and received substantial additional compensation and benefits, including, but not limited to, bonuses and long-term incentive awards.

Absmeier Agrees to Protect Delphi’s Trade Secrets, Proprietary and Confidential Information and Agrees to Non-Competition Obligations

19. On June 27, 2014, following his promotion to the executive-level Global Automated Vehicle Business Development position, Delphi and Absmeier entered into a Confidentiality and Noninterference Agreement (the “June 27, 2014 Agreement”) as a condition of an Executive Restricted Stock Unit Award agreement, attached as Ex. 1. Absmeier’s continued employment was not made

contingent on his signing the June 27, 2014 Agreement; rather, he accepted the obligations of the agreement solely in exchange for personal financial reward.

20. In the June 27, 2014 Agreement, Absmeier made critical promises of confidentiality:

You acknowledge and agree that you will keep in strict confidence, and will not, directly or indirectly, at any time during or after your employment with Delphi, disclose, furnish, disseminate, make available or use Confidential Information of the Company or its customers or suppliers, without limitation as to when or how you may have acquired such information, other than in the proper performance of your duties to Delphi, unless and until such Confidential Information is or shall become general public knowledge through no fault of yours. You specifically acknowledge that all such information, whether written or oral, or in electronic format, or maintained in your mind or memory and whether compiled by the Company, and/or you, derives independent economic value from not being readily known to or ascertainable by proper means by others who can obtain economic value from its disclosure or use, that reasonable efforts have been made by the Company to maintain the secrecy of such information, that such information is the sole property of the Company and that any retention and use of such information by you during or after your employment with Delphi (except in the course of performing your duties and obligations as an executive) shall constitute a misappropriation of the Company's trade secrets. In the event that you are required by law to disclose any Confidential Information, you agree to give Delphi prompt advance written notice thereof and to provide Delphi with reasonable assistance in obtaining an order to protect the Confidential Information from public disclosure.

Ex. 1, June 27, 2014 Agreement, Attachment D, ¶ 1(c).

21. The June 27, 2014 Agreement identified the following specific categories of Confidential Information:

- information relating to its products and product development;
- pricing;
- engineering and design specifications;
- trade secrets;
- customers;
- suppliers;
- unique and/or proprietary software and source code; and
- marketing plans.

Ex. 1, Attachment D, ¶ 1(b).

22. Absmeier further agreed not to compete with Delphi for 1 year following the termination of his employment, and not to solicit business or interfere with Delphi's business for a period of 2 years following the termination of his employment:

You acknowledge and agree that: (i) the Business (as defined below) is intensely competitive and conducted by Delphi throughout the world; and (ii) reasonable limits on your ability to engage in activities that are competitive with Delphi are warranted in order to, among other things, reasonably protect the Confidential Information of Delphi and Delphi's reputation, customer relationships, goodwill and overall status in the marketplace for which Delphi has invested substantial time and resources. You acknowledge and agree that:

(i) During your employment and for twelve (12) months after the termination of your employment by you or by Delphi for any reason, you will not directly or indirectly engage in Competition (as defined below) with Delphi; or

(ii) During your employment and for twenty-four (24) months after the termination of your employment by you or by Delphi for any reason, you will not directly or indirectly:

(1) Solicit for your benefit or the benefit of any other person or entity, business of the same or of a similar nature to the Business (as defined below) from any customer that is doing business with Delphi, provided that after termination of your employment, this restriction shall not apply to any entity that was not a customer of Delphi during the six (6) month period immediately preceding the termination of your employment;

(2) Solicit for your benefit or the benefit of any other person or entity from any known potential customer of Delphi, business of the same or of a similar nature to the Business that has been the subject of a known written or oral bid, offer or proposal by Delphi, or of substantial preparation with a view to making such a bid, proposal or offer, provided that after termination of your employment, this restriction shall only apply to a potential customer if the bid, proposal or offer, or substantial preparation for making a bid, proposal or offer occurred during the six (6) month period immediately preceding the termination of your employment; or

(3) Otherwise interfere with the Business of Delphi, including, but not limited to, with respect to any relationship or agreement between Delphi and any supplier to Delphi during the period of your employment, provided that after termination of your employment, this restriction shall only apply to relationships or agreements in effect during the six (6) month period immediately preceding the termination of your employment; or

(4) Solicit for your benefit or the benefit of any other person or entity, the employment or services of, or hire or engage, any individual who was known to be employed or engaged by Delphi during the period of your employment, provided that after the termination of your employment, this restriction shall only apply to individuals who were so employed or engaged during the six (6) month period immediately preceding the termination of your employment, and provided further, that this restriction will not

prohibit solicitation or hiring of any individual whose employment was involuntarily terminated by Delphi, provided at the time of such solicitation or hiring you are not engaged in Competition with Delphi and no solicitation of such individual occurred while he or she was employed by Delphi.

Ex. 1, Attachment D, ¶ 1(d).

23. “Competition,” for purposes of the June 27, 2014 Agreement, is defined as:

engaging in, or otherwise directly or indirectly being employed by or acting as a consultant or lender to, or being a director, officer, employee, principal, agent, shareholder, member, owner or partner of, or permitting your name to be used in connection with the activities of any other business or organization anywhere in the world that competes, directly or indirectly, with Delphi in the Business

Ex. 1, Attachment D, ¶ 2(a). “Business” is defined as “the creation, development, manufacture, sale, promotion and distribution of vehicle electronics, transportation components, integrated systems and modules, electronic technology and other products and services which Delphi engages in, or is preparing to become engaged in, at the time of your termination.” *Id.* ¶ 2(b).

24. Absmeier also acknowledged and agreed that “the Company would suffer irreparable harm if you fail to comply with Paragraph 1, and that the Company would be entitled to any appropriate relief, including money damages, equitable relief and attorneys’ fees.” Ex. 1, Attachment D, ¶ 3.

25. The June 27, 2014 Agreement also contained a provision stating that “The Agreement shall be governed by the laws of the State of New York, without

application of the conflicts of law principles thereof.” This is a standard choice-of-law provision used in Delphi’s stock award agreements with United States executives, including executives residing in Michigan, New York, Ohio, Indiana, Texas, and California. Delphi stock trades on the New York Stock Exchange, it has an investor relations office and other facilities in New York, and Delphi prefers to have all of its stock-related agreements governed by a uniform body of sophisticated commercial law.

26. On March 5, 2015, Absmeier entered into two substantively identical Confidentiality and Noninterference Agreements (“the March 5, 2015 Agreements”) in connection with two further awards of Restricted Stock Units. Those agreements are attached as Exhibits 2 and 3. The March 5, 2015 Agreements likewise provide that New York law will govern the Agreements.

27. Delphi’s purpose in having a non-competition agreement in addition to a confidentiality agreement for certain employees is that particular jobs cannot be performed for competitors without disclosing confidential and/or proprietary information obtained during the course of employment at Delphi. The non-competition agreement is intended to, among other things, protect Delphi against such inevitable disclosures. The value to Delphi of its right to prevent the disclosure of its confidential information and trade secrets to competitors far exceeds \$75,000.

28. In addition to having confidentiality agreements and non-competition agreements for its key personnel, Delphi protects its trade secrets, proprietary information, and confidential information in numerous other ways.

Absmeier Notifies Delphi that He Is Resigning to Join Samsung—a Competitor in Advanced Vehicular Technology and Autonomous Vehicles

29. In or around early November 2015, Absmeier notified Delphi that he was resigning his employment and joining Samsung. Absmeier made clear in discussing his resignation that he would be working for Samsung performing duties that would directly compete with Delphi.

30. Specifically, Absmeier had a conversation with his direct superior, Vice President Katherine Winter, in which he disclosed that he would be doing exactly the same thing he was doing at Delphi, but with what he characterized as substantially more pay and a “better title.” He further told Winter that he would be “in charge of all things automotive” for Samsung, and that he would be leading a team of engineers to develop Samsung’s automated driving and in-vehicle technology, as well as applications in robotics and drones – exactly what he worked on at Delphi.

31. Absmeier’s conversation with Winter parallels media reports that Samsung is actively attempting to gain a more significant foothold in the advanced vehicular technology business and the autonomous driving field. For instance, on October 29, 2015, the media reported that Samsung was “making a belated push

into the business of supplying technology to carmakers” and “ramping up R&D for auto technology.” *See* Reuters, “Better late than never? Samsung IT arms push into autos,” *at* <http://www.reuters.com/article/2015/10/30/us-samsung-group-autos-insight-idUSKCN0SN2U120151030>. Among other things, it was reported that Samsung’s patent filings revealed plans for “a wide range of technologies including a drowsy-driving detection system, an alert system for break-in attempts and a transparent display for directions and traffic information.” *Id.* The same article correctly notes that this business is “notoriously difficult to break into.” *Id.*

32. Ultimately, on or around December 9, 2015, Samsung Electronics publically declared that it was “setting up a new business unit to focus on automotive-related technology such as components for driverless cars,” and that while “[d]etails about the team were scarce . . . Samsung said it is to focus on infotainment systems and autonomous driving technology.” Arjun Kharpal, *Samsung sets up team to focus on driverless cars*, CNBC, *at* <http://www.cnbc.com/2015/12/09/samsung-sets-up-team-to-focus-on-driverless-cars.html>; *see also* Reuters, *Samsung Electronics to Form Auto Team In Search of Growth Driver*, *at* <http://www.reuters.com/article/samsung-elec-autos-idUSL3N13Y2EF20151209>. Upon information and belief, this is the team that Defendant Absmeier will be leading, in direct competition with Delphi.

33. Samsung is a competitor of Delphi under the Agreements. Samsung's in-vehicle technologies would compete directly with Delphi's in-vehicle technologies—as would Samsung's plan to develop autonomous vehicle technology. Absmeier is well aware that Samsung is a Delphi competitor.

34. In fact, Samsung had made earlier attempts to glean information about Delphi's autonomous driving directly from Absmeier, while he was still employed at Delphi. On May 2, 2015, Absmeier informed Katherine Winter that Samsung's CEO wanted to ride in Delphi's self-driving prototype car; Ms. Winter instructed Absmeier not to educate Samsung about the technology or to allow Samsung's CEO to access Delphi's self-driving car.

35. Further, on May 6, 2015, Samsung asked Absmeier questions about Ottomatika—a firm founded at Carnegie Mellon University that had decades of autonomous driving experience and know-how, and that Delphi was in the process of acquiring—under the pretense of seeking to “invest.” Again, Ms. Winter informed Absmeier not to share information with Samsung, and Delphi ultimately did not permit Samsung to “invest” in Ottomatika. Absmeier is well aware that Delphi has no intention of sharing its intellectual property or expertise with Samsung.

36. In his employment with Samsung, Absmeier will perform work that is similar to his duties, described above, for Delphi. Critically, Absmeier has the

specific know-how and knowledge of proprietary and confidential Delphi information that would enable Samsung to fulfill its recently-disclosed goal of significantly expanding into the “notoriously” competitive automobile technology business, at Delphi’s expense—and Absmeier has confirmed that this is precisely why Samsung is hiring him.

37. Absmeier is well aware that by accepting this position with Samsung, he is violating his non-competition agreement with Delphi, and that he cannot perform his duties for Samsung without violating the confidentiality provisions of his Agreements.

**Absmeier’s Misrepresentations to Delphi About His Plans
to “Sit Out” While this Dispute Progresses**

38. On Tuesday, November 10, 2015, Absmeier provided Delphi with a formal two-week notice of resignation, with his last day at Delphi to be November 24, 2015. Despite resigning with the intent to work for a competitor, Absmeier told Katherine Winter that he intended to participate on Delphi’s behalf in upcoming meetings with Delphi’s strategic partners including Apple and Uber. Winter told Absmeier that this was inappropriate, and Absmeier was immediately relieved of all job duties (although Delphi did pay Absmeier for the remainder of his two-week notice period.)

39. On November 11, 2015, Delphi brought the present action for, among other things, breach of contract and misappropriation of trade secrets. After

Absmeier obtained counsel, an oral representation was made to Delphi's counsel that Absmeier would be "sitting out" and not working for anyone due to the litigation. (*See* Ex. 4, Nov, 23, 2015 letter from Delphi's counsel to Absmeier's counsel.) After no such representation was made in Absmeier's subsequent pleadings with the Court, Delphi's counsel asked Absmeier's counsel to confirm in writing that Absmeier was not working for or being paid by Samsung, and would not do so while the litigation was pending. (*Id.*) Absmeier refused to provide such a representation in writing.

40. Delphi subsequently determined that, in fact, Absmeier did begin working at Samsung despite the oral representation to the contrary. Specifically, Absmeier was observed leaving his home early in the morning on December 8, 2015, briefcase in hand, and driving to a Samsung facility located at 2440 Sandhill in Menlo Park, California where he stayed late into the afternoon.

**Absmeier's Acts of Misappropriation and Attempted Misappropriation of
Delphi Confidential Information and Trade Secrets**

41. After informing Absmeier that he would not be performing further duties for Delphi during his two-week notice period, Delphi had him escorted from its office building. Absmeier's work computer was thus left behind.

42. Delphi also instructed Absmeier to return company property and provide passwords or other means of accessing that property. He provided only a small number of flash drives and hard-copy documents.

43. Delphi performed a forensic examination of Absmeier's work computer, and discovered that on October 28, 2015—just days before he told Katherine Winter that he would be resigning to join Samsung, Absmeier attached a Western Digital My Passport 0740 external hard drive to his work computer, with serial number 575854314543304a53434539, and downloaded files. This brand of external hard drive has a very high storage capacity—500 gigabytes and up—and is large enough to download a large portion, if not all, of the files on Absmeier's work computer. The drive was also large enough to download a significant number of files from Delphi's servers, which Absmeier also had access to. Between his work computer and access to Delphi servers, Absmeier had physical access to Delphi's confidential information and trade secrets in advanced vehicular technology and autonomous driving technology.

44. The forensic examination also revealed that Absmeier had downloaded files from his work computer on October 15, 2015 and on November 3, 2015.

45. Delphi has thus far been able to identify some of what Absmeier downloaded—including over 100 gigabytes of data that appears to be the contents of his "My Documents" folder and his Outlook e-mail folder. These documents consist of many, if not all, of the work emails that Absmeier sent and received while a global executive. Those emails include confidential and sensitive

information, and confidential and sensitive documents in the form of e-mail attachments. There was no legitimate reason for Absmeier to be downloading work-related documents and emails in the days and weeks before his resignation—and, in fact, there is no evidence that he had *ever* downloaded documents from his work computer onto external hard drives before October 15, 2015.

46. Delphi also discovered that Absmeier had opened a Dropbox account using his Delphi work e-mail address, but Delphi did not have the password.

47. Further, Absmeier turned in his cellular telephone, but it was password protected.

48. On December 1, 2015, Delphi's counsel sent Absmeier's counsel a letter requesting (a) the Western Digital hard drive which was used to download files from Delphi's computer; (b) the password to the Dropbox account that Absmeier opened using a Delphi e-mail address; and (c) the password to his cell phone. (Ex. 5, December 1, 2015 letter from Delphi's counsel to Absmeier's counsel.)

49. On December 4, 2015, Absmeier's counsel responded. (Ex. 6, December 4, 2015 letter from Absmeier's counsel to Delphi's counsel.) Absmeier's counsel indicated that Absmeier actually had *two* external hard drives in his possession which contained Delphi files, but which he refused to elaborate upon—and then claimed that they had been sent to an unidentified third party for

safekeeping. (*Id.*) Absmeier's counsel refused to provide the password to the Dropbox account, but alleged that there were only twelve Delphi-related files in the account. (*Id.*) Finally, he claimed that Absmeier had forgotten his cell-phone password, and suggested that Delphi *return the phone* to Absmeier so he could figure the password out. (*Id.*)

50. On December 7, 2015, Delphi's counsel sent a letter to Absmeier's counsel. (Ex. 7, December 7, 2015 letter from Delphi's counsel to Absmeier's counsel.) This letter stated that it viewed the December 4, 2015 letter as acknowledging a misappropriation of Delphi's property, and demanded the return of both hard drives that Absmeier used to take Delphi files, requested the password to the Dropbox account, and questioned the legitimacy of the claim that Absmeier "forgot" the password to his phone—given that Absmeier had provided the password only weeks before to a Delphi HR representative so that she could email him "personal pictures." (The HR representative did not retain the password.)

51. On December 9, 2015, Absmeier's counsel responded again, stating that Absmeier had purchased the hard drives in question himself and would not provide them to Delphi. (Ex. 8, December 9, 2015 letter from Absmeier's counsel to Delphi's counsel.) He claimed that the hard drives were "primarily" used for personal matters and that a "substantial" amount of the files on the hard drives were not Delphi's material, and again refused to identify the third-party custodian

who allegedly has the drives. (*Id.*) Absmeier’s counsel also refused to provide the Dropbox password, claiming that the Dropbox account was for his personal use, and that his utilization of his work email address to open Dropbox account was merely for “convenience.” (*Id.*) He then claimed that the Delphi files *in the Dropbox account* were not “trade secrets.” (*Id.*) He again refused to provide the password for the cell phone. (*Id.*)

52. The letter from Absmeier’s counsel on December 9, 2015 tacitly concedes that Delphi’s confidential information and trade secrets are contained on the two external hard drives that Absmeier admits to having used to download files from his work computer. Among other things: (a) Absmeier’s counsel identified *only* the files in the Dropbox account, while refusing to identify any files in the hard drives; and (b) Absmeier’s counsel represented that the files in the Dropbox account were not trade secrets, but did *not* make a similar representation about the files on the external hard drives. Further, counsel’s refusal to provide the hard drives to Delphi, and the alleged provision of those drives to a still-unnamed third party strongly suggests that Absmeier knows that there is something on the hard drives that he does not want Delphi to know about.

53. In fact, based on (a) the timing of Absmeier’s downloads—*i.e.*, around the time of his resignation, but *never* before; (b) the size and number of external hard drives Absmeier used; (c) the fact that Delphi has already established

that Absmeier downloaded a large quantity of work emails and documents he had no reason to take; and (d) the surreptitious activities and guarded comments by his counsel all suggest that Absmeier intentionally and improperly misappropriated Delphi's confidential information and trade secrets on a massive scale.

**COUNT I
BREACH OF CONTRACT**

54. Delphi hereby incorporates and re-alleges by reference each and every allegation contained in the above paragraphs of its Complaint as though fully stated and set forth herein.

55. In consideration for, and as a condition of his restricted stock unit awards, Absmeier executed the Agreements with Delphi. *See* Ex. 1, 2, 3.

56. As described fully above, pursuant to the Agreements, Absmeier agreed to abide by certain obligations, including, but not limited to, confidentiality and non-competition obligations, both during and after his employment with Delphi.

57. As described above, Absmeier has breached and inevitably will continue to breach his contractual obligations to Delphi.

58. Absmeier's breaches of the Agreement have caused and inevitably will continue to cause Delphi substantial damage.

COUNT II
COMMON LAW MISAPPROPRIATION OF TRADE SECRETS

59. Delphi hereby incorporates and re-alleges by reference each and every allegation contained in the above paragraphs of its Complaint as though fully stated and set forth herein.

60. Delphi possesses trade secrets used in its business that give Delphi an advantage over its competitors who do not know or use those trade secrets.

61. Delphi's trade secrets include, without limitation, information and processes concerning its products and product development, pricing, engineering and design specifications, customers, suppliers, unique and/or proprietary software and source code, and marketing plans.

62. Absmeier has misappropriated, used, and will continue to use, Delphi's trade secrets in breach of an agreement, in breach of a confidential relationship, or in breach of his duties to Delphi.

63. As a result of Absmeier's conduct, Delphi has suffered and will inevitably continue to suffer irreparable harm, including, but not limited to, a loss of its competitive advantage.

64. As a result of Absmeier's conduct, Delphi has suffered and will continue to suffer damages including, but not limited to, loss of income, damage to its reputation, and lost sales/profits.

COUNT III
STATUTORY MISAPPROPRIATION OF TRADE SECRETS

65. Delphi hereby incorporates and re-alleges by reference each and every allegation contained in the above paragraphs of its Complaint as though fully stated and set forth herein.

66. Absmeier is prohibited by the Uniform Trade Secrets Act, adopted in Michigan at MCL § 445.1901, *et seq.* (“MUTSA”), from using, disclosing and misappropriating Delphi’s trade secrets.

67. Absmeier had access and was exposed to Delphi’s trade secrets including, without limitation, its products and product development, pricing, engineering and design specifications, customers, suppliers, unique and/or proprietary software and source code, and marketing plans.

68. Delphi’s trade secrets described herein have independent economic value, are unique to Delphi’s business and are not generally known or readily ascertainable by proper means by other persons or entities who can obtain economic value from its use. Delphi acquired rights in its trade secrets at great time and expense and for Delphi’s benefit.

69. Delphi’s trade secrets provide important commercial and competitive advantages to Delphi in a highly competitive industry.

70. Delphi’s trade secrets are not available to the general public and cannot be duplicated without access to Delphi’s trade secrets.

71. Delphi has taken, and continues to take, reasonable and adequate precautions to protect its trade secrets, including by, among other things, limiting access to such information to a select group of individuals who have a need to know and access that information in order to perform their employment duties and by requiring individuals, including Absmeier, to sign employment agreements containing confidentiality provisions.

72. Absmeier's actions, set forth above, constitute misappropriation of Delphi's trade secrets in violation of the MUTSA.

73. Absmeier's actions were committed with actual malice and with the intent to injure Delphi and its business.

74. Delphi has suffered and will inevitably continue to suffer irreparable harm, including, but not limited to, a loss of its competitive advantage.

75. As a result of Absmeier's conduct, Delphi will suffer loss of income, damage to its reputation, and lost sales/profits.

76. Unless restrained, Absmeier will inevitably continue to misappropriate Delphi's trade secrets in violation of the MUTSA.

77. Delphi is entitled to injunctive relief under, and any and all statutory damages provided by, the MUTSA.

**COUNT IV
BREACH OF FIDUCIARY DUTIES**

78. Delphi hereby incorporates and re-alleges by reference each and every allegation contained in the above paragraphs of its Complaint as though fully stated and set forth herein.

79. Absmeier was placed in a position of trust and confidence, and has a fiduciary duty to maintain the confidentiality of Delphi's proprietary/confidential information.

80. By the conduct described above, Absmeier improperly and illegally has taken, used, and inevitably will continue to use, and has disclosed and inevitably will continue to disclose, Delphi's proprietary/confidential information, in violation of his fiduciary duties to Delphi.

81. Absmeier's conduct has caused and inevitably will continue to cause Delphi substantial damage.

RELIEF REQUESTED

WHEREFORE, Delphi requests entry of judgment in its favor and against Absmeier, and further requests that the Court:

A. Preliminarily and permanently enjoin, restrain, and prohibit Absmeier from directly or indirectly:

1. Violating any of the restrictive covenants contained in Absmeier's Agreements with Delphi;

2. Engaging in competition with Delphi as defined in the Agreements, including engaging in, or otherwise directly or indirectly being employed by or acting as a consultant or lender to, or being a director, officer, employee, principal, agent, shareholder, member, owner or partner of, or permitting his name to be used in connection with the activities of any other business or organization anywhere in the world that competes, directly or indirectly, with Delphi in Business as defined in the Agreement, which includes but is not limited to Samsung;
 3. Possessing, disclosing and/or using Delphi's "confidential business information" or trade secrets (as those terms are defined in the Agreements), in any form; and
 4. An injunction ordering Absmeier to return all Delphi property immediately, upon penalty of contempt.
- B. Enter an Order that the restrictions requested in paragraph A above are binding upon Absmeier;
- C. Award Delphi such damages as may be proven at trial, including without limitation, compensatory and exemplary damages, plus interests and costs;
- D. Award Delphi appropriate statutory damages, attorney's fees, costs and interest;
- E. Award Delphi its costs, including reasonable attorney's fees, incurred in this action;

F. Enter an Order imposing a constructive trust over all revenues received by Absmeier as a result of his unlawful conduct, including, but not limited to, breach of contract and breach of fiduciary duty;

G. Direct that an accounting be conducted of all work, proceeds, revenue and profits of Absmeier concerning any proceeds, revenue and profits of business obtained as a result of his/its/their unlawful conduct, and award all such proceeds and profits to Delphi; and

H. Award Delphi such other and further relief as this Court deems just and equitable.

Respectfully submitted,

KIENBAUM OPPERWALL
HARDY & PELTON, P.L.C.

By: /s/William B. Forrest III
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Dated: December 11, 2015
241726

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2015, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following: mblum@fosterswift.com, sdrucker@fosterswift.com, and I hereby certify that I have caused to be served via U.S. mail the foregoing document to the following non-ECF participants:

(no manual recipients)

/s/William B. Forrest III
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