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ZHENYU ZHANG, ZHENXIANG GONG, ALEX
ZHONG, MARIA JAIMES, GIL REININ, and
JANELLE SHOOK

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BECTON, DICKINSON AND COMPANY,

Plaintiff,

v.

CYTEK BIOSCIENCES INC., MING YAN,
ALFRED RILEY, DAVID VRANE, ZHENYU
ZHANG, ZHENXIANG GONG, ALEX
ZHONG, MARIA JAIMES, GIL REININ, and
JANELLE SHOOK,

Defendants.

Case No. 3:18-cv-00933-MMC

**DEFENDANTS MING YAN, ALFRED
RILEY, DAVID VRANE, ZHENYU
ZHANG, ZHENXIANG GONG, ALEX
ZHONG, MARIA JAIMES, GIL REININ,
AND JANELLE SHOOK'S ANSWER
AND COUNTERCLAIM TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT**

Assigned to the Hon. Maxine M. Chesney

Complaint filed: February 13, 2018

FAC Filed: June 8, 2018

SAC Filed: December 19, 2019

Trial date: January 19, 2021

Defendants MING YAN (“Yan”), ALFRED RILEY (“Riley”), DAVID VRANE (“Vrane”), ZHENYU ZHANG (“Zhang”), ZHENXIANG GONG (“Gong”), ALEX ZHONG (“Zhong”), MARIA JAIMES (“Jaimes”), GIL REININ (“Reinin”), AND JANELLE SHOOK (“Shook”) (collectively “Individual Defendants”) hereby answer Plaintiff BECTON, DICKINSON AND COMPANY (“Plaintiff”) First Amended Complaint (“FAC”). The Individual Defendants deny every allegation in the FAC, unless admitted. The Individual Defendants reserve the right to challenged Plaintiff’s alleged trade secrets, as disclosed on August 31, 2018, on any applicable grounds. To the extent any paragraph of the FAC alleges, indicates, or suggests the existence of a trade secret, the Individual Defendants deny that allegation.

NATURE OF ACTION

1. The Individual Defendants deny the allegations contained in Paragraph 1.
2. The Individual Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 2 and therefore, deny them.
3. Defendant Yan admits he headed up Project Newton. Defendants Zhong and Vrane admit they worked on Project Newton. The Individual Defendants deny each and every remaining allegation in Paragraph 3.
4. Defendant Yan admits he left BD and became Cytek’s Chief Technology Officer. The Individual Defendants admit Cytek introduced the Cytek™ Aurora in June 2017. The Individual Defendants deny each and every remaining allegation in Paragraph 4.
5. The Individual Defendants admit they downloaded files to removable storage devices while employed by Plaintiff. The Individual Defendants deny each and every remaining allegation in Paragraph 5.
6. The Individual Defendants deny each and every allegation in Paragraph 6.

PARTIES

7. The Individual Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 7 and, therefore, deny them.
8. The Individual Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 8 and, therefore, deny them.

1 9. The Individual Defendants are without sufficient knowledge or information to form
2 a belief as to the truth of the allegations in Paragraph 9 and, therefore, deny them.

3 10. The Individual Defendants admit that Cytek manufactures some components for its
4 flow cytometers in China.

5 11. Defendant Yan admits the allegations in Paragraph 11. The remaining Individual
6 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
7 allegations in Paragraph 11 and therefore, deny them.

8 12. Defendant Yan admits the allegations in Paragraph 12. The remaining Individual
9 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
10 allegations in Paragraph 12 and, therefore, deny them.

11 13. Defendant Riley admits the allegations in Paragraph 13. The remaining Individual
12 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
13 allegations in Paragraph 13 and, therefore, deny them.

14 14. Defendant Riley admits the allegations in Paragraph 14. The remaining Individual
15 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
16 allegations in Paragraph 14 and, therefore, deny them.

17 15. Defendant Vrane admits the allegations in Paragraph 15. The remaining Individual
18 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
19 allegations in Paragraph 15 and, therefore, deny them.

20 16. Defendant Vrane admits he is presently employed at Cytek. Defendant Vrane
21 denies the remaining allegations in Paragraph 16. The remaining Individual Defendants are
22 without sufficient knowledge or information to form a belief as to the truth of the allegations in
23 Paragraph 16 and, therefore, deny them.

24 17. Defendant Zhang admits the allegations in Paragraph 17. The remaining Individual
25 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
26 allegations in Paragraph 17 and, therefore, deny them.

27 18. Defendant Zhang admits he is presently employed by Cytek as a software
28 developer. Defendant Zhang denies the remaining allegations in Paragraph 18. The remaining

1 Individual Defendants are without sufficient knowledge or information to form a belief as to the
2 truth of the allegations in Paragraph 18 and, therefore, deny them.

3 19. Defendant Gong admits the allegations in Paragraph 19. The remaining Individual
4 Defendants are without sufficient knowledge or information to form a belief as to the truth or
5 allegations in Paragraph 19 and, therefore, deny them.

6 20. Defendant Gong admits the allegations in Paragraph 20. The remaining Individual
7 Defendants are without sufficient knowledge or information to form a belief as to the truth or
8 allegations in Paragraph 20 and therefore, deny them.

9 21. Defendant Zhong admits the allegations in Paragraph 21. The remaining Individual
10 Defendants are without sufficient knowledge or information to form a belief as to the truth or
11 allegations in Paragraph 21 and, therefore, deny them.

12 22. Defendant Zhong admits that he was hired by Cytek in January 2016 and is
13 presently employed by Cytek. Defendant Zhong denies the remaining allegations in Paragraph 22.
14 The remaining Individual Defendants are without sufficient knowledge or information to form a
15 belief as to the truth or allegations in Paragraph 22 and, therefore, deny them.

16 23. Defendant Jaimes admits the allegations in Paragraph 23. The remaining
17 Individual Defendants are without sufficient knowledge or information to form a belief as to the
18 truth or allegations in Paragraph 23 and, therefore, deny them.

19 24. Defendant Jaimes admits she was hired by Cytek in 2015 and is presently
20 employed by Cytek. Defendant Jaimes denies the remaining allegations in Paragraph 24. The
21 remaining Individual Defendants are without sufficient knowledge or information to form a belief
22 as to the truth or allegations in Paragraph 24 and, therefore, deny them.

23 25. Defendant Reinin admits the allegations in Paragraph 25. The remaining
24 Individual Defendants are without sufficient knowledge or information to form a belief as to the
25 truth of the allegations in Paragraph 25 and, therefore, deny them.

26 26. Defendant Reinin admits the allegations in Paragraph 26. The reaming Individual
27 Defendants are without sufficient knowledge or information to form a belief as to the truth of the
28 allegations in Paragraph 26 and, therefore, deny them.

1 37. The Individual Defendants are without sufficient knowledge or information to form
2 a belief as to the truth of the allegations of Paragraph 37 and, therefore, deny them.

3 38. The Individual Defendants admit the allegations in Paragraph 38.

4 39. The Individual Defendants admit the allegations in Paragraph 39.

5 40. The Individual Defendants admit the allegations in Paragraph 40.

6 41. The Individual Defendants are without sufficient knowledge or information to form
7 a belief as to the truth of the allegations of Paragraph 41 and, therefore, deny them.

8 42. The Individual Defendants are without sufficient knowledge or information to form
9 a belief as to the truth of the allegations of Paragraph 42 and, therefore, deny them.

10 43. The Individual Defendants admit the allegations in Paragraph 43.

11 44. The Individual Defendants admit the allegations in Paragraph 44.

12 45. The Individual Defendants admit the allegations in Paragraph 45.

13 46. The Individual Defendants admit the allegations in Paragraph 46.

14 47. The Individual Defendants admit the allegations in Paragraph 47.

15 48. The Individual Defendants admit the allegations in Paragraph 48.

16 49. The Individual Defendants admit the allegations in Paragraph 49.

17 50. The Individual Defendants admit the allegations in Paragraph 50 as they relate to
18 conventional spectral flow cytometers. Cytek's spectral flow cytometers do not send fluorescent
19 light to a spectral to a spectrograph to disperse the light signal.

20 51. The Individual Defendants are without sufficient knowledge or information to form
21 a belief as to the truth of the allegations of Paragraph 51 and, therefore, deny them.

22 52. The Individual Defendants are without sufficient knowledge or information to form
23 a belief as to the truth of the allegations of Paragraph 52 and, therefore, deny them.

24 53. The Individual Defendants are without sufficient knowledge or information to form
25 a belief as to the truth of the allegations of Paragraph 53 and, therefore, deny them.

26 54. The Individual Defendants are without sufficient knowledge or information to form
27 a belief as to the truth of the allegations of Paragraph 54 and, therefore, deny them.
28

1 55. The Individual Defendants are without sufficient knowledge or information to form
2 a belief as to the truth of the allegations of Paragraph 55 and, therefore, deny them.

3 56. Defendant Yan admits he worked on spectral flow cytometry while employed by
4 Plaintiff. Defendant Yan denies the remaining allegations in Paragraph 56. The remaining
5 Individual Defendants are without sufficient information or knowledge to form a belief as to the
6 truth of the allegations in Paragraph 56 and, therefore, deny them.

7 57. Defendants Vrane and Defendant Zhong admit they worked on Project Newton.
8 Defendants Vrane and Zhong deny the remaining allegations in Paragraph 57. Defendants Gong,
9 Zhang, and Jaimes deny they worked on Project Newton and the remaining allegations in
10 Paragraph 57. The remaining Individual Defendants are without sufficient information or
11 knowledge to form a belief as to the truth of the allegations in Paragraph 55 and, therefore, deny
12 them.

13 58. The Individual Defendants admit they worked on flow cytometry projects while
14 employed by Plaintiff. The Individual Defendants deny the remaining allegations of Paragraph
15 58.

16 59. The Individual Defendants admit they worked on BD flow cytometer products
17 while employed by Plaintiff. The Individual Defendants deny the remaining allegations of
18 Paragraph 59.

19 60. The Individual Defendants deny the allegations in Paragraph 60.

20 61. The Individual Defendants are without sufficient knowledge or information to form
21 a belief as to the truth of the allegations of Paragraph 61 and, therefore, deny them.

22 62. The Individual Defendants deny they misappropriated confidential files. The
23 Individual Defendants are without sufficient information or knowledge to form a belief as to the
24 remaining allegations in Paragraph 62 and, therefore, deny them.

25 63. The Individual Defendants deny the allegations in Paragraph 63.

26 64. The Individual Defendants admit they had access to Plaintiff's information while
27 employed by Plaintiff. The Individual Defendants deny the remaining allegations in Paragraph 64.
28

1 65. The Individual Defendants are without sufficient knowledge or information to form
2 a belief as to the truth of the allegations of Paragraph 65 and, therefore, deny them.

3 66. The Individual Defendants deny they took Plaintiff's files. The Individual
4 Defendants deny the remaining allegations in Paragraph 66.

5 67. The Individual Defendants are without sufficient knowledge or information to form
6 a belief as to the truth of the allegations of Paragraph 67 and, therefore, deny them.

7 68. The Individual Defendants are without sufficient knowledge or information to form
8 a belief as to the truth of the allegations of Paragraph 68 and, therefore, deny them.

9 69. The Individual Defendants are without sufficient knowledge or information to form
10 a belief as to the truth of the allegations of Paragraph 69 and, therefore, deny them.

11 70. Defendants Yan, Vrane, Zhang, Gong, Zhong, Jaimes, Reining, and Shook admit
12 they signed an employment agreement. The Individual Defendants deny the remaining allegations
13 of Paragraph 70.

14 71. The Individual Defendants are without sufficient knowledge or information to form
15 a belief as to the truth of the allegations of Paragraph 71 and, therefore, deny them.

16 72. The Individual Defendants are without sufficient knowledge or information to form
17 a belief as to the truth of the allegations of Paragraph 72 and, therefore, deny them.

18 73. The Individual Defendants are without sufficient knowledge or information to form
19 a belief as to the truth of the allegations of Paragraph 73 and, therefore, deny them.

20 74. The Individual Defendants are without sufficient knowledge or information to form
21 a belief as to the truth of the allegations of Paragraph 74 and, therefore, deny them.

22 75. The Individual Defendants are without sufficient knowledge or information to form
23 a belief as to the truth of the allegations of Paragraph 75 and, therefore, deny them.

24 76. The Individual Defendants are without sufficient knowledge or information to form
25 a belief as to the truth of the allegations of Paragraph 76 and, therefore, deny them.

26 77. Defendant Yan admits Plaintiff hired him in January of 2006 in R&D. Defendant
27 Yan denies the remaining allegations in Paragraph 77. The remaining Individual Defendants lack
28

1 information sufficient to form a belief as to the truth of the allegations of Paragraph 77 and,
2 therefore, deny them.

3 78. Defendant Yan admits he worked on Plaintiff's flow cytometers and other projects,
4 that he headed Project Newton, and that he oversaw Defendants Vrane and Zhong on Project
5 Newton. Defendant Yan denies the remaining allegations in Paragraph 78. The remaining
6 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
7 in Paragraph 78 and, therefore, deny them.

8 79. Defendant Yan admits that he departed BD on January 16, 2015 and joined Cytek
9 as its Chief Technology Officer. Defendants Yan denies the remaining allegations in Paragraph
10 79. The remaining Individual Defendants lack information sufficient to form a belief as to the
11 truth of the allegations in Paragraph 79 and, therefore deny them.

12 80. Defendant Yan admits that he downloaded files to removable storage devices while
13 employed by Plaintiff. Defendant Yan denies the remaining allegations in Paragraph 80. The
14 remaining Individual Defendants lack information sufficient to form a belief as to the truth of the
15 allegations in Paragraph 80 and, therefore, deny them.

16 81. Defendant Yan denies the allegations of Paragraph 81. The remaining Individual
17 Defendants lack information sufficient to from a belief as to the truth of the allegations in
18 Paragraph 81 and, therefore, deny them.

19 82. Defendant Yan denies the allegations of Paragraph 82. The remaining Individual
20 Defendants lack information sufficient to form a belief as to the truth of the allegations in
21 Paragraph 82 and, therefore, deny them.

22 83. Defendants Yan and Jaimes admit they worked on Cytek's AuroraTM and unveiled
23 it at the June 2017 CYTO conference in Boston. Defendants Riley, Vrane, Zhang, Gong, Zhong,
24 and Reinin admit that they were present at the 2017 CYTO conference in Boston. The remaining
25 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
26 in Paragraph 83 and, therefore, deny them.

27 84. Defendant Reinin admits he was present at the October 2017 CYTO Asia
28 Conference and gave a presentation entitled "Enhancement of Multicolor Assay Performance

1 Using High Sensitivity Full Spectrum Cytometry.” Defendant Reinin denies the remaining
2 allegations of Paragraph 84. Defendant Yan admits he was present at the October 2017 CYTO
3 Asia conference and gave a presentation entitled “A new Standard for Hight Sensitivity Full
4 Spectrum Cytometry.” Defendant Yan denies the remaining allegations of Paragraph 82.
5 Defendants Jaimes and Shook deny the allegations of Paragraph 82. The remaining Individual
6 Defendants lack information sufficient to form a belief as to the truth of the allegations in
7 Paragraph 82 and, therefore, deny them.

8 85. Defendant Jaimes admits she was present at the 2018 CYTO conference in Prague
9 and displayed the Cytex Aurora™ flow cytometer in a presentation entitled “Expanding
10 Application Capabilities Using Full Spectrum Cytometry.” Defendant Jaimes denies the
11 remaining allegations in Paragraph 85. Defendants Yan, Reinin, and Zhong admit to being present
12 at the 2018 CYTO conference in Prague. Defendants Yan, Reinin, and Zhong deny the remaining
13 allegations in Paragraph 83. Defendant Gong denies the allegations in Paragraph 85. The
14 remaining Individual Defendants lack information sufficient to form a belief as to the truth of the
15 allegations in Paragraph 85 and, therefore, deny them.

16 86. Defendant Riley admits he was last employed by Plaintiff as a Senior Program
17 Manager and that he did not sign an employment agreement. Defendant Riley denies the
18 remaining allegations in Paragraph 86. The remaining Individual Defendants lack information
19 sufficient to form a belief as to the truth of the allegations in Paragraph 86 and, therefore, deny
20 them.

21 87. Defendant Riley admits he worked on flow cytometry projects while employed by
22 Plaintiff. Defendant Riley denies the remaining allegations in Paragraph 87. The remaining
23 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
24 in Paragraph 87 and, therefore, deny them.

25 88. Defendant Riley admits the allegations in Paragraph 88. The remaining Individual
26 Defendants lack information sufficient to form a belief as to the truth of the allegations in
27 Paragraph 88 and, therefore, deny them.
28

1 89. Defendant Riley admits that he downloaded files to removable storage devices
2 while employed by Plaintiff. Defendant Riley denies the remaining allegations in Paragraph 89.
3 The remaining Individual Defendants lack information sufficient to form a belief as to the truth of
4 the allegations in Paragraph 89 and, therefore, deny them.

5 90. Defendant Riley admits he is presently employed as Cytex's General Manager and
6 that he participated at the 2017 CYTO conference in Boston. Defendant Riley denies the
7 remaining allegations in Paragraph 90. The remaining Individual Defendants lack information
8 sufficient to form a belief as to the truth of the allegations in Paragraph 90 and, therefore, deny
9 them.

10 91. Defendant Riley and Yan deny the allegations in Paragraph 91. The remaining
11 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
12 in Paragraph 91 and, therefore, deny them.

13 92. Defendant Vrane admits the allegations in Paragraph 92. The remaining Individual
14 Defendants lack information sufficient to form a belief as to the truth of the allegations in
15 Paragraph 92 and, therefore, deny them.

16 93. Defendant Vrane admits he worked as fluidics engineer on Project Newton, worked
17 on FACS Aria, and worked on vacuum fluidics subsystems while employed by Plaintiff.
18 Defendant Vrane denies the remaining allegations of Paragraph 93. The remaining Individual
19 Defendants lack information sufficient to form a belief as to the truth of the allegations in
20 Paragraph 93 and, therefore, deny them.

21 94. Defendant Vrane admits the allegations in Paragraph 94. The remaining Individual
22 Defendants lack information sufficient to form a belief as to the truth of the allegations in
23 Paragraph 94 and, therefore, deny them.

24 95. Defendant Riley admits that he downloaded files to removable storage devices
25 while employed by Plaintiff. Defendant Riley denies the remaining allegations in Paragraph 95.
26 The remaining Individual Defendants lack information sufficient to form a belief as to the truth of
27 the allegations in Paragraph 95 and, therefore, deny them.
28

1 96. Defendant Vrane admits that he is currently employed by Cytek and that he
2 attended the 2017 CYTO conference in Boston. Defendant Vrane denies the remaining allegations
3 in Paragraph 96. The remaining Individual Defendants lack information sufficient to form a belief
4 as to the truth of the allegations in Paragraph 94 and, therefore, deny them.

5 97. Defendant Jaimes admits she was hired by Plaintiff on or about July 2005.
6 Defendant Jaimes denies the remaining allegations in Paragraph 97. The remaining Individual
7 Defendants lack information sufficient to form a belief as to the truth of the allegations in
8 Paragraph 97 and, therefore, deny them.

9 98. Defendant Jaimes denies the allegations in Paragraph 98. The remaining Individual
10 Defendants lack information sufficient to form a belief as to the truth of the allegations in
11 Paragraph 98 and, therefore, deny them.

12 99. Defendant Jaimes admits that she downloaded files to removable storage devices
13 while employed by Plaintiff. Defendant Jaimes denies the remaining allegations in Paragraph 99.
14 The remaining Individual Defendants lack information sufficient to form a belief as to the truth of
15 the allegations in Paragraph 99 and, therefore, deny them.

16 100. Defendant Jaimes admits the allegations in Paragraph 100. The remaining
17 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
18 in Paragraph 100 and, therefore, deny them.

19 101. Defendant Jaimes admits she is presently employed by Cytek and that she
20 presented at the 2017 CYTO in Boston. Defendant Jaimes denies the remaining allegations in
21 Paragraph 101. The remaining Individual Defendants lack information sufficient to form a belief
22 as to the truth of the allegations in Paragraph 101 and, therefore, deny them.

23 102. Defendant Zhang admits the allegations in Paragraph 102. The remaining
24 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
25 in Paragraph 102 and, therefore, deny them.

26 103. Defendant Zhang admits the allegations in Paragraph 103. The remaining
27 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
28 in Paragraph 103 and, therefore, deny them.

1 104. Defendant Zhang admits his employment with Plaintiff ended in April 2015.
2 Defendant Zhang denies the remaining allegations in Paragraph 104. The remaining Individual
3 Defendants lack information sufficient to form a belief as to the truth of the allegations in
4 Paragraph 104 and, therefore, deny them.

5 105. Defendant Zhang admits that he downloaded files to removable storage devices
6 while employed by Plaintiff. Defendant Zhang denies the remaining allegations in Paragraph 105.
7 The remaining Individual Defendants lack information sufficient to form a belief as to the truth of
8 the allegations in Paragraph 105 and, therefore, deny them.

9 106. Defendant Zhang admits he is presently employed by Cytek. Defendant Zhang
10 denies the remaining allegations in Paragraph 106. The remaining Individual Defendants lack
11 information sufficient to form a belief as to the truth of the allegations in Paragraph 106 and,
12 therefore, deny them.

13 107. Defendant Gong admits BD hired him in June 2000. Defendant Gong denies the
14 remaining allegations in Paragraph 107. The remaining Individual Defendants lack information
15 sufficient to form a belief as to the truth of the allegations in Paragraph 107 and, therefore, deny
16 them.

17 108. Defendant Gong admits he worked on flow cytometry projects while employed by
18 Plaintiff. Defendant Gong denies the remaining allegations in Paragraph 108. The remaining
19 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
20 in Paragraph 108 and, therefore, deny them.

21 109. Defendant Gong admits the allegations in Paragraph 109. The remaining
22 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
23 in Paragraph 109 and, therefore, deny them.

24 110. Defendant Gong admits that he downloaded files to removable storage devices
25 while employed by Plaintiff. Defendant Gong denies the remaining allegations in Paragraph 110.
26 The remaining Individual Defendants lack information sufficient to form a belief as to the truth of
27 the allegations in Paragraph 110 and, therefore, deny them.
28

1 111. Defendant Gong admits he is presently employed by Cytek as the Director of
2 Software Development and was present at the 2017 CYTO conference in Boston. Defendant
3 Gong denies the remaining allegations in Paragraph 111. The remaining Individual Defendants
4 lack information sufficient to form a belief as to the truth of the allegations in Paragraph 111 and,
5 therefore, deny them.

6 112. Defendant Zhong admits the allegations in Paragraph 112. The remaining
7 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
8 in Paragraph 112 and, therefore, deny them.

9 113. Defendant Zhong admits he worked on spectral flow cytometry while employed by
10 Plaintiff and Project Newton. Defendant Zhong denies the remaining allegations in Paragraph
11 113. The remaining Individual Defendants lack information sufficient to form a belief as to the
12 truth of the allegations in Paragraph 113 and, therefore, deny them.

13 114. Defendant Zhong admits the allegations of Paragraph 114. The remaining
14 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
15 in Paragraph 114 and, therefore, deny them.

16 115. Defendant Zhong admits that he downloaded files to removable storage devices
17 while employed by Plaintiff. Defendant Zhong denies the remaining allegations in Paragraph 115.
18 The remaining Individual Defendants lack information sufficient to form a belief as to the truth of
19 the allegations in Paragraph 115 and, therefore, deny them.

20 116. Defendant Zhong admits he participated in the 2017 CYTO conference in Boston
21 and the 2018 CYTO conference in Prague. Defendant Zhong denies the remaining allegations in
22 Paragraph 116. The remaining Individual Defendants lack information sufficient to form a belief
23 as to the truth of the allegations in Paragraph 116 and, therefore, deny them.

24 117. Defendant Shook admits she was a Senior Product Engineer when she ended her
25 employment with Plaintiff. Defendant Shook denies the remaining allegations of Paragraph 117.
26 The remaining Individual Defendants lack information sufficient to form a belief as to the truth of
27 the allegations in Paragraph 117 and, therefore, deny them.
28

1 118. Defendant Shook admits she worked on flow cytometry projects while employed
2 by Plaintiff. Defendant Shook denies the remaining allegations in Paragraph 118. The remaining
3 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
4 in Paragraph 118 and, therefore, deny them.

5 119. Defendant Shook admits she ended her employment with Plaintiff in October 2016.
6 Defendant Shook denies the remaining allegations in Paragraph 119. The remaining Individual
7 Defendants lack information sufficient to form a belief as to the truth of the allegations in
8 Paragraph 119 and, therefore, deny them.

9 120. Defendant Shook admits that she downloaded files to removable storage devices
10 while employed by Plaintiff. Defendant Shook denies the remaining allegations in Paragraph 120.
11 The remaining Individual Defendants lack information sufficient to form a belief as to the truth of
12 the allegations in Paragraph 120 and, therefore, deny them.

13 121. Defendant Shook admits she is currently employed by Cytex as a Systems
14 Engineer. Shook denies the remaining allegations of Paragraph 121. The remaining Individual
15 Defendants lack information sufficient to form a belief as to the truth of the allegations in
16 Paragraph 121 and, therefore, deny them.

17 122. Defendant Reinin admits Plaintiff hired him in October 2007. Defendant Reinin
18 denies the remaining allegations of Paragraph 122. The remaining Individual Defendants lack
19 information sufficient to form a belief as to the truth of the allegations in Paragraph 122 and,
20 therefore, deny them.

21 123. Defendant Reinin admits the allegations in Paragraph 123. The remaining
22 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
23 in Paragraph 123 and, therefore, deny them.

24 124. Defendant Reinin admits the allegations in Paragraph 124. The remaining
25 Individual Defendants lack information sufficient to form a belief as to the truth of the allegations
26 in Paragraph 124 and, therefore, deny them.

27 125. Defendant Reinin admits that he downloaded files to removable storage devices
28 while employed by Plaintiff. Defendant Renin denies the remaining allegations in Paragraph 125.

1 The remaining Individual Defendants lack information sufficient to form a belief as to the truth of
2 the allegations in Paragraph 125 and, therefore, deny them.

3 126. Defendant admits the allegations in Paragraph 126. The remaining Individual
4 Defendants lack information sufficient to form a belief as to the truth of the allegations in
5 Paragraph 126 and, therefore, deny them.

6 127. The Individual Defendants deny the allegations in Paragraph 127.

7 128. The Individual Defendants are without sufficient knowledge or information to form
8 a belief as to the truth of the allegations of Paragraph 128 and, therefore, deny them.

9 129. The Individual Defendants are without sufficient knowledge or information to form
10 a belief as to the truth of the allegations of Paragraph 129 and, therefore, deny them.

11 130. The Individual Defendants, excluding Defendant Riley, admit that they signed
12 employment Agreements. Defendant Riley admits that he did not sign an employment
13 Agreement. The Individual Defendants deny the remaining allegations in Paragraph 130.

14 131. The Individual Defendants, excluding Defendant Riley, admit that they signed
15 employment Agreements. Defendant Riley admits that he did not sign an employment
16 Agreement. The Individual Defendants deny the remaining allegations in Paragraph 131.

17 132. The Individual Defendants, excluding Defendant Riley, admit that their
18 employment agreements contained the quoted text contained in Paragraph 132. The Individual
19 Defendant deny the remaining allegations in Paragraph 132.

20 133. The Individual Defendants are without sufficient knowledge or information to form
21 a belief as to the truth of the allegations of Paragraph 133 and, therefore, deny them.

22 134. The Individual Defendants are without sufficient knowledge or information to form
23 a belief as to the truth of the allegations of Paragraph 134 and, therefore, deny them.

24 135. The Individual Defendants are without sufficient knowledge or information to form
25 a belief as to the truth of the allegations of Paragraph 135 and, therefore, deny them.

26 136. Defendants Yan, Vrane, and Zhong admit that they worked on Project Newton.
27 Defendants Yan, Vrane, and Zhong deny the remaining allegations in Paragraph 136. Defendants
28 Gong and Jaimes deny the allegations in Paragraph 136. The remaining Individual Defendants

1 lack information sufficient to form a belief as to the truth of the allegations in Paragraph 136 and,
2 therefore, deny them.

3 137. The Individual Defendants are without sufficient knowledge or information to form
4 a belief as to the truth of the allegations of Paragraph 137 and, therefore, deny them.

5 138. The Individual Defendants are without sufficient knowledge or information to form
6 a belief as to the truth of the allegations of Paragraph 138 and, therefore, deny them.

7 139. The Individual Defendants admit they had Plaintiff's information during their
8 employment. The Individual Defendants deny the remaining allegations in Paragraph 139.

9 140. The Individual Defendants admit that they had access to Plaintiff's network files
10 and hardcopy files while employed by Plaintiff. The Individual Defendants deny the remaining
11 allegations in Paragraph 140.

12 141. The Individual Defendants are without sufficient knowledge or information to form
13 a belief as to the truth of the allegations of Paragraph 141 and, therefore, deny them.

14 142. The Individual Defendants are without sufficient knowledge or information to form
15 a belief as to the truth of the allegations of Paragraph 142 and, therefore, deny them.

16 143. The Individual Defendants are without sufficient knowledge or information to form
17 a belief as to the truth of the allegations of Paragraph 143 and, therefore, deny them.

18 144. The Individual Defendants are without sufficient knowledge or information to form
19 a belief as to the truth of the allegations of Paragraph 144 and, therefore, deny them.

20 145. The Individual Defendants are without sufficient knowledge or information to form
21 a belief as to the truth of the allegations of Paragraph 145 and, therefore, deny them.

22 146. The Individual Defendants are without sufficient knowledge or information to form
23 a belief as to the truth of the allegations of Paragraph 146 and, therefore, deny them.

24 147. The Individual Defendants are without sufficient knowledge or information to form
25 a belief as to the truth of the allegations of Paragraph 147 and, therefore, deny them.

26 148. The Individual Defendants are without sufficient knowledge or information to form
27 a belief as to the truth of the allegations of Paragraph 148 and, therefore, deny them.
28

1 149. Defendant Yan admits the allegations in Paragraph 149. The remaining Individual
2 Defendants lack information sufficient to form a belief as to the truth of the allegations in
3 Paragraph 149 and, therefore, deny them.

4 150. The Individual Defendants admit they are currently employed by Cytek. The
5 individual Defendants lack sufficient information to form a belief as to the truth of the allegations
6 in Paragraph 150 and, therefore, deny them.

7 151. The Individual Defendants admit that Cytek's Athena™ is sold throughout the
8 United States and Worldwide. The Individual Defendants deny the remaining allegations in
9 Paragraph 151.

10 152. The Individual Defendants admit that Cytek's Aurora™ is sold throughout the
11 United States and Worldwide. The Individual Defendants deny the remaining allegations in
12 Paragraph 152.

13 153. Defendants Yan and Vrane admit that they are named inventors in patent
14 applications filed by Cytek. The remaining Individual Defendants lack sufficient information to
15 form a belief as to the truth of the allegations in Paragraph 153 and, therefore, deny them.

16 154. The Individual Defendants deny the allegations in Paragraph 154.

17 155. The Individual Defendants deny the allegations in Paragraph 155.

18 156. The Individual Defendants deny the allegations in Paragraph 156.

19 157. The Individual Defendants are without sufficient knowledge or information to form
20 a belief as to the truth of the allegations of Paragraph 157 and, therefore, deny them.

21 158. The Individual Defendants are without sufficient knowledge or information to form
22 a belief as to the truth of the allegations of Paragraph 158 and, therefore, deny them.

23 159. The Individual Defendants are without sufficient knowledge or information to form
24 a belief as to the truth of the allegations of Paragraph 159 and, therefore, deny them.

25 160. The Individual Defendants deny the allegations in Paragraph 160.

26 161. The Individual Defendants deny the allegations in Paragraph 161.

27 162. The Individual Defendants deny the allegations in Paragraph 162.

28

1 163. The Individual Defendants are without sufficient knowledge or information to form
2 a belief as to the truth of the allegations in Paragraph 163 and, therefore, deny them.

3 164. The Individual Defendants are without sufficient knowledge or information to form
4 a belief as to the truth of the allegations of Paragraph 164 and, therefore, deny them.

5 165. The Individual Defendants deny the allegations in Paragraph 165.

6 166. The Individual Defendants deny the allegations in Paragraph 166.

7 167. The Individual Defendants are without sufficient knowledge or information to form
8 a belief as to the truth of the allegations of Paragraph 167 and, therefore, deny them.

9 168. The Individual Defendants are without sufficient knowledge or information to form
10 a belief as to the truth of the allegations of Paragraph 168 and, therefore, deny them.

11 169. The Individual Defendants are without sufficient knowledge or information to form
12 a belief as to the truth of the allegations of Paragraph 169 and, therefore, deny them.

13 170. The Individual Defendants are without sufficient knowledge or information to form
14 a belief as to the truth of the allegations of Paragraph 170 and, therefore, deny them.

15 171. The Individual Defendants are without sufficient knowledge or information to form
16 a belief as to the truth of the allegations of Paragraph 171 and, therefore, deny them.

17 172. The Individual Defendants are without sufficient knowledge or information to form
18 a belief as to the truth of the allegations of Paragraph 172 and, therefore, deny them.

19 173. The Individual Defendants are without sufficient knowledge or information to form
20 a belief as to the truth of the allegations of Paragraph 173 and, therefore, deny them.

21 174. The Individual Defendants are without sufficient knowledge or information to form
22 a belief as to the truth of the allegations of Paragraph 174 and, therefore, deny them.

23 175. The Individual Defendants are without sufficient knowledge or information to form
24 a belief as to the truth of the allegations of Paragraph 175 and, therefore, deny them.

25 176. The Individual Defendants are without sufficient knowledge or information to form
26 a belief as to the truth of the allegations of Paragraph 176 and, therefore, deny them.

27 177. The Individual Defendants are without sufficient knowledge or information to form
28 a belief as to the truth of the allegations of Paragraph 177 and, therefore, deny them.

1 178. The Individual Defendants are without sufficient knowledge or information to form
2 a belief as to the truth of the allegations of Paragraph 178 and, therefore, deny them.

3 179. The Individual Defendants are without sufficient knowledge or information to form
4 a belief as to the truth of the allegations of Paragraph 179 and, therefore, deny them.

5 180. The Individual Defendants are without sufficient knowledge or information to form
6 a belief as to the truth of the allegations of Paragraph 180 and, therefore, deny them.

7 181. The Individual Defendants are without sufficient knowledge or information to form
8 a belief as to the truth of the allegations of Paragraph 181 and, therefore, deny them.

9 182. The Individual Defendants are without sufficient knowledge or information to form
10 a belief as to the truth of the allegations of Paragraph 182 and, therefore, deny them.

11 183. The Individual Defendants are without sufficient knowledge or information to form
12 a belief as to the truth of the allegations of Paragraph 183 and, therefore, deny them.

13 184. The Individual Defendants are without sufficient knowledge or information to form
14 a belief as to the truth of the allegations of Paragraph 184 and, therefore, deny them.

15 **Plaintiff's First Claim for Relief – Alleged Misappropriation/Threatened Misappropriation**
16 **of Trade Secrets Under the Defend Trade Secrets Act of 2016**

17 185. The Individual Defendants reassert and incorporate by reference each of the
18 preceding admissions and denials in response to Paragraph 185.

19 186. The Individual Defendants are without sufficient knowledge or information to form
20 a belief as to the truth of the allegations of Paragraph 186 and, therefore, deny them.

21 187. The Individual Defendants are without sufficient knowledge or information to form
22 a belief as to the truth of the allegations of Paragraph 187 and, therefore, deny them.

23 188. The Individual Defendants are without sufficient knowledge or information to form
24 a belief as to the truth of the allegations of Paragraph 188 and, therefore, deny them.

25 189. The Individual Defendants are without sufficient knowledge or information to form
26 a belief as to the truth of the allegations of Paragraph 189 and, therefore, deny them.

27 190. The Individual Defendants deny the allegations in Paragraph 190.

28 191. The Individual Defendants deny the allegations in Paragraph 191.

1 209. The Individual Defendants deny they took, used, retained, or disclosed BD Trade
2 Secrets. Except as expressly admitted, the Individual Defendants deny the allegations of Paragraph
3 209.

4 210. The Individual Defendants deny the allegations in Paragraph 210.

5 211. The Individual Defendants deny the allegations in Paragraph 211.

6 212. The Individual Defendants deny the allegations in Paragraph 212.

7 213. The Individual Defendants deny the allegations in Paragraph 213.

8 214. The Individual Defendants deny the allegations in Paragraph 214.

9 **Plaintiff's Third Claim for Relief – Alleged Misappropriation/Threatened Misappropriation**
10 **of Trade Secrets Under the California Uniform Trade Secrets Act**

11 215. The Individual Defendants reassert and incorporate by reference each of the
12 preceding admissions and denials in response to Paragraph 215.

13 216. The Individual Defendants are without sufficient knowledge or information to form
14 a belief as to the truth of the allegations of Paragraph 216 and, therefore, deny them.

15 217. The Individual Defendants are without sufficient knowledge or information to form
16 a belief as to the truth of the allegations of Paragraph 217 and, therefore, deny them.

17 218. The Individual Defendants are without sufficient knowledge or information to form
18 a belief as to the truth of the allegations of Paragraph 218 and, therefore, deny them.

19 219. The Individual Defendants are without sufficient knowledge or information to form
20 a belief as to the truth of the allegations of Paragraph 219 and, therefore, deny them.

21 220. The Individual Defendants deny they misappropriated trade secrets, but are without
22 sufficient knowledge or information to form a belief as to the truth of the remaining allegations of
23 Paragraph 220 and, therefore, deny them.

24 221. The Individual Defendants deny they took or disclosed BD Trade Secrets. Except
25 as expressly admitted, Defendants deny the allegations of Paragraph 221.

26 222. The Individual Defendants deny the allegations in Paragraph 222.

27 223. The Individual Defendants deny the allegations in Paragraph 223.

28 224. The Individual Defendants deny the allegations in Paragraph 224.

1 225. The Individual Defendants deny the allegations in Paragraph 225.

2 226. The Individual Defendants deny the allegations in Paragraph 226.

3 227. The Individual Defendants deny the allegations in Paragraph 227.

4 228. The Individual Defendants deny the allegations in Paragraph 228.

5 229. The Individual Defendants deny the allegations in Paragraph 229.

6 230. The Individual Defendants deny the allegations in Paragraph 230.

7 231. The Individual Defendants deny the allegations in Paragraph 231.

8 232. The Individual Defendants deny the allegations in Paragraph 232.

9 233. The Individual Defendants deny the allegations in Paragraph 233.

10 234. The Individual Defendants deny the allegations in Paragraph 234.

11 **Plaintiff's Fourth Claim for Relief – Breach of Contract**

12 235. The Individual Defendants reassert and incorporate by reference each of the
13 preceding admissions and denials in response to Paragraph 235.

14 236. The Individual Defendants, excluding Defendant Riley, admit they signed
15 employment agreements while employed by Plaintiff. The Individual Defendants deny the
16 remaining allegations in Paragraph 236. Defendant Riley denies the allegations in Paragraph 236.

17 237. The Individual Defendants are without sufficient knowledge or information to form
18 a belief as to the truth of the allegations of Paragraph 237 and, therefore, deny them.

19 238. The Individual Defendants are without sufficient knowledge or information to form
20 a belief as to the truth of the allegations of Paragraph 238 and, therefore, deny them.

21 239. The Individual Defendants admit they had access to Plaintiff's information while
22 employed by Plaintiff. The Individual Defendants deny the remaining allegations in Paragraph
23 239.

24 240. The Individual Defendants deny the allegations in Paragraph 240.

25 241. The Individual Defendants deny the allegations in Paragraph 241.

26 242. The Individual Defendants deny the allegations in Paragraph 242.

1 243. Defendant Yan denies the allegations in Paragraph 243. The remaining Individual
2 Defendants lack information sufficient to form a belief as to the truth of the allegations of
3 Paragraph 243 and, therefore, deny them.

4 244. The Individual Defendants deny the allegations in Paragraph 244.

5 **Plaintiff's Fifth Claim for Relief – Breach of Contract**

6 245. Paragraph 245 of the SAC is directed to Defendant Cytex, thus no response by the
7 Individual Defendants is required. To the extent a response is required, the Individual Defendants
8 deny the allegations of paragraph 245.

9 246. Paragraph 246 of the SAC is directed to Defendant Cytex, thus no response by the
10 Individual Defendants is required. To the extent a response is required, the Individual Defendants
11 deny the allegations of paragraph 246.

12 247. Paragraph 247 of the SAC is directed to Defendant Cytex, thus no response by the
13 Individual Defendants is required. To the extent a response is required, the Individual Defendants
14 deny the allegations of paragraph 247.

15 248. Paragraph 248 of the SAC is directed to Defendant Cytex, thus no response by the
16 Individual Defendants is required. To the extent a response is required, the Individual Defendants
17 deny the allegations of paragraph 248.

18 249. Paragraph 249 of the SAC is directed to Defendant Cytex, thus no response by the
19 Individual Defendants is required. To the extent a response is required, the Individual Defendants
20 deny the allegations of paragraph 249.

21 **Plaintiff's Fifth Claim for Relief – Alleged Inducing of Breach of Contract**

22 250. This claim has been dismissed against Defendants Yan and Riley, thus no response
23 is required.

24 251. This claim has been dismissed against Defendants Yan and Riley, thus no response
25 is required.

26 252. This claim has been dismissed against Defendants Yan and Riley, thus no response
27 is required.

28

1 253. This claim has been dismissed against Defendants Yan and Riley, thus no response
2 is required.

3 254. This claim has been dismissed against Defendants Yan and Riley, thus no response
4 is required.

5 255. This claim has been dismissed against Defendants Yan and Riley, thus no response
6 is required.

7 256. This claim has been dismissed against Defendants Yan and Riley, thus no response
8 is required.

9 **Plaintiff's Sixth Claim for Relief - Violation of California Unfair Competition Law**

10 257. This claim has been dismissed against the Individual Defendants, thus no response
11 is required.

12 258. This claim has been dismissed against the Individual Defendants, thus no response
13 is required.

14 259. This claim has been dismissed against the Individual Defendants, thus no response
15 is required.

16 260. This claim has been dismissed against the Individual Defendants, thus no response
17 is required.

18 261. This claim has been dismissed against the Individual Defendants, thus no response
19 is required.

20 262. This claim has been dismissed against the Individual Defendants, thus no response
21 is required.

22 263. This claim has been dismissed against the Individual Defendants, thus no response
23 is required.

24 264. This claim has been dismissed against the Individual Defendants, thus no response
25 is required.

26 265. This claim has been dismissed against the Individual Defendants, thus no response
27 is required.
28

1 266. This claim has been dismissed against the Individual Defendants, thus no response
2 is required.

3 267. This claim has been dismissed against the Individual Defendants, thus no response
4 is required.

5 **Plaintiff's Eighth Claim for Relief – Copyright Infringement**

6 268. Paragraph 268 of the SAC is directed to Defendant Cytek, thus no response by the
7 Individual Defendants is required. To the extent a response is required, the Individual Defendants
8 deny the allegations of paragraph 268.

9 269. Paragraph 269 of the SAC is directed to Defendant Cytek, thus no response by the
10 Individual Defendants is required. To the extent a response is required, the Individual Defendants
11 deny the allegations of paragraph 269.

12 270. Paragraph 270 of the SAC is directed to Defendant Cytek, thus no response by the
13 Individual Defendants is required. To the extent a response is required, the Individual Defendants
14 deny the allegations of paragraph 270.

15 271. Paragraph 271 of the SAC is directed to Defendant Cytek, thus no response by the
16 Individual Defendants is required. To the extent a response is required, the Individual Defendants
17 deny the allegations of paragraph 271.

18 272. Paragraph 272 of the SAC is directed to Defendant Cytek, thus no response by the
19 Individual Defendants is required. To the extent a response is required, the Individual Defendants
20 deny the allegations of paragraph 272.

21 273. Paragraph 273 of the SAC is directed to Defendant Cytek, thus no response by the
22 Individual Defendants is required. To the extent a response is required, the Individual Defendants
23 deny the allegations of paragraph 273.

24 274. Paragraph 274 of the SAC is directed to Defendant Cytek, thus no response by the
25 Individual Defendants is required. To the extent a response is required, the Individual Defendants
26 deny the allegations of paragraph 274.

27
28

1 13. Defendants deny Plaintiff is entitled to the relief requested in Paragraph 11 or to any
2 relief in any matter or amount whatsoever.

3 14. Defendants deny Plaintiff is entitled to the relief requested in Paragraph 11 or to any
4 relief in any matter or amount whatsoever.

5 **AFFIRMATIVE DEFENSES**

6 By way of affirmative defenses to the allegations of the FAC herein, The Individual
7 Defendants allege as follows:

8 **FIRST AFFIRMATIVE DEFENSE**

9 The Complaint and each cause of action therein fails to state a claim upon which relief can
10 be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 Plaintiff's Claims are barred by the applicable statutes of limitation.

13 **THIRD AFFIRMATIVE DEFENSE**

14 Plaintiff's Complaint, and each cause of action asserted therein, is barred by Plaintiff's
15 failure to take reasonable efforts to mitigate damages or injury, if any, that would have prevented
16 (or at a minimum, substantially reduced) its alleged injury or damage.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 Plaintiff is barred from claiming trade secret misappropriation as to any items of
19 information that were readily ascertainable within the meaning of that affirmative defense under
20 The Defend Trade Secrets Act of 2016 and California's Uniform Trade Secrets Act at the time of
21 the alleged misappropriation.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 The Individual Defendants allege that they used independently developed their own
24 systems from sources unrelated to Plaintiff's, and never used any of Plaintiff's information.

25 **SIXTH AFFIRMATIVE DEFENSE**

26 The Individual Defendants allege that they used information already in the public domain.

27 **SEVENTH AFFIRMATIVE DEFENSE**

28 Plaintiff's Complaint is barred, in whole or in part, to the extent, as to each and every

1 contract or agreement alleged therein, Plaintiff has failed to fulfill mandatory conditions precedent
2 to the enforcement of any such agreement or contract.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 The alleged contract(s) upon which Plaintiff purports to bring its Complaint was and is, to
5 the extent that such a contract exists or existed, void and/or unenforceable due to Plaintiff's own
6 prior material breach of the contract thereby excused the Individual Defendant's performance.

7 **NINTH AFFIRMATIVE DEFENSE**

8 Plaintiff's Complaint is barred, in whole or in part, on the grounds that confidentiality
9 agreements and non-competition agreements are barred to the extent that they restrict the mobility
10 of employees, in violation of public policy and California Business and Professions Code § 16600.

11 **TENTH AFFIRMATIVE DEFENSE**

12 Plaintiff's Complaint, and each purported cause of action asserted against the Individual
13 Defendants, constitutes and/or arises from an improper effort to restrain competition and employee
14 mobility in violation of public policy and California Business and Professions Code § 16600.
15 Because the effect of each count asserted against Defendants is to restrain competition and
16 employee mobility, in violation of public policy and California Business and Professions Code §
17 16600, Defendants cannot be held liable under any of the purported counts asserted against them.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 The Individual Defendants are entitled to set off from any recovery Plaintiff may claim
20 against them.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 Plaintiff's Complaint is barred, in whole or in part, by the doctrine of after-acquired
23 evidence, or the doctrine of after-acquired evidence limits or reduces Plaintiff's recovery of
24 alleged damages.

25 **THIRTEENTH AFFIRMATIVE DEFENSE**

26 Plaintiff's Complaint is barred, in whole or in part, to the extent Plaintiff comes to this
27 Court with unclean hands.
28

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred, in whole or in part, by the doctrine of waiver

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred, in whole or in part, by the doctrine of laches.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred, in whole or in part, to the extent Plaintiff is estopped by its own conduct to claim any right to damages or relief against the Individual Defendants.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendants may have additional, as yet unidentified, defenses available. Defendants reserve the right to assert additional defenses that are revealed by Defendant's investigation of this action or through discovery.

PRAYER

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiff take nothing by way of its Complaint;
2. That the Complaint and each cause of action be dismissed in its entirety with prejudice;
3. That Plaintiff be denied each and every demand and prayer for relief contained in the Complaint;
4. For costs of suit incurred herein, including reasonable attorney's fees, as and where permitted by law; and
5. For such other and further relief as the Court deems just and equitable.

ANDERIES & GOMES LLP

DATED: January 9, 2020

BY: /s/ Allan J. Gomes
Allan J. Gomes

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