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8 ROBERT MUELLER, IVAN CHOUSAL, and INTREPID AUTOMATION

9
10 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

11 3D SYSTEMS, INC., a California
Corporation;

12 Plaintiff,

13 v.

14 BEN WYNNE, an individual; CHRIS
TANNER, an individual; JAMIE
15 ETCHESON, an individual; ROBERT
MUELLER, an individual; IVAN
CHOUSAL, an individual; INTREPID
AUTOMATION, a California
16 Corporation; and DOES 1 through 20,
inclusive,

17 Defendants.

18 INTREPID AUTOMATION,

19 Counter-Claimant,

20 v.

21 3D SYSTEMS Counter-
Defendant.

22 INTREPID AUTOMATION,

23 Third Party Claimant,

24 v.

25 EVAN KUESTER

26 Third Party Defendant.
27
28

CASE NO. 3:21-cv-01141-LAB-DDL

**DEFENDANTS' AMENDED
ANSWER AND INTREPID
AUTOMATION'S AMENDED
ANSWER AND
COUNTERCLAIM/THIRD PARTY
CLAIM**

Judge: Hon. Larry A. Burns
Dept. 14A
Complaint Filed: May 19, 2021

[Removed from the Superior Court of
the State of California for the County
of San Diego, Case No. 37-2021-
00022139]

1 Defendants Ben Wynne, Chris Tanner, Jamie Etcheson, Robert Mueller, Ivan
2 Chousal, and Intrepid Automation (“Intrepid”) (together “Defendants”) hereby
3 amend their answer to the First Amended Complaint (“FAC”) by denying all
4 allegations set forth in the FAC not specifically admitted herein, and otherwise
5 responds as follows:

6 **INTRODUCTION**

7 1. Answering Paragraph 1 of the FAC, Defendants deny the allegations in
8 the first sentence. Further, Defendants lack knowledge sufficient to form a belief
9 about the truth of the remaining allegations and deny on that basis.

10 2. Answering Paragraph 2 of the FAC, Defendants Wynne, Tanner,
11 Chousal, and Mueller admit their previous place of employment before joining
12 Plaintiff was Hewlett Packard (HP). Except as otherwise expressly admitted,
13 Defendants deny the remaining allegations in Paragraph 2.

14 3. Answering Paragraph 3 of the FAC, Defendants admit Plaintiff filed
15 patent applications with some of the Independent Experts listed as inventors. Except
16 as otherwise expressly admitted, Defendants deny the remaining allegations in
17 Paragraph 3.

18 4. Answering Paragraph 4 of the FAC, Defendants admit they formed
19 Intrepid. Except as otherwise expressly admitted, Defendants deny the remaining
20 allegations in Paragraph 4.

21 5. Answering Paragraph 5 of the FAC, Defendants admit they formed
22 Intrepid after they left Plaintiff’s employ. Except as otherwise expressly admitted,
23 Defendants deny the remaining allegations in Paragraph 5.

24 6. Answering Paragraph 6 of the FAC, Intrepid admits it has hired two
25 employees immediately after those employees left Plaintiff’s employ. Except as
26 otherwise expressly admitted, Defendants deny the remaining allegations in
27 Paragraph 6.

1 7. Answering Paragraph 7 of the FAC, Defendants deny each and every
2 allegation in the Paragraph.

3 8. Answering Paragraph 8 of the FAC, Defendants deny each and every
4 allegation in the Paragraph.

5 **JURISDICTION AND VENUE**

6 9. Paragraph 9 of the FAC states legal conclusions to which no response is
7 required. To the extent a response is required, Defendants admit this Court has
8 jurisdiction.

9 10. Paragraph 10 of the FAC states legal conclusions to which no response
10 is required. To the extent a response is required, Defendants admit venue is proper in
11 this District.

12 **THE PARTIES**

13 11. Answering Paragraph 11 of the FAC, Defendants lack knowledge
14 sufficient to form a belief about the truth of this allegation and deny on that basis.

15 12. Answering Paragraph 12 of the FAC, Defendants admit the allegations
16 of fact set forth in Paragraph 12 of the FAC.

17 13. Answering Paragraph 13 of the FAC, Wynne admits he resides in
18 Escondido, California. Wynne admits he was only a principal systems architect for a
19 few months, and was initially hired as such. Except as otherwise expressly admitted,
20 Defendants deny the remaining allegations in Paragraph 13.

21 14. Answering Paragraph 14 of the FAC, Tanner admits he resides in
22 Idyllwild, California. Tanner admits he was only a principal systems architect for a
23 few months, and was initially hired as such. Except as otherwise expressly admitted,
24 Defendants deny the remaining allegations in Paragraph 14.

25 15. Answering Paragraph 15 of the FAC, Etcheson admits he resides in San
26 Diego, California. Etcheson admits he was only a principal systems architect for a
27 few months, and was initially hired as such. Except as otherwise expressly admitted,
28 Defendants deny the remaining allegations in Paragraph 15.

1 16. Answering Paragraph 16 of the FAC, Mueller admits he resides in San
2 Diego, California. Mueller admits he was only a principal systems architect for a
3 few months, and was initially hired as such. Except as otherwise expressly admitted,
4 Defendants deny the remaining allegations in Paragraph 16.

5 17. Answering Paragraph 17 of the FAC, Chousal admits he resides in
6 Chula Vista, California. Chousal admits he was only a principal systems architect for
7 a few months, and was initially hired as such. Except as otherwise expressly
8 admitted, Defendants deny the remaining allegations in Paragraph 17.

9 18. Answering Paragraph 18, Defendants lack knowledge sufficient to form
10 a belief about the truth of this allegation and deny on that basis.

11 **FACTUAL ALLEGATIONS**

12 19. Answering Paragraph 19 of the FAC, Defendants lack knowledge
13 sufficient to form a belief about the truth of this allegation and deny on that basis.

14 20. Answering Paragraph 20 of the FAC, Defendants admit the
15 Independent Experts were only a principal systems architect for a few months, and
16 were initially hired as such. Except as otherwise expressly admitted, Defendants deny
17 the remaining allegations in Paragraph 20.

18 21. The allegations of Paragraph 21 refer to a written document which is
19 the best evidence as to its contents. Defendants deny the allegations of Paragraph 21
20 to the extent they misstate or mischaracterize the referenced document. Except as
21 expressly admitted, Defendants deny the allegations of Paragraph 21.

22 22. The allegations of Paragraph 22 refer to a written document which is
23 the best evidence as to its contents. Defendants deny the allegations of Paragraph 22
24 to the extent they misstate or mischaracterize the referenced document. Except as
25 expressly admitted, Defendants deny the allegations of Paragraph 22.

26 23. The allegations of Paragraph 23 refer to a written document which is the
27 best evidence as to its contents. Defendants deny the allegations of Paragraph 23 to
28

1 the extent they misstate or mischaracterize the referenced document. Except as
2 expressly admitted, Defendants deny the allegations of Paragraph 23.

3 24. The allegations of Paragraph 24 refer to a written document which is
4 the best evidence as to its contents. Defendants deny the allegations of Paragraph 24
5 to the extent they misstate or mischaracterize the referenced document. Except as
6 expressly admitted, Defendants deny the allegations of Paragraph 24.

7 25. Answering Paragraph 25 of the FAC, Defendants admit they were
8 sometimes called “Architects” because of their initial job title, and understood
9 subsequent references to them being “architects” after their demotion to be
10 derogatory. Defendants lack knowledge sufficient to form a belief about the truth of
11 the remaining allegations and deny on that basis.

12 26. Paragraph 26 of the FAC states simply how some 3D printers work, and
13 thus no response is required regarding what these products do in the 3D printing
14 process. To the extent a response is required, Defendants deny the allegations set
15 forth in this paragraph of the FAC.

16 27. Answering Paragraph 27 of the FAC, Defendants lack knowledge
17 sufficient to form a belief about the truth of the allegations and deny on that basis.

18 28. Answering Paragraph 28 of the FAC, Defendants deny each and every
19 allegation in the Paragraph.

20 29. Answering Paragraph 29 of the FAC, Defendants admit one of the
21 collective names for their work was given the name “Enso” by Wynne and admit
22 they performed some work on the collective project known as Enso. Except as
23 otherwise expressly admitted, Defendants deny the remaining allegations in
24 Paragraph 29.

25 30. Answering Paragraph 30 of the FAC, Defendants admit some patent
26 applications were filed listing some of them as inventors while employed by Plaintiff
27 Except as otherwise expressly admitted, Defendants deny the remaining allegations
28 in Paragraph 30.

1 31. Answering Paragraph 31 of the FAC, Defendants deny each and every
2 allegation in the Paragraph.

3 32. Answering Paragraph 32 of the FAC, Defendants deny each and every
4 allegation in the Paragraph.

5 33. Answering Paragraph 33 of the FAC, Defendants admit in the course
6 of regular business and over their whole employment period at Plaintiff, some emails
7 were sent from work accounts to personal accounts, which was an acceptable and
8 known practice at Plaintiff. Except as otherwise expressly admitted, Defendants lack
9 knowledge sufficient to form a belief about the truth of the remainder of the
10 allegations and deny on that basis.

11 34. Answering Paragraph 34 of the FAC, Chousal admits in the course of
12 regular business and over their whole employment period at Plaintiff, some emails
13 were sent from work accounts to personal accounts, which was an acceptable and
14 known practice at Plaintiff. Except as otherwise expressly admitted, Chousal denies
15 the remainder of the allegations.

16 35. Answering Paragraph 35 of the FAC, Defendants admit in the course of
17 regular business and over their whole employment period at Plaintiff, some emails
18 were sent from work accounts to personal accounts, which was an acceptable and
19 known practice at Plaintiff and which was done to facilitate their work for Plaintiff.
20 Except as otherwise expressly admitted, Defendants deny the remainder of the
21 allegations.

22 36. Answering Paragraph 36 of the FAC, Defendants deny each and every
23 allegation in the Paragraph.

24 37. Answering Paragraph 37 of the FAC, Defendants lack sufficient
25 information as to who sent this email or why it was sent, and therefore deny the
26 whole of this allegation on this basis.

27 38. Answering Paragraph 38 of the FAC, Defendants deny having access to
28 or using “information related to 3D Systems’ customers, pricing lists and

1 information, supplier lists, vendor and supplier contact information, information
2 related to materials ordered from vendors, 3D Systems' marketing strategies, and
3 product design information." As to the remaining allegations, Defendants lack
4 sufficient knowledge to form a belief about the truth of the remaining allegations and
5 deny on that basis.

6 39. Answering Paragraph 39 of the FAC, Defendants admit providing two
7 weeks notice and continuing to work to assist in the transition due to their departure.
8 Except as otherwise expressly admitted, Defendants deny the remaining allegations
9 in Paragraph 39.

10 40. Answering Paragraph 40 of the FAC, Defendants lack knowledge
11 sufficient to form a belief about the truth of the remaining allegations and deny on
12 that basis.

13 41. Paragraph 41 of the FAC states legal conclusions to which no response
14 is required. To the extent a response is required, Defendants deny each and every
15 allegation in the Paragraph.

16 42. Answering Paragraph 42 of the FAC, Defendants admit some of them
17 returned work computers and phones to their initial settings as this was standard
18 procedure in the industry. Except as otherwise expressly admitted, Defendants deny
19 the remaining allegations in Paragraph 42.

20 43. Answering Paragraph 43 of the FAC, Defendants lack knowledge
21 sufficient to form a belief about the truth of the remaining allegations and deny on
22 that basis.

23 44. Answering Paragraph 44, Defendants admit they formed Intrepid after
24 leaving Plaintiff. As to the website, it speaks for itself, and thus no response is
25 required regarding the contents of the document. Except as otherwise expressly
26 admitted, Defendants deny the remaining allegations in Paragraph 44.

1 45. Answering Paragraph 45, Defendants lack knowledge sufficient to form
2 a belief about what Plaintiff believes and denies the allegations on that basis.
3 Defendants deny any remaining allegations in Paragraph 45.

4 46. Answering Paragraph 46 of the FAC, Intrepid admits it has hired two
5 employees immediately after those employees left Plaintiff's employ. Except as
6 otherwise expressly admitted, Defendants deny the remaining allegations in
7 Paragraph 46.

8 47. Answering Paragraph 47 of the FAC, Defendants admit Plaintiff alleges
9 misappropriation of trade secrets. Except as otherwise expressly admitted,
10 Defendants deny each and every allegation in the Paragraph.

11 48. Answering Paragraph 48, Defendants admit Intrepid has filed patents
12 during the alleged time window. Except as otherwise expressly admitted, Defendants
13 deny the remaining allegations in Paragraph 48.

14 49. Answering Paragraph 49 of the FAC, Defendants lack knowledge
15 sufficient to form a belief about the truth of the allegations regarding Plaintiff's
16 "monitoring" and deny on that basis. Defendants deny each and every other
17 allegation in the Paragraph.

18 50. The allegations of Paragraph 50 refer to a written document which is
19 the best evidence as to its contents. Defendants deny the allegations of Paragraph 50
20 to the extent they misstate or mischaracterize the referenced document. Except as
21 otherwise expressly admitted, Defendants deny the allegations of Paragraph 50.

22 51. The allegations of Paragraph 51 refer to a written document which is
23 the best evidence as to its contents. Defendants deny the allegations of Paragraph 51
24 to the extent they misstate or mischaracterize the referenced document. Except as
25 expressly admitted, Defendants deny the allegations of Paragraph 51.

26 52. Answering Paragraph 52 of the FAC, Defendants deny each and every
27 allegation in the Paragraph
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1 53. Answering Paragraph 53 of the FAC, Defendants deny each and every
2 allegation in the Paragraph.

3 54. The allegations of Paragraph 54 refer to a written document which is
4 the best evidence as to its contents. Defendants deny the allegations of Paragraph 54
5 to the extent they misstate or mischaracterize the referenced document. Except as
6 expressly admitted, Defendants deny the allegations of Paragraph 54.

7 55. The allegations of Paragraph 55 refer to a written document which is
8 the best evidence as to its contents. Defendants deny the allegations of Paragraph 55
9 to the extent they misstate or mischaracterize the referenced document. Except as
10 expressly admitted, Defendants deny the allegations of Paragraph 55.

11 56. The allegations of Paragraph 56 refer to a written document which is
12 the best evidence as to its contents. Defendants deny the allegations of Paragraph 56
13 to the extent they misstate or mischaracterize the referenced document. Except as
14 expressly admitted, Defendants deny the allegations of Paragraph 56.

15 57. The allegations of Paragraph 57 refer to a written document which is
16 the best evidence as to its contents. Defendants deny the allegations of Paragraph 57
17 to the extent they misstate or mischaracterize the referenced document. Except as
18 expressly admitted, Defendants deny the allegations of Paragraph 57.

19 58. Answering Paragraph 58, Defendants deny each and every allegation in
20 this Paragraph.

21 **CLAIMS FOR RELIEF**

22 **FIRST CAUSE OF ACTION**

23 59. Answering Paragraph 59 of the FAC, Defendants repeat and incorporate
24 by reference its responses to Paragraphs 1 through 58 of the FAC as if set forth fully
25 herein.

26 60. Paragraph 60 of the FAC states legal conclusions to which no response
27 is required. To the extent a response is required, Defendants deny each and every
28 allegation in this Paragraph.

1 61. Paragraph 61 of the FAC states legal conclusions to which no response
2 is required. To the extent a response is required, Defendants lack knowledge
3 sufficient to form a belief about the truth of the purported reasonable efforts by
4 Plaintiff to maintain the secrecy of some of its items and deny on that basis.
5 Defendants deny each and every other allegation in the Paragraph.

6 62. Answering Paragraph 62 of the FAC, Defendants lack knowledge
7 sufficient to form a belief about what Plaintiff believes Defendants should have
8 known under the circumstances and deny on that basis. Defendants deny each and
9 every other allegation in the Paragraph.

10 63. Answering Paragraph 63 of the FAC, Defendants deny each and every
11 allegation in the Paragraph.

12 64. Paragraph 64 of the FAC states legal conclusions to which no response
13 is required. To the extent a response is required, Defendants deny each and every
14 allegation in the Paragraph.

15 65. Paragraph 65 of the FAC states legal conclusions to which no response
16 is required. To the extent a response is required, Defendants deny each and every
17 allegation in the Paragraph.

18 66. Paragraph 66 of the FAC states legal conclusions to which no response
19 is required. To the extent a response is required, Defendants deny each and every
20 allegation in the Paragraph.

21 67. Paragraph 67 of the FAC states legal conclusions to which no response
22 is required. To the extent a response is required, Defendants deny each and every
23 allegation in the Paragraph.

24 **SECOND CAUSE OF ACTION**

25 68. Answering Paragraph 68 of the FAC, Defendants repeat and incorporate
26 by reference its responses to Paragraphs 1 through 67 of the FAC as if set forth fully
27 herein.
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1 69. Paragraph 69 of the FAC states legal conclusions to which no response
2 is required. To the extent a response is required, Defendants deny the items alleged in
3 the FAC are trade secrets protected by the Defense of Trade Secrets Act.

4 70. Paragraph 70 of the FAC states legal conclusions to which no response
5 is required. To the extent one is required, Defendants lack knowledge sufficient to
6 form a belief about the truth of which of Plaintiff's products and services are used,
7 sold, shipped, and/or ordered in or intended to be used, sold, shipped and/or ordered
8 in, interstate or foreign commerce deny on that basis. Defendants deny each and
9 every remaining allegation in the Paragraph.

10 71. Answering Paragraph 71 of the FAC, Defendants lack knowledge
11 sufficient to form a belief about the truth of the allegations and deny on that basis.

12 72. Answering Paragraph 72 of the FAC, Defendants lack knowledge
13 sufficient to form a belief about the truth of the allegations and deny on that basis.

14 73. Answering Paragraph 73 of the FAC, Defendants deny each and every
15 allegation in the Paragraph.

16 74. Answering Paragraph 74 of the FAC, Defendants deny each and every
17 allegation in the Paragraph.

18 75. Paragraph 75 of the FAC states legal conclusions to which no response
19 is required. To the extent a response is required, Defendants deny each and every
20 allegation in the Paragraph.

21 76. Paragraph 76 of the FAC states legal conclusions to which no response
22 is required. To the extent a response is required, Defendants deny each and every
23 allegation in the Paragraph.

24 77. Paragraph 77 of the FAC states legal conclusions to which no response
25 is required. To the extent a response is required, Defendants deny each and every
26 allegation in the Paragraph.

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THIRD CAUSE OF ACTION

78. Answering Paragraph 78 of the FAC, Defendants repeat and incorporate by reference its responses to Paragraphs 1 through 77 of the FAC as if set forth fully herein. As to Mueller, no response is required because this cause of action has been dismissed. To the extent a further response required, Mueller denies each and every allegation in the Paragraph.

79. Paragraph 79 of the FAC states legal conclusions to which no response is required. The allegations of Paragraph 79 refer to a written document which is the best evidence as to its contents. Defendants deny the allegations of Paragraph 79 to the extent they misstate or mischaracterize the referenced document. Except as expressly admitted, Defendants deny the allegations of Paragraph 79. As to Mueller, no response is required because this cause of action has been dismissed. To the extent a further response required, Mueller denies each and every allegation in the Paragraph.

80. Paragraph 80 of the FAC states legal conclusions to which no response is required. To the extent a response is required, Defendants deny each and every allegation in the Paragraph. As to Mueller, no response is required because this cause of action has been dismissed. To the extent a further response required, Mueller denies each and every allegation in the Paragraph.

81. Paragraph 81 of the FAC states legal conclusions to which no response is required. To the extent a response is required, Defendants lack sufficient knowledge and information as to when these emails or actions were supposedly taken, and so also deny on that basis. Defendants deny each and every remaining allegation in the Paragraph. As to Mueller, no response is required because this cause of action has been dismissed. To the extent a further response required, Mueller denies each and every allegation in the Paragraph.

82. Answering Paragraph 82, Defendants deny each and every allegation in the Paragraph. As to Mueller, no response is required because this cause of action has

1 been dismissed. To the extent a further response required, Mueller denies each and
2 every allegation in the Paragraph.

3 83. Paragraph 83 of the FAC states legal conclusions to which no response
4 is required. To the extent a response is required, Defendants deny each and every
5 allegation in the Paragraph. As to Mueller, no response is required because this cause
6 of action has been dismissed. To the extent a further response required, Mueller
7 denies each and every allegation in the Paragraph.

8 **FOURTH CAUSE OF ACTION**

9 84. No response is required because this cause of action has been
10 dismissed. To the extent a response required, Defendants deny the allegations set
11 forth in this paragraph of the FAC.

12 85. No response is required because this cause of action has been
13 dismissed. To the extent a response required, Defendants deny the allegations set
14 forth in this paragraph of the FAC.

15 86. No response is required because this cause of action has been
16 dismissed. To the extent a response required, Defendants deny the allegations set
17 forth in this paragraph of the FAC.

18 87. No response is required because this cause of action has been
19 dismissed. To the extent a response required, Defendants deny the allegations set
20 forth in this paragraph of the FAC.

21 88. No response is required because this cause of action has been
22 dismissed. To the extent a response required, Defendants deny the allegations set
23 forth in this paragraph of the FAC.

24 89. No response is required because this cause of action has been
25 dismissed. To the extent a response required, Defendants deny the allegations set
26 forth in this paragraph of the FAC.

1 90. No response is required because this cause of action has been
2 dismissed. To the extent a response required, Defendants deny the allegations set
3 forth in this paragraph of the FAC.

4 91. No response is required because this cause of action has been
5 dismissed. To the extent a response required, Defendants deny the allegations set
6 forth in this paragraph of the FAC.

7 **FIFTH CAUSE OF ACTION**

8 92. No response is required because this cause of action has been
9 dismissed. To the extent a response required, Defendants deny the allegations set
10 forth in this paragraph of the FAC.

11 93. No response is required because this cause of action has been
12 dismissed. To the extent a response required, Defendants deny the allegations set
13 forth in this paragraph of the FAC.

14 94. No response is required because this cause of action has been
15 dismissed. To the extent a response required, Defendants deny the allegations set
16 forth in this paragraph of the FAC.

17 95. No response is required because this cause of action has been
18 dismissed. To the extent a response required, Defendants deny the allegations set
19 forth in this paragraph of the FAC.

20 **SIXTH CAUSE OF ACTION**

21 96. No response is required because this cause of action has been
22 dismissed. To the extent a response required, Defendants deny the allegations set
23 forth in this paragraph of the FAC.

24 97. No response is required because this cause of action has been
25 dismissed. To the extent a response required, Defendants deny the allegations set
26 forth in this paragraph of the FAC.

1 98. No response is required because this cause of action has been
2 dismissed. To the extent a response required, Defendants deny the allegations set
3 forth in this paragraph of the FAC.

4 99. No response is required because this cause of action has been
5 dismissed. To the extent a response required, Defendants deny the allegations set
6 forth in this paragraph of the FAC.

7 **SEVENTH CAUSE OF ACTION**

8 100. No response is required because this cause of action has been
9 dismissed. To the extent a response required, Defendants deny the allegations set
10 forth in this paragraph of the FAC.

11 101. No response is required because this cause of action has been dismissed.
12 To the extent a response required, Defendants deny the allegations set forth in this
13 paragraph of the FAC.

14 102. No response is required because this cause of action has been dismissed.
15 To the extent a response required, Defendants deny the allegations set forth in this
16 paragraph of the FAC.

17 103. No response is required because this cause of action has been dismissed.
18 To the extent a response required, Defendants deny the allegations set forth in this
19 paragraph of the FAC.

20 **AFFIRMATIVE DEFENSES**

21 Defendants hereby assert the following separate and distinct affirmative
22 defenses to the FAC and to each and every cause of action contained therein.

23 **FIRST AFFIRMATIVE DEFENSE**

24 **(FAILURE TO STATE A CLAIM)**

25 The FAC, and each and every cause of action alleged in it, fails to state facts
26 sufficient to constitute a cause of action upon which relief may be granted.
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1 **SECOND AFFIRMATIVE DEFENSE**

2 (UNCLEAN HANDS)

3 No relief may be obtained under the FAC by reason of the doctrine of unclean
4 hands and/or by reason of the unconscionability of Plaintiffs' acts and claims.

5 **THIRD AFFIRMATIVE DEFENSE**

6 (UNJUST ENRICHMENT)

7 Plaintiff would be unjustly enriched if allowed to recover on this FAC.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 (APPORTIONMENT OF RESPONSIBILITY)

10 A third party contributed to the harm, such that all liability or a portion of the
11 harm is properly attributed to that party, and any liability to Defendants is reduced by
12 that sum.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 (ESTOPPEL)

15 Plaintiff is estopped from obtaining any and all of the relief sought against
16 Defendants by virtue of its acts, conduct, representations and/or omissions.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 (WAIVER)

19 Any purported duty or obligation alleged in the FAC which Defendants may
20 have owed to Plaintiffs has been waived.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 (INTERVENING AND SUPERSEDING CAUSE)

23 Some or all of Plaintiff's alleged injuries or damages, if any, were proximately
24 caused by the independent and intervening conduct, actions, or omissions of
25 Plaintiffs or persons, corporations, unincorporated associations, government bodies,
26 or other entities, whether or not named as parties to this action.

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EIGHTH AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

Each cause of action in the FAC is barred by the application of the applicable statutes of limitation.

NINTH AFFIRMATIVE DEFENSE

(LACHES)

Plaintiffs are barred by laches from recovery under the FAC by reason of their unreasonable delay in notifying Defendant of the claims alleged, and by reason of their unreasonable delay in seeking the recovery requested herein.

TENTH AFFIRMATIVE DEFENSE

(JUSTIFICATION/PRIVILEGE)

Defendants allege their conduct, as it relates to Plaintiffs' claims, was completely lawful and was justified and/or privileged under California or other applicable law.

ELEVENTH AFFIRMATIVE DEFENSE

(RELEASE)

Defendants alleged Plaintiff released them of liability by accepting the resignations and compliance by Defendants with all agreements with Plaintiff, and Plaintiff therefore abandoned or relinquished their claim at the time Defendants finally left Plaintiff's employ.

TWELFTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE)

Defendant is informed and believes and thereon alleges that Plaintiffs' alleged damages, if any, are the result, in whole or in part, of Plaintiffs' failure to exercise reasonable care to reduce or mitigate the damages.

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THIRTEENTH AFFIRMATIVE DEFENSE

(OFFSET)

Defendant is informed and believes and thereon alleges that Plaintiffs' alleged damages are offset by Plaintiffs' own actions and by claims Defendants have against Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

(PERFORMANCE EXCUSED)

Defendants' obligation to perform under the purported contract alleged by Plaintiff, if any, is excused. The purported contract expressly and/or by operation of law impliedly imposed upon Plaintiff a fiduciary duty and a duty of good faith and fair dealing. Plaintiff has engaged in acts, omissions, and courses of conduct which constitute a breach of such duties, which breaches prevented or excused Defendants from performing their obligations, if any, under such contract. Further, Plaintiff has engaged in acts, omissions, and courses of conduct which constitute breaches of the purported contract, which breaches have prevented or excused Defendants from performing their obligations, if any, under such contract.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray as follows:

1. That Plaintiff take nothing by way of its FAC;
2. That the FAC be dismissed with prejudice;
3. That Defendants recover the costs of suit incurred, including reasonable attorneys' fees as otherwise provided by law; and
4. That the Court grant to Defendants such other and further relief as the Court deems just and proper.

COUNTERCLAIMS/THIRD PARTY CLAIMS

Defendant/Counter-Claimant/Third Party Claimant Intrepid Automation, (“Intrepid”), by and through undersigned counsel, and pursuant to the Court’s May 4, 2023 Order (Dkt. 174) and Fed. R. Civ. P. 13(b) and 15 (a)(1), hereby submits its Amended Counterclaims against Plaintiff/Counter-Defendant 3D Systems Inc., a California corporation and wholly-owned subsidiary and/or affiliate of 3D Systems Corporation (“3D Systems”), and its Amended Third Party claims against Third Party Defendant Evan Kuester (“Kuester”)¹ and other as of yet unnamed Parties, on information and belief formed after reasonable inquiry under the circumstances:

104. 3D Systems is a publicly traded corporation. Founded in the mid-1980s, 3D Systems was, at one time, a leader in the additive manufacturing industry. But 3D Systems’ competitive edge eroded over the years as it failed to innovate new technologies to replace key patents on its core original technologies. As a result of its continued inability to innovate to maintain its competitive advantage, 3D Systems resorted to adopting a strategy of acquiring smaller competitors and gobbling up their novel and strategic technologies as its own. Such acquisitions necessitated integrating various entities, each with differing corporate cultures and business approaches, into a single 3D Systems’ ecosystem. 3D Systems, however, failed to seamlessly integrate its acquisitions, leading to a toxic corporate culture infecting, among others, its executive management team.

105. In 2015, Vyomesh Joshi (“Joshi”) replaced Avi Reichental as 3D Systems’ President and CEO. Joshi, a prominent technology industry veteran and executive, had spent more than three decades with Hewlett Packard (“HP”), a highly respected printing technology company and emerging industry leader in 3D printing. With Joshi’s hiring, 3D Systems sought to reverse years of internal technology stagnation and acquisition dysfunction by developing a new strategy of innovation,

¹ There is a question as to what is the proper name of the Individual Third Party Defendant. He signed his non-disclosure agreement with Intrepid as “Evan Kuester.” Bd his LinkedIn profile is under the name “Evan Keuster.”)

1 organic growth and internal development. The new CEO attempted to resurrect 3D
 2 Systems and its culture by infusing a highly innovative research and development-
 3 oriented engineering culture – an approach mirroring Hewlett Packard’s product
 4 development model. The goal was to reverse the slide of 3D Systems’ technology
 5 and adapt to rapidly changing market forces otherwise rendering its technologies
 6 obsolete and non-competitive.

7 106. To facilitate its new strategy, 3D Systems identified five highly skilled
 8 master engineers with extensive experience developing new technologies and
 9 products, including 3D printers. These innovative and entrepreneurial master
 10 engineers, the majority of whom were seasoned veterans from HP, were in fact
 11 specifically identified and targeted by CEO Joshi based on his tenure as a senior
 12 executive at HP and follow on experiences working with Ben Wynne at a 3D printing
 13 startup, of which he was an investor and mentor. As a result, Ben Wynne, Chris
 14 Tanner, Jamie Etcheson, Ivan Chousal, and Robert Mueller (collectively the “Intrepid
 15 Experts”) were solicited, heavily recruited and ultimately induced by 3D Systems
 16 and various executives to leave their well-paying, safe, and stable HP careers to
 17 revolutionize 3D Systems’ existing moribund research and development processes.
 18 Generous promises were made to the Intrepid Experts by CEO Joshi and other 3D
 19 Systems executives to induce them to take the risk to join 3D Systems with a new
 20 approach to technology and product development of badly needed new products. The
 21 Intrepid Experts were told they would be leading a corporate paradigm shift in the
 22 industrial space and be granted bountiful resources, significant compensation, a
 23 direct link to the CEO, top notch facilities, changes in 3D Systems’ customer
 24 support, and technology roll-out programs and a nurturing and supportive culture.

25 107. In connection with their onboarding, 3D Systems required the Intrepid
 26 Experts to execute illegal non-compete, non-solicitation, and non-disclosure
 27 agreements, titled “3D Systems California Employee Confidentiality, Non-Compete,
 28 Non-Solicitation and Arbitration Agreement” (the “Agreements”). As is apparent

1 from the title, the Agreements are intended to unlawfully restrict the Intrepid
2 Experts' rights under California law to practice their chosen profession and compete
3 with 3D Systems. The non-disclosure, non-competition, and non-solicitation
4 provisions are illegal under California Business & Professions Code § 16600
5 ("Section 16600"), which declares "every contract" that restrains "anyone...from
6 engaging in a lawful profession, trade, or business of any kind is to that extent void."
7 Section 16600 evinces California's fundamental and well-settled policy against non-
8 compete, non-solicitation, and no-hire provisions in favor of open competition and
9 employee mobility. *See Edwards v. Arthur Andersen LLC*, 44 Cal. 4th 937, 945-46
10 (2008). 3D Systems circumvented Section 16600 by restraining employee mobility
11 and subverting competition, but nonetheless required the Independent Experts to
12 execute them as a condition of employment.

13 108. Despite regular praise for the Intrepid Experts' work product, the
14 inducement promises were broken. Political in-fighting between CEO Joshi, on the
15 one hand, and 3D Systems' founder and loyal henchmen, on the other, poisoned the
16 culture and strategic direction of the company, with the latter pair engaging in
17 conduct that marginalized the Intrepid Experts. Despite the Intrepid Expert's repeated
18 efforts to fix the political quagmire through continued communications with Joshi,
19 3D Systems ultimately left the Intrepid Experts in an untenable and unsafe
20 environment. As a result, the Intrepid Experts were forced to abandon their lucrative
21 stock options in 3D Systems and withdraw from the toxic environment at 3D
22 Systems in 2017. Nonetheless, the Intrepid Experts maintained their dream to
23 transform the additive manufacturing industry, as they knew they could. So, the
24 Intrepid Experts set out on their own to achieve just that.

25 109. Following their 3D Systems departure, the Intrepid Experts formed
26 Intrepid Automation and began to look for ways to use their vast and independent
27 experience in technology and product development to transform the use of additive
28 manufacturing in the industrial market. The Intrepid Experts have hundreds of

1 patents and a combined century of experience developing new technologies and
2 products. Rather than use any of 3D Systems' outdated and obsolete technology
3 (which was equally useless and antagonistic to the vision), Intrepid built new
4 technology and methods using First Principles – foundational engineering principles
5 – from the ground up to develop new technology and products.

6 110. As 3D Systems slid behind due to its continued innovation shortcomings,
7 Intrepid rose up by developing and patenting cutting-edge technology over the course
8 of several years. Intrepid's products were developed in-house using new techniques
9 with novel developments to produce more accurate plastic, elastomeric, and digitally-
10 cast metal parts than others in the industry.

11 111. After nearly four years of independent development, Intrepid was on
12 the cusp of penetrating the larger marketplace. Customer trials were successful
13 and significant and marquee wins were near the finish line, only to vanish due to
14 unfair business practices and tortious interference by unscrupulous and unethical
15 employees and agents of 3D Systems at one or more Intrepid clients. Sadly,
16 instead of competing fairly to bring better solutions to the marketplace, 3D
17 Systems chose underhanded tactics to sabotage the development and rise of Intrepid.

18 112. In a brazen display of corporate espionage, 3D Systems had Evan
19 Kuester, one of 3D Systems' Applications Engineers and a person known to the
20 Intrepid Experts, approach Intrepid purporting to be interested in leaving 3D
21 Systems to join the team at Intrepid. At the very outset of the process, Kuester
22 signed a Non-Disclosure Agreement, preventing him from disclosing any of the
23 confidential information that Kuester gained access to during his recruitment.
24 Believing that Kuester had a good faith interest in joining Intrepid, desirous of
25 recruiting Kuester to join the team, and secure in the knowledge that Kuester had
26 agreed to the NDA, Intrepid and Kuester exchanged information and undertook
27 negotiations for a 3-week period in January through February 2021. During that
28 time, Kuester was given a tour of the Intrepid laboratory, observed Intrepid's in-

1 development 3D printers in action, learned information regarding Intrepid's
2 confidential business plans, including third parties with whom Intrepid was actively
3 negotiating regarding prospective business, and obtained detailed product
4 specification and capabilities information regarding Intrepid's ground-breaking
5 DLP multi-projector vat-based 3D Printer System, which became known as
6 Valkyrie, which was at that time in development. But, on information and belief,
7 Kuester was only feigning interest in Intrepid and had no intention of honoring the
8 NDA. Upon information and belief, Kuester dutifully relayed the highly
9 confidential Intrepid information he gained access to – including the trade secret
10 product specification, design, and capabilities information regarding the new
11 Valkyrie printer system – to his employer 3D Systems.

12 113. When 3D Systems became aware of Intrepid's DLP multi-projection
13 vat-based 3D print system under development, 3D Systems quickly understood that
14 this new technology was an existential threat, particularly to 3D Systems' aerospace
15 business. 3D Systems' large format print systems – specifically the ProX800 and its
16 latest release, the SLA-750 – would be rendered antiquated the moment that
17 Valkyrie hit the marketplace. 3D Systems took immediate action to readjust its
18 pricing, strategy, and product release timelines.

19 114. Ultimately, 3D Systems had two choices: innovate to compete with
20 Intrepid, or commence a campaign to destroy Intrepid in the marketplace. Sadly, it
21 chose the latter and, upon information and belief, embarked upon a strategy of unfair
22 competition, including but not limited to casting Intrepid and its founders in a false
23 light, including but not limited to misrepresenting and discrediting Intrepid and its
24 founders in the marketplace to interfere with Intrepid's prospective customer
25 relations and to stunt Intrepid's growth. Previously enthusiastic prospective
26 customers abandoned business relationships with Intrepid in favor of 3D Systems as
27 a result of 3D Systems' wrongful actions.

28

JURISDICTION

115. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1332. 3D Systems has asserted claims against Defendants/Counter-Claimants/Third Party Claimants arising out of federal law, specifically the Defend Trade Secrets Act. This Court has supplemental jurisdiction over this claim pursuant to 28 U.S.C. § 1367 because it arises out of the same transaction or occurrence that is the subject matter of 3D Systems' claims against Defendants/Counter-Claimants.

116. Venue for this action is proper in this judicial district under 28 U.S.C. § 1391 (b) because a substantial part of the events giving rise to this action allegedly occurred in this District.

117. This Court has personal jurisdiction over 3D Systems because it has already submitted itself to this Court's jurisdiction by filing the initial lawsuit. This Court also has personal jurisdiction over Kuester, an employee of 3D Systems who resides in California and engaged in some of the wrongful acts alleged in these counterclaims and third party claims in this state.

THE PARTIES

118. Counter-Claimant and Third Party Claimant Intrepid is a corporation organized under the laws of the State of Delaware with its principal place of business at 7867 Dunbrook Rd., Suite A, San Diego, California 92126.

119. Counter-Defendant 3D Systems, Inc. is a corporation organized, existing, and doing business under the laws of the State of California. The principal place of business for 3D Systems is 16550 W. Bernardo Drive, Building 5, Suite 500, San Diego, California 92127. Plaintiff 3D Systems, Inc. is a wholly owned subsidiary of 3D Systems Corporation.

120. Third Party Defendant Evan Kuester is an employee of 3D Systems and resident of San Diego County, California.

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ADDITIONAL FACTUAL ALLEGATIONS

A. 3D Systems’ Employee Agreements Unlawfully Restrict Competition

121. As a condition of employment, 3D Systems required the Independent Experts to execute the “3D Systems Corporation California Employee Confidentiality, Non-Compete, Non-Solicitation and Arbitration Agreement” (the “Employee Agreement”) (Exhibit A). Throughout the Employee Agreement, 3D Systems attempts and purports to unlawfully restrict competition in violation of California law by subverting the statutory right under Section 16600 to practice in one’s chosen profession. 3D Systems’ improper effort to circumvent California law and Section 16600 is revealed by the Employee Agreement’s title in and of itself. The title indicates the agreement is specific to California employees but also notes the existence of non-compete and non-solicitation provisions despite well-settled California law holding such provisions offend Section 16600. As detailed below, the substance of the Employee Agreement only further confirms the anticompetitive provisions injected into it are irreconcilable with California law.

122. Section 2 of the Employee Agreement, titled “Trade Secrets and Confidential Business Information,” is a non-disclosure provision purporting to require employees to “not, at any time, whether during or subsequent to the term of Employee’s employment ... directly or indirectly use, divulge, disclose, release, publish, or communicate to any person, firm or corporation confidential information ... as that term is defined in this Agreement.” As an initial matter, requiring employees to keep proprietary information confidential for an undefined period of time (aka, in perpetuity), is clearly offensive to Section 16600. *See Brown v. TGS Management Company, LLC*, 57 Cal. App. 5th 303, 317 (2020.) The non-disclosure provision is also problematic in that it defines “Confidential Information” so broadly it prevents employees from using their learned work experience to compete against 3D Systems. Specifically, “Confidential Information” includes:

1 (a) the identities, buying habits or practices of the Company's customers;
 2 (b) the Company's advertising and marketing strategies, methods,
 3 research and related data; (c) the names of the Company's vendors,
 4 resellers or suppliers; (d) the cost, type and quantity of materials and/or
 5 supplies ordered by the Company; (e) the prices at which the Company
 6 obtains or has obtained or sells or has sold its products or services; (f)
 7 the Company's manufacturing, distribution and sales costs, methods and
 8 objectives; (g) technical information including machinery and
 9 equipment designs, drawings and specifications; (h) inventions; (i)
 10 pending patent applications; (j) product information including designs,
 drawings, specifications, methods of quality control and formulas or
 equations used in connection therewith; (k) "trade secrets" as such term
 is defined by California law; and/or (l) current or potential customer
 lists, pricing lists, supplier lists or reseller lists.

11 123. Notably, the definition of "Confidential Information" does not require
 12 the information be learned from 3D Systems or even be a trade secret, and includes
 13 information that is known or readily available to the public or within the 3D Systems,
 14 such as patent applications, regulatory filings, and technical information. In fact,
 15 nothing is excluded from the definition of "Confidential Information." Given the
 16 provision's extreme overbreadth, Section 2 operates as a de facto non-compete
 17 provision barring the Independent Experts from ever competing with 3D Systems or
 18 even practicing in the 3D printing industry following their employment. The non-
 19 disclosure provision thus violates Section 16600. This is especially so in light of the
 20 anticompetitive and overly restrictive provisions found elsewhere in the Employee
 21 Agreement.

22 124. Section 4 of the Employee Agreement, titled "Solicitation or Interference
 23 of Customers," purports to unlawfully prevent employees, both during their
 24 employment and for a period of 18 months following their separation, from "directly
 25 or indirectly" soliciting or attempting "to divert or take away the business" of 3D
 26 Systems' customers. It is well-settled non-solicitation provisions are unenforceable
 27 restraints on one's ability to practice their profession notwithstanding any temporal
 28 limitation. *See Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 948 (2008).

1 125. Section 5 of the Employee Agreement, titled “Solicitation of
 2 Employees,” is yet another unenforceable non-solicitation provision. Section 5
 3 purports to unlawfully require employees, during their employment and for a period
 4 of 18 months following their separation, to “not, directly or indirectly, either alone or
 5 in concert with others, solicit, induce, or entice any employee of or consultant to the
 6 Company or its subsidiaries to leave the Company or its subsidiaries for any reason
 7 whatsoever, or to work for anyone in competition with the Company or its
 8 subsidiaries.” Again, non-solicitation provisions, including no-hire provisions, are
 9 void under Section 16600. *See, e.g., VL Systems, Inc. v. Unisen, Inc.*, 152 Cal. App.
 10 4th 708 (2007); *Thomas Weisel Partners LLC v. BNP Paribas*, 2010 U.S. Dist.
 11 LEXIS 11626, 2010, at *5-6 (N.D. Cal. Feb. 10, 2010)

12 126. For instance, even though it is well-settled that non-solicitation and non-
 13 compete provisions are illegal under California law and Section 16600, the
 14 Agreement explicitly purports to unlawfully restrict both the solicitation of customers
 15 and employees, as well as competition.

16 127. Sections 4 and 5 of the Agreement, titled “Solicitation or Interference of
 17 Customers” and “Solicitation of Employees,” respectively, purport to unlawfully
 18 prevent the Independent Experts, for a period of 18-months following their
 19 employment with 3D Systems, from “directly or indirectly” soliciting or interfering
 20 with its customers or hiring any 3D Systems employees. These provisions are
 21 patently intended to unlawfully prevent the Independent Experts from engaging in
 22 their chosen profession after terminating their employment with 3D Systems. Indeed,
 23 3D Systems makes explicit reference to its intention in Section 5 to prevent
 24 employees from “work[ing] for anyone in competition with the Company or its
 25 subsidiaries.”

26 128. Section 6 of the Employee Agreement, titled “Non-Competition,”
 27 purports to require the Independent Experts to not, “directly or indirectly, own any
 28 interest in, develop, manage, control, participate in, consult, render services,

1 organize, or in any manner engage ... in any activity or enterprise providing 3D or
 2 additive manufacturing content-to-print solutions, including 3D printers, print
 3 materials, on-demand custom parts services and 3D authoring solutions for
 4 professionals and consumers (the “Business of Company”) anywhere in the United
 5 States.” Non-competition and non-solicitation clauses are both facially void under
 6 Section 16600 and are unenforceable as a matter of law. *See Edwards v. Arthur*
 7 *Andersen LLP*, 44 Cal. 4th 937, 948 (2008); *Dowell v. Biosense Webster, Inc.*, 179
 8 Cal. App. 4th 562, 574-575 (2009).

9 **B. Through Corporate Espionage, 3D Systems Wrongfully Obtains Trade**
 10 **Secret and Other Highly Confidential Information Showing that Intrepid is a**
 11 **Serious Threat**

12 129. In January 2021, 3DS’s Evan Kuester formally sought a position at
 13 Intrepid. Intrepid required Kuester to sign an NDA, which Kuester signed
 14 individually and with the title Senior Application Engineer, the title he then held at
 15 3D Systems. A true and correct copy of the NDA signed by Kuester is attached as
 16 Exhibit B.

17 130. Based on Kuester’s promises of confidentiality and his representation he
 18 was genuinely interested in working for Intrepid, Kuester induced Intrepid to sign the
 19 NDA and give him access to confidential information. As a result, Intrepid gave him
 20 a tour of Intrepid’s facilities, described its capabilities, and provided strategic
 21 business insight Kuester then used to harm Intrepid and benefit himself and 3D
 22 Systems. Kuester asked detailed questions during and after his tour about the specific
 23 capabilities of Intrepid’s machines, which he remarked to Intrepid personnel were
 24 noticeably different and superior to 3D Systems’ legacy machines.

25 131. Kuester toured Intrepid’s facilities on January 26, 2021, being shown for
 26 the first time unreleased products and technologies. Intrepid’s technological
 27 information, as well as its prototypes and samples, are extremely confidential and
 28 only shown under protection of the NDA. No outsiders are or were allowed to see

1 this technology without strict secrecy protocols in place, and it was kept in Intrepid's
2 second lab used for special visitors under signed NDAs. Intrepid does not allow
3 phones or cameras in the lab, the area is marked as restricted and ITAR controlled,
4 and Intrepid even covers up skylights and windows.

5 132. As part of the tour, Kuester viewed a test bed – i.e., a technology
6 demonstration machine - that Intrepid considered a “proof of concept” of a DLP
7 multi-projection print engine with six projectors projecting sub-images that are
8 “stitched together” to form a composite image to be printed. Kuester observed that
9 Intrepid had successfully developed a specific implementation of edge-blending,
10 featuring geometric correction, irradiance mask filters, and gamma adjustment mask
11 filters referenced in its patents. Moreover, the number of projectors and the structure
12 of the test bed made it clear that Intrepid intended to and had the capability to deploy
13 its multi-projection technology in large-format, vat based printer system that could be
14 scaled to an extremely large size. Finally, Kuester knew, as would anyone in the
15 industry, that because the multi-projector system being tested employed DLP instead
16 of SLA technology, the new printer would be much faster than anything 3D Systems
17 had in the marketplace or even under development at that time. Intrepid had kept and
18 continued to keep this proof of concept under reasonable measures to ensure
19 confidentiality.

20 133. Weeks later, Kuester followed up with Chris Tanner, one of Intrepid's
21 founders, for specific information regarding the specs and throughput of the new
22 large-format DLP multi-projector system in development. Three days after his tour,
23 Kuester asked Mr. Tanner via text message, “Do you have a way to generate a rough
24 build for that large format machine?” He followed this with another message, “Am I
25 allowed to know an approximate mm per hour build speed?” Under the comfort
26 provided by the NDA signed by Kuester, Mr. Tanner responded and answered his
27 questions.
28

1 134. Upon information and belief, 3D Systems management or members of
2 the development team specifically requested that Kuester send these follow up
3 messages to gain additional information regarding the specifications and capabilities
4 so that 3D Systems could begin work on development of a competing large format
5 DLP multi-projector printer system and/or to adjust the pricing of its existing
6 hardware and resin solutions, including the then-under-development SLA-750 print
7 system in anticipation of the eventual effect of Intrepid's groundbreaking new
8 product once it launched.

9 135. In addition, during his tour, Kuester also received insight into Intrepid's
10 Epic product line. Epic is Intrepid's patented automated production system, which is
11 essentially a factory in a box comprised of robotics, patented post-processing
12 methods, and an instantiation of Intrepid's patented membrane-based technology.
13 Epic is used to produce millions of parts with a high degree of automation,
14 consistency, and quality.

15 136. Kuester also received insight into other Intrepid's proprietary investment
16 casting pattern production. Investment casting is a way of manufacturing a metal part
17 using a sacrificial form. This new method devised by Intrepid was shown to Kuester,
18 who then turned around to share it with 3D Systems, allowing 3D Systems to secretly
19 pull back the curtain on 3D Systems' trade secret information while improperly
20 giving a view into how the timing and capabilities of Intrepid are not only faster but
21 are also only a fraction of the cost. The investment casting process works because of
22 patented DLP technology, and is a different way of using 3D technology. For
23 example, old technology uses a laser to trace a contour to form each layer, like a
24 ballpoint pen drawing on paper, whereas Intrepid's innovative method uses patented
25 modular DLP technology to project the image of the full layer at once. This
26 difference enables up to ten times speed improvement for an exposure of a printed
27 layer.

1 137. Intrepid's investment casting technology is up to ten times faster than its
2 peers' and cheaper than existing solutions. Kuester saw this technology
3 demonstration, which was extremely confidential and only shown under protection of
4 the NDA. No outsiders were allowed to see this technology without strict secrecy
5 protocols in place, and it was kept in Intrepid's second lab used for special visitors
6 under signed NDAs. Intrepid does not allow phones or cameras in the lab, the area is
7 marked as restricted and ITAR controlled, and Intrepid even covers up skylights and
8 windows.

9 138. During the tour, Kuester specifically acknowledged to Intrepid
10 representatives he had seen one of Intrepid's parts at a customer site he had visited.
11 This customer was a major player in the aerospace industry. On information and
12 belief, Kuester was the technical point of contact for 3D Systems and this particular
13 customer, and was in regular contact with this customer on behalf of 3D Systems

14 139. After text messages were exchanged, Kuester continued his deceptive
15 acts by negotiating compensation and a job title for a potential job with Intrepid. This
16 negotiation was complete by February 4, 2021. About a week later, Kuester informed
17 Mr. Tanner he was planning to leave 3D Systems.

18 140. On February 15, 2021, Kuester abruptly changed course and told Mr.
19 Tanner he would be staying at 3D Systems because he had been promised
20 additional stock in the company. On February 16, 2021, Mr. Tanner acknowledged
21 Kuester's declined offer and reminded him of the confidential nature of the
22 information shared during the interview process under mutually signed NDA,
23 which was in turn acknowledged by Mr. Kuester.

24 141. On information and belief, Kuester was sent to Intrepid by 3D Systems
25 to acquire information about Intrepid and its capabilities. Knowing Kuester had
26 developed friendships with Intrepid founders, 3D Systems directed Kuester to use
27 that trust to gain access to Intrepid's confidential and proprietary information.
28

1 Kuester then, under the deceptive guise of seeking a job at Intrepid, sought to obtain
2 access to Intrepid's confidential information.

3 142. In the alternative, upon information and belief, when Kuester informed
4 3D Systems regarding his intention to resign from 3DS and join Intrepid, 3DS
5 offered Kuester consideration including but not limited to renumeration such as an
6 increase in salary, title, and/or potentially lucrative stock options in order to stay at
7 3DS, provided that Kuester disclose to 3DS the confidential information he obtained
8 under NDA during his tour of Intrepid facilities and in discussions with Intrepid.

9 143. Regardless of whether Kuester intended to spy from the outset and
10 signed the NDA under false pretenses or whether Kuester was induced by 3DS to
11 breach the NDA provision, Kuester did indeed breach the NDA, allowing 3D
12 Systems to discover Intrepid's new and revolutionary technologies, printer systems,
13 and prospective customers.

14 **C. 3DS Begins to Use Trade Secret Information to Analyze and Adjust its**
15 **Strategy in its Large Format Printing Systems, Including in its Aerospace**
16 **Business**

17 144. Kuester's intelligence regarding Intrepid's multi-projector technology
18 and its contacts in the aerospace industry reached a subset of 3DS employees that are
19 involved in 3DS's aerospace business.

20 145. On or just prior to February 24, 2021 – just over a week after Kuester
21 informed Tanner that he intended to stay at 3D Systems, Aaron Wood, Director of
22 Material Sales, searched for, identified, and shared via email a number of patents that
23 were assigned to Intrepid. Upon review of these patents, Wood ascertained that
24 Kuester's information regarding Intrepid's proof of concept of multi-projector
25 technology in large format printing was, indeed, a dire threat to 3D Systems'
26 business, particularly with respect to an important aerospace client.

27 146. Wood requested immediate analysis on how Intrepid's new technology
28 stacked up to existing 3DS equipment used for this client, stating that it is "vitaly

1 important” that they get additional knowledge to combat the impending threat that
2 this new technology posted.

3 147. 3DS’s Stacie Hoche, Director of SLA Product Management, responded
4 to Wood’s email and indicated that she understood that Intrepid’s products are built
5 to order based on customer requirements such that data regarding speed, size and
6 other attributes may vary by client and by how the product was built. Upon
7 information and belief, Hoche’s understanding regarding Intrepid’s business plan of
8 building to customer specs was obtained directly or indirectly from Kuester’s spying.
9 Hoche further stated that she “was at a loss on how to get hard data” on Intrepid’s
10 large format DLP printer system.

11 148. Patrick Dunne, a mid-level manager at 3D Systems asked what the
12 Intrepid patents had to do with the aerospace customer and suggested that that what
13 Intrepid was doing was derivative of 3DS’s Figure Four. Dunne was referred to
14 3DS’s Craig White, 3DS’s Director of Sales, who could bring Dunne up to speed
15 about the implications of the technology to the aerospace customer.

16 149. Hoche disabused Dunne of his incorrect assumption that Intrepid’s
17 products were similar to 3DS’s Figure Four. Hoche told Dunne that Intrepid’s new
18 printer system was a custom built, vat-based DLP multi-projection system with a
19 large print area. Hoche stated that her expectation is that Intrepid’s new machine was
20 fast.

21 150. Upon information and belief, Hoche’s explanation to Dunne was based
22 on information obtained directly or indirectly from Kuester.

23 151. Also, on information and belief, Hoche was significantly understating
24 her assessment of the difference between Valkyrie and 3DS’s vat-based printer
25 systems used with aerospace clients. Hoche understood what Kuester understood
26 during his tour of Intrepid. 3D Systems’ printers used the old technology whereby a
27 single or multiple lasers trace the outline and the surface of the layer to be printed.
28 Intrepid’s innovative method uses patented modular DLP-based technology to project

1 an entire layer at a time. Hoche understood from Kuester and Intrepid's patents that
2 the Valkyrie system would be significantly faster than 3D Systems' vat-based
3 systems and their antiquated approach.

4 152. On information and belief, Kuester's improperly obtained information
5 caused a panic inside of 3DS. Hoche, for one, was besides herself. Even months
6 later, Kuester acknowledged that, despite all of 3DS's efforts and acquisitions in the
7 market, Intrepid's printer systems far outstripped anything 3DS had. Kuester wrote
8 to Scott Turner nearly a year after 3D Systems had filed this lawsuit lamenting that
9 3DS "bought TWO FDM companies but don't have the money to invest in just
10 ***buying Intrepid Automation and getting a machine that would actually make us***
11 ***money.***"

12 153. On information and belief, 3D Systems used the wrongly acquired trade
13 secret information provided by Kuester to (i) adjust its pricing and market position of
14 its then-existing large format printer system, the ProX 800; (ii) to accelerate its time
15 to market of the SLA-750, its upcoming flagship large format printer system; (iii)
16 strategically hone its pricing and market position of the SLA-750 to account for the
17 speed and other specifications of Intrepid's impending large format DLP printer
18 system; and (iv) to utilize its vast economic resources to explore development of 3D
19 Systems' own multi-projector system to eventually compete with Intrepid, using
20 knowledge of the proof of concept, specific implementation observed by Kuester,
21 and the specifications of the Intrepid large format DLP printer system obtained by
22 Kuester.

23 154. But for 3D Systems' corporate espionage, Intrepid would have had 18 to
24 24 months to fully develop its large format DLP multi-projection system, obtain
25 additional funding, and demonstrate the system's capabilities to customers under
26 non-disclosure agreements before springing the product suddenly on the market.
27 Intrepid would have had market exclusivity for at least two years or more while its
28 competitors scrambled to develop their own large format DLP multi-projection

1 systems. 3D Systems' corporate espionage allowed it to get a jump on Intrepid and
 2 the rest of the 3D printing industry, adjusting its pricing and marketing strategies to
 3 minimize the impact of the launch of Intrepid's new system, speed the development
 4 of the SLA-750 for introduction to market before Intrepid's system, and begin
 5 development of its own large format multi-projection DLP printer system so as to
 6 lessen Intrepid's first mover advantage and minimize Intrepid's market exclusivity.

7 155. In addition, 3D Systems understood, based on Kuester's corporate
 8 espionage and/or induced breach of the NDA, that the superiority of Intrepid's
 9 patented technology would make it exceedingly difficult if not impossible for 3DS to
 10 fairly compete in the aerospace industry, the dental industry and elsewhere. But,
 11 3DS and its executives such as Scott Turner knew from experience that there are two
 12 ways to compete with a fledgling company such as Intrepid. Because fair
 13 competition would result in 3D Systems being rendered an afterthought, 3DS hatched
 14 a plot to unfairly compete with Intrepid through tortious conduct separate and apart
 15 from 3D Systems acquisition of Intrepid's trade secrets and other highly confidential
 16 information.

17 **D. 3DS's Tortious Acts to Unfairly Compete with Intrepid and to Tortiously**
 18 **Interfere with Intrepid's Prospective Contractual Relations**

19 156. 3D Systems, along with Kuester, began a campaign to discredit Intrepid
 20 and its founders and interfere with Intrepid's abilities to obtain business from
 21 Intrepid's prospective economic relations and to otherwise poison the industry well
 22 to make it harder for Intrepid to form new prospective economic relations.

23 157. Intrepid is informed and believes and thereupon alleges that that as part
 24 of their duties at 3D Systems, White, Kuester, and one or more additional 3DS
 25 employees disparaged Intrepid to Ben Hester, Daniel Bach and potentially other
 26 employees at the aforementioned aerospace engineering company. These 3D Systems
 27 persons cast Intrepid in a false light, including but not limited to making statements
 28 about the capabilities of Intrepid's founders that, on information and belief, were

1 known to be false based upon the Independent Experts' exceptional work at 3DS,
2 including as set forth in performance reviews produced in this case as confirmed by
3 the deposition of Dave Tribolet in this matter.

4 158. Upon information and belief, the statements made by Kuester were
5 known to be false based on his previous experience with Intrepid's founders' work at
6 3D Systems. Upon information and belief, Kuester further made statements about
7 the capabilities of Intrepid's printer systems and technologies that Kuester knew to
8 be false based upon Kuester's own observations of Intrepid's technologies during the
9 time in which Kuester was subject to an NDA.

10 159. Upon information and belief, Craig White and/or additional 3DS
11 employees made statements to the aerospace company to cast Intrepid in a false light,
12 including by making false statements regarding the qualities, attributes and
13 capabilities of Intrepid's printer systems and technologies. Upon information and
14 belief, these statements were untrue based upon the information provided by Kuester
15 to 3D Systems and additional investigation performed by 3D Systems, including with
16 respect to Intrepid's issued patents.

17 160. Upon information and belief, 3D Systems' sales personnel made
18 disparaging statements to participants in the 3D printing industry and/or potential
19 customers that Intrepid had not yet approached. These statements were intended to
20 cast Intrepid in a false light and included but were not limited to false statements
21 related the capabilities of Intrepid's founders and the qualities, characteristics, and
22 capabilities of Intrepid's printer systems and technologies. 3D Systems' personnel
23 made these statements in order to predispose these participants and prospective
24 customers to not want to work with Intrepid.

25 161. On a number of occasions, Intrepid's first contacts with a potential
26 customer were met with immediate disdain as the customer had already formed a
27 negative view of Intrepid, its founders, and its technology, which view was caused,
28 upon information and belief, by 3D Systems false statements.

1 162. 3D Systems and its employees made these statements with the express
2 purpose and specific intent to interfere with Intrepid's relationships with prospective
3 customers, to disrupt Intrepid's position in the marketplace, and to unfairly protect
4 3DS from the threat to competition that Intrepid and its new technology posed.

5 **FIRST CAUSE OF ACTION**

6 Fraudulent Inducement

7 (Against Evan Kuester)

8 163. Intrepid re-alleges and incorporates by reference each and every
9 allegation contained in Paragraphs 115-120, 129-154.

10 164. Evan Kuester concealed his true intent when he entered into the NDA
11 with Intrepid. (Exhibit B.) He falsely represented he would keep Intrepid's
12 information confidential under the terms of the contract.

13 165. On information and belief, Kuester knew his representations to Intrepid
14 were false at the time he made them. He had the intent to use the information Intrepid
15 would reveal under the NDA for his own benefit and to leverage a better position at
16 3D Systems. He would also use this information to make targeted attacks towards
17 Intrepid customers and to interfere in Intrepid's business relations, thereby diverting
18 business to 3D Systems at Intrepid's expense.

19 166. On information and belief, Kuester intended to induce Intrepid's reliance
20 and trust by utilizing his friendship with the Intrepid Experts, agreeing to sign the
21 NDA, and operating under the guise of seeking employment with Intrepid. Intrepid
22 justifiably relied on Kuester's representations that he would keep its information
23 confidential. Kuester also expressed interest in joining Intrepid and avoiding the
24 toxic politics at 3D Systems, which was one of the reasons the Intrepid Experts left
25 3D Systems. Intrepid fully met its obligations under the NDA it signed with Kuester.

26 167. Upon signing the NDA, Kuester – with, upon information and belief, 3D
27 Systems' direction and approval – toured Intrepid's facility and became privy to
28 confidential information and business plans belonging to Intrepid. While purporting

1 to “consider” the Intrepid job offer, Kuester asked detailed questions to Intrepid
2 about their machines’ capabilities. Having no intention of ever accepting a job with
3 Intrepid, Kuester turned down the Intrepid job offer after having acquired Intrepid
4 confidential information.

5 168. Kuester was in charge of 3D Systems’ business relationship with the
6 above referenced aerospace company. Based on Kuester having gained access to
7 Intrepid’s confidential information and capabilities, Kuester knew Intrepid was a real
8 threat to his position as the 3D Systems representative to this company and to 3D
9 Systems as a whole. As a result, he and 3D Systems agreed to have him breach the
10 NDA and use the information wrongfully acquired as a result to undermine Intrepid
11 and advance his 3D Systems’ business goals.

12 169. As a reward for his conspiratorial actions and for keeping business in the
13 3D Systems pipeline which otherwise would have gone to Intrepid, Kuester got
14 promoted at 3D Systems into a position to directly compete with Intrepid’s machines.
15 Meanwhile, that same aerospace customer severed its relationship with Intrepid.

16 170. As a result of Kuester’s fraudulent actions, Intrepid has been harmed by
17 losing one or more customers and customer business, including the same aerospace
18 company Kuester serves in his role at 3D Systems. Intrepid has also suffered by
19 having its confidential information placed in 3D Systems’ hands, giving 3D Systems
20 access to a potential rival’s capabilities and goals.

21 171. The acts of Kuester were willful, oppressive, fraudulent, and malicious
22 and committed by him with the intent on his part to deprive Intrepid of its property or
23 legal rights or otherwise cause injury, and were despicable conduct that subjected
24 Intrepid to a cruel and unjust hardship and conscious disregard of its rights, so as to
25 justify an award of punitive damages.

26 //

27 //

28 //

SECOND CAUSE OF ACTION

Breach of Written Contract

(Against Evan Kuester)

172. Intrepid re-alleges and incorporates by reference each and every allegation contained in Paragraphs 115-120 and 129-154.

173. The NDA between Kuester and Intrepid is a valid and enforceable contract and confidentiality provisions within the NDA are valid and enforceable contractual provisions binding on Kuester. The non-disclosure and confidentiality covenants and other provisions contained in the contract signed by Kuester are reasonably necessary to protect Intrepid's legitimate protectable interests in its trade secrets, confidential information, customer relationships, work force, and goodwill and other assets as described in the NDA.

174. Intrepid has fully performed all of its obligations under the NDA except those it was excused of performing.

175. Kuester breached the NDA by using and/or disclosing to 3D Systems Intrepid's nonpublic, proprietary, or confidential information, knowledge, and data relating to Intrepid, or its businesses, which Kuester obtained during his tour of Intrepid and through conversations with Intrepid employees. Upon information and belief, Kuester also breached the NDA by using Intrepid's confidential, proprietary, and/or nonpublic information to undermine Intrepid's business opportunities with one or more prospective customers, to poison the well with other potential customers with whom Intrepid had not yet formed contractual relations and to further his own career at 3D Systems.

176. After his initial engagement with Intrepid, Kuester began a coordinated campaign to elicit further confidential knowledge and capabilities of Intrepid. Upon information and belief, he did this with the support and direction of 3D Systems.

177. As a result of Kuester's breach of the NDA, along with the anticompetitive conduct alleged above, Intrepid has been injured and faces

1 irreparable injury in its efforts to gain market credibility and acceptance. Intrepid is
2 threatened with losing customers, technology, its competitive advantage, its
3 confidential information, and goodwill in amounts to be determined at trial, presently
4 estimated to be in excess of the jurisdictional minimum of this Court.

5 **THIRD CAUSE OF ACTION**

6 **Tortious Interference with Contractual Relations**

7 **(Against 3D Systems in Alternative to Count 1)**

8 199. Intrepid re-alleges and incorporates by reference each and every
9 allegation contained in Paragraphs 115-120 and 129-154.

10 200. The NDA between Kuester and Intrepid is a valid and enforceable
11 contract and confidentiality provisions within the NDA are valid and enforceable
12 contractual provisions binding on Kuester. The non-disclosure and confidentiality
13 covenants and other provisions contained in the contract signed by Kuester are
14 reasonably necessary to protect Intrepid's legitimate protectable interests in its trade
15 secrets, confidential information, customer relationships, work force, and goodwill
16 and other assets as described in the NDA.

17 201. Intrepid has fully performed all of its obligations under the NDA except
18 those it was excused of performing.

19 202. During the course of his discussions with Intrepid, Kuester disclosed to
20 3D Systems that he was considering and/or had been offered employment at Intrepid.

21 203. 3D Systems provided significant consideration to Kuester, including a
22 promotion, additional compensation, and/or valuable stock options to Kuester in
23 exchange for and intending that Kuester disclose to 3D Systems the confidential
24 information Kuester learned under the NDA.

25 204. At the time of the offer above, 3D Systems knew that Kuester had
26 signed a Non-Disclosure Agreement related to his potential employment with
27 Intrepid.
28

1 205. Kuester did, in fact, breach the NDA, disclosing to 3D Systems
2 confidential information regarding the nature and capabilities of Intrepid's new
3 printer systems, its materials, and its business plans and prospective customers.

4 206. 3DS used the confidential information obtained from Kuester to
5 Intrepid's detriment, including without limitation by adjusting its pricing and
6 marketing of large format printers and, upon information and belief, speeding the
7 development of the SLA-750 printer which was then under development. 3D systems
8 also used the confidential information targeting specific prospective customers of
9 Intrepid's, including without limitation through the use of false statements regarding
10 the Intrepid founders' capabilities and the qualities, characteristics and capabilities of
11 Intrepid's printer systems, the existence of which 3D Systems only learned about
12 from Kuester, all to the damage of Intrepid.

13 **FOURTH CAUSE OF ACTION**

14 Violation of the California Uniform Trade Secret Act, Civ. Code §3426, et seq.

15 (Against 3D Systems and Kuester)

16 201. Intrepid re-alleges and incorporates by reference each and every
17 allegation contained in Paragraphs 115-120 and 129-154.

18 202. 3D Systems and Kuester wrongfully gained access to a test bed and
19 technology demonstration that Intrepid considered a "proof of concept" of a DLP
20 multi-projection print engine with six projectors projecting sub-images that are
21 "stitched together" to form a composite image to be printed. Kuester observed that
22 Intrepid had successfully developed a specific implementation of edge-blending,
23 featuring geometric correction, irradiance mask filters, and gamma adjustment mask
24 filters. The demonstration made clear that Intrepid intended to deploy this
25 technology in connection with a large format, vat-based printer system, and obtained
26 information regarding the specifications and speed.

1 203. Intrepid's proof of concept of a DLP multi-projection print system and
2 specifications for its in-development printer system were trade secrets as defined by
3 the California Uniform Trade Secret Act.

4 204. Intrepid kept this test bed, proof of concept and specifications for its in-
5 development printer systems confidential and subjected the same to reasonable
6 measures to ensure the confidentiality of the same. Such measures included limiting
7 the number of employees who have access to them, requiring third parties to execute
8 NDAs before Intrepid would share such trade secrets with them, using encryption on
9 computers, compartmentalization protocols at Intrepid to keep this information
10 confidential, refusing to let visitors see the special testing equipment and protocols,
11 and using restricted/ITAR controlled labs.

12 205. Intrepid's proof of concept and specifications for in-development printer
13 systems had independent economic value from not being generally known or readily
14 ascertainable by industry participants. These trade secrets would be useful for a
15 competitor, in that Intrepid's proof of concept disclosed that (i) a large format DLP
16 multi-projector system was indeed possible to manufacture, incentivizing research
17 and development efforts for others; (ii) employed and made evident Intrepid's
18 methods and techniques for its specific implementation of edge-blending, featuring
19 geometric correction, irradiance mask filters, and gamma adjustment mask filters;
20 and (iii) because the machine was not in the market yet, would allow competitors to
21 adjust marketing plans and pricing plans for competing printer systems, rush
22 development and introduction of in-process systems, and attempt to develop new
23 competitive machines all while Intrepid had yet to announce or publicly disclose its
24 new printer system.

25 206. Intrepid invested considerable time and resources to develop its
26 proprietary trade secrets described above.

27 207. 3D Systems willfully acquired access to Intrepid's trade secrets by the
28 improper means of Kuester's fraudulent inducement of disclosure, breach of the

1 NDA, which 3D Systems' wrongfully induced and the subsequent disclosure of
2 Intrepid's trade secrets and other confidential information to others at 3D Systems.

3 208. On information and belief, as a direct result of 3D Systems' acquisition
4 of Intrepid's trade secrets by improper means, 3D Systems adjusted marketing plans
5 and pricing plans for competing printer systems and materials, rushed development
6 and introduction of in-process competing large-format printer systems, and attempted
7 to develop new competitive machines, all while Intrepid had yet to announce or
8 publicly disclose its new printer systems.

9 209. As a direct and proximate result of 3D Systems' and Kuester's wrongful
10 conduct, Intrepid is threatened with injury and has been injured in an amount that
11 will be proven at trial.

12 210. Intrepid has also incurred, and will continue to incur, additional
13 damages, costs and expenses, including attorneys' fees, as a result of 3D Systems'
14 and Kuester's wrongful conduct. As a further proximate result of such wrongful
15 conduct, 3D Systems and Kuester have been unjustly enriched.

16 211. 3D Systems' and Kuester's actions were willful, malicious and
17 fraudulent. Intrepid is therefore entitled to an award of exemplary damages.

18 212. 3D Systems' and Kuester's conduct constitutes transgressions of a
19 continuing nature for which Intrepid has no adequate remedy at law. Unless and
20 until enjoined and restrained by order of this Court, 3D Systems and Kuester will
21 continue to use Intrepid's trade secret information to enrich themselves and divert
22 business from Intrepid. Intrepid is entitled to a preliminary and permanent injunction
23 against the misappropriation and continued threatened misappropriation of trade
24 secrets as alleged herein and further asks the Court to restrain 3D Systems and
25 Kuester from using all trade secret information misappropriated from Intrepid and to
26 return all trade secret information to Intrepid.

27 213. Intrepid is entitled to an award of attorneys' fees for 3D Systems' and
28 Kuester's misappropriation of trade secrets.

FIFTH CAUSE OF ACTION

Violation of the Defend Trade Secrets Act, 18 U.S.C. §1836, et seq.

(Against 3D Systems and Kuester)

214. Intrepid re-alleges and incorporates by reference each and every allegation contained in Paragraphs 115-120 and 129-154.

215. 3D Systems and Kuester wrongfully gained access to a test bed and technology demonstration that Intrepid considered a “proof of concept” of a DLP multi-projection print engine with six projectors projecting sub-images that are “stitched together” to form a composite image to be printed. Kuester observed that Intrepid had successfully developed a specific implementation of edge-blending, featuring geometric correction, irradiance mask filters, and gamma adjustment mask filters. The demonstration made clear that Intrepid intended to deploy this technology in connection with a large format, vat-based printer system, and obtained information regarding the specifications and speed.

216. Intrepid’s proof of concept of a DLP multi-projection print system and specifications for its in-development printer system were trade secrets as defined by and protected under the Defend Trade Secrets Act.

217. 3D Systems willfully acquired access to Intrepid’s trade secrets by the improper means of Kuester’s fraudulent inducement of disclosure, breach of the NDA, which 3D Systems wrongfully induced and the subsequent disclosure of Intrepid’s trade secrets and other confidential information to others at 3D Systems.

218. Intrepid kept this test bed, proof of concept and specifications for its in-development printer systems at the highest level of confidential and subjected the same to reasonable measures to ensure the confidentiality of the same. Such measures included limiting the number of employees who have access to them, requiring third parties to execute NDAs before Intrepid will share such trade secrets with them, using encryption on computers, compartmentalization protocols at

1 Intrepid to keep this information confidential, refusing to let visitors see the special
2 testing equipment and protocols, and using restricted/ITAR controlled labs.

3 219. Intrepid's proof of concept and specifications for in-development printer
4 systems had independent economic value from not being generally known or readily
5 ascertainable by industry participants. These trade secrets would be useful for a
6 competitor, in that Intrepid's proof of concept disclosed that (i) a large format DLP
7 multi-projector system was indeed possible to manufacture, incentivizing research
8 and development efforts for others; (ii) employed and made evident Intrepid's
9 methods and techniques for its specific implementation of edge-blending, featuring
10 geometric correction, irradiance mask filters, and gamma adjustment mask filters;
11 and (iii) because the machine was not in the market yet, would allow competitors to
12 adjust marketing plans and pricing plans for competing printer systems, rush
13 development and introduction of in-process systems, and attempt to develop new
14 competitive machines all while Intrepid had yet to announce or publicly disclose its
15 new printer system.

16 220. 3D Systems acquired access to Intrepid's trade secrets by the improper
17 means of Kuester's fraudulent inducement of disclosure, breach of the NDA, which
18 3D Systems' wrongfully induced and the subsequent disclosure of Intrepid's trade
19 secrets and other confidential information to others at 3D Systems.

20 221. On information and belief, as a direct result of 3D Systems' acquisition
21 of Intrepid's trade secrets by improper means, 3D Systems adjusted marketing plans
22 and pricing plans for competing printer systems and materials, rushed development
23 and introduction of in-process competing large-format printer systems, and attempted
24 to develop new competitive machines, all while Intrepid had yet to announce or
25 publicly disclose its new printer systems.

26 222. In violation of Intrepid's rights, 3D Systems and Kuester wrongfully
27 acquired Intrepid's confidential, proprietary and trade secret information in the
28 improper and unlawful manner as alleged herein. Such wrongful acquisition of

1 Intrepid's confidential, proprietary, and trade secret information was intentional,
2 knowing, willful, malicious, fraudulent, and oppressive. 3D Systems and Kuester
3 have attempted and continue to attempt to conceal their misappropriation.

4 223. Intrepid is informed and believes and hereby alleges that if 3D Systems
5 and Kuester are not enjoined, they will continue to misuse Intrepid's trade secret
6 information for their own benefit and to Intrepid's detriment.

7 224. 3D Systems' and Kuester's conduct constitutes transgressions of a
8 continuing nature for which Intrepid has no adequate remedy at law. Unless and
9 until enjoined and restrained by order of this Court, 3D Systems and Kuester will
10 continue to retain and use Intrepid's trade secret information to enrich themselves
11 and divert business from Intrepid. Intrepid is entitled to a preliminary and permanent
12 injunction against the misappropriation and continued threatened misappropriation of
13 trade secrets as alleged herein and further asks the Court to restrain 3D Systems and
14 Kuester from using all trade secret information misappropriated from Intrepid and to
15 return all trade secret information to Intrepid.

16 225. Intrepid has been damaged by all of the foregoing and is entitled to an
17 award of economic, exemplary damages and attorney's fees.

18 **SIXTH CAUSE OF ACTION**

19 **Violation of Cal. Bus. & Prof. Code § 17200**

20 **(Against 3D Systems, and Kuester)**

21 226. Intrepid re-alleges and incorporates by reference each and every
22 allegation contained in Paragraphs 115-128 and 156-162.

23 227. As alleged above, Kuester and 3D Systems knowingly and willing
24 agreed among themselves to damage Intrepid's interests by taking actions so 3D
25 Systems could unfairly compete with Intrepid. Among other things, 3DS and Kuester
26 knowingly cast Intrepid in a false light to the aerospace company discussed herein,
27 with whom Intrepid had formed economic relationships as well as to other
28

1 participants in the 3D printing industry and potential customers with whom Intrepid
2 had not yet formed an economic relationship.

3 228. The false statements made by 3D Systems and/or Kuester included
4 statements regarding the capabilities of Intrepid's founders and/or the qualities,
5 characteristics and capabilities of Intrepid's printer systems among other statements.

6 229. As discussed *infra* at Count Seven, 3D Systems' further competed
7 unfairly by subjecting its employees to employee agreements that contain restrictions
8 that 3D Systems knows are invalid under California law. 3D System engaged in this
9 unfair competition in order to restrict employee mobility and limit the labor market
10 for employees with experience in 3D Printing.

11 230. 3D Systems' and Kuester's conduct constitutes unlawful, unfair, or
12 fraudulent business acts or practices in violation of California Business and
13 Professions Code §§ 17200, *et seq.* As the direct result of 3D Systems' and violations
14 of §§ 17200, *et seq.*, Intrepid Automation has suffered irreparable injury, including
15 but not limited to the loss of prospective customers, the loss of potential employees
16 and, on information and belief, 3DS has been unjustly enriched, including but not
17 limited to by obtaining or increasing business of at least one customer and
18 competition generally in the 3D printing market has been harmed.

19 231. Intrepid Automation seeks damages in the amount of injuries
20 proximately caused by Defendants' unfair competition and restitution of all benefits
21 improperly received by Defendants as a result of its unfair competition and
22 permanent injunctive relief to protect its legitimate business interests.

23 **SEVENTH CAUSE OF ACTION**

24 Declaratory Relief Pursuant to 28 U.S.C. §§ 2201, 2202, Fed. R. Civ. P. 57 Based On

25 Cal. Bus. & Prof. Code § 16600

26 (Against 3D Systems)

27 178. Intrepid re-alleges and incorporates by reference each and every
28 allegation contained in Paragraphs 104-128.

1 179. An actual, present, and justiciable controversy has arisen and now exists
 2 between Defendant and Plaintiff/Counter-Defendant concerning the enforceability of
 3 the “Employee Agreement” (the “3D Systems Corporation California Employee
 4 Confidentiality, Non-Compete, Non-Solicitation and Arbitration Agreement”) and
 5 the non-disclosure (“Trade Secrets and Confidential Business Information”), non-
 6 solicitation (“Solicitation or Interference of Customers” and “Solicitation of
 7 Employees”), and Non-Competition provisions contained therein.

8 180. California Business & Professions Code section 16600 provides: “Except
 9 as otherwise provided in this chapter, every contract by which anyone is restrained
 10 from engaging in a lawful profession, trade, or business of any kind is to that extent
 11 void.” As stated by the California Supreme Court, section 16600 “evinces a settled
 12 legislative policy in favor of open competition and employee mobility and
 13 ensures that every citizen shall retain the right to pursue any lawful employment and
 14 enterprise of their choice.” *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 946
 15 (2008); see also *Dowell v. Biosense Webster, Inc.*, 179 Cal. App. 4th 564, 575 (2009)
 16 (“Section 16600 expresses California’s strong public policy of protecting the right of
 17 its citizens to pursue any lawful employment and enterprise of their choice”).

18 181. The Independent Experts were required to sign the Employee Agreement
 19 prior to and as a condition of their employment with 3D Systems.

20 182. Section 2 (“Trade Secrets and Confidential Business Information”),
 21 Section 4 (“Solicitation or Interference of Customers”), Section 5 (“Solicitation of
 22 Employees”), and Section 6 (“Non-Competition”) of the Employee Agreement
 23 purport to restrict the rights of the Independent Experts to pursue their chosen
 24 profession and undermine competition in violation of section 16600 and California’s
 25 long-recognized and fundamental public policy against such provisions. See
 26 *Edwards*, 44 Cal. 4th at 945-46.

1 183. The non-competition and non-solicitation provisions in the Employee
2 Agreement are facial violations of section 16600 and are void and unenforceable as a
3 matter of law. *See Edwards*, 44 Cal. 4th at 948; *Dowell*, 179 Cal. App. 4th at 574-75.

4 184. The Employee Agreement’s non-disclosure provision is void and
5 unenforceable under section 16600 because it operates a de facto non-compete and
6 unreasonably restrains the rights of the Independent Experts to practice in their
7 chosen profession.

8 185. Unless the non-disclosure (“Trade Secrets and Confidential Business
9 Information”), non-solicitation (“Solicitation or Interference of Customers” and
10 “Solicitation of Employees”), and Non-Competition provisions in the Employee
11 Agreements are invalidated, the Independent Experts will be unable to practice in
12 their chosen profession or within the 3D printing industry because 3D Systems has
13 sought, currently seeks, and will continue seeking to enforce the unlawful provisions
14 of its Employee Agreement against them, and Intrepid will be foreclosed from
15 availing itself of the Independent Experts’ experience and expertise in the 3D
16 printing industry in California.

17 186. 3D Systems contends the non-disclosure (“Trade Secrets and
18 Confidential Business Information”), non-solicitation (“Solicitation or Interference of
19 Customers” and “Solicitation of Employees”), and Non-Competition provisions in
20 the Employee Agreements are valid and that it is entitled to enforce these provisions,
21 which would prevent the Independent Experts from lawfully competing within the
22 3D printing industry.

23 187. A judicial declaration and judgment is necessary and appropriate at this
24 time and under the present circumstances so that Intrepid may ascertain the
25 Independent Experts’ respective rights, duties, and future obligations under the
26 Employee Agreements.

27 188. Intrepid seeks a judicial declaration and judgment from the Court as
28 specified in the prayer.

PRAYER

Intrepid prays for judgment against 3D Systems and Kuester as follows:

1. For disgorgement, damages and restitution and monetary, compensatory, consequential, punitive, and exemplary damages in an amount to be proved at trial and as permitted by law;

2. For preliminary and permanent injunctive relief against 3D Systems and its agents, servants, assigns, and all those acting in active concert or participation with them from further misappropriating Intrepid's trade secrets and from engaging in the unfair and/or unlawful acts described above, including disclosing or misusing Intrepid's trade secret and other confidential information to unlawfully and unfairly compete with Intrepid;

3. For a judicial declaration and judgment from this Court that the "3D SYSTEMS CORPORATION CALFIORNIA EMPLOYEE CONFIDENTIALITY, NON-COMPETE, NON-SOLICITATION AND ARBITRATION AGREEMENT" and the "Trade Secrets and Confidential Business Information," "Solicitation or Interference of Customers," "Solicitation of Employees," and "Non-Competition" provisions therein constitute unlawful restraints on trade in violation of California Business & Professions Code section 16600 and California's long-recognized and fundamental public policy favoring open competition and employee mobility, and such agreement and provisions are therefore void *ab initio*, as a matter of law.

4. For a judicial declaration and judgment from this Court that 3D Systems is not entitled to relief, equitable or legal, to prevent Defendants/Counter-Claimants, through the use of the 3D SYSTEMS CORPORATION CALFIORNIA EMPLOYEE CONFIDENTIALITY, NON-COMPETE, NON-SOLICITATION AND ARBITRATION AGREEMENT" and the "Trade Secrets and Confidential Business Information," "Solicitation or Interference of Customers," "Solicitation of Employees," and "Non-Competition" provisions therein, from pursuing their chosen profession, including while in the employment of competitor Intrepid.

1 5. For prejudgment and post-judgment interest at the rate authorized by
2 law;

3 6. For reasonable attorneys' fees;

4 7. For costs of suit incurred herein; and

5 8. For such other and further relief as this Court deems just and proper.
6

7
8 Dated: May 18, 2023

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**

9
10 By: /s/ Anne E. Swenson

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