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INTREPID AUTOMATION, BEN WYNNE, CHRIS TANNER, JAMIE
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

3D SYSTEMS, INC., a California
Corporation;

Plaintiff,

v.

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

Defendants.

AND RELATED COUNTER-
ACTION AND THIRD PARTY
ACTION.

Case No.: 3:21-cv-01141-AGS-DDL
**JOINT STATEMENT OF
UNDISPUTED FACTS RELATED
TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT
[Dkt. 531]**

Hon. Andrew G. Schopler
Courtroom 5C
Hearing Date: June 21, 2024
Hearing Time: 2:00 p.m.

JOINT STATEMENT OF UNDISPUTED FACTS RELATED TO DEFENDANTS' AMENDED
MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56 and Hon. Andrew G. Schopler Civil Chamber Rule 7(a), Defendants Ben Wynne, Chris Tanner, Rob Mueller, Ivan Chousal, and Jamie Etcheson, and Intrepid Automation (collectively, “Defendants”) and Plaintiff 3D Systems, Inc. (“3DS” or “3D Systems”) hereby submit the following Joint Statement of Undisputed Facts Relating to Defendants’ Amended Motion for Summary Judgment [Dkt. 531], as agreed upon through their meet and confers. The Parties admit these facts for the purposes of summary judgment only and not for any other purpose. In the event there is a trial, the statements herein shall not be used as admissions.¹

1. Ben Wynne, Chris Tanner, Rob Mueller and Jamie Etcheson began work at 3D Systems Inc. in June 2016. Ivan Chousal began work at 3DS no later than September 2016. Collectively, Wynne, Tanner, Mueller, Etcheson, and Chousal are referred to as the “Architects.”

2. All of the Architects had been engineers at Hewlett-Packard (“HP”) and were brought to 3DS by 3DS’s then-CEO Vyomesh Joshi. Dkt. 6, First Amended Complaint, ¶¶ 19-20.

3. Upon joining 3DS, Wynne, Tanner, Mueller, and Etcheson admit to signing employee confidentiality agreements (hereinafter the “Employment Agreement”). Dkt. 6, First Amended Complaint, ¶¶ 21.

4. The Employment Agreement was drafted by 3DS or 3D Systems Corporation.

5. Paragraph 2 of the Employment Agreement provides as follows:

Employee recognizes and agrees that Employee will not, at any time, whether during or subsequent to the term of Employee’s employment

¹ During the meet and confer process, counsel for Plaintiff and counsel for Defendants each indicated that they believed there were additional undisputed facts based on the summary judgment record that the parties did not agree upon. This Joint Statement of Facts are the facts upon which the Parties were able to agree.

1 by the Company or any of its subsidiaries, unless done so in the
 2 performance of Employee's job responsibilities as an employee of the
 3 Company or specifically previously consented to in writing by the
 4 President of the Company, directly or indirectly use, divulge, disclose,
 5 release, publish, or communicate to any person, firm or corporation
 6 confidential information belonging to the Company or any of its
 7 subsidiaries or their business, as that term is defined in this Agreement.
 8 "Confidential Information" specifically includes (a) the identities,
 9 buying habits or practices of the Company's customers; (b) the
 10 Company's advertising and marketing strategies, methods, research
 11 and related data; (c) the names of the Company's vendors, resellers, or
 12 suppliers; (d) the cost, type, and quantity of materials and/or supplies
 13 ordered by the Company; (e) the prices at which the Company obtains
 14 or has obtained or sells or has sold its products or services; (f) the
 15 Company's manufacturing, distribution and sales costs, methods, and
 16 objectives; (g) technical information including machinery and
 17 equipment designs, drawings and specifications; (h) inventions; (i)
 18 pending patent applications; (j) product information including designs,
 19 drawings, specifications, methods of quality control and formulas or
 20 equations used in connection therewith; (k) "trade secrets" as such term
 21 is defined by California law; and/or (l) current or potential customer
 22 lists, pricing lists, supplier lists or reseller lists. The parties hereto agree
 23 that the foregoing items of Confidential Information are important,
 24 material, and confidential, could constitute trade secret material, affect
 25 the successful conduct of the Company's business, and its goodwill,
 26 and that breach of any term of this Section 2 is a material breach of this
 27 Agreement. Employee understands that nothing contained in this
 28 Agreement is intended to, nor will this Agreement be enforced in a
 manner so as to infringe upon or restrict any rights (if applicable)
 afforded to Employee under the National Labor Relations Act,
 including any rights related to protected concerted activity.

Employee agrees to comply with all of the Company's security and
 confidentiality procedures including but not limited to, maintaining the
 secrecy of all Confidential Information. Employee further agrees that
 Employee will use his/her best efforts to preserve the confidentiality
 and secrecy of all Confidential Information that comes into Employee's
 possession, or of which Employee becomes aware.

1 Dkt. 6, First Amended Complaint, ¶ 24; Ex. 1, ¶ 2.

2 6. Paragraph 9 of the Employment Agreement is entitled “Employee’s
3 Duties Upon Separation” and includes the following: “In the event of the termination
4 of the Employee’s employment, for any reason, Employee agrees to sign and deliver
5 the “Termination Certification” attached hereto as Exhibit C. Ex. 1, ¶ 9.

6 7. Paragraph 10.1 of the Employment Agreement states, in part:
7 “Employee agrees that a breach or threatened breach by Employee of this
8 Agreement, including its covenants, could not reasonably or adequately be
9 compensated in damages in an action at law, including but not limited to damages
10 awarded as part of an arbitration proceeding pursuant to Section 13.5 of this
11 Agreement.” Ex. 1, ¶ 10.1.

12 8. Paragraph 10.2 of the Employment Agreement allows 3DS to initiate
13 legal action in court “to pursue and obtain temporary, preliminary, and/or permanent
14 injunctive relief ... for the purpose of preserving the status quo pending the
15 arbitration of the parties’ dispute.” Ex. 1, ¶ 10.2.

16 9. Paragraph 10.2 of the Employment Agreement further provides that
17 “[t]he Parties’ election to pursue injunctive relief against each other pursuant to this
18 paragraph shall not operate as a waiver of the right to arbitrate the dispute, and any
19 injunctive relief resulting from such legal proceedings shall remain in full force and
20 effect during the pendency of any related arbitration proceedings.” Ex. 1, ¶ 10.2.

21 10. Paragraph 10.3 of the Employment Agreement states: “Nothing herein
22 shall be construed as prohibiting the Company or Employee from pursuing any other
23 remedy available to the Company or Employee at law or in equity as a result of the
24 other Parties’ breach or threatened breach of this Agreement, including but not
25 limited to the recovery of damages from the Company or Employee.” Ex. 1, ¶ 10.3.

26 11. Paragraph 13.1 of the Employment Agreement states, in part: “All
27 notices or other written communications required or permitted to be given by this
28

Agreement shall be deemed given when personally delivered or two (2) days after it has been sent (the date of posting shall be considered as the first day and any Sundays, legal holidays or other days upon which the local mail generally is not delivered shall not be counted in determining this period) by registered or certified mail, postage prepaid, properly addressed to the party to receive the notice at the following address or at any other address given to the other party in the manner provided by this Section 13.1: If to the Company: 3D Systems Corporation 333 Three D Systems Circle Rock Hill, SC 29730 Attn: Executive Vice President, Chief Legal Officer and Secretary.” Ex. 1, ¶ 13.1.

12. Paragraph 13.2 of the Employment Agreement states: “If any provision of this Agreement is determined to be invalid or unenforceable, the provision shall be deemed to be severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement.” Ex. 1, ¶ 13.2.

13. Paragraph 13.5 of the Employment Agreement is entitled “Arbitration” and provides that “[t]he Parties agree that any and all controversies, claims, disputes, and matters in question arising out of, or relating to, Employee’s employment with the Company or arising out of, or relating to this Agreement (or the breach thereof), shall be decided by arbitration, subject to the terms, provisions, and exceptions set forth in a separate agreement attached hereto as Exhibit D.” Ex. 1, ¶ 13.5.

14. Paragraph 13.4 of the Employment Agreement provides: “[t]he failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at any later time nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of such provision.” Ex. 1, ¶ 13.4.

15. Exhibit D to the Employment Agreement is entitled “AGREEMENT TO MEDIATE AND/OR ARBITRATE.” Ex. 1 at Ex. D. (Exhibit D of the

1 Employment Agreement is hereinafter referred to as the “Employment Arbitration
2 Agreement.”)

3 16. Paragraph 1 of the Employment Arbitration Agreement provides that
4 “Employer and Employee mutually agree to submit to mediation and/or final and
5 binding arbitration of all controversies, claims, disputes, and matters in question
6 (“Disputes”) arising out of, or relating to this Agreement, or breach thereof, or out
7 of Employees employment with Employer or seeking employment with Employer
8 or Employee’s termination of employment with Employer or any claims whatsoever
9 between them related to Employee’s employment.” Ex. 1, at Ex. D, ¶ 1.

10 17. Paragraph 1 of the Employment Arbitration Agreement further
11 provides that “Employer and Employee knowingly understand and agree that they
12 are waiving the right to bring any Disputes to court, including the right to a jury trial,
13 and that they agree to have any and all Disputes between them decided by an
14 arbitrator.” Ex. 1, at Ex. D, ¶1.

15 18. Paragraph 4 of the Employment Arbitration Agreement provides that
16 “Any Dispute between Employer and Employee shall first be submitted to mediation
17 unless either party does not desire to mediate and would rather go directly to
18 arbitration. The parties agree to utilize mediation in good faith with the goal of
19 resolving any Disputes.” Ex. 1, at Ex. D, ¶ 4.

20 19. Paragraph 5 of the Employment Arbitration Agreement provides that
21 “Any Disputes between Employer and Employee which has not been resolved by
22 mediation as set forth above, will be resolved by submission to final and binding
23 arbitration. Employee and the Employer agree that the arbitration and this
24 Agreement shall be controlled by the Federal Arbitration Act and acknowledge that
25 Employer’s business and the nature of Employee’s employment affect interstate
26 commerce.” Ex. 1, at Ex. D, ¶ 5.

20. Paragraph 5(a) of the Employment Arbitration Agreement states, in part: “Either of the parties may exercise the right to arbitrate any Disputes against the other by sending a written notice to arbitrate to the other party by via mail (preferably using a service with delivery confirmation) of any action which gives rise to the Dispute or when the party knew or reasonably should have known of the existence of any Disputes. The written notice shall identify and describe the nature of all Disputes asserted and the facts upon which such Disputes are based.” Ex. 1, at Ex. D ¶ 5(a).

21. Paragraph 5(a) of the Employment Arbitration Agreement provides that the notice to arbitrate “must be sent within the applicable statute of limitations under California law or applicable federal law. Failure to file a notice to arbitrate within the applicable time limits prescribed by California and/or applicable federal law for each claim alleged shall constitute a waiver of any and all claims (both to arbitrate and to file such claims in any court).” Ex. 1, at Ex. D, ¶ 5(a).

22. Paragraph 8 of the Employment Arbitration Agreement provides as follows:

Notwithstanding any other provision herein and in accordance with Section 10 of the California Employee Confidentiality, Non-Compete, Non-Solicitation and Arbitration Agreement, Employee and Employer acknowledge and agree that both Employee and Employer shall be entitled to initiate legal action in an appropriate state or federal court to pursue and obtain temporary, preliminary, and/or permanent injunctive relief for the purpose of preserving the status quo pending the arbitration of the parties’ dispute and as may be necessary to protect their respective rights and interests pending mediation and/or arbitration, particularly if necessary, to avoid irreparable harm. The Parties’ election to pursue injunctive relief against each other pursuant to this paragraph shall not operate as a waiver of the right to arbitrate the dispute, and any injunctive relief resulting from such legal proceedings shall remain in full force and effect during the pendency of any related arbitration proceedings.

1 Ex. 1, at Ex. D, ¶ 8.

2 23. Paragraph 13 of the Employment Arbitration Agreement
3 states: “Written notices to be given under this agreement shall be sent by Mail
4 (preferably with a service that provides delivery confirmation) to Employee and
5 Employer at the addresses listed above.” Ex. 1, at Ex. D, ¶ 13.

6 24. The final provision of Exhibit D to the Employment Agreement states,
7 in part and in bold and all capital letters: “EMPLOYEE HAS READ,
8 UNDERSTOOD, AND AGREES TO BE LEGALLY BOUND TO ALL OF THE
9 ABOVE TERMS AND UNDERSTANDS BY AGREEING TO THIS BINDING
10 ARBITRATION AGREEMENT, BOTH EMPLOYEE AND THE COMPANY
11 GIVE UP RIGHTS TO TRIAL BY JURY.” Ex. 1, at Ex. D

12 25. The Architects resigned from 3D Systems on August 4, 2017. Dkt. 6,
13 First Amended Complaint, at ¶ 39.

14 26. Defendants Tanner, Chousal, Wynne and Mueller indicated that their
15 last day of employment with 3DS Systems would be August 18, 2017. Defendant
16 Etcheson indicated that his last day of employment with 3D Systems would be
17 August 14, 2017. Dkt. 6, First Amended Complaint, at ¶ 39.

18 27. The First Amended Complaint alleges that “Defendants
19 misappropriated 3D Systems’ trade secrets, and Defendants unlawfully used and
20 benefitted from 3D Systems’ trade secrets, which 3D Systems discovered only
21 recently.” The First Amended Complaint also alleges Defendants Wynne, Tanner,
22 Etcheson, Mueller, and Chousal misappropriated trade secrets by acquiring trade
23 secrets with knowledge of or reason to know that the trade secrets were acquired by
24 improper means, and Defendants Intrepid, Wynne, Tanner, Etcheson, Mueller, and
25 Chousal are using and/or threatening to use the trade secrets acquired by improper
26

1 means without 3D Systems' knowledge or consent. Dkt. 6, First Amended
2 Complaint, ¶ 47.

3 28. The First Amended Complaint alleges that "the Architects also did not
4 inform 3D Systems management about where they were going to work after their
5 employment with 3D Systems ended or what their plans were." Dkt. 6, First
6 Amended Complaint, at ¶ 43.

7 29. On August 18, 2017, Derek Gary (3DS's Director of Human Resources
8 for the Americas and APAC) emailed Dave Tribolet (Director, Figure Four), Jim
9 Ruder (Head of 3DS's Plastics Division), and Andrew Johnson (3DS's General
10 Counsel) with a summary of Defendants Tanner, Chousal, Wynne, and Mueller's
11 exit interviews, at which they were asked "where they were headed and what the
12 new opportunity [was]." All four answered "Not going to disclose" or "seeking a
13 new opportunity." Gary also stated in the email, "All four were lined up at the door
14 with the company property, badges, keys, credit cards and laptops ready to turn in."
15 All stated that they would not sign any documents, and they refused to fill out the
16 exit interview questionnaire. All "acknowledged they understood" the
17 confidentiality obligations they owed the Company. Ex. 3, 3DS_004177; Ex. 4
18 Johnson Dep. (Vol. 1) at 45:9-47:12.

19 30. In his August 18, 2017 email, Gary stated: "Note: [Tanner, Chousal,
20 Wynne, and Mueller] did ask for a confirmation letter on 3D Systems letterhead
21 stating their last day was today. This was for benefits purposes. Most will be
22 converting to their wife's coverage. (attached for reference). This is another good
23 indication that they are going to be starting their own business. They won't have
24 coverage at their new venture." Ex. 3, 3DS_004177; Ex. 4 Johnson Dep. (Vol. 1) at
25 45:9-47:12.

26 31. On September 6, 2017, Joshi emailed Wally Loewenbaum (Chairman
27 of the Board of Directors, 3D Systems Corporation) that "The Figure 4 architects
28

1 that left the company have started **Intrepid Automation** with Ben Wynne the Co-
2 Founder and CEO. He has a new linked in webpage that is very interesting.” Ex. 10,
3 3DS_003927 (emphasis in original). At the time, Ben Wynne’s LinkedIn page did
4 not disclose that Intrepid Automation would be a 3D-printing company.

5 32. On September 6, 2017, Loewenbaum responded to Joshi’s email
6 regarding Intrepid Automation by requesting the link to Wynne’s new LinkedIn page
7 and asking whether Intrepid Automation is a competitor of 3DS. Ex. 10,
8 3DS_003927.

9 33. On September 8, 2017, Scott Turner emailed Chuck Hull (Founder of
10 3DS) an email with the subject line “Team Intrepid” that consisted of the hyperlink
11 <http://intrepidautomation.com/>. Ex. 11, 3DS_004938. At the time, the Intrepid
12 Automation website contained only a graphical depiction of the Intrepid logo, the
13 phrase “we are intrepid,” and, directly below that,
14 “manufacturing/automation/development.”

15 34. Until at least September 10, 2019, the Intrepid Automation website
16 contained only a graphical depiction of the Intrepid logo, the phrase “we are
17 intrepid,” and, directly below that, “manufacturing/automation/development.”

18 35. The September 8, 2017 email from Turner to Hull included as
19 attachments (i) the Articles of Incorporation for Intrepid Automation and (ii) a
20 Statement of Information for Intrepid Automation filed with the California Secretary
21 of State. The Statement of Information identified that the directors of Intrepid
22 Automation were Wynne, Mueller, Tanner, Etcheson, and Chousal and described
23 the type of business as “engineering.” Ex.11, 3DS_004938 at 39-40.

24 36. At their August 18, 2017 exit interviews, Tanner, Chousal, Wynne, and
25 Mueller stated that they would not be signing any documents. They refused to fill
26 out the exit interview questionnaire and Tanner, Chousal, Wynne and Mueller
27

1 “confirmed that they will NOT be signing any additional documents.” Ex. 3,
2 3DS_004177.

3 37. During their August 18, 2017 exit interviews, Tanner, Chousal, Wynne
4 and Mueller were asked to sign 3DS’s standard California Termination certificate.
5 All four informed Gary that “they will not be signing any additional documents.”
6 Ex. 3, 3DS_004177.

7 38. Gary’s August 18, 2017 email attaches, for each of Wynne, Tanner,
8 Mueller, and Chousal, an unsigned 3DS Termination Certificate which states in
9 handwriting “Employee refused to sign at exit interview on August 18, 2017 @ 8:00
10 a.m. PST” and immediately below that, the name “Derek Gary” and below that a
11 signature. Ex. 3, 3DS_004177.

12 39. The California Termination Certificate provided:

13 This is to certify that I have returned to 3D Systems Corporation (the
14 “Company”) and do not have in my possession any Confidential
15 Information (as such term is defined in the California Employee
16 Confidentiality, Non-Compete, Non-Solicitation, and Arbitration
17 Agreement), intellectual property, devices, records, data, notes, reports,
18 proposals, lists, correspondence, materials, equipment, other
19 documents or property, or reproductions of any aforementioned items
developed by me pursuant to my employment with the Company or
otherwise belonging to the Company, its parents, subsidiaries,
affiliates, licensees, successors or assigns.

20 I further certify that I have complied with all the terms in the
21 Company’s California Employee Confidentiality, Non-Compete, Non-
22 Solicitation and Arbitration Agreement signed by me. I further agree
23 that, in compliance with the California Employee Confidentiality, Non-
24 Compete, Non-Solicitation, and Arbitration Agreement, I will preserve
as confidential all Confidential Information.

25 I acknowledge I have received a copy of my signed California
26 Employee Confidentiality, Non-Compete, Non-Solicitation and
27 Arbitration Agreement and that I will continue to comply with my
28 continuing obligations as set forth therein, including but not limited to,

1 the provisions regarding confidentiality, assigning inventions, non-
2 solicitation and non-interference.

3 Ex. 3, 3DS_004177 at 4178.

4 40. In his August 18, 2017 email, Gary requested that Tanner, Chousal,
5 Wynne and Mueller's unsigned California Termination Certificate letters be saved
6 in their employee files. Ex. 3, 3DS_004177.

7 41. In his August 18, 2017 email, Gary wrote the following regarding the
8 exit interviews he conducted with Defendants Tanner, Chousal, Wynne, and
9 Mueller: "I then reminded them of our conversation a couple weeks ago reminding
10 them about the confidentiality agreement. Following that reminder, I advised them
11 that I wanted to share a more detailed list of items, STILL NON EXHAUSTIVE,
12 but an example of items we consider to be protected. I read the list provided
13 verbatim to each individual. One person at a time. All four acknowledged they
14 understood." Ex. 3, 3DS_004177.

15 42. In a September 3, 2017 email, Tribolet stated to Michael Jackyra (3DS
16 Director of Internal Audit) that, according to Steve Rountree in the 3DS IT
17 department, the Architects had "completely wiped the hard drives" of their laptops.
18 Tribolet was mistaken, in part, as Etcheson had not completely wiped his hard drive.
19 Ex. 8, 3DS_005026.

20 43. On September 5, 2017, Tribolet sent an additional email to Jackyra
21 stating that Tribolet's "take" was that "you don't wipe the hard drive unless you have
22 something to hide. Deleting a few personal files is something I would expect, but
23 wiping the hard drive is in a different class of effort and intent." Ex. 8, 3DS_005026;
24 Ex. 4, Tribolet Dep. at 219:10-22.

25 44. That the Architects wiped the hard drive of their laptops was
26 "exceptional, unprecedented" in Tribolet's experience as a manager. Ex. 5, Tribolet
27 Dep. 220:20-23.

1 45. The First Amended Complaint alleges that “On July 23, 2017, Ben
2 Wynne received on his personal email account links to Dropbox files containing
3 images that would allow him to re-flash Halo boards. The subject line on the email
4 was ‘Re: Re-flasher for Enso...’ Dkt. 6, First Amended Complaint at ¶ 37.

5 46. During the Architects’ employment with 3DS, Tribolet was aware that
6 Ben Wynne put “the current capabilities of snuggles,” a software tool used by 3DS
7 engineers, on www.benwynne.com as a “temporary parking place” until there was
8 “someplace better to park it” and that Wynne used a Git repository for code. Ex. 10,
9 3DS_008424; Ex.54, Tribolet 167:16-169:23; 170:18-172:18.

10 47. During his employment, Wynne did not hide from Tribolet that he was
11 using Benwynne.com. Ex. 10, 3DS_008424; Ex. 4, Tribolet Dep., 172:22-173:3.

12 48. On May 19, 2021, 3DS filed a Complaint against Defendants, which
13 Complaint asserted seven causes of action: (i) Violation of the California Uniform
14 Trade Secrets Act (against all Defendants); (ii) Violation of the Defend Trade
15 Secrets Act (against all Defendants); (iii) Breach of Written Contract (Against All
16 Defendants); (iv) Breach of Duty of Loyalty (Against the Architects); (v) Conspiracy
17 (Against All Defendants); (vi) Violation of Cal. Bus. & Prof. Code § 17200 (Against
18 All Defendants); and (vii) Unfair Competition (Against All Defendants). Dkt. 1 at
19 Ex. A.

20 49. 3DS’s misappropriation claims include the allegation that the
21 Defendants “misappropriated trade secrets by acquiring trade secrets with
22 knowledge of or reason to know that the trade secrets were acquired by improper
23 means.” The claim also alleges Defendants Wynne, Tanner, Etcheson, Mueller, and
24 Chousal misappropriated trade secrets by using and/or threatening to use the trade
25 secrets acquired by improper means without 3D Systems’ knowledge or consent.
26 Dkt. 6, First Amended Complaint at ¶ 63.

50. The First Amended Complaint alleges that “Defendants misappropriated 3D Systems’ trade secrets, and Defendants unlawfully used and benefitted from 3D Systems’ trade secrets, which 3D Systems discovered only recently.” Dkt. 6, First Amended Complaint at ¶ 47.

51. In the original and First Amended Complaints, 3D Systems pled entitlement to, among other relief, a preliminary and permanent injunction against Defendants. (Dkt. 1, Ex. A, Complaint ¶ 68, Paragraph 2, Prayer; Dkt. 6, First Amended Complaint, ¶ 76, Paragraph 2, Prayer).

52. As of July 18, 2023, 3DS has not sent a written notice to arbitrate to any of the Architects.

53. As of August 13, 2023, none of the Architects have demanded arbitration under the Arbitration Agreement.

54. As of August 13, 2023, none of the Architects have given notice to 3DS of their intent to arbitrate the claims in the lawsuit.

55. The Architects state the following in their Answer with respect to jurisdiction:

a. Paragraph 9 of the FAC states legal conclusions to which no response is required. To the extent a response is required, Defendants admit this Court has jurisdiction. (Dkt. 22, Answer).

b. Paragraph 9 of the FAC states legal conclusions to which no response is required. To the extent a response is required, Defendants admit this Court has jurisdiction. (Dkt. 199, Amended Answer).

56. The Architects have not moved to compel arbitration of 3DS's claims.

57. The Architects filed a motion to dismiss the original Complaint in this matter. (Dkt. 3, 3-1).

58. The Architects filed a motion to dismiss the First Amended Complaint in this matter. (Dkt. 10, 10-1).

59. The Architects filed at least seven discovery motions during this lawsuit. (Dkt. 62, ~~85~~, 110, 132, 236, 390, 513, 514)

60. The Architects demanded a jury on June 21, 2021, and again in their Answer filed on May 18, 2023. (Dkt. No. 1-2, 199)

1 “’055 Patent”) on May 12, 2020. The ’055 Patent claims priority to provisional
2 application 62/692,196, filed on June 29, 2018.

3 69. On March 21, 2019, Intrepid filed U.S. Pat. App. No. 16/360,675,
4 which was published on March 19, 2020 and issued as U.S. Patent No. 10,759,116
5 (the “’116 Patent”) on September 1, 2020. The ’116 Patent claims priority to
6 provisional application 62/731,404, filed on September 14, 2018.

7 70. On March 29, 2019, Intrepid filed U.S. Pat. App. No. 16/370,337,
8 which was published on January 30, 2020 and issued as U.S. Patent No. 10,780,640
9 (the “’640 Patent” on September 22, 2020. The ’640 Patent claims priority to
10 provisional applications 62/734,003 and 62/711,719, filed on September 20, 2018
11 and July 30, 2018, respectively.

12 71. On May 23, 2019, Intrepid filed U.S. Pat. App. No. 16/421,189, which
13 was published on January 30, 2020 and issued as U.S. Patent No. US 10,809,205
14 (the “’205 Patent”) on October 20, 2020. The ’205 Patent claims priority to
15 provisional patent application 62/711,438 filed on July 27, 2018.

16 72. On April 1, 2019, Intrepid filed U.S. Pat. App. No. 16/371,771, which
17 was published on April 2, 2020 and issued as U.S. Patent No. 10,844,211) (the “’211
18 Patent”) on November 24, 2020. The ’211 Patent claims priority to provisional
19 patent application 62/739,476 filed on October 1, 2018.

20 73. At the time of his deposition through present, Dave Tribolet has been
21 an independent contractor of 3D Systems. Ex. 5, Tribolet Dep. 50:7-10.

22 74. Before leaving their employment with 3DS, the Architects participated
23 in meetings to transfer information and documents about the projects they had been
24 working on to other employees at 3DS. This knowledge transfer by the Architects to
25 other 3DS personnel before their last day of employment proceeded well and Mr.
26
27
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1 Tribolet expressed he was “appreciative of the effort of the Architects in that regard.”
2 Ex.5, Tribolet Dep. 190:6-10.

3 75. Prior to his last day of employment, Ivan Chousal returned a number of
4 3D Systems documents as part of the knowledge transfer process. Ex. 5, Tribolet
5 Dep. 190:11-191:5, Ex. 16, (Tribolet Dep. Ex. 11).

6 76. Chousal testified that he did not take 3DS trade secrets when he left
7 3DS. Ex. 17, Chousal Dep. 71:8-13.

8 77. On September 3, 2017, Tribolet emailed Jackyra to, inter alia, provide
9 a list of “tools used by [the Architects] above and beyond the MS Office suite,”
10 including “Github code repository,” for Ben Wynne and Jamie Etcheson. Ex. 8,
11 Email.

12 78. On September 6, 2017, Boyle sent an email to Hausheer, Lamont, and
13 Jackyra, which stated, among other things, “[b]ased on their LinkedIn profiles, [the
14 Architects] have all started a new venture called ‘Intrepid Automation.’” Dkt. 531,
15 Ex. 9,

16 79. As of the Fall of 2017, 3DS believed that the circumstances under
17 which Defendants left and the actions they took were highly unusual. Ex. 4, Johnson
18 30(b)(6) Dep77:18-78:11, 231:18-232:5.

19 80. 3DS began an investigation of the Architects’ departure in August
20 2017. Ex. 4, Johnson 30(b)(6) Dep. at 231:18-232:5

21 81. The individuals spending the most time on the 2017 Investigation were
22 Erica Hausheer (Senior Vice President and Chief Information Officer), Michael
23 Jackyra (Director of Internal Audit), Andrew Lamont (Vice President of Information
24 Technology), and Kenneth Boyle (Manager, Internal Audit). Ex. 4, Johnson 30(b)(6)
25 Dep at 141:8-143:13.

26 82. Hausheer’s August 25, 2017 email created action items and delegated
27 those tasks to certain members of the team. Ex. 18, 3DSCORP_000078; Ex. 7,

Johnson 30(b)(6) Dep. at 77:3-77:9. Three action items were delegated to Lamont, namely (i) review available emails, (ii) review cell phone records – calls and texts, and (iii) review PC hard drives. Three action items were delegated to Jackyra, namely (i) check with HR, any employment contracts, (ii) talk to legal/any patents filed by the team, and (iii) look at travel reimbursements. Ex.4, Johnson 30(b)(6) Dep. at 77:8-78:11, 82:7-82:4.

83. In August 2017, Hausheer asked Jackyra to check with legal to find out whether any patents were filed by the Architects. Keith Roberson, 3DS’s in-house lawyer, reviewed public information and did not find any such patents. Ex. 4, Johnson 30(b)(6) Dep at 82:14-24, 87:6-14.

84. None of the Architects signed any 3DS exit documents, including 3DS’s California Termination Certificate when they resigned from 3DS. Ex. 3, 3DS_004177 (2017-08-17 Email Gary to Johnson et al.); Ex. 4, Johnson Dep. 46:10-23.

85. Boyle prepared notes of his review of the Architects’ 3DS email. 3DS’s corporate designee testified that he relied on the notes as being recorded accurately. Ex. 4, Johnson 30(b)(6) Dep at 164:9-13.. The notes included bullet points for each of the five Architects. Ex. 4, Johnson 30(b)(6) Dep at 163:20-24.

86. On September 7, 2017, Jackyra sent to Boyle a draft email providing a “quick update” on the internal audit department’s investigation of the Architects. Dkt. 531 at Ex. 13. Among other things, Jackyra’s draft update email stated that the team “began reviewing the emails and computer files of these individuals and (working alongside IT) noted the following so far:”

- a. “All individuals wiped their hard drives”
- b. “[t]hese individuals regularly utilized their personal email address for Company business and there are instances where they appear to be sending Company information via these personal emails”

- c. “[o]ne of the individuals (Ivan) had instructions on his email on how to circumvent the Company firewall [. . .] Note, we did not identify any data was taken ... just an indication of circumvention of Company protection measures”
- d. “Ben Wynne commonly utilized personal email addresses, personal web-sites, public servers, and other tools available on the web.
- e. “Understanding that all of their 3D property (laptops, cell phones, badges, etc) were collected[.]”

Dkt. 531, Ex. 13.

87. Following Jackyra’s report, 3DS “retained an outside law firm to conduct a further review of the Architects’ emails and to determine if any data could be recovered from the Architects’ wiped company computers and from their company-issued cellular telephones. The external law firm retained a consultant from a computer forensics company to try to retrieve the data from the computers and cell phones. Dkt. 555, Johnson Decl. ¶ 6.

88. 3DS authorized Nexsen to perform a review, “zero[ing] in” on the “roughly 400 emails that were sent to [the Architects’] personal addresses.” Ex. 14, Johnson Dep. (Vol. 2) 311:3-23, 317:8-15. These emails were reviewed and narrowed to 128 emails. Ex. 14, Johnson Dep. (Vol. 2) 355:13-356:18; Ex. 18, Email Nexsen provided these 128 emails to Johnson, who also provided them to Roberson (3DS Assistant General Counsel), and Tribolet. *Id.* Johnson asked Roberson and Tribolet to review the emails and “determine what, if anything, was interesting and concerning.” Ex. 14, Johnson Dep. (Vol. 2) 339:13-23.

89. 3DS ended its investigation in October 2017.

90. 3DS claims that a June 30, 2016 PowerPoint presentation entitled “6-Pack” contains information that 3DS asserts as trade secrets in this action. Dkt.

1 531, Ex. 42; *see also* Dkt. 531, Ex. 32 (Zurbrickie Dep.) 128:10-129:10; Third
 2 Supplemental Response to Chousal Interrogatory No. 3.

3 91. In his report, 3DS's expert, Richard Greene, describes 3DS's Edge
 4 Blending and Calibration Techniques asserted as trade secrets in this action at ¶¶ 29-
 5 33, which incorporates description from 3DS's responses to Intrepid's Interrogatory
 6 No. 1 and Chousal Interrogatory Nos. 3-4. Dkt. 531, Ex. 27 (Greene Report) at ¶ 29;
 7 Dkt. 531, Ex. 28 (Greene Dep) at 6:13-7:9.

8 92. Closed loop control systems generally are known in the art. Dkt. 531,
 9 Ex. 28 (Greene Dep.) at 235:6-8.

10 93. Examples of common closed loop systems include the temperature
 11 control mechanisms on a household oven, an aquarium, or a thermostat. Ex. 28
 12 (Greene Dep.) at 248:12-250:5; Dkt. 531, Ex. 30 at 221-226.

13 94. Keith Roberson, 3DS's in-house IP counsel, became aware of the
 14 publication of the patent application that became the '055 Patent on January 3, 2020.
 15 Ex. 4, Johnson 30(b)(6) Dep. at 205:24-206:9.

16 95. Keith Roberson, 3DS's in-house IP counsel, became aware of the
 17 publication of the patent application that became the '640 Patent on January 30,
 18 2020. Ex.4, Johnson 30(b)(6) Dep. at 209:13-17.

19 96. Keith Roberson, 3DS's in-house IP counsel, became aware of the
 20 publication of the patent application that became the '205 Patent on March 24, 2020.
 21 Ex. 4, Johnson 30(b)(6) Dep. at 209:18:21.

22 97. Keith Roberson, 3DS's in-house IP counsel, became aware of the
 23 publication of the patent application that became the '116 Patent on March 24, 2020.
 24 Ex. 4, Johnson 30(b)(6) Dep. at 209:22-25.

25 98. Keith Roberson, 3DS's in-house IP counsel, became aware of the
 26 publication of the patent application that became the '808 Patent on August 31, 2020.
 27 Ex. 4, Johnson 30(b)(6) Dep. at 210:1-4.

1 99. When Defendants left in an unusual and coordinated way, 3DS
2 determined that it was a prudent step to look into their departure to “know more
3 about this.” Ex. 4, Johnson 30(b)(6) Dep. At 29:6-30:1.

4 100. Defendants were cooperative in the transition of their project work
5 when they left 3DS. Ex. 4, Johnson 30(b)(6) Dep. 37:23-25; 38:4-11.

6
7
8 Dated: June 14, 2024

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