UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

3D Systems, Inc. v. Wynne

3D Systems · No. 21-cv-1141-AGS-DDL · Decided March 20, 2025

OPINION

3D Systems, Inc. v. Wynne
PER CURIAM.
1 NOT FOR PUBLICATION
2
3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF CALIFORNIA
5 3D SYSTEMS, INC., Case No.: 21-cv-1141-AGS-DDL 6 Plaintiff,
ORDER GRANTING IN PART
7 v. PLAINTIFF'S SUMMARY-
JUDGMENT MOTION (ECF 484),
8 Ben WYNNE, et al.,
DENYING KUESTER'S SUMMARY-
9 Defendants. JUDGMENT MOTION (ECF 489),
GRANTING IN PART DEFENSE'S
10
AMENDED SUMMARY-JUDGMENT
11 MOTION (ECF 531), DENYING
MOTIONS TO STRIKE (ECF 527,
12
574), AND DENYING MOTIONS TO
13 EXCLUDE EXPERTS (ECF 506, 509,
513, 514, 515) 14 15 16 In this trade-secret case, the Court considers the parties' various pretrial motions, 17 including dispositive motions to strike and for summary judgment.
18 BACKGROUND
19 The parties tell dueling narratives of corporate espionage within the 3D-printing 20 industry. According to plaintiff 3D Systems, Inc., five of its (now-former) employees—the 21 individual defendants here—stole its trade secrets and used them to build a rival 22 3D-printing company, defendant Intrepid Automation. (ECF 6, at 3.) Among other claims, 23 3D Systems alleges trade-secret misappropriation and breach of its employee 24 confidentiality agreements. 25 Intrepid responds that it is the actual victim. It claims 3D Systems sent one of its 26 employees to steal

Intrepid's trade secrets under the guise of seeking employment—or 27 improperly persuaded the employee to reveal those secrets after his job interview. That 28 employee—third-party defendant Evan Kuester—in fact interviewed with Intrepid and, 1 after signing a non-disclosure agreement, toured Intrepid's facilities and learned certain 2 confidential information. (ECF 545-2, at 2; ECF 565, at 4.) Intrepid offered Kuester a job, 3 but he instead opted to stay at 3D Systems for "additional compensation." (ECF 565, at 4– 4 5.) In its counterclaim and third-party claim, Intrepid alleges that 3D Systems and Kuester 5 colluded to misappropriate Intrepid's trade secrets and that Kuester disclosed at least some 6 of the protected information he learned. (See ECF 199, at 23, 31–32.)

7 DISCUSSION

8 MOTIONS FOR SUMMARY JUDGMENT

9 Courts grant summary judgment when "the pleadings, depositions, answers to 10 interrogatories, and admissions on file, together with the affidavits, if any, show that there 11 is no genuine issue as to any material fact and that the moving party is entitled to a judgment 12 as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). To defeat a 13 summary-judgment motion, the nonmoving party "need only present evidence from which 14 a jury might return a verdict in his favor." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 15 257 (1986). The nonmovant's evidence "is to be believed, and all justifiable inferences are 16 to be drawn in his favor." Id. at 255. 17 A. Trade-Secret Misappropriation 18 The parties move for summary judgment on the trade-secret-misappropriation 19 claims, which are centered on the federal Defense of Trade Secrets Act and the California 20 Uniform Trade Secrets Act. (ECF 484, 489, 531.) This Court analyzes the federal and 21 California counts "together because the elements are substantially similar." InteliClear, 22 LLC v. ETC Glob. Holdings, Inc., 978 F.3d 653, 657 (9th Cir. 2020). To succeed on a claim 23 of trade-secret misappropriation, plaintiffs must prove: (1) "that the plaintiff possessed a 24 trade secret," (2) "that the defendant misappropriated the trade secret," and (3) "that the 25 misappropriation caused or threatened damage to the plaintiff." Id. at 657–58 26 (citing 18 U.S.C. § 1839(5)). 27 1. 3D Systems' Trade-Secret-Misappropriation Allegations 28 Intrepid argues that 3D Systems' misappropriation claim falters on the first 1 element—that 3D Systems "possessed a trade secret." See InteliClear, 978 F.3d at 657. 2 "To prove ownership of a trade secret, plaintiffs must identify the trade secrets and carry 3 the burden of showing they exist." Id. at 658 (cleaned up). Plaintiffs "should describe the 4 subject matter of the trade secret with sufficient particularity to separate it from matters of 5 general knowledge in the trade or of special knowledge of those persons skilled in the 6 trade." Id. (cleaned up). 7 Once parties complete the "dialectic discovery process," as here, the "level of 8 specificity required" to satisfy this particularity requirement is more stringent. See 9 InteliClear, 978 F.3d at 663. And when the trade secrets involve "a sophisticated and 10 highly complex" system, like the 3D printers at issue, plaintiffs may even have to specify 11 "precise numerical dimensions and tolerances." See Imax Corp. v. Cinema Techs., Inc., 12 152 F.3d 1161, 1167 (9th Cir. 1998). At a

minimum, they must do more than “rely upon 13 ‘catchall’ phrases or identify categories of trade secrets they intend to pursue at trial.” 14 InteliClear, 978 F.3d at 658. Nor may plaintiffs simply reference “[l]ong lists of general 15 areas of information containing unidentified trade secrets,” or merely “identify a kind of 16 technology and then invite the court to hunt through the details in search of items meeting 17 the statutory definition.” Id. at 658, 660. Yet 3D Systems’ trade-secret descriptions depend 18 on exactly this type of forbidden generality, as discussed below. 19 a. Interrogatory Responses 20 In responding to Intrepid’s interrogatories, 3D Systems “identified 12 trade secrets 21 related to its 3DS printing process that it contends Defendants misappropriated.” (ECF 549, 22 at 26; see also id. at 28–34; ECF 531-3, at 82–84.) Each alleged secret is numbered below, 23 followed by its quoted description and an explanation of its deficiencies. 24 3D Systems’ Alleged Trade Secret 1 25 “3DS’s [digital-light-processing] multi-projector system, including the particular detail at issue therein—the edge blending and calibrating techniques 26 developed by 3DS, which is a unique technique for varying energy when 27 transitioning from one projector to another.” (ECF 531-3, at 82.) 28 1 This description identifies a “system” and “techniques.” (Id.) Rather than identify a 2 particularized trade secret, 3D Systems has merely described some of the technologies that 3 underlie 3D printing. Such abstract technological descriptions fail to “separate[e] the trade 4 secrets from other information that goes into any” 3D-printing apparatus. See InteliClear, 5 978 F.3d at 660. For such a “sophisticated and highly complex” system, 3D Systems likely 6 must specify “precise numerical dimensions and tolerances” to pass muster. See Imax, 7 152 F.3d at 1167. Yet the above description does not even approach that standard. 8 3D Systems’ Alleged Trade Secret 2 9 “3DS’s laser and vat base photopolymer printer material handling technology utilized with open vats and recoating layers in large scale photopolymer 10 printers.” (ECF 531-3, at 82.) 11 This describes a type of technology and one way it is “utilized.” It suffers from the 12 same fatal flaws as Alleged Trade Secret 1. 13 3D Systems’ Alleged Trade Secret 3 14 Enso Figure 4 print engine, including the particular detail at issue therein from 15 3DS CAD files: 16 [C]onfidential designs of the spine for supporting components, elevator 17 mounted to spine, projector mounted to spine, and bracket on the projector including pneumatic clamping mechanisms. 18 CAD data containing mechanical assembly information, dimensioning and 19 tolerance data in order to optimize cost and assembly, and to ensure reliable 20 and repeatable manufacturing. The control system for Enso, which is unconventional and represented a very 21 different approach to 3D printers, as the printer itself was a server that could 22 draw data from sources other than the printer itself, including spooling data from the internet. 23 Note: the Enso CAD drawings, Enso CAD data, and the initial Enso patent 24 filings were not published at the time Intrepid filed its patent application for 25 Patent Number 10,780,640. (ECF 531-3, at 82–83.) 26 This alleged secret purports to describe some “particular detail” about its “designs,” 27 “mechanisms,” “dimensioning and tolerance data,” and “approach to 3D printers.” But 28 such “catchall” phrases do not suffice when they merely refer to a patented “system which 1 potentially qualifies for trade secret protection.” Imax, 152 F.3d at

1167. For example, the 2 Imax court ruled a trade-secret identification deficient when it used the "catchall phrase 3 'including every dimension and tolerance that defines or reflects that design,'" and the 4 description otherwise referred only to "a patented projector system," which did not 5 necessarily qualify "for trade secret protection." Id. That is, the patented apparatus in Imax 6 would have had trade-secret protection only to the extent that it contained valuable, secret 7 features not disclosed in the patent. Id. On the other hand, in Forro Precision, Inc. v. 8 International Bus. Machines, 673 F.2d 1045 (9th Cir. 1982), IBM's identification of its 9 trade secrets was "sufficient," despite the same catchall reference to "dimensions and 10 tolerances," because it otherwise identified those secrets as "engineering drawings and 11 blueprints" of new IBM devices that were somehow in Forro's possession before "IBM's 12 first shipment to customers." Id. at 1057. In other words, that description "clearly referred 13 to trade secret material" physically before the court in that case. Imax, 152 F.3d at 1167 14 (discussing Forro). 15 3D Systems suggests that its generic reference to "CAD files and data Defendants 16 stole from 3DS (which they still possess)" is just like the identification of the "engineering 17 drawing and blueprints in Forro." (ECF 549, at 30.) Not so. In Forro, the judge and jury 18 could examine, for example, a specific drawing of a device part that was "dated prior to the 19 time" that part could have been acquired legally. Forro, 673 F.2d at 1057. If such a 20 concrete document exists in this case, 3D Systems has utterly failed in its burden to 21 adequately identify it to the Court and defense. 22 Without a physical document or precise description, a lay factfinder would be 23 hard-pressed to discern "exactly which" of Alleged Trade Secret 3's "many 'dimensions 24 and tolerances' were trade secrets." See Imax, 152 F.3d at 1167. In addition, the description 25 is "too broad to enforce because it does not differentiate between truly secret information 26 (such as formulas and product design) and new product information which has been 27 publicly disclosed." See Whyte v. Schlage Lock Co., 101 Cal. App. 4th 1443, 1454 (2002) 28 (cleaned up). 1 3D Systems' Alleged Trade Secret 4 2 "3DS's proprietary additive manufacturing system, and in particular that part comprised of an image projection system made up of a plurality of image 3 projectors and a display subsystem that controls the image projection system 4 and each of the image projectors including its use over conventional vat based photopolymer 3D printing systems." (ECF 531-3, at 83.) 5 6 This alleged trade secret provides no "precise numerical dimensions." See Imax, 7 152 F.3d at 1167. A "plurality," for example, is not "precise"—it does not indicate how 8 many image projectors there are nor the direction of those projectors. And its descriptions 9 of a "manufacturing system" composed of this non-specified "plurality of image 10 projectors" that controls another "system" "use[d] over" another "conventional" "system" 11 fails to "separate[e] the trade secrets from other information that goes into any" 3D-printing 12 apparatus. See InteliClear, 978 F.3d at 660. For the same reasons as Alleged Trade Secret 13 3, it's "too broad to enforce." See Whyte, 101 Cal. App. 4th at 1454. 14 3D Systems' Alleged Trade Secret 5 15 "3DS's design updating print platform motion parameters, and in particular that part based upon resin pool temperature, which was used to develop a 16 unique printer with active

temperature control that improves the print process. 17 This design was based on 3DS's study of the effects of heating polymer to print at a higher speed with better results." (ECF 531-3, at 83.) 18 19 The first sentence describes a technology with "platform motion parameters" and a 20 "part based upon resin pool temperature," but it makes no distinction between the trade 21 secret and "other information that goes into any" 3D-printing apparatus. See InteliClear, 22 978 F.3d at 660. Nor does it supply "precise numeral dimensions" or "tolerances." See 23 Imax, 152 F.3d at 1167. And the "incantation" of a "catchall" word like unique—without 24 saying what makes it unique or "clearly refer[ring] to tangible trade secret material"—does 25 not move the needle either. See id. As for the second sentence, it is insufficient to state that 26 the "design was based on" a "study," without specifying the design or study. From this 27 language, neither the defense nor the factfinder could divine the protected trade secret. 28 1 3D Systems' Alleged Trade Secret 6 2 "3DS diagrams and schematic diagram information for Halo, LabDental, and ProBot equipment, as well as the layout for 'stack light,' 'Janbot' printer, and 3 pump equipment in 3DS's lab." (ECF 531-3, at 83.) 4 As explained earlier with Alleged Trade Secret 3, generic references—whether to 5 CAD files or to "diagrams" and "layout[s]" (id.)—do not meet the trade-secret particularity 6 requirement, unless the description "clearly refer[s] to trade secret material" that a 7 factfinder may examine, such as a specific document in the record. See Imax, 152 F.3d 8 at 1167. 3D Systems has now had years to provide that type of specificity, even in a filing 9 "under seal to protect [its] proprietary information," if necessary. See InteliClear, 978 F.3d 10 at 659. But it has not. Nor does its description "separate" its alleged "trade secrets from 11 information known in the industry" or from "information that goes into any [3D-printing] 12 package." Id. at 659–60. 13 3D Systems' Alleged Trade Secret 7 14 "3DS's customer list." (ECF 531-3, at 83.) 15 16 To "qualify as a trade secret," a customer list "must (1) furnish a competitor with the 17 previously unknown fact that a potential customer is in the market for the goods or services 18 which the secret-holder offers, thus saving the competitor valuable 'screening' time, or 19 (2) include 'sophisticated information' beyond the mere identity of the customer." Perrin 20 Bernard Supowitz, LLC v. Morales, No. 23-55189, 2024 WL 411714, at *1 (9th Cir. Feb. 5, 21 2024) (quoting Courtesy Temp. Serv., Inc. v. Camacho, 222 Cal. App. 3d 1278, 1287–88 22 (1990)). Merely invoking a "customer list"—without mentioning details relevant to either 23 part of this analysis—does not carry plaintiff's identification burden. Cf. CanWe Studios 24 LLC v. Sinclair, No. CV 13-6299 PSG (FFMx), 2013 WL 12120437, at *3 (C.D. Cal.
25 Nov. 20, 2013) (finding that plaintiff sufficiently described a customer list when it
26 specified "approximately 10,000 users who have downloaded the [plaintiff's] application, 27 which includes customers' names, contact information, and business affiliations" that 28 plaintiff "developed through its marketing efforts"). 1 3D Systems' Alleged Trade Secret 8 2 "3DS's pricing lists and information." (ECF 531-3, at 84.) 3 Courts have interpreted references to "pricing and order information" to mean "data 4 reflecting: (1) what items [plaintiff] sold to a customer, (2) when [plaintiff] sold the items, 5

(3) the quantity of each item sold, and (4) the price at which [plaintiff] sold each item."
6 Perrin Bernard Supowitz, LLC v. Morales, No. 2:22-cv-02120-ODW (JEMx), 2023 WL 7 1415572, at *9 (C.D. Cal. Jan. 31, 2023), aff'd, No. 23-55189, 2024 WL 411714 (9th Cir. 8 Feb. 5, 2024). But 3D Systems has not provided any specificity regarding those 9 considerations. For example, the Court is left to guess which "pricing," "lists," and 10 "information" 3D Systems is alleging to be a trade secret. 11 3D Systems' Alleged Trade Secret 9 12 "3DS's supplier lists." (ECF 531-3, at 84.) 13 This purported "supplier lists" trade secret is expressed at such an abstract level that 14 neither the Court nor a factfinder could determine what is included. Which suppliers? 15 Which "lists"? Exactly how many "supplier lists" fall within this trade secret? Once again, 16 the identification is "too broad to enforce" for the same reasons as Alleged Trade Secret 3. 17 See Whyte, 101 Cal. App. 4th at 1454. 18 3D Systems' Alleged Trade Secret 10 19 "3DS's vendor and supplier contact information." (ECF 531-3, at 84.) 20 21 To successfully allege vendor-related trade-secret misappropriation, plaintiffs must 22 "(1) point to a vendor list that has value beyond the mere identity of the vendors and 23 (2) show that Defendants used the valuable part of the vendor list (3) in a way that harmed" 24 plaintiffs. Perrin, 2023 WL 1415572, at *12. But 3D Systems supplied no vendor list— 25 nor anything like it—to assess. 3D Systems does not, for instance, offer any specific 26 "vendor" name or "supplier contact information" that it asserts as a trade secret. Although 27 it alleges that Intrepid "used various vendors" that they "also used at 3DS," this argument 28 puts the cart before the horse. (See ECF 549, at 32.) 3D Systems must first "point to a 1 vendor list" before the Court engages in any use-based misappropriation analysis. See 2 Perrin, 2023 WL 1415572, at *12. 3 3D Systems' Alleged Trade Secret 11 4 "Information related to materials ordered by 3DS from vendors." (ECF 531-3, at 84.) 5 6 This identification of "[i]nformation," "materials," and "vendors" is fatally generic. 7 In its briefing, 3D Systems inches ever so slightly closer to the necessary particularization. 8 Specifically, it charges that Intrepid sources from a vendor that also supplies 3D Systems 9 with "materials" and that 3D Systems' "use of this particular" "material is a trade secret." 10 (ECF 549, at 32.) As with the alleged vendor-list secret, however, 3D Systems argues 11 use-based misappropriation before adequately describing the material misappropriated. 12 3D Systems does not explain how this material "has value beyond the mere identity" of the 13 material or explain why "[i]nformation related to" that material is valuable. See Perrin, 14 2023 WL 1415572, at *12; (ECF 531-3, at 84). It's also unclear whether the ordered 15 materials are "generally known," which would itself be disqualifying. See 18 U.S.C. 16 § 1839(3)(B). 17 3D Systems' Alleged Trade Secret 12 18 "3DS's marketing strategies and product design information." (ECF 531-3, at 84.) 19 20 Finally, 3D Systems' general reference to its "marketing strategies and product 21 design information" is insufficient. The Court is once again left to speculate which 22 "marketing strategies," "product[s]", "design[s]," or "information" 3D Systems considers 23 a trade secret. 24 b. Other Sources of Trade-Secret Identification 25 In addition to its interrogatory responses, 3D Systems urges the Court to look at 26 various additional documents to flesh out its generic trade secrets: (1)

its 27 “30(b)(6) representative[s’]” depositions, (2) information from “seven other 3DS 28 employees who [Intrepid] questioned (or could have questioned),” (3) expert reports, and 1 (4) expert depositions. (ECF 549, at 26.) These papers total more than 250 pages, yet—as 2 best the Court can tell—none of them contain a more specific accounting of 3D Systems’ 3 trade secrets. (See, e.g., ECF 519-5; ECF 545-3; ECF 551-5; ECF 551-9; ECF 583-1; 4 ECF 583-2; ECF 583-3; ECF 583-4.) Even if further identifying information lurks 5 somewhere in this substantial record, 3D Systems must do more than “invite the court to 6 hunt through the details in search of items meeting the statutory definition.” InteliClear, 7 978 F.3d at 660; see id. at 658 (“It is inadequate for plaintiffs to ‘cite and incorporate by 8 reference hundreds of documents that purportedly reference or reflect the trade secret 9 information.’”). 10 c. Remaining Identification-Related Arguments 11 3D Systems raises two final points: (1) the Court “already found 3DS properly 12 identified its trade secrets,” and (2) defendants “do not challenge 3DS’s description of 13 10 of its trade secrets.” (ECF 549, at 22.) Both arguments are meritless. 14 First, far from blessing the specificity of 3D Systems’ trade-secret identifications, 15 the Court has repeatedly hinted that they might be wanting. For instance, the Court noted 16 that the amended complaint’s “description of these techniques is not laden with every detail 17 of these technologies,” but “there is no such requirement at this stage in the litigation.” 18 (ECF 16, at 7 (emphasis added).) Similarly, the magistrate judge concluded that 19 3D Systems’ interrogatory response was adequate for “both the parties and the Court to 20 understand the relevant scope of discovery.” (ECF 102, at 5 (emphasis added).) But, almost 21 in the same breath, that judge warned that if 3D Systems stood on its current interrogatory 22 response, Intrepid might be able to show that 3D Systems “has not adequately established 23 the existence of a trade secret.” (Id. at 6.) If anything, these judicial pronouncements 24 suggest that 3D Systems “knowingly incurred the risk that its [trade-secret identifications] 25 would not meet the ‘reasonable particularity’ requirement.” See InteliClear, 978 F.3d 26 at 663 (emphasis removed). 27 Next, there is no support for the claim that defendants failed to contest any of 28 3D Systems’ trade-secret identifications. In Intrepid’s summary-judgment briefs, it 1 challenges all 12 alleged secrets from 3D Systems’ interrogatory response. (See ECF 531, 2 at 13–17; ECF 562, at 6–11.) Any confusion on this score must be laid at the feet of 3 3D Systems, which has given contradictory guidance on where to hunt down its illusive 4 trade secrets. At a deposition, 3D Systems’ attorney said that “what the company has 5 identified as its trade secrets” may be found “in the interrogatory responses.” (ECF 519-5, 6 at 12.) Yet, more recently, 3D Systems claims that those identifications must be pieced 7 together from “depositions,” other “interrogatory responses,” and “documents cited 8 therein.” (ECF 549, at 24.) It is no wonder that the magistrate judge understood “the 9 Defendants’ concern” that these trade secrets were, as he put it, “a moving target.” 10 (ECF 102, at 6.) 11 In short, this scavenger hunt must end. We have now reached the summary-judgment 12 stage—the “‘put up or shut up’ moment in a lawsuit.” See Nelson v. Guardian Towing, 13 Inc., No. 22-CV-0306-AGS-BLM, 2024 WL 1421967, at *4 (S.D. Cal. Mar. 30, 2024). A 14 plaintiff alleging trade-secret

misappropriation must describe its trade secrets with the 15 requisite particularity. Intrepid did so. (See ECF 302 (sealed filing).) 3D Systems did not. 16 And it had ample opportunities. (See, e.g., ECF 102, at 5–6 (magistrate judge commenting 17 that "Plaintiff's initial response" to the trade-secret-identification interrogatory "was to 18 refuse to respond at all" until "a response was compelled"); ECF 519-5, at 31 (asking 19 3D Systems' corporate representative: "Is there like a list somewhere that lists all the trade 20 secrets that 3DS has?" Answer: "Not that I'm aware of.").) On 3D Systems' trade-secret 21 claims, the Court grants summary judgment for Intrepid. 22 2. Intrepid's Trade-Secret-Misappropriation Allegations 23 Next, 3D Systems and Kuester move for summary judgment on Intrepid's claim of 24 trade-secret misappropriation. Intrepid alleges that 3D Systems either sent Kuester to steal 25 Intrepid's trade secrets "under the deceptive guise of seeking" employment or persuaded 26 Kuester to reveal "the confidential information he obtained" after a legitimate job interview 27 and tour of Intrepid's facilities. (ECF 199, at 31–32.) 3D Systems and Kuester do not 28 challenge the specificity of Intrepid's trade secrets. Instead, they move for summary 1 judgment on the trade-secret-misappropriation test's other two prongs: misappropriation 2 and damages. (ECF 484, at 15; ECF 489, at 12.) 3 a. Misappropriation 4 Misappropriation involves "either (1) the acquisition of a trade secret by another 5 person who knows or has reason to know that the trade secret was acquired by improper 6 means; or (2) the disclosure or use of a trade secret of another without express or implied 7 consent." Alta Devices, Inc. v. LG Elecs., Inc., 343 F. Supp. 3d 868, 877 (N.D. Cal. 2018) 8 (cleaned up) (citing 18 U.S.C. § 1839(5); Cal. Civ. Code § 3426.1(b)). "Improper means" 9 includes "misrepresentation, breach or inducement of a breach of a duty to maintain 10 secrecy, or espionage through electronic or other means." Cal. Civ. Code. § 3426.1(a). And 11 "use" of a trade secret includes employing the information "in manufacturing, production, 12 research or development, marketing goods that embody the trade secret, or soliciting 13 customers through the use of trade secret information[.]" PMC, Inc. v. Kadisha, 14 78 Cal. App. 4th 1368, 1383 (2000), as modified on denial of reh'g (Apr. 7, 2000). 15 The Ninth Circuit has found that "disclosure of the [trade] secret to the defendant, 16 followed by manufacture of a closely similar device by the defendant, shifts to the 17 defendant the burden of going forward with evidence to prove, if it can, that it arrived at 18 the process by independent invention." Droeger v. Welsh Sporting Goods Corp., 541 F.2d 19 790, 793 (9th Cir. 1976). So it is here. 20 Kuester, while working at 3D Systems, undisputedly acquired Intrepid's trade 21 secrets during a tour of Intrepid's facilities. (ECF 542-5, at 9.) During that recruitment tour, 22 Intrepid showed Kuester "part of the multi-projector test bed" (ECF 542-4, at 7) for its in- 23 development "[digital-light-processing]-based large-format machine," (ECF 542-5, at 9). 24 That machine had "projectors on top" that were "facing down." (ECF 542-5, at 9, 12 25 (emphasis added).) The "moment [Intrepid] showed [Kuester] it had projectors on top," 26 Kuester "believe[d] that Intrepid's [digital-light-processing]-based large-format machine 27 was superior to the SLA 750," 3D Systems' newest "large-frame" printer. (ECF 542-5, 28 at 8–9.) Then, less than three years after Kuester's

recruitment tour, 3D Systems announced 1 that it would "preview" its "PSLA 270, a new projector-based polymer 3D printing 2 platform," at an industry conference. (ECF 542-18, at 2, 5.) Its display model for this "new" 3 machine showed that it uses "two [digital-light-processing] projectors" that "project[] 4 downwards." (ECF 542-35, at 5 (emphasis added).) 5 In other words, we have "disclosure" to the defendant and its subsequent 6 "manufacture of a closely similar device." See Droeger, 541 F.2d at 793; (ECF 542-5, at 8– 7 9). 3D Systems and Kuester thus have the burden to "prove, if [they] can, that [they] arrived 8 at the process by independent invention." See Droeger, 541 F.2d at 793. That, alone, is 9 likely enough for Intrepid to defeat 3D Systems' and Kuester's summary-judgment motion 10 on this claim. 11 Intrepid's additional circumstantial evidence of misappropriation bolsters this 12 conclusion. Reliance upon "[c]ircumstantial evidence is particularly appropriate in trade 13 secret cases." UniRAM Tech., Inc. v. Taiwan Semiconductor Mfg. Co., 617 F. Supp. 2d 14 938, 944 (N.D. Cal. 2007). In UniRAM, the inventor shared trade secrets with defendant 15 TSMC. Id. at 940. The two defendants, TSMC and MoSys, then met separately to "find a 16 solution" to a shared financial problem. Id. at 944 After that meeting and "after TSMC 17 became privy to [the allegedly misappropriated] invention," the two defendants started 18 "working" "to develop" a technology "that mirrored" the allegedly misappropriated 19 invention. Id. Taken together, TSMC's meeting with the plaintiff, TSMC's meeting with 20 MoSys, the suspicious timing, and the mirrored technology combined to create sufficient 21 circumstantial evidence of misappropriation to survive summary judgment. Id. 22 Kuester represents that, in 2020, he "was very ready" "to get out of 3D [Systems]." 23 (ECF 489-4, at 13.) He contacted "over a hundred, maybe 150 different companies" about 24 employment opportunities—including an informal attempt "to set up a meeting" with 25 defendants Ben Wynne and Chris Tanner at Intrepid. (Id. at 12–13.) But "[n]ot a single 26 person" initially "responded" to him. (Id.) As discussed, Intrepid eventually responded and 27 gave Kuester a tour in early 2021—preceded by the signing of a non-disclosure agreement. 28 (ECF 484-16, at 19, 22; ECF 545, at 8; ECF 545-2, at 2; ECF 558, at 3.) The agreement 1 imposed upon Kuester a "duty to hold confidential information in confidence" "for so long 2 as" Intrepid "treats the information as confidential," or until the agreement's two-year 3 period ended. (ECF 545-2, at 2.) That "confidential information" included "[p]roduct 4 concepts, design information, trade secrets, development schedules, financial data, 5 marketing and customer data, and other information." (Id.) 6 During the tour, in addition to the downward-shooting projectors that Kuester saw, 7 Tanner told Kuester that Intrepid was working with a "large aerospace company." 8 (ECF 542-4, at 12.) The parties dispute whether this constituted a communication that 9 Intrepid was working with AeroCo,1 a large aerospace company that was also 3D Systems' 10 client. Tanner did not disclose that AeroCo had paid Intrepid "up front to develop a system 11 for them," but Kuester "saw test patterns" at Intrepid that he had seen before. (Id.) Tanner 12 alleges that Kuester "obviously saw" those patterns at AeroCo, which were identifiable by 13 the "color of [Intrepid's] resin," and this fueled Kuester's conclusion that AeroCo was 14 working with Intrepid. (Id.) 15

Kuester thus acquired trade-secret information during his tour—all parties agree that 16 is the case, though they disagree about the extent of the trade secrets acquired. (See 17 ECF 542-5, at 9.) But Kuester acquired them through appropriate means, so his liability 18 hinges on whether he "disclose[d]" or "use[d]" them improperly. See Alta Devices, 19 343 F. Supp. 3d at 877. Intrepid has introduced sufficient circumstantial evidence of such 20 improper use or disclosure. 21 Shortly after Kuester's Intrepid tour, 3D Systems employee Stacie Hoch knew 22 Kuester "had signed an NDA," but still asked: "How about I tell you what I think their 23 business model is and you can let me know" "if I'm correct or not." (ECF 484-22, 24 at 10–11.) She then "described" what she believed might be Intrepid's business model: "a 25 26 27 1 To avoid the need to "seal their briefs," the parties agreed to refer to the aerospace company as "AeroCo" and to a separate dental company as "DentalCo." (See ECF 484, 28 1 customer gets to pick and choose what" "they want, and then [Intrepid] will customize and 2 build them a solution." (Id. at 11.) Kuester confirmed she was "generally accurate." (Id.) 3 Within one month of that conversation, Hoche responded to an email from 3D Systems 4 colleagues about the "situation described at" AeroCo, expressing her belief that "Intrepid 5 is build-to-order products." (ECF 484-26, at 2.) Intrepid posits that this shows both that 6 (1) Kuester disclosed Intrepid's business-model-related trade secrets and (2) Kuester told 7 his colleagues about Intrepid's AeroCo business. (ECF 542, at 18, 22.) 8 All the while, Kuester continued to ask Intrepid about its system specifications, 9 including whether Intrepid could "generate a rough build for that large format machine" 10 and for "an approximate mm per hour build speed." (ECF 484-16, at 19.) Then Kuester 11 decided not to work for Intrepid and stayed at 3D Systems in exchange for increased 12 compensation. (ECF 489-4, at 23.) Intrepid suggests that this compensation was in 13 exchange for Kuester's revelations about Intrepid's trade secrets. (ECF 199, at 31–32.) 14 Meanwhile, 3D Systems contends it was "to keep him from leaving his employment with 15 3DS," and Kuester says it was based on multiple factors. (ECF 484, at 17; ECF 484-15, 16 at 17.) 17 Intrepid also sees evidence of misappropriation in a 2022 conversation Kuester had 18 with 3D Systems' Scott Turner. (ECF 542, at 14.) During that talk, Kuester proposed that 19 3D Systems "buy[] Intrepid Automation" to "get[] a machine that would actually make us 20 money." (ECF 542-5, at 31.) Turner rejected the idea, saying, "Let's see what happens as 21 funding gets harder and the legal fees grow." (ECF 542-13, at 19; ECF 542-4, at 12.) 22 Intrepid suggests that Turner's failure to "ask for clarification regarding" which "Intrepid 23 'machine' Kuester was" referencing indicates Kuester "must already have" inappropriately 24 shared information about Intrepid's 3D printers with Turner. (ECF 542-4, at 12.) 25 Intrepid's evidence, at a minimum, "construct[s] a web of perhaps ambiguous 26 circumstantial evidence from which the trier of fact may" infer "that it is more probable 27 than not that what" Intrepid alleges "did in fact take place." See M.A. Mobile Ltd. v. Indian 28 Inst. of Tech. Kharagpur, 400 F. Supp. 3d 867, 893 (N.D. Cal. 2019). In a matter of months, 1 Kuester went from being an engineer that 0 out of 100 companies wanted to hire to one 2 worthy of a $25,000 pay increase and title upgrade. (See ECF 489-4, at 23.) A trial must 3

determine whether this was because of his merit, an organized scheme to spy on Intrepid, 4 or an after-tour disclosure of Intrepid's trade secrets. 5 b. Damages 6 3D Systems and Kuester assert there is no evidence that they harmed Intrepid. 7 (ECF 484, at 25; ECF 489, at 22.) Intrepid disagrees, contending there are "triable issues 8 of fact as to how 3DS's conduct damaged Intrepid." (ECF 542, at 21.) Specifically, Intrepid 9 asserts it "lost profits" "based on the loss of existing business" and alleges that Kuester's 10 and 3D Systems' misappropriation "unjustly enrich[ed]" 3D Systems. (Id. at 23.) 11 In trade-secret-misappropriation cases, courts may award damages for (1) "actual 12 loss caused by the misappropriation of the trade secret," (2) "any unjust enrichment caused 13 by the misappropriation of the trade secret that is not addressed in computing damages for 14 actual loss," or, "in lieu of damages measured by any other methods," (3) "damages caused 15 by the misappropriation measured by imposition of liability for a reasonable royalty for the 16 misappropriator's unauthorized disclosure or use of the trade secret." 18 U.S.C. 17 § 1836(b)(3)(B); see also Cal. Civ. Code § 3426.3(a), (b). So even when "neither actual 18 damages to the holder of the trade secret nor unjust enrichment to the user is provable," 19 "the trial court may order a reasonable royalty." Ajaxo Inc. v. E*Trade Fin. Corp., 20 187 Cal. App. 4th 1295, 1308 (2010); see also O2 Micro Int'l Ltd. v. Monolithic Power 21 Sys., Inc., 399 F. Supp. 2d 1064, 1077 (N.D. Cal. 2005) (granting plaintiff a royalty when 22 it established the defendant misappropriated some of its secrets but proved "[n]either unjust 23 enrichment nor damages"), amended 420 F. Supp. 2d 1070 (N.D. Cal. 2006). 24 Intrepid asserts that it lost existing business contracts, including its previously 25 existing "contract with AeroCo for four" devices and its "contract with DentalCo for 26 several" others. (ECF 542, at 22.) Intrepid draws a straight line of causation from Kuester's 27 revelations to Hoche to her later email discussions with other 3D Systems colleagues about 28 AeroCo. (ECF 484-22, at 11.) According to Intrepid, after Hoche discussed with these 1 colleagues "details about Intrepid's product design and business plans for which there was 2 no public source," the colleagues "caus[ed] Intrepid to lose its contract with AeroCo." 3 (ECF 542, at 13, 18, 22.) 4 3D Systems responds that Intrepid is to blame for its losses because it "had not 5 fulfilled its contractual obligation." (ECF 484, at 26.) But nonmovant's evidence "is to be 6 believed, and all justifiable inferences are to be drawn in his favor." Anderson, 477 U.S. 7 at 255. Applying that principle here, a reasonable factfinder could find that Kuester's and 8 3D Systems' behavior damaged Intrepid. 9 Additionally, Intrepid alleges damages for unjust enrichment. That is, it claims that 10 3D Systems unfairly profited by developing a competing device using the trade secrets it 11 and Kuester misappropriated. (See ECF 565, at 4; ECF 542-18, at 2, 5.) As previously 12 discussed, there is a triable issue of fact on misappropriation based on the potentially 13 suspicious timing of Kuester's tour, promotion, conversation with Hoche, and 3D Systems' 14 later launch of a device with downward-facing projectors like Intrepid's model. See 15 UniRAM, 617 F. Supp. 2d at 944. A reasonable jury could believe Intrepid's allegations, 16 so it has sufficiently demonstrated harm. 17 Even if Intrepid is unable to specifically prove the sum total of its lost profits—or 18 3D Systems' and Kuester's

unjust enrichment—there remains a material issue as to 19 whether the circumstances warrant a reasonable royalty. See O2 Micro, 399 F. Supp. 2d 20 at 1077. So, 3D Systems' and Kuester's summary-judgment motions on Intrepid's trade- 21 secret claim are denied. 22 B. Breach of Employee Confidentiality Agreements 23 3D Systems moves for partial summary judgment on its breach-of-contract claims 24 against individual defendants Wynne and Tanner. (ECF 484, at 33.) It alleges that these 25 defendants "breached their agreements with 3D Systems by, at a minimum, using 26 3D Systems' trade secret, confidential, proprietary, and/or nonpublic information." 27 (ECF 6, at 18.) As relevant here, Intrepid asks for summary judgment on its request for a 28 declaration that this contract "unlawfully restrains competition in violation" of California's 1 non-compete ban. (ECF 531, at 32.) The defense has the better argument. 2 In California, "every contract by which anyone is restrained from engaging in a 3 lawful profession, trade, or business of any kind is to that extent void." Cal. Bus. & Prof. 4 Code § 16600(a). This statute "shall be read broadly" "to void the application of" "any 5 noncompete clause in an employment contract, no matter how narrowly tailored." Id. 6 § 16600(b)(1). It prohibits "restrict[ing]" employees' "ability to practice" their profession. 7 Edwards v. Arthur Andersen LLP, 44 Cal. 4th 937, 948 (2008). And it applies "even if such 8 an employee uses information that is confidential," so long as it is "not a trade secret." 9 AMN Healthcare, Inc. v. Aya Healthcare Servs., Inc., 28 Cal. App. 5th 923, 940 (2018); 10 see also Asset Mktg. Sys., Inc. v. Gagnon, 542 F.3d 748, 758 (9th Cir. 2008) 11 ("[N]on-competition agreements are unenforceable unless necessary to protect an 12 employer's trade secret.").

13 Under 3D Systems' agreement, its employees cannot "directly or indirectly use" or

14 "disclose" to anyone "confidential information belonging to the Company." (ECF 531-2, 15 at 3.) It argues that the agreement "seeks only to protect 3DS's confidential information 16 and trade secrets." (ECF 549, at 9.) Legally, 3D Systems may not preclude its 17 ex-employees from using "information that is confidential but not a trade secret." See AMN, 18 28 Cal. App. 5th at 940. Yet, as to the confidential information, 3D Systems' agreement 19 unlawfully applies "subsequent to the term of Employee's employment by the Company." 20 (ECF 531-2, at 3 (emphasis added).) 21 In addition, 3D Systems' "confidential information" definition sweeps far too 22 broadly. For example, it prohibits "use" of the "type" "of materials and/or supplies ordered 23 by the Company." (ECF 531-2, at 3.) Put another way, defendants and all other 24 ex-employees—for the rest of their careers—cannot "use" the "type" of materials used in 25 3D Systems' 3D printers. It's hard to imagine how a professional could work in the 26 3D printing industry without using the "type" of materials other 3D printers use. 27 The agreement also prohibits "use" of both the "current" and "potential" "resellers" 28 and "suppliers." (ECF 531-2, at 3.) In essence, 3D Systems could foreclose its ex- 1 employees' ability to use the entire universe of 3D-printing resellers and suppliers because 2 it either currently or "potential[ly]" would use them. (See id.) This, at a minimum, 3 "restrict[s]" ex-employees' "ability to practice" their profession. See Edwards, 44 Cal. 4th 4 at 948. 5 Further, the agreement prohibits ex-employees' "use" of

"pending patent 6 applications." (ECF 531-2, at 3.) But patent applications are publicly "published" no more 7 than "18 months" after filing. 35 U.S.C. § 122(b)(1)(A). And an "inventor actively 8 practicing in the field and prosecuting his own patent application must be deemed to be on 9 constructive notice of published patent applications in the same field." Wang v. Palo Alto 10 Networks, Inc., No. C 12–05579 WHA, 2014 WL 1410346, at *6 (N.D. Cal. Apr. 11, 2014). 11 Thus, 3D Systems prohibits "use" of information that a 3D-printing competitor is expected 12 by courts to have knowledge of and therefore "use." Ex-employees would thus have to 13 choose between violating their 3D Systems employment agreement or the law's 14 expectations. 15 The contract does, however, include a severability clause. (ECF 531-2, at 10.) And 16 California law voids contracts that "restrain[]" workers from "engaging in a lawful 17 profession" only "to that extent." Cal. Bus. & Prof. Code § 16600(a). This statute's plain 18 language evinces a legislative "intent to sever invalid portions of contracts." VibrantCare 19 Rehab., Inc. v. Deol, No. 2:20-CV-00791-MCE-AC, 2021 WL 1614692, at *5 (E.D. Cal.
20 Apr. 26, 2021). And such a violation "does not automatically invalidate the underlying
21 contract when the alleged breach is the misappropriation of trade secrets." Id. "Under 22 California law, a court has discretion to either sever an unconscionable provision from an 23 agreement, or refuse to enforce the agreement in its entirety." Pokorny v. Quixtar, Inc., 24 601 F.3d 987, 1005 (9th Cir. 2010); see also Cal. Civ. Code § 1599 ("Where a contract has 25 several distinct objects, of which one at least is lawful, and one at least is unlawful, in 26 whole or in part, the contract is void as to the latter and valid as to the rest."). 27 Even if the Court were to sever the agreement's invalid portions and only leave the 28 trade-secret-protecting provisions, 3D Systems' claim still fails. No reasonable jury could 1 find that defendants "breached their agreements with 3D Systems by" "using 3D Systems' 2 trade secret[s]" (see ECF 6, at 18), because, as previously discussed, 3D Systems alleged 3 no proper trade secrets in this case. 4 Thus, Intrepid's summary-judgment motion regarding the employment agreement is 5 granted in part. Because a person cannot work in the 3D Printing industry without running 6 afoul of this agreement, it is at least partially void. To the extent that any of its provisions 7 survive severability, 3D Systems' trade-secret-breach claim fails. 3D Systems' partial 8 summary-judgment motion for breach of contract is correspondingly denied.

9 MOTIONS TO EXCLUDE EXPERTS

10 The parties move to exclude evidence from seven expert witnesses. The "proponent 11 of . . . expert testimony" shoulders "the burden to establish its admissibility." United States 12 v. 87.98 Acres of Land More or Less in the Cnty. of Merced, 530 F.3d 899, 904 (9th Cir. 13 2008). An expert must be qualified "by knowledge, skill, experience, training, or 14 education." Fed. R. Evid. 702. The opinion of such a qualified expert is admissible when: 15 (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; 16 17 (b) the testimony is based on sufficient facts or data; 18 (c) the testimony is the product of reliable principles and methods; and 19 (d) the expert has reliably

applied the principles and methods to the facts of 20 the case. 21 Id. 22 The Court's inquiry is "flexible," with a "liberal thrust favoring admission." Wendell 23 v. GlaxoSmithKline LLC, 858 F.3d 1227, 1232 (9th Cir. 2017). The proffered testimony 24 need only "logically advance[] a material aspect of the proposing party's case." Daubert v. 25 Merrell Dow Pharms., Inc., 43 F.3d 1311, 1315 (9th Cir. 1995). And "[s]haky but 26 admissible evidence is to be attacked by cross examination, contrary evidence, and 27 attention to the burden of proof, not exclusion." Primiano v. Cook, 598 F.3d 558, 564 28 1 (9th Cir. 2010), as amended (Apr. 27, 2010). The Court must "screen the jury from 2 unreliable nonsense opinions, but not exclude opinions merely because they are 3 impeachable." Alaska Rent-A-Car, Inc. v. Avis Budget Grp., Inc., 738 F.3d 960, 969 4 (9th Cir. 2013). 5 A. William Allen 6 3D Systems and Kuester move to exclude William Allen's expert testimony on the 7 ground that he lacks "specialized knowledge in the relevant technology at issue," that is, 8 "3D printing with DLP [digital-light-processing] projectors using photopolymers." 9 (ECF 509, at 17.) Typically, a "lack of particularized expertise goes to the weight" of the 10 expert's opinion, not to its "admissibility." United States v. Garcia, 7 F.3d 885, 890 11 (9th Cir. 1993). But that forgiving principle gives way when an expert ventures beyond 12 "the reasonable confines of his subject area." Avila v. Willits Env. Remediation Tr., 13 633 F.3d 828, 839 (9th Cir. 2011). For example, in Avila the Ninth Circuit held that the 14 trial court did not abuse its discretion (nor clearly err) in excluding a proffered 15 "Physician/Scientist/Attorney" expert because he lacked "any special training or 16 knowledge regarding metal working industries such that he could reliably opine that 17 activities at [a machine shop] 'must' have created dioxins." Id. 18 Unlike the Avila expert, Allen has not strayed from his area of expertise. He served 19 as "Chief Technologist for Hewlett-Packard's Digital Projection Display business" and 20 was "the first technologist promoted to HP Fellow in HP's printing business." (ECF 509-4, 21 at 2.) In 2020, Allen helped found the Hewlett-Packard/Nanyang Technological University 22 Digital Manufacturing Corporate Lab, and he "led two 3D-printing-related research 23 projects" there. (Id.) Also, he is the "named inventor on over 90 United States patents and 24 patent applications," including patents related specifically to "digital projection," "digital 25 imaging," and "3D printing." (Id.) In particular, he is the "primary inventor of wobulation," 26 which is a "fundamental technology" in many projectors, including "the Young Optics 27 projectors used by Intrepid" in two 3D printers at issue here. (Id. at 2–3.) 28 This background and experience qualify Allen to offer the opinions proffered in his 1 initial expert report. For example, he opines that an alleged trade secret that Intrepid 2 disclosed to Kuester—a "multi-projection test bed" for a 3D printer system—"was not 3 disclosed in Intrepid's patent applications," nor was Intrepid's development of "a 4 large-format vat-based multi-projection system apparent from those published patent 5 filings." (ECF 509-4, at 3.) Similarly, in Allen's expert opinion, "this information would 6 have independent economic value to Intrepid derived from its secrecy." (Id. at 4.) 7 3D Systems and Kuester complain that Allen has no meaningful experience with the 8 exact type of 3D printers here: "photopolymer-based" 3D printers. (ECF 603, at 4.) Yet it 9 is

unclear why Allen would need such pinpoint-specific experience to give helpful opinions 10 on the topics mentioned: whether this new technology was revealed in patent applications 11 and whether this information's secrecy had economic value. By analogy, if all-time 12 basketball great Michael Jordan gave expert testimony that a groundbreaking basketball 13 strategy had economic value, it's unlikely that he would be deemed unqualified just 14 because he never used that strategy himself. Likewise, Allen is competent to offer opinions 15 in his field of expertise, even pertaining to new innovations in that field. 16 By contrast, each of the cases that 3D Systems and Kuester rely upon involve experts 17 stepping outside their fields—much like, to build on our analogy, a basketball expert 18 commenting on hockey. See, e.g., Pooshs v. Phillip Morris USA, Inc., 904 F. Supp. 2d 19 1009, 1019 (N.D. Cal. 2012) (admitting epidemiologist's expert opinion about "the 20 addictive properties of nicotine," but excluding his testimony about "cigarette design," as 21 the expert "conceded that he has no training in cigarette design and that he has never 22 designed a cigarette or a cigarette filter"); Diviero v. Uniroyal Goodrich Tire Co., 23 919 F. Supp. 1353, 1357–58 (D. Ariz. 1996) (excluding as unqualified an engineering 24 expert who lacked the chemistry background and "knowledge, understanding or 25 experience" regarding the "chemical makeup of [the] steel belted radial tires" at issue "to 26 render a valid scientific opinion concerning whether these tires are defective"); Sedlik v. 27 Drachenberg, No. CV 21-1102 DSF (MRWx), 2022 WL 17886029, at *2–3 (C.D. Cal.
28 June 27, 2022) (excluding a tattoo expert as unqualified because she lacked "specialized
1 knowledge" in the relevant expert topics—"photographs" or "comparative analysis" of the 2 art forms of "photographs and tattoos"). 3 Finally, Intrepid points out that 3D Systems' own hiring practices contradict the 4 claim that these printers inhabit a unique field or some inaccessible subspecialty. After all, 5 when 3D Systems began developing its 3D printer here, it did not seek workers "with 6 extensive experience with photopolymer-based 3D printing." (ECF 584, at 8.) Rather, it 7 hired the individual defendants, who had experience in many of the same technologies in 8 which Allen specializes. 3D Systems responds that the defendants later "received ample 9 and thorough training to get up to speed on such printers." (ECF 603, at 4 n.1.) Even so, 10 this history strengthens the Court's conclusion that Allen is opining about a technological 11 advance in his own field, not about a field that is foreign to his training and experience. 12 Allen may testify on the topics in his initial expert report. The motion to exclude 13 those opinions is denied. 14 B. Paul Zimmer 15 3D Systems and Kuester also move to exclude Paul Zimmer's expert report and 16 opinions about Intrepid's alleged damages. They challenge his causation assumptions, 17 projected revenue basis, and cost-to-develop calculations. (ECF 515, at 8.) 18 First, 3D Systems and Kuester fault Zimmer for assuming that they caused the 19 AeroCo- and DentalCo-related damages, while ignoring "possible alternative 20 explanations." (ECF 515, at 8–9.) But it is "perfectly permissible for an expert to assume 21 liability (of which causation is an element) and simply focus on the issue of damages." 22 BladeRoom Grp. Ltd. v. Facebook, Inc., No. 5:15-cv-01370-EJD, 2018 WL 1611835, at *6 23 (N.D. Cal. Apr. 3, 2018). Zimmer's causation

assumptions can be made plain to the jury. 24 If the jury finds those assumptions unjustified, it will also disregard the resulting damages 25 opinion. 26 Second, 3D Systems' and Kuester's criticisms of Zimmer's projected revenue 27 analysis go to weight, not admissibility. "[N]ew businesses often cannot offer reliable proof 28 of prospective profits." Humetrix, Inc., v. Gemplus S.C.A., 268 F.3d 910, 920 (9th Cir. 1 2001). And "lost profits are necessarily an estimate," so their "amount cannot be shown 2 with mathematical precision." Id. at 919 (cleaned up). "[P]rospective profits may 3 nevertheless be recovered if the evidence shows with reasonable certainty both their 4 occurrence and the extent thereof." Id. at 920. 5 In calculating Intrepid's lost profits, Zimmer relied upon a "10-year projection for 6 revenue and direct expenses" prepared by defendant Mueller, Intrepid's CFO. (ECF 515-4, 7 at 4.) Zimmer independently "review[ed]" those projections, which were premised upon 8 Intrepid's "purchase order and contracts" with AeroCo. (ECF 588-4, at 4.) He even used a 9 "discount rate" to account for market uncertainty. (ECF 588-2, at 6.) Thus, the purchase 10 order and contracts "show[]" those "prospective profits" with "reasonable certainty." See 11 Humetrix, 153 F.3d at 920. Zimmer's analysis was not, as 3D Systems and Kuester suggest, 12 "plucked out of thin air" (see ECF 515, at 14), and any perceived shortcomings may be 13 fully argued at trial. 14 Finally, 3D Systems and Kuester argue that Zimmer's cost-to-develop calculations 15 inappropriately rely on Intrepid's costs in "developing all of its technology," rather than 16 "focus[ing] on," or apportioning, the costs associated with developing Intrepid's alleged 17 trade secrets. (ECF 515, at 18.) Generally, "apportionment is required" when "the accused 18 technology does not make up the whole of the accused product." Finjan, Inc. v. Blue Coat 19 Sys., Inc., 879 F.3d 1299, 1309 (Fed. Cir. 2018). But the "entire market value rule permits 20 recovery of damages based on the value of a [technology owner's] entire apparatus 21 containing several features when the [allegedly misappropriated technology] is the basis 22 for customer demand." See Bose Corp. v. JBL, Inc., 274 F.3d 1354, 1361 (Fed. Cir. 2001). 23 For example, in Bose a speaker company presented evidence that its technology 24 "inextricably worked with other components of loudspeakers as a single functioning unit." 25 Id. The Bose court applied the entire-market-value rule for damages, because the accused 26 technology "improved the performance of the loudspeakers and contributed substantially 27 to the increased demand for the products in which it was incorporated," making it "integral 28 to the overall performance of [plaintiff's] loudspeakers." Id. 1 Similarly, Intrepid's trade-secret technology allegedly "inextricably work[s] with" 2 its other 3D-printer components. See id. A reasonable jury could conclude that its trade 3 secrets "improved the performance" of its printers and operate as a "single functioning 4 unit" within the printers. See id.; (ECF 302). That technology also "contributed 5 substantially" to the "demand" for its products, including its Valkyrie and Epic 3D-printer 6 systems, as evidenced by AeroCo's and DentalCo's engagements. See Bose, 274 F.3d 7 at 1361. Even 3D Systems and Kuester seem to concede that Intrepid's "commercial 8 viability, print platform size, number of projectors, customizable parameters, 9 developmental and market timeline, and price expectations" hinge upon its 10 trade-secret-based

technology's success. (See ECF 600, at 11.) The fact that there is "more" 11 to Intrepid's 3D printers does not undercut the fact that the alleged trade secrets 12 "inextricably work" together "as a single functioning unit" to form Intrepid's 3D printers. 13 See Bose, 274 F.3d at 1361; cf. Management & Eng'g Techs. Int'l v. Information Sys. 14 Support, Inc., 490 F. App'x 30, 34 (9th Cir. 2012) (overturning a jury verdict when an 15 expert witness failed to apportion value between "legally valid" and "legally invalid 16 alleged trade secrets"). 17 Defendant's motion to exclude Zimmer's expert testimony is thus denied. 18 3D Systems and Kuester raise reasonable criticisms, but each of these issues should "be 19 attacked by cross examination, contrary evidence, and attention to the burden of proof, not 20 exclusion." See Primiano, 598 F.3d at 564. 21 C. Mooted Exclusion Motions 22 Because the Court grants Intrepid's summary-judgment motion regarding 23 3D Systems' alleged trade secrets, all motions to exclude the associated expert testimony 24 are denied as moot. Those include the motions to exclude: (1) Wynne and Tanner as 25 "rebuttal witnesses" to 3D Systems' alleged trade secrets (see ECF 506, at 8–9, 16); 26 (2) Iman Sadeghi's testimony "rebut[ting]" a discussion about 3D Systems' "source code" 27 within the context of its alleged trade secrets (see ECF 509, at 24; ECF 584, at 24); 28 (3) Robert Zubrickie's testimony regarding 3D Systems' "trade secrets" (ECF 513-2, at 5) 1 and whether Intrepid's "multi-projector testbed" "relies on or utilizes 3DS's trade secrets" 2 (ECF 513-3, at 8; see also id. at 14); (4) Richard Greene as an "expert with respect to three 3 of 3DS's alleged trade secrets" (ECF 514, at 6); and (5) Allen's rebuttal testimony, 4 regarding "certain portions of the reports" of Zubrickie and Greene (ECF 509-6, at 2). 5 In sum, all the parties' expert-exclusion motions are denied.

6 INTREPID'S MOTION TO STRIKE THE ANSWER

7 Intrepid moves to strike 3D Systems' and Kuester's answer to its counterclaim and 8 third-party claim due to tardiness. (ECF 527, at 7.) Their answer was indeed 13 days late, 9 filed after Intrepid had already requested entry of default (which was inexplicably refused 10 by the Clerk's Office). (See ECF 452, at 18; ECF 493; ECF 494; ECF 495; ECF 496); 11 see also Fed. R. Civ. P. (4)(a). Courts may strike "an insufficient defense." Fed. R. Civ. 12 P. 12(f). But "[m]otions to strike are disfavored, and the remedy of striking a pleading 13 should generally be granted only to avoid prejudice to the moving party or when it is clear 14 that the matter sought to be stricken could have no possible bearing on the subject matter 15 of the litigation." Hadley v. Kellogg Sales Co., No. 16-CV-04955-LHK, 2018 WL 16 11341859, at *1 (N.D. Cal. Mar. 7, 2018). 17 Several factors convince the Court that any prejudice Intrepid suffered "is not 18 significant enough to warrant the drastic remedy of striking the answer." See id. First, 19 throughout the answer-delay dispute, 3D Systems and Kuester continued to vigorously 20 argue their claims, as they have throughout these proceedings. (See generally 21 ECF 457–491.) Second, Intrepid has long been on notice that 3D Systems and Kuester 22 planned to contest this case, and Intrepid has asserted no cognizable prejudice from the 23 13-day delay in receiving the answer. Finally, Intrepid failed to meet and confer with 24 opposing counsel before seeking default, as required by this Court's chambers rules. 25 Especially given the strong "policy that cases should be resolved on the

merits," the 26 Court denies Intrepid's request to strike the answer. See Innospan Corp. v. Shasta Ventures 27 GP LLC, 582 F. App'x 755, 755 (9th Cir. 2014). 28

1 CONCLUSION

2 Thus, summary judgment is GRANTED for defendants on these 3D Systems 3 || claims: 4 1. California Uniform Trade Secrets Act claim (count 1); 5 2. Defend Trade Secrets Act claim (count 2); and 6 3. Breach-of-contract claim (count 3). 7 ||Summary judgment is GRANTED IN PART for 3D Systems on this Intrepid 8 || counterclaim: 9 4. Declaratory-relief counterclaim (count 7), to the extent Intrepid challenges the rovisions of 3D Systems' employment contracts that protect 3D Systems' 10 alleged trade secrets. 1] Otherwise, the Court DENIES the pending summary-judgment motions, motions to 3 exclude experts, and motions to strike." 14 Dated: March 20, 2025 f—_— 16 Hon. Afdrew G. Schopler United States District Judge 17 18 19 20 21 22 23 25 06 The Court did not rely on the evidence submitted with Intrepid's summary-judgment reply, so 3D Systems' motion to strike that evidence is denied as moot. 27 || (See ECF 574.) The parties' arguments about the statute of limitations and the arbitration clause are also moot. 28