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1	KEVIN V. RYAN (CSBN 118321) United States Attorney
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8	UNITED STATES DISTRICT COURT
9	NORTHERN DISTRICT OF CALIFORNIA
10	SAN FRANCSICO DIVISION
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12	UNITED STATES OF AMERICA, ) No.
13	Plaintiff, VIOLATION: Title 18, United States Code,
14	v. Sections 1832(a)(5) and 371 – Conspiracy to Commit Theft and Downloading of Trade Secrets, Fraud in Connection with
15	ROBERT MICHAEL MCKIMMEY, Computers, and Interstate Transportation of
16	Defendant.  Stolen Property  SAN ERANGISCO VENIUE
17	SAN FRANCISCO VENUE
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19	<u>INFORMATION</u>
20	The United States Attorney charges:
21	<u>BACKGROUND</u>
22	At all times relevant to this Information:
23	1. Business Engine Software Corporation (BES) was a privately funded company which
24	manufactured, licensed, and provided enterprise application software products and services that
25	allow companies to manage projects, resources, and budgets. It had offices in: San Francisco and
26	Ontario, California; Virginia Beach, Virginia; New York, New York; Chicago, Illinois; King of
27	Prussia, Pennsylvania; Belgium; the United Kingdom; and India.
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	INFORMATION

- 2. Defendant Robert Michael McKimmey was employed by BES as the Chief Technology Officer in its Virginia Beach, Virginia office. McKimmey was also a member of BES's Board of Directors and one of BES's equity owners.
- 3. Niku Corporation (Niku) was a publicly traded company which manufactured, licensed, and provided enterprise application software and services for companies to manage and govern their projects, resources, and budgets. It had twenty offices in the United States and overseas including its headquarters in Redwood City, California and offices in: Petaluma, California; New York, New York; Chicago, Illinois; Atlanta, Georgia; Pittsburgh, Pennsylvania; Lovina, Michigan; Exeter, New Hampshire; the United Kingdom; the Netherlands; France; Germany; and Australia. Niku was one of BES's direct competitors in the enterprise software industry.

## THE CONSPIRACY

\_\_\_\_4. Beginning on date unknown but at least by October of 2001, and continuing to in or about July of 2002, in the Northern District of California and elsewhere, the defendant

## ROBERT MICHAEL MCKIMMEY

did knowingly and intentionally conspire and agree with other persons to commit the following offenses: theft and downloading of trade secrets, in violation of 18 U.S.C. §§ 1832(a)(1) and (a)(2); fraud in connection with computers, in violation of 18 U.S.C. § 1030(a)(4); and interstate transportation of stolen property, in violation of 18 U.S.C. § 2314.

- 5. It was part of the conspiracy that the defendant would and did knowingly, and with intent to defraud, access victim Niku's computer network and applications without authorization, and by means of such conduct further the intended fraud, and obtain things of value including Niku trade secrets.
- 6. It was further part of the conspiracy that the defendant would and did steal, and without authorization knowingly take by fraud, artifice, and deception, Niku trade secrets.
- 7. It was further part of the conspiracy that the defendant would and did knowingly download, copy, and transmit Niku trade secrets without authorization.
- 8. It was further part of the conspiracy that the defendant would and did knowingly transport, transmit, and transfer in interstate commerce goods, wares, and merchandise having a

value exceeding \$5,000, knowing the same to have been stolen, converted, and taken by fraud from 1 2 Niku. 9. It was further part of the conspiracy that the defendant would and did: (a) access Niku's 3 computer network and applications without authorization; (b) steal, download, and copy things of 4 value including Niku trade secrets; and (c) transmit some of those things of value including Niku 5 trade secrets to other BES officers and employees – all so that BES could maintain a competitive 6 7 edge over its direct competitor, Niku. 8 **OVERT ACTS** 9 10. In furtherance of the conspiracy and to effect its objects, the defendant committed, among others, the following overt acts in the Northern District of California and elsewhere: 10 11 a. Beginning in or about October of 2001, and continuing to in or about July of 12 2002, the defendant knowingly accessed Niku's computer network and applications without 13 authorization; and 14 b. Beginning in or about October of 2001, and continuing to in or about July of 15 2002, the defendant stole, downloaded, and copied things of value including trade secrets from 16 Niku's computer network and applications. 17 All in violation of Title 18, United States Code, Sections 1832(a)(5) and 371. DATED: April 6, 2004. 18 KEVIN V. RYAN 19 United States Attorney 20 21 ROSS W. NADEL 22 Chief, Criminal Division 23 24 25 26 27 28