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BECTON, DICKINSON AND COMPANY

UNITED STATES DISTRICT COURT

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.

C.A. No. 3:18-cv-00933-MMC

FIRST AMENDED COMPLAINT

1. **VIOLATION OF DEFEND TRADE SECRETS ACT**
2. **AIDING AND ABETTING VIOLATION OF THE DEFEND TRADE SECRETS ACT**
3. **VIOLATION OF CALIFORNIA UNIFORM TRADE SECRET ACT**
4. **BREACH OF CONTRACT**
5. **INDUCING BREACH OF CONTRACT**
6. **VIOLATION OF CAL. BUS & PROF. CODE SECTION 17200**

DEMAND FOR JURY TRIAL

This is a civil action by Plaintiff Becton, Dickinson and Company ("BD," or "Plaintiff"), by and through their attorneys, arising out of unfair competition and the misappropriation of BD's property, including confidential, proprietary, and trade secret information, by Cytek Biosciences Inc. ("Cytek") and former BD employees 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"). Plaintiff hereby alleges as follows upon information and belief:

NATURE OF THE ACTION

1. This lawsuit arises from theft of BD's secret technical specifications, source code, and designs related to the field of flow cytometry. Formerly a small company that serviced BD products, Cytek recently hired away nearly a dozen scientists, engineers, and businesspeople from BD and employed them to develop products that compete unfairly with their former company's product lines. When they left BD to work for Cytek and thereafter, those employees, upon information and belief, improperly took, retained, and misused BD's valuable, highly confidential, proprietary information, including thousands of confidential and valuable technical files that they had downloaded from BD's computer systems onto removable storage media while employed by BD. Despite BD's diligent efforts to recover those devices and files, and its inquiries to Cytek and the former employees—indeed, BD gave Cytek a list of serial numbers of the unrecovered storage media known to have been used by the employees—the vast majority of the storage devices and files have not been recovered. Cytek has not disclosed the extent to which it and its employees have or have shared confidential BD information, and how any such information has been used, forcing BD to file this case to safeguard its trade secrets and other valuable property.

2. BD is a world-renowned medical technology company founded in 1897 that serves healthcare institutions, life science researchers, clinical laboratories, industry, and the general public. With more than a century of experience, BD manufactures and sells a broad range of medical supplies, devices, laboratory equipment, and diagnostic products to enable medical research and assist clinical laboratories. Research, development, and innovation for new technologies and products are at the core of BD's mission and corporate identity and are critical to BD's competitive

advantages in the marketplace. Among other products, the BD Biosciences business unit of the company has for decades researched, developed, and produced flow cytometers. These complex and sophisticated instruments, the fruit of years of research and development ("R&D"), use lasers to count and detect the properties of human cells, assisting research and clinical practice.

3. In roughly 2012, BD started development on a spectral flow cytometer, a new type of flow cytometer that analyzes the light detected by a flow cytometer differently to optimize sensitivity and flexibility. This project was known internally as "Project Newton." Defendant Yan headed up Project Newton, dedicating to it the majority of his time over approximately two years. Defendants Yan, Riley, Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook (the "Individual Defendants") worked on Project Newton and/or other confidential flow cytometer products. Their collective exposure to BD's confidential information spanned the areas of physics, chemistry, biology, fluidics, optics, electrical engineering, and computer science, as well as BD's marketing, finances, and competitive strategy. Each of these former BD employees had access to BD's confidential information related to Project Newton and numerous other trade secrets involving flow cytometry.

4. Formed in the early 1990s, Cytek is a small company that had not produced flow cytometers of its own, but rather serviced and customized BD flow cytometers. Starting in 2015, Cytek began hiring current and former BD employees for the purposes of developing flow cytometers, including each of the Individual Defendants. In particular, after BD prioritized other products over Project Newton, Yan left BD and joined Cytek as its Chief Technology Officer. Cytek and Yan then proceeded to recruit other Individual Defendants to join Cytek, each of whom had worked on flow cytometers at BD. In March 2017, less than two years after it began hiring this group of BD employees, Cytek—which for two decades had never developed or sold a flow cytometer—began selling its own flow cytometer products under the Athena™ name. In June 2017, Cytek introduced the Aurora™ line of spectral flow cytometers. Cytek has said that its products would compete against BD products, among others, in the United States and worldwide.

5. Before leaving BD, each of the Individual Defendants downloaded files to removable storage media devices. BD's own forensic analysis revealed that these storage media contained thousands of files, with confidential, trade secret information about the hardware and software of

BD's designs, including Project Newton. Only a handful of these removable storage drives have been found after diligent efforts to locate them. From the day each employee joins the company, BD expressly warns its associates not to take confidential information if and when they leave BD and *never* to give it to, or use it for the benefit of, unaffiliated third parties. BD's employee agreements, training, annual certifications, and other forms instruct employees to maintain the confidentiality of sensitive company information. Upon information and belief, each of the Individual Defendants, having taken these removable storage media devices from BD, brought them to Cytek along with the BD confidential and trade secret information they contained.

6. The Individual Defendants improperly downloaded, removed from BD's premises, took to Cytek, and failed to return thousands of files with BD's valuable, highly confidential, proprietary information before departing to Cytek, which then immediately launched its own cytometers and substantially similar products within a shortened time frame—a feat that was aided by Cytek's improper access to and misuse of BD's confidential information. Those former employees had years—sometimes decades—of access to BD's proprietary product designs and research data in flow cytometry. Judicial intervention is required to hold Cytek and the Individual Defendants responsible for this theft of BD's critical trade secrets, for their unfair acts designed to harm BD's R&D efforts and induce the Individual Defendants to breach their contractual obligations to BD, and to prevent Cytek from continuing its development and sale of competing products and unauthorized service, repair, and upgrade of BD products, through wrongful, improper, and illegal means.

PARTIES

7. BD is a corporation duly organized under the laws of the State of New Jersey, and maintains its principal place of business at 1 Becton Drive, Franklin Lakes, New Jersey 07417.

8. BD is a medical technology company that serves healthcare institutions, life science researchers, clinical laboratories, industry, and the general public. BD manufactures and sells a broad range of medical supplies, devices, laboratory equipment, and diagnostic products. BD has offices in approximately 50 countries worldwide.

9. Defendant Cytek Biosciences Inc. is a Delaware corporation with its principal place of business located at 46107 Landing Pkwy, Fremont, California 94538.

10. Cytek manufactures components for its flow cytometer products in China.

11. Yan is an individual currently residing in the State of California, whose last known address is 2809 Elsnab Court, Pleasanton, California 94588. BD employed Yan from approximately January 23, 2006 until his departure on January 16, 2015.

12. Cytek hired Yan shortly after his departure from BD, and Yan is presently employed as Cytek's Chief Technology Officer.

13. Riley is an individual currently residing in the State of California, whose last known address is 2296 Sunny Vista Drive, San Jose, California 95128. BD employed Riley from approximately June 1988 until his departure on January 10, 2015.

14. Cytek hired Riley in or about February 2016, and Riley is presently employed at Cytek as a General Manager.

15. Vrane is an individual currently residing in the State of California, whose last known address is 880 Nevada Avenue, San Jose, California 95125. BD employed Vrane from approximately October 20, 1998 until his departure on April 20, 2015.

16. Vrane is presently employed at Cytek as a Staff Specialist: Fluid Dynamics.

17. Zhang is an individual currently residing in the State of California, whose last known address is 3836 Dunford Way, Santa Clara, California 95051. BD employed Zhang from approximately January 3, 2005 until his departure on April 25, 2015.

18. Cytek hired Zhang in 2016, and Zhang is presently employed by Cytek as a software developer.

19. Gong is an individual currently residing in the State of California, whose last known address is 3234 Silverland Drive, San Jose, California 95135. BD employed Gong from approximately June 5, 2000 until his departure in May 2015.

20. Cytek hired Gong in or about May 2015, and Gong is presently employed by Cytek as Director of Software Development.

21. Zhong is an individual currently residing in the State of California, whose last known address is 501 Manhattan Place, San Jose, California 95136. BD employed Zhong from approximately March 28, 2011 until his departure on January 18, 2016.

22. Cytek hired Zhong in or about January 2016, and Zhong is presently employed by Cytek as its China Business Manager.

23. Jaimes is an individual currently residing in the State of California, whose last known address is 1335 Montecito Ave., Apt. 18, Mountain View, California 94043. BD employed Jaimes from approximately 2005 until her departure on April 30, 2015.

24. Cytek hired Jaimes in or about July 2015, and Jaimes is presently employed by Cytek as an application specialist.

25. Reinin is an individual currently residing in the State of California, whose last known address is 41 Dorchester Drive, Mountain View, California 94043. BD employed Reinin from approximately October 15, 2007 until his departure on June 13, 2016.

26. Cytek hired Reinin in or about July 2016, and Reinin is presently employed as Cytek's Director of Marketing.

27. Shook is an individual currently residing in the State of California, whose last known address is 985 Vicar Lane, San Jose, California 95117. BD employed Shook from approximately October 17, 2011 until her departure on October 18, 2016.

28. Cytek hired Shook in or about November 2016, and Shook is presently employed by Cytek as a Systems Engineer.

JURISDICTION AND VENUE

29. Jurisdiction is based upon 28 U.S.C. § 1332(a)(2) in that there is complete diversity of citizenship between the parties and the amount in controversy exceeds $75,000.00.

30. Jurisdiction is also based on 28 U.S.C. § 1331 and BD's claims under 18 U.S.C. §§ 1836-39, *et seq.*, for misappropriation of trade secrets under the Defend Trade Secrets Act.

31. This Court has supplemental jurisdiction pursuant to 28 U.S.C § 1367 over all other claims that do not arise under the Constitution, laws, or treaties of the United States because they involve a common nucleus of operative fact.

32. Venue is proper within this district because, as set forth above, all Defendants reside in this Judicial District. In addition, a substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in this Judicial District. Venue is therefore proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1391(b)(1) and (2).

FACTUAL ALLEGATIONS

A. BD And Its Products and Services

33. Founded in 1897 and headquartered in Franklin Lakes, New Jersey, BD employs more than 65,000 associates in approximately 50 countries throughout the world. BD is among the world's leading suppliers of medical devices and is a leading innovator in injection- and infusion-based drug delivery, and has been since 1906, when the Company built the first-ever facility in the U.S. to manufacture needles and syringes.

34. BD, with its overarching vision to improve outcomes for patients, focuses its business on improving drug delivery, enhancing the quality and speed of diagnosing infectious diseases and cancers, and advancing research, discovery, and production of new drugs and vaccines. BD's capabilities are instrumental in combating many of the world's most pressing diseases by identifying and developing next-generation *in vitro* diagnostic technologies for settings ranging from hospital clinical labs to fields with minimal healthcare infrastructure. As part of its development efforts, BD broadly looks at novel sample processing and detection technologies that help speed results, reduce cost, increase accuracy, and provide new types of clinically actionable information. BD serves healthcare institutions, life science researchers, clinical laboratories, the pharmaceutical industry, and the general public. Homegrown innovation has been critical to BD's innovation and competitive advantages.

35. Through its BD Biosciences ("BDB") business unit, BD provides continuous advancement in the science and applications associated with cellular analysis and products that help grow living cells and tissue. Among other products, BDB focuses on research, development, and production of flow cytometers. BDB employs approximately 1,100 associates in its San Jose location (the "San Jose Facility"), which has primary responsibility for R&D, marketing, sales, finance, and

customer service for flow cytometers, including but not limited to instruments, reagents, cell culture, and applications.

B. Flow Cytometry

36. Flow cytometry is a laser-based, biophysical technology that is employed in cell counting, cell sorting, biomarker detection, and protein engineering. A flow cytometer suspends cells with fluorescent labels ("dyes") in a stream of fluid and passes them individually past one or more lasers and optical detection circuitry. The resulting fluorescence is detected and measured to determine various properties of the cells, which can in turn provide critical information about human diseases and health.

37. Flow cytometry is widely used for medical diagnoses, research, clinical practice, and clinical trials. It has been used successfully to diagnose, classify, and evaluate the risk of recurrence of certain cancers, including certain cancers in the blood, such as leukemia, and has also been used in stem cell transplantation. Flow cytometry is a powerful research tool used for a wide variety of research purposes including cancer research, immune function research, and other forms of cellular analysis.

38. The properties measured in flow cytometry include the relative size of a particle, as well as its relative granularity or internal complexity, and relative fluorescence intensity. These characteristics are determined using an optical-to-electronic coupling system that records how the cell or particle scatters incident laser light and emits fluorescence.

39. The first fluorescence-based flow cytometry device was developed in 1968, and in 1974, BD introduced the first commercial flow cytometer. BD has received significant industry praise for its excellence in the flow cytometry space, including Life Science Industry Awards for Best New Product in Cellular Research and similar awards in multiple years, as well as over 100 U.S. patents related to flow cytometry.

40. In addition to its patent portfolio, BD possesses confidential, non-public, trade secret information related to flow cytometry. BD's policy is to seek patents on patentable technologies that are publicly disclosed or readily ascertainable through proper means from the products it sells, while

retaining as trade secrets the valuable technology and information that would remain secret because it would not be publicly disclosed or readily ascertainable by proper means in a BD product.

41. Development of new flow cytometers often requires years of R&D and hundreds of thousands or millions of dollars. Flow cytometry involves multiple scientific disciplines, including physics, chemistry, biology, fluidics, optics, electrical engineering, and computer science.

42. A flow cytometer includes four main systems: fluidics, optics, electronics, and software.

43. The fluidics system of a flow cytometer is responsible for transporting the sample from the sample tube to the flow cell surrounded by sheath fluid, which centers the cells in the flow cell and past the laser and detector.

44. The optics system consists of lasers to illuminate the particles in the sample stream and optical filters to direct the resulting light signals to the appropriate detectors.

45. The electronics system converts the detected light signals into electronic signals that can be processed by a computer.

46. The software systems include algorithms for setting up a flow cytometer and for processing and interpreting the resulting data. This includes algorithms related to panel design, which involves the proper choice of special dyes to produce reliable data.

47. In a flow cytometer, when cells pass through the laser intercepts, they scatter laser light and any fluorescent molecules on the cells fluoresce. The scattered and fluorescent light is then collected by appropriately positioned lenses. A combination of beam splitters and filters steers the scattered and fluorescent light to the appropriate detectors, and the detectors produce electronic signals proportional to the optical signals striking them. Data are collected on each particle or event, and stored in the computer. The characteristics or parameters of each event are based on its light scattering and fluorescent properties. This data can then be analyzed to provide information about subpopulations within the sample.

48. In spectral flow cytometry, the fluorescent light is sent to a spectrograph in which the light signal is dispersed and measured as a spectrum on the multichannel detector. Spectral flow cytometry distinguishes the shapes of emission spectra along a large range of continuous

wavelengths. The data is analyzed with an algorithm that replaces compensation matrices and treats auto-fluorescence as an independent parameter.

C. BD's Flow Cytometers And Trade Secrets

49. BD currently makes and sells multiple lines of flow cytometers and associated products. These include the BD FACSAria™, BD FACSLyric™, BD Accuri™, BD FACSCelesta™, BD LSRFortessa™, and BD FACSymphony™ lines of flow cytometers. For decades, BD's flow cytometer products have been on the cutting edge of innovation, highly successful, and reputable, and are sought after for their quality and reliability.

50. BD uses confidential code in the software that its customers use to run its flow cytometers. This BD code provides control over the cytometer's hardware, which in turn carries out the actual functions of the flow cytometer. This BD code instructs the cytometer how to function, thus performing control, monitoring, analysis, and data manipulation functions of the cytometer. This BD code is confidential and proprietary and constitutes trade secret information. BD also uses confidential algorithms for panel design, which allow for effective selection of dyes. BD takes substantial care in keeping BD code and algorithms secret and out of the hands of its competitors.

51. In roughly 2012, BD initiated a confidential project aimed at developing a flow cytometer with spectral analysis capabilities. This project was known internally as "Project Newton."

52. BD invested significant resources in Project Newton, including multiple years of research, financial investment, and substantial personnel time. BD developed a working prototype, including a processing algorithm that allowed it to process and analyze assay data. The specific ways in which BD's algorithms process and analyze data are proprietary and confidential and constitute trade secrets, and BD takes substantial care in keeping these algorithms secret and out of the hands of its competitors.

53. The R&D related to this potential spectral flow cytometer involved new and confidential technology, including advances related to panel selection and development, fluidics, spectral unmixing, and new software code. These advances, alone and in combination, would also

be useful for non-spectral flow cytometry applications, including the service, repair, and upgrade of existing and future BD products.

54. As a BD Principal Engineer and leader of the spectral flow cytometry project, Defendant Yan played an integral part in BD's research and development of this new project to develop a flow cytometer with spectral analysis. Yan had access to BD's confidential R&D information regarding Project Newton, including but not limited to design drawings, prototypes, and fluidics design details. Yan was central to Project Newton since its inception and spent approximately two years working on it.

55. At least four other Individual Defendants, including Vrane, Gong, Zhong, and Jaimes, worked on Project Newton under Yan's direction and had access to BD's confidential R&D information, including but not limited to design drawings, prototypes, software code, and fluidics design details.

56. The other Individual Defendants, including Riley, Zhang, and Shook, worked on other confidential and proprietary BD flow cytometry development projects and had access to additional confidential and proprietary R&D information, comprising circuit diagrams, prototypes, software code, fluidics designs, and marketing strategies. This confidential and trade secret information is valuable for applications in spectral flow cytometry as well as non-spectral flow cytometry, including service, repair, and upgrades of flow cytometry products.

57. All of the Individual Defendants also worked on BD flow cytometer products aside from Project Newton, which also involved BD's confidential, proprietary, and trade secret information.

58. BD developed the following trade secrets that, upon information and belief, the Individual Defendants improperly took from BD and brought to Cytek, and that they and Cytek used and continue to use:

a. Trade secrets specific to Project Newton and spectral flow cytometry:

i. specific algorithms for spectral deconvolution and spectral unmixing, used to process data from spectral flow cytometers;

ii. software models for simulating operation of the Project Newton cytometer;

iii. panel designs for choosing reagents and dyes that optimize cytometer data;

iv. results of BD's research into automated panel design;

v. internal presentations about the Newton architecture and "modular design" for its components;

vi. schematics for the Newton breadboard;

vii. lists of specific modifications to factors for optimizing design of a spectral flow cytometer, including factors such as antigen abundance, reagent abundance, autofluorescence, and baseline restoration;

viii. know-how regarding the specific assembly and performance of BD's working prototype.

b. Trade secrets relating to the hardware and electronics components of BD flow cytometers:

i. the designs for FPGAs (field-programmable gate arrays) for the BD Accuri™ C6 cytometer;

ii. the interface and programming model for FPGAs in BD cytometers;

iii. Operation Method Sheets (OMS) showing assembly instructions for BD cytometer products, with critical parameters, torque specifications, and part numbers needed to create BD products;

iv. specific methods for "dynamic gain switching" to detect smaller electronic signals;

v. specific methods for laser modulation and demodulation in BD Accuri™ cytometers;

vi. the transducer board design and testing results for the BD FACSAria™ cytometer;

vii. circuit diagrams showing designs and revisions for BD cytometers;

viii. designs for vacuum-based fluidics systems for the BD FACSAria™ cytometers.

c. Trade secrets relating to software for BD cytometers:

i. source code for BD's "Virtual Cytometer" software for simulating the operation of flow cytometers;

ii. source code and requirements documents for BD's FACSuite™ software for operating BD cytometers;

iii. communication protocols for BD's Cytometer Controller software for the FACSAria™ II and FACSCanto™ II cytometers, explaining how different components of BD's cytometers communicate;

iv. functional specifications for BD's FACSDiva™ 5.0 software;

v. designs for BD's proprietary CS&T (Cytometer Setup and Tracking) software; including specifications for CS&T 2.0;

vi. communications protocols that describe how BD's flow cytometer products communicate with personal computers;

vii. source code for modeling cytometers;

viii. source code specifications for BD's Accuri™ cytometers;

ix. specifications for fluidics source code, including command sets for BD's Project Newton prototype.

d. Trade secrets relating to the firmware in BD cytometers:

i. the design specifications explaining the architecture of the BD Accuri™ firmware;

ii. the design specifications for firmware and architecture for the fluidics components of BD's confidential "Liberty" and "Harambee" cytometer development projects;

iii. firmware configuration files for BD's FACSDiva™ cytometers;

iv. firmware communication protocols for BD's FACSAria™ cytometers;

v. functional descriptions of firmware for cell sorter products, used to separate different cells that pass through a cytometer.

e. Confidential data showing experimental data and results for BD cytometers:

i. panel design data for the BD Fusion Aria™ cytometer;

ii. data with results of quality control experiments with CS&T beads, used to evaluate cytometer performance;

iii. specifications for beads and dyes used to calibrate flow cytometers, including the quantities of dyes and parameters for calibration;

iv. data from prototype test runs that are used for development and refinement.

f. Trade secrets relating to BD's marketing, finances, and competitive strategy:

i. BD's internal marketing plans for cytometers, reflecting financial projections and profit margins for fiscal years 2015-2017, BD's "tactical plans" for cytometer product families, and BD's strategies for different market segments;

ii. competitive analysis of other companies' cytometers, reagents, and cell sorters;

iii. customer survey information for BD cytometers;

iv. confidential market research on competing products that customers bought;

v. confidential strategic analysis by third-party consultants to BD on market opportunities for molecular cell analysis.

(collectively, "the BD Trade Secrets").

59. The BD Trade Secrets constitute valuable and confidential information that can be used individually or in combination to design, manufacture, and sell competing cytometers, giving competitors like Cytek an unfair advantage in creating their own products. The BD Trade Secrets would also give companies that offer cytometer repair services, upgrade services, or replacement components (like Cytek) an unfair advantage by revealing confidential information about the design

of BD's cytometers.

60. The confidential files misappropriated by Defendants, individually and as a whole, contain BD Trade Secrets and were identified on removable media taken by the Individual Defendants. Identifying information for the removable media is listed in Exhibit A and was provided to Cytek.

61. Many of the files that the Individual Defendants improperly took from BD are expressly marked as confidential and not for distribution. As examples, circuit diagrams that the Individual Defendants improperly took state: "This drawing and the information set forth herein are the property [of] Becton Dickinson Immunocytometry Systems. Publications, duplication, or use not authorized in writing is prohibited." BD internal marketing presentations state: "Company Confidential."

62. Because of their positions with BD in its San Jose Facility, the Individual Defendants had access to BD's design, specifications, manufacturing plans, materials, processes, equipment, and customer lists for all products in which the San Jose Facility maintains responsibility, including BD's cytometer products.

63. The BD Trade Secrets were developed by BD in the course of its business at significant time, effort, and expense, and BD invests significant additional time, effort, and expense to keep this information secret.

64. BD's confidential and proprietary information—including, notably, the BD Trade Secrets contained in the files taken by Individual Defendants—is not generally known outside of BD.

65. BD's competitive position rests on continually enhancing product development and on a strong and consistent R&D approach founded on confidentiality and protection of intellectual property in a highly competitive field.

D. BD's Efforts To Protect the Confidentiality of the BD Trade Secrets

66. BD has expended significant amounts of time, effort, money, and resources to preserve and maintain the secrecy of the BD Trade Secrets, including through policies, procedures,

training programs, and systems that protect this information from disclosure to others and from use by any one for purposes other than BD's interest.

67. BD employees execute an Employee Agreement with BD, establishing the employee's responsibility regarding BD's trade secrets and confidential information.

68. Individual Defendants Yan, Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook executed an Employee Agreement. As such, each of these Individual Defendants was aware that they were bound by such an agreement. In addition to other corporate policies, Defendant Riley also had an acknowledged duty to avoid disclosing or misusing BD's trade secrets and confidential information.

69. BD has policies and procedures concerning information and data security that stated, in relevant part, that only the software provided and installed by BD was allowed on employee computers, and that data and information on the BD Information System Network are proprietary and confidential.

70. BD employees are reminded of these policies when they sign into the BD system, as reflected in messages such as this one:

> **You are about to enter a private network intended for the authorized use of Becton, Dickinson and Company and its affiliates ("BD") for business purposes. The actual or attempted unauthorized access, use, or modification of this network is prohibited by BD. Unauthorized users and/or unauthorized use may be subject to BD disciplinary proceedings and/or criminal and civil penalties in accordance with applicable law. The use of this system may be monitored and/or recorded for administrative and security reasons in accordance with applicable law and policies. If such monitoring and/or recording reveals possible evidence of criminal activity, BD may provide the monitored evidence of such activity to law enforcement officials. Authorized use of this network is subject to BD policies and procedures including the Acceptable Use Policy.**

71. To the extent that BD confidential information exists in written paper form, such writings are kept in secured areas with limited access.

72. Guests to any BD facility, including the San Jose Facility, are not allowed to venture unescorted into such secure areas or access BD Confidential Information unless they or their employer had executed appropriate non-disclosure agreements with BD.

73. BD maintains a Code of Conduct (the "Code") and has required all associates, including the Individual Defendants, to participate each year in training pertaining to the Code. Complying with the Code is a condition of employment with BD, and "[a]ll directors, officers and employees are responsible for complying with the Code." The Code prohibits BD employees from, among other things, using BD Information Technologies to engage in the unauthorized access to data, using "personal email or file services to conduct BD business[,]" downloading or installing software that is not approved by BD, or using "hostage or storage services that have not been approved by BD Information Security[.]"

74. Each of the Individual Defendants agreed to the Code, as well as other separate agreements to protect BD's confidential information.

E. The Individual Defendants' Employment With BD

75. On or about January 23, 2006, BD hired Yan as a Principal Engineer in R&D.

76. While employed by BD, Yan's primary responsibilities included working on BD's flow cytometers and R&D projects related to flow cytometry and other products. Yan also headed Project Newton. He oversaw numerous engineers and developers on this project, including Defendants Vrane, Gong, Zhong, and Jaimes, and dedicated approximately two years to this project.

77. In 2014, BD elected to prioritize several other promising confidential projects over Project Newton. Upon information and belief, upset by this decision, Defendant Yan—while still employed at BD—sought advice and investment from others to form his own company or join another company, to capitalize off and personally continue the work he had done on Project Newton. Yan departed BD on January 16, 2015 and joined Cytek shortly thereafter as its Chief Technology Officer.

78. Before commencing employment at Cytek and while still employed at BD, Yan downloaded at least 17,000 files to multiple separate removable media devices (one of the devices included in it a compressed or encrypted folder in a foreign language (Chinese)[1]). Such files included (i) design detail information and specifications regarding the BD Accuri™ code; (ii) source code

[1] BD has recovered one of the devices to which Yan downloaded BD information. However, the device BD recovered does not contain the compressed or encrypted folder in a foreign language.

relating to BD's flow cytometry systems; (iii) testing information related to BD's flow cytometry systems; (iv) prototypes relating to BD's confidential program to develop a spectral cytometer; (v) design detail information and command settings for code relating to BD's confidential program to develop a spectral cytometer; and (vi) confidential code information relating to BD's confidential program to develop a spectral cytometer. After diligent efforts to locate the removable media devices, including inquiries to Yan and Cytek, only one device has been found. Upon information and belief, Yan (1) took the other devices and files with him when he left BD and (2) brought them to Cytek, where he has disclosed and/or used and continues to use them and their content for Cytek's benefit and has enabled others at Cytek to similarly use them.

79. Upon information and belief, while still employed at BD and in a clear conflict of interest, Yan was already planning how to develop his own competing flow cytometers and communicating with investors about developing his own business, using the knowledge and information gained from Project Newton and his years at BD. Shortly after Yan departed BD in January 2015, a representative of Fidelity Asia approached a retired BD employee to inquire about potentially investing in a business in which Yan was involved. The representative showed the retired BD employee a copy of a patent application Yan had provided that was in Yan's own name. That application had been prepared and filed while Yan was employed at BD, and was based on technology developed at BD. Upon information and belief, Yan subsequently abandoned or suppressed that patent application after the potential investors were informed that it was based on BD technology.

80. After Yan left BD and joined Cytek, he proceeded to recruit BD's flow cytometry engineers, encouraging them to leave BD and join Cytek.

81. Yan, along with Defendant Jaimes, worked directly on Cytek's Aurora™ flow cytometer, and they unveiled it together at the June 2017 CYTO conference in Boston. At least Individual Defendants Riley, Vrane, Zhang, Gong, Zhong, and Reinin also participated in the June 2017 CYTO conference on behalf of Cytek.

82. At the October 2017 CYTO Asia conference in Singapore, Defendants Reinin, Jaimes, Shook, and Yan gave a presentation entitled "Enhancement of Multicolor Assay

Performance Using High Sensitivity Full Spectrum Cytometry," in which, upon information and belief, the Aurora™ flow cytometer was showcased. Defendant Yan also gave a presentation entitled "A New Standard for High Sensitivity Full Spectrum Cytometry," in which, upon information and belief, Yan referred to "an intelligent deconvolution algorithm" and showcased the Aurora™ flow cytometer.

83. At the April-May, 2018 CYTO conference in Prague, Czech Republic, Defendant Jaimes once again displayed the Cytek Aurora™ flow cytometer in a presentation entitled "Expanding Application Capabilities Using Full Spectrum Cytometry," in which the Aurora™ flow cytometer was showcased. This presentation made apparent that the Aurora™ cytometer, though a spectral flow cytometer, relied on many of the same systems and quality control—such as panel design and calibration—that BD's systems employ. At least Defendants Yan, Gong, Zhong, and Reinin participated in the 2018 CYTO conference on behalf of Cytek.

84. On or about June 1988, BD hired Riley, whose position with BD before his departure to Cytek was Senior Program Manager. Based on his employment status at the time, he was not required to sign an employment agreement. Nevertheless, he accepted, and was subject to, a clear duty to maintain the confidentiality of BD trade secrets and other confidential proprietary information, and a duty of loyalty as BD's employee.

85. While employed by BD, Riley's recent work primarily involved supporting several confidential and proprietary BD projects related to flow cytometry, including one of BD's proprietary clinical cytometer projects as well as a proprietary BD clinical analyzer project.

86. Riley departed BD on January 10, 2015, and he joined Cytek in approximately February 2016.

87. Before commencing employment at Cytek and while still employed at BD, Riley downloaded multiple files to at least one removable media device. Such files included those related to R&D of clinical cytometry and analysis such as (i) design review templates and (ii) master project schedules. Upon information and belief, Riley (1) took these devices and files with him when he left BD and (2) brought them to Cytek, where he has disclosed and/or used and continues to use them and their content for Cytek's benefit and has enabled others at Cytek to similarly use them.

88. Riley is presently employed by Cytek as its General Manager. On his LinkedIn profile, Riley describes himself as being "[r]esponsible for the successful operation of the Production, Service, Marketing, IT, and Program Management aspects of" Cytek's business. Upon information and belief, Riley's work for Cytek is substantially similar to the work he did for BD, including working on Cytek's spectral flow cytometry products. Riley participated in the 2017 CYTO conference on behalf of Cytek.

89. Following the suspension of Project Newton, BD's spectral flow cytometry project and the departures of Yan and Riley shortly thereafter, both Yan and Riley proceeded to recruit from BD's ranks in its flow cytometry space, encouraging them to leave BD and join Cytek.

90. On or about October 20, 1998, BD hired Vrane, whose position with BD before his departure to Cytek was in the R&D position of Senior Staff Engineer.

91. While employed by BD, Vrane worked as a fluidics engineer on Project Newton, BD's spectral flow cytometry project overseen by Yan, as well as on several confidential and proprietary BD projects related to flow cytometry, including a proprietary clinical cytometer project, a proprietary BD clinical analyzer project, and a proprietary BD sorter project. For example, Vrane designed the proprietary fluidics system for the BD FACSAria™ cytometers. Shortly before leaving BD, Vrane worked on BD's proprietary vacuum fluidics subsystem for flow cytometers.

92. Vrane departed BD on April 20, 2015, and he joined Cytek soon after.

93. Before commencing employment at Cytek and while still employed at BD, Vrane downloaded multiple files to one or more separate removable media devices. Such files included those related to R&D design and development of BD's spectral cytometry, clinical cytometry, and sorting such as (i) fluidics design files and (ii) mode table files. Upon information and belief, Vrane (1) took these devices and files with him when he left BD and (2) brought them to Cytek, where he has disclosed and/or used and continues to use them and their content for Cytek's benefit and has enabled others at Cytek to similarly use them.

94. Vrane is presently employed by Cytek as a Staff Specialist: Fluid Dynamics. Upon information and belief, Vrane's primary responsibilities for Cytek are substantially the same as his

primary responsibilities when he worked for BD, including working on Cytek's spectral flow cytometry products. Vrane participated in the 2017 CYTO conference on behalf of Cytek.

95. On or about July 2005, BD hired Jaimes, whose position with BD before her departure to Cytek was Scientist.

96. While employed by BD, Jaimes worked on Project Newton, as well as other confidential R&D projects.

97. Before commencing employment at Cytek and while still employed at BD, Jaimes downloaded multiple files to one or more removable media devices. Such files included product test protocols and service specifications. Upon information and belief, Jaimes (1) took these devices and files with her when she left BD and (2) brought them to Cytek, where she has disclosed and/or used and continues to use them and their content for Cytek's benefit and has enabled others at Cytek to similarly use them.

98. Jaimes departed BD on or about April 30, 2015, and she joined Cytek in July 2015.

99. Jaimes is presently employed at Cytek as an application specialist. Upon information and belief, her role at Cytek includes work with Yan on flow cytometry projects, including Cytek's spectral flow cytometry products. Indeed, Jaimes has made public presentations of Cytek's flow cytometry products on at least two separate occasions, including at the 2017 CYTO conference and 2017 CYTO Asia conference. Jaimes also participated in the 2018 CYTO conference on behalf of Cytek.

100. On or about January 3, 2005, BD hired Zhang, whose position with BD before his departure to Cytek was Software Developer.

101. While employed by BD, Zhang's primary responsibilities included working on various flow cytometry projects.

102. Zhang departed BD on April 25, 2015, and he joined Cytek in 2016.

103. Before commencing employment at Cytek and while still employed at BD, Zhang downloaded source code files to one or more removable media devices. Upon information and belief, Zhang (1) took these devices and files with him when he left BD and (2) brought them to Cytek,

where he has disclosed and/or used and continues to use them and their content for Cytek's benefit and has enabled others at Cytek to similarly use them.

104. Zhang is presently employed by Cytek as a software developer. Upon information and belief, Zhang's primary responsibilities for Cytek are substantially the same as his primary responsibilities when he worked for BD, including working on Cytek's spectral flow cytometry products. Zhang participated in the 2017 CYTO conference on behalf of Cytek.

105. On or about June 5, 2000, BD hired Gong, whose position with BD before his departure to Cytek was in the R&D position of Staff Engineer.

106. While employed by BD, Gong's primary responsibilities included working on software development for BD's proprietary spectral flow cytometry project overseen by Yan, as well as software development relating to several additional confidential and proprietary BD flow cytometry projects, including that relating to BD's proprietary and confidential cytometer panel design.

107. Gong departed BD in May 2015, and he joined Cytek that same month.

108. Before commencing employment at Cytek and while still employed at BD, Gong downloaded multiple files to one or more separate removable media devices. Such files included those related to R&D design and development of BD's spectral cytometry software and cytometer panel design software such as (i) software design files and (ii) panel specification files. Upon information and belief, Gong (1) took these devices and files with him when he left BD and (2) brought them to Cytek, where he has disclosed and/or used and continues to use them and their content for Cytek's benefit and has enabled others at Cytek to similarly use them.

109. Gong is presently employed by Cytek as Director of Software Development. Upon information and belief, Gong's current role as Cytek's Director of Software Development includes the development, use, and implementation of software in Cytek's flow cytometry systems. Upon information and belief, Gong was and continues to be involved in the use of BD software files taken to Cytek by Gong and other Individual Defendants, and the implementation of such files into Cytek products, including Cytek's spectral flow cytometry products. Gong participated in the 2017 and 2018 CYTO conferences on behalf of Cytek.

110. On or about March 28, 2011, BD hired Zhong, whose position with BD before his departure to Cytek was in the R&D position of Engineer II.

111. While employed by BD, Zhong's primary responsibilities included work as a systems engineer on Project Newton, BD's proprietary spectral flow cytometry project overseen by Yan, as well as on another confidential and proprietary BD clinical cytometer project.

112. Zhong departed BD on or about January 18, 2016, and he joined Cytek that same month.

113. Before commencing employment at Cytek and while still employed at BD, Zhong downloaded multiple files to one or more separate removable media devices. Such files included those related to R&D design, development, and experimentation of BD's spectral cytometry and clinical cytometry, such as (i) spectral cytometry experiment files and (ii) experimental data. Upon information and belief, Zhong (1) took these devices and files with him when he left BD and (2) brought them to Cytek, where he has disclosed and/or used and continues to use them and their content for Cytek's benefit and has enabled others at Cytek to similarly use them.

114. Zhong is presently employed by Cytek as China Business Manager. Zhong participated in the 2017 and 2018 CYTO conferences on behalf of Cytek.

115. On or about October 17, 2011, BD hired Shook, whose position with BD before her departure to Cytek was in the R&D position of Senior Project Engineer.

116. While employed by BD, Shook worked on several proprietary and confidential BD projects related to flow cytometry, including two proprietary clinical cytometer projects, a proprietary analyzer project, and a proprietary sorter project.

117. Shook departed BD in October 2016, and she joined Cytek the following month, in November 2016.

118. Before commencing employment at Cytek and while still employed at BD, Shook downloaded multiple files to one or more separate removable media devices. Such files included those related to R&D design, development, and experimentation of BD's clinical cytometry, analysis, and sorting such as (i) CAD drawings; (ii) design review summaries; and (iii) experimentation files. Shook (1) took these devices and files with her when she left BD and (2)

brought them to Cytek, where she has disclosed and/or used and continues to use them and their content for Cytek's benefit and has enabled others at Cytek to similarly use them.

119. Shook is presently employed by Cytek as a Systems Engineer. Upon information and belief, Shook's primary responsibilities for Cytek are substantially the same as her primary responsibilities when she worked for BD, including working on Cytek's spectral flow cytometry products. Shook participated in the 2017 CYTO Asia conference on behalf of Cytek.

120. On or about October 15, 2007, BD hired Reinin, whose position with BD before his departure to Cytek was Senior Project Manager.

121. While employed by BD, Reinin's primary responsibilities included marketing and product commercialization, including work on BD's proprietary FACSAria™ cell sorter project and other customer product development projects.

122. Reinin departed BD on or about June 13, 2016, and he joined Cytek the following month, in July 2016.

123. Before commencing employment at Cytek and while still employed at BD, Reinin downloaded multiple files to a removable media device. Such files contained BD confidential and proprietary information relating to BD marketing strategy and product pricing information, and product specifications for BD products including the FACSAria™ Fusion. Upon information and belief, Reinin (1) took these devices and files with him when he left BD and (2) brought them to Cytek, where he has disclosed and/or used and continues to use them and their content for Cytek's benefit and has enabled others at Cytek to similarly use them.

124. Reinin is presently employed by Cytek as Director of Marketing. Upon information and belief, his primary responsibilities at Cytek include marketing strategy for Cytek's products and services, including working on the marketing strategy for Cytek's spectral flow cytometry products. Reinin participated in the 2017 CYTO, 2017 CYTO Asia, and 2018 CYTO conferences on behalf of Cytek.

125. The files the Individual Defendants took from BD are useful to every aspect of Cytek's business, including (1) the design and development of spectral and non-spectral flow cytometry systems; (2) the service, repair, and upgrading of a wide variety of flow cytometry

systems, whether or not they are manufactured by Cytek; and (3) the marketing and sale of flow cytometry products and services.

126. Upon Cytek's hiring of the Individual Defendants, Defendant Cytek knew or should have known that Defendants Yan, Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and/or Shook was subject to an Employment Agreement under his or her former employer, BD. Further, Defendant Cytek knew or should have known that Defendant Riley was subject to confidentiality obligations to his former employer, BD.

F. The Individual Defendants' Responsibilities to BD

127. Together, the Individual Defendants possess decades of knowledge of BD's confidential, proprietary, and trade secret information relating to the development of BD's flow cytometry products, including the BD Trade Secrets.

128. As employees of BD, the Individual Defendants other than Riley executed an Employee Agreement (the "Agreement") that set forth obligations that the Individual Defendants had as employees concerning, among other things, confidential information, technology, and trade secrets. Each Agreement sets forth the same or substantially the same terms.

129. Upon signing the Agreements, the Individual Defendants agreed that they were prohibited from disclosing or using, outside the scope of their employment, any BD confidential information, including "any confidential or unpublished information, business plan, financial information, trade secret, computer program, design, product, process, procedure, formula, research, improvement, work of authorship, or the like, whether of a technical or non-technical nature," relating to BD's business.

130. The Individual Defendants further agreed that upon leaving BD, they would promptly return all BD property, "including such things as drawings, manuals, notebooks, reports, customer and vendor lists, all samples, all prototypes, all demos, and like material, and anything else owned by the Company or to which the Company is entitled and which is in my possession or under my control."

131. The Individual Defendants also assigned, and agreed to assign, to BD all right, title, and interest in any innovations (defined as "any idea, invention, discovery, improvement, copyright,

and the like") developed during the time of their employment or a period of one year after their employment.

132. Each Employee Agreement is governed by New Jersey law.

133. As a result of their position at BD, the Individual Defendants all had access to BD confidential information, including BD's design, specifications, blueprints, manufacturing plans, materials, processes, technical information, marketing materials, and other information relating to BD's flow cytometers. Such access included access to the BD Trade Secrets.

134. Yan, Vrane, Gong, Zhong, and Jaimes also had access to BD's highly confidential design files, prototypes, software, and analyses regarding BD's R&D efforts in connection with Project Newton, a flow cytometer capable of spectral analysis. Such access included access to the BD Trade Secrets.

135. BD maintains a Trade Secret Policy to which the Individual Defendants had access during their employment. The Trade Secret Policy states in part:

> 4.3 *Examples of BD Trade Secrets*
>
> BD trade secrets may include, but need not be limited to:
>
> (a) Information relating to:
> (i) intellectual property such as unpublished patent, trademark or copyright applications, or invention disclosures;
> (ii) research and development activities and results such as formulas, prototypes, processes, laboratory notebooks, experiments and experimental data, analytical data, calculations, drawings, vendor/supplier information, reports, know-how and negative know-how (i.e., what does not work), new product development, clinical study protocols, results and associated data.
>
> ---
>
> (e) BD Associates – BD trade secrets should be made available to BD associates on a "need to know" basis only. BD associates should treat all non-public information about BD as a BD trade secret unless otherwise instructed.

136. The Trade Secret Policy also states that "Every BD associate with access to BD trade secrets shall comply with this Policy."

137. During their employment at BD, the Individual Defendants had access to paper, computer, and other files that had R&D information concerning a number of various and ongoing projects, including the BD Trade Secrets.

138. BD issued to each of the Individual Defendants a laptop computer and provided each with access to BD's network files and hard copy files. Network files include specific product information, technical reports, and project lists. Hard copy files include all product designs, manufacturing instructions, quality control specifications, and chemical characteristics.

139. The information to which the Individual Defendants had access was confidential and proprietary and constituted trade secrets under at least California, New Jersey, and federal law.

140. In each of their roles at BD, the Individual Defendants routinely played a critical part in the various product-related and R&D-related projects pertaining to flow cytometry. The technical and clinical designs, pictures, and drawings, design data, product and process developments, prototypes, marketing data and marketing studies, and other innovative information relating to each of these products or developing products is extremely confidential, has great value to BD and would have significant economic value to its competitors. If a competitor of BD were to learn of the designs, blueprints, and other innovative information relating to any of these products or developing products, it would cause BD great harm and put it at significant competitive disadvantage.

141. Furthermore, the collective knowledge possessed by the Individual Defendants of BD's confidential, proprietary, and trade secret information would be exceptionally valuable to a competitor, and would cause BD great harm and put it at significant competitive disadvantage.

G. Cytek's Employment of the Individual Defendants and Recent Launch of Competitive Cytometers

142. Cytek was founded in the early 1990s by a former employee of BD as a service-oriented company providing service, upgrades, and technical support to flow cytometers developed by other companies, including BD.

143. Cytek Biosciences Inc. is the outcome of a merger between Cytek Development Inc., and Cytoville Inc., a venture capital-backed business focused on advanced medical instrument technology development. *See* https://www.biospace.com/article/releases/ cytek-biosciences-poised-to-accelerate-flow-cytometry-adoption-/, Mar. 29, 2017 (last viewed Feb. 3, 2018).

144. Before approximately March 2017, Cytek continued in its original service-oriented role, and did not produce or sell any of its own cytometers.

145. According to its current website, however, Cytek now consists of "engineers, scientists and customer service representatives who design, build and support flow cytometers." *See* https://cytekbio.com/pages/about (last viewed June 5, 2018).

146. Also according to its current website, Cytek is now a "manufacturer and supplier of flow cytometry products and services." *Id*.

147. According to Cytek's website, Yan "is a co-founder of Cytek Biosciences, Inc.[,]" is on Cytek's Board of Directors, and is Cytek's Chief Technology Officer. *Id*.

148. The other Individual Defendants are all currently employed with Cytek as well. A substantial number of Cytek's R&D positions, including senior management and technology positions, are held by former BD employees.

149. On or about March 15, 2017, less than two years after Yan began employment with Cytek, Cytek launched its first flow cytometry system, the DxP Athena™ flow cytometry system. The DxP Athena™ is marketed and sold throughout the United States and worldwide.

150. Less than three months after it launched the DxP Athena™ flow cytometry system, on or about June 7, 2017, Cytek launched another flow cytometry system, the Cytek Aurora™ flow cytometry system. The Aurora™ shares striking similarities with the spectral flow cytometer previously in development at BD by Yan and other Individual Defendants, as well as other BD products and technologies. Specifically, the Cytek Aurora™ is a flow cytometer with spectral analysis capabilities similar to those that were in development at BD through Project Newton. The Aurora™ is sold throughout the United States and worldwide.

151. Since 2016, Cytek has filed patent applications directed to technologies relating to spectral flow cytometry, including published applications with Yan and Vrane as named inventors.

152. Use of BD's confidential, proprietary, and trade secret information held by the Individual Defendants and contained in the files they misappropriated greatly helped Cytek bring its DxP Athena™ and Aurora™ flow cytometry systems to market. That information would have given Cytek an unfair advantage and head start in developing their own flow cytometer products. Use of BD's confidential, proprietary, and trade secret information held by the Individual Defendants and

contained in the files they misappropriated greatly helps Cytek with its original business of service, repair, and upgrade of BD products.

153. Cytek used BD's confidential, proprietary, and trade secret information as part of its effort to develop and market flow cytometry systems, including but not limited to, the DxP Athena™ flow cytometry system and the Aurora™ flow cytometry system, to the detriment of BD.

H. The Theft Of Confidential Information And Trade Secrets From BD and Systemic Poaching of BD Employees by Cytek

154. In January 2018, having learned from public information that several BD employees had left BD's employ and accepted employment with Cytek after being specifically targeted and recruited, BD initiated an ongoing internal review. As a result of the internal review, BD learned that the Individual Defendants had downloaded thousands of files to dozens of removable media devices containing BD confidential and proprietary information and trade secrets, including the BD Trade Secrets, while still employed at BD.

155. BD engaged in diligent efforts to recover the missing devices, including but not limited to: (a) making written demands to certain Individual Defendants for the immediate return of the devices; (b) conducting a search of the BD San Jose Facility for the devices; and (c) requesting that Cytek assist BD with recovering the devices from their current officer(s) and employees, preserve information related to the missing devices, and agree to a third-party forensic inspection.

156. Of the dozens of devices to which the Individual Defendants downloaded BD confidential information, to date BD has been able to recover only a handful of devices.

157. BD's internal review revealed the downloading activity by the Individual Defendants described above.

158. The Individual Defendants were in possession of the misappropriated BD Trade Secrets, as well as their individual and combined knowledge of BD's proprietary and confidential information related to BD's flow cytometry and spectral flow cytometry, when they joined Cytek and, on information and belief, used, and continue to use, those trade secrets in their work there for the benefit of Cytek and have enabled others at Cytek to similarly use them.

159. Cytek and Yan knew or should have known of the other Individual Defendants' contractual obligations to BD, which included (1) an obligation not to use or disclose BD confidential information outside the scope of their employment at BD, (2) the obligation to assign intellectual property, (3) the obligation to return BD property upon leaving BD, and (4) a duty of loyalty to BD as its employees.

160. With its improper access to and misuse of the BD Trade Secrets, Cytek was able to develop and launch its own spectral flow cytometry products rapidly, despite having never before produced a flow cytometer product itself—its only prior experience being in servicing and refurbishing others' flow cytometers, including BD's. Cytek would not have been able to develop flow cytometers on as rapid a time frame but for its wrongful use of the BD Trade Secrets, aided by the improper disclosures and participation of the Individual Defendants.

161. After learning of Yan's and the other Individual Defendants' conduct regarding BD's confidential information, BD contacted Cytek and asked that Cytek preserve any relevant information and agree to a third-party review of its computer systems for BD's confidential information. After learning of the conduct of the other Individual Defendants regarding BD's confidential information, BD again contacted Cytek to reiterate the need for a third-party review. BD also provided Cytek with information about the missing removable media devices. To date, Cytek has not agreed to allow a third-party review of its computer systems.

162. The BD Trade Secrets derive significant independent economic value, actual and/or potential, from not being generally known to the public or to other persons that can obtain economic value from their use or disclosure. BD derives substantial business advantage and significant economic benefit from maintaining the confidentiality of the BD Trade Secrets.

163. The Individual Defendants' improper disclosure to Cytek of the BD Trade Secrets, and Cytek's and the Individual Defendants' improper use of the BD Trade Secrets, has caused and will cause substantial economic harm and disadvantage to BD, some of which is not even known or knowable at the present time.

164. BD has been injured by Defendants' conduct, including lost profits, lost revenue, Cytek's unjust enrichment, and other harms.

FIRST CLAIM FOR RELIEF

(Misappropriation/Threatened Misappropriation of Trade Secrets Under the Defend Trade Secrets Act of 2016)
(Against All Defendants)

165. BD repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

166. BD owned and possessed confidential and proprietary information, documents, and data containing or constituting the BD Trade Secrets. The BD Trade Secrets are the products of valuable research and development, time and effort, and investment by BD.

167. The BD Trade Secrets are valuable products of BD's R&D. The BD Trade Secrets derive independent economic value from not being generally known to, and not being readily ascertainable through proper means by, other persons who could obtain economic value from the disclosure or use of that information. The BD Trade Secrets constitute a significant knowledge base for the development of a new flow cytometer. They would also give companies that offer cytometer repair services, upgrade services, or replacement components (like Cytek) an unfair advantage by revealing confidential information about the design of BD's cytometers. The BD Trade Secrets, individually or in combination, could be used to create new cytometer components, entire instruments, software, or marketing strategies for those products.

168. At all times, BD has taken reasonable and extensive measures to keep secret its trade secrets and confidential information, including the BD Trade Secrets, including but not limited to by limiting access to confidential information, requiring non-exempt employees to sign Employee Agreements, implementing employment policies (including the BD Trade Secret Policy) that require confidentiality, and reminding BD employees (including all of the Individual Defendants) of their responsibilities when logging into the BD network.

169. The BD Trade Secrets all relate to flow cytometry products and services used, sold, shipped and ordered in, or intended to be used, sold, shipped and/or ordered in, interstate or foreign commerce.

170. At no time did BD consent to Defendants' taking, using, retaining, or disclosing the BD Trade Secrets for any purpose.

171. In violation of BD's rights, the Defendants misappropriated the BD Trade Secrets in the improper and unlawful manner as alleged herein, within the meaning of the DTSA, 18 U.S.C. § 1836, by using and disclosing the BD Trade Secrets and continuing to use and disclose them to this day, after May 11, 2016, for their own economic benefit.

172. The Individual Defendants misappropriated the BD Trade Secrets by improperly downloading files containing the BD Trade Secrets onto removable media devices, removing them from BD's premises, and taking the BD Trade Secrets with them to Cytek. At Cytek they then, upon information and belief, disclosed, used, and continue to use them and enable others at Cytek to use them, after May 11, 2016, in violation of their duties of secrecy to BD and their duties to return BD property upon leaving BD.

173. The Individual Defendants further misappropriated the BD Trade Secrets by improperly disclosing the BD Trade Secrets to Cytek, using the BD Trade Secrets for Cytek's benefit, and enabling their use by others at Cytek, from no later than the time each Individual Defendant began working at Cytek to no earlier than the times Cytek unveiled (1) the Athena™ flow cytometer in March 2017 and (2) the Aurora™ flow cytometer in June 2017.

174. Cytek misappropriated the BD Trade Secrets by improperly acquiring the BD Trade Secrets from the Individual Defendants over the time period in which the Individual Defendants disclosed them, even though Cytek knew or should have known that the Individual Defendants' disclosure was in violation of the Individual Defendants' duties of secrecy and to return BD property to BD.

175. Upon information and belief, all Defendants further misappropriated the BD Trade Secrets by improperly using the BD Trade Secrets to develop, manufacture, market, sell, maintain, service, and upgrade flow cytometry products, for Cytek's benefit and to the detriment of BD, and such improper use continues to this day.

176. Upon information and belief, Defendants Reinin and Shook further misappropriated the BD Trade Secrets by improperly taking devices and files containing the BD Trade Secrets with

them to Cytek when they left BD on dates after May 11, 2016, in violation of their Agreements, irrespective of their later use and disclosure of the BD Trade Secrets at Cytek.

177. The Individual Defendants' misappropriation of the BD Trade Secrets was intentional, knowing, willful, malicious, fraudulent, and oppressive within the meaning of 18 U.S.C. § 1836(b)(3)(B)(i)(C).

178. The Individual Defendants have failed to return the removable media devices and files containing BD Trade Secrets.

179. If the Individual Defendants' conduct is not remedied, they will continue to misappropriate, disclose, and use for their own and Cytek's benefit and to BD's detriment, the BD Trade Secrets.

180. As the direct and proximate result of Defendants' misappropriation, BD has suffered damage within the meaning of 18 U.S.C. § 1836(b)(3)(B)(i)(I) in an amount as yet unknown and, if Defendants' conduct is not stopped, BD will continue to suffer irreparable injury and significant damages, in an amount to be proven at trial.

181. In addition, as a direct and proximate result of Defendants' misappropriation, Defendants have been unjustly enriched as a result their misappropriation of the BD Trade Secrets within the meaning of 18 U.S.C. § 1836(b)(3)(B)(i)(II) in an amount as yet unknown.

182. Because BD's remedy at law is inadequate, BD seeks, in addition to damages, injunctive relief pursuant to 18 U.S.C. § 1836(b)(3)(A)(i) to recover and protect its confidential, proprietary, and trade secret information and other legitimate business interests. BD's business relies on its reputation and ability to maintain and grow its client base in a competitive market and will continue suffering irreparable harm absent injunctive relief.

SECOND CLAIM FOR RELIEF

(Aiding and Abetting the Defend Trade Secrets Act of 2016)
(Against All Defendants)

183. BD repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

184. BD owned and possessed the BD Trade Secrets, which relate to flow cytometry products and services used, sold, shipped and ordered in, or intended to be used, sold, shipped and/or ordered in, interstate or foreign commerce, as alleged herein.

185. The BD Trade Secrets are not generally known or readily ascertainable through proper means, nor could they be properly acquired or duplicated by others.

186. At all times, BD has taken reasonable and extensive efforts to keep secret its trade secrets and confidential information, including the BD Trade Secrets.

187. The BD Trade Secrets derive independent economic value from not being generally known to, and not being readily ascertainable through proper means by, another person who could obtain economic value from the disclosure or use of the information.

188. The misappropriated BD Trade Secrets are crucial to the success of the implementation, operation, and maintenance of BD's proprietary cytometry technologies, and give a decisive competitive advantage to BD and, potentially, to anyone else with access to this information. Use of the BD Trade Secrets held by the Individual Defendants and contained in the files they misappropriated would also greatly help Cytek with its original business of service, repair, and upgrade of BD products.

189. At no time did BD consent to Defendants' taking, using, or disclosing the BD Trade Secrets for any purpose.

190. In violation of BD's rights, the Defendants misappropriated the BD Trade Secrets in the improper and unlawful manner as alleged herein, within the meaning of the DTSA, 18 U.S.C. § 1836, by using and disclosing the BD Trade Secrets and continuing to use and disclose them for their own economic benefit, and by enabling others at Cytek to use them.

191. Each of the Defendants aided and abetted the misappropriation by other Defendants of the BD Trade Secrets within the meaning of the DTSA, 18 U.S.C. § 1836, to the benefit of Cytek.

192. As the direct and proximate result of Defendants' misappropriation, and aiding and abetting of said misappropriation as aforesaid, BD has suffered damage within the meaning of 18 U.S.C. § 1836(b)(3)(B)(i)(I) in an amount as yet unknown and, if Defendants' conduct is not stopped,

BD will continue to suffer irreparable injury and significant damages, in an amount to be proven at trial.

193. Defendants will continue to misappropriate, and aid and abet said misappropriation of, the BD Trade Secrets, and BD will continue to suffer irreparable injury, unless Defendants' continued aiding, abetting, and misappropriation is enjoined by this Court pursuant to 18 U.S.C. § 1836(b)(3)(A)(i).

194. Defendants willfully and maliciously misappropriated, and aided and abetted said misappropriation of, the BD Trade Secrets within the meaning of 18 U.S.C. § 1836(b)(3)(B)(i)(C).

THIRD CLAIM FOR RELIEF

(Misappropriation/Threatened Misappropriation of Trade Secrets Under the California Uniform Trade Secrets) (California Civil Code § 3426, et seq.)
(Against All Defendants)

195. BD repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

196. BD owned and possessed confidential and proprietary information, documents, and data containing and embodying the BD Trade Secrets.

197. The BD Trade Secrets would also give companies that offer cytometer repair services, upgrade services, or replacement components (like Cytek) an unfair advantage by revealing confidential information about the design of BD's cytometers.

198. At all times, BD has taken reasonable and extensive measures to keep secret its trade secrets and confidential information, including the BD Trade Secrets, including but not limited to by limiting access to confidential information, requiring employees to sign Employee Agreements, implementing employment policies, including the BD Trade Secret Policy, that require confidentiality, and reminding BD employees, including all of the Individual Defendants, of their responsibilities when logging into the BD network.

199. The BD Trade Secrets derive independent economic value from not being generally known to, and not being readily ascertainable through proper means by, another person who could obtain economic value from the disclosure or use of the information.

200. The misappropriated BD Trade Secrets are crucial to the success of the implementation, operation, and maintenance of BD's proprietary cytometry technologies, and give a decisive competitive advantage to BD and, potentially, to anyone else with access to this information. Use of the BD Trade Secrets held by the Individual Defendants and contained in the files they misappropriated would also greatly help Cytek with its original business of service, repair, and upgrade of BD products.

201. At no time did BD consent to Defendants' use or disclosure of the BD Trade Secrets for any purpose.

202. In violation of BD's rights at law and under contracts, the Individual Defendants misappropriated the BD Trade Secrets by secretly downloading to external media devices before their departure from BD, by removing those devices from BD, and by using and disclosing the BD Trade Secrets for their own economic benefit.

203. The Individual Defendants misappropriated the BD Trade Secrets by improperly downloading files containing the BD Trade Secrets onto removable media devices, removing them from BD's premises, and taking the BD Trade Secrets with them to Cytek. At Cytek they then, upon information and belief, disclosed, used, and continue to use them, and enable others at Cytek to use them, in violation of their duties of secrecy to BD and their duties to return BD property upon leaving BD.

204. The Individual Defendants further misappropriated the BD Trade Secrets by improperly disclosing the BD Trade Secrets to Cytek and using the BD Trade Secrets for Cytek's benefit.

205. Cytek misappropriated the BD Trade Secrets by improperly acquiring the BD Trade Secrets from the Individual Defendants and, upon information and belief, using that information to develop its own flow cytometry products, even though Cytek knew or should have known that the Individual Defendants' disclosure was in violation of the Individual Defendants' duties of secrecy and to return BD property to BD.

206. Upon information and belief, all Defendants further misappropriated the BD Trade Secrets by improperly using the BD Trade Secrets to develop, manufacture, market, sell, maintain,

service, and upgrade flow cytometry products, for Cytek's benefit and to the detriment of BD, and such improper use continues to this day.

207. Upon information and belief, all Individual Defendants further misappropriated the BD Trade Secrets by improperly taking devices and files containing the BD Trade Secrets with them when they left BD, in violation of the Agreement, irrespective of their later use and disclosure of the BD Trade Secrets at Cytek.

208. Defendants knew or should have known under the circumstances that the information misappropriated by Defendants was trade secret information.

209. The Individual Defendants have failed to return the removable media devices and files containing BD Trade Secrets.

210. As a direct and proximate result of Defendants' misappropriation as aforesaid, BD is threatened with injury and has been injured in an amount in excess of the jurisdictional minimum of this Court and that will be proven at trial. BD has also incurred, and will continue to incur, additional damages, costs and expenses, including attorney's fees, as a result of Defendants' misappropriation.

211. As a further proximate result of the misappropriation and use of the BD Trade Secrets, Defendants were unjustly enriched.

212. The aforementioned acts of Defendants were willful, malicious, and fraudulent. BD is therefore entitled to exemplary damages under California Civil Code § 3426.3(c).

213. Defendants' conduct constitutes transgressions of a continuing nature for which BD has no adequate remedy at law. Unless and until enjoined and restrained by order of this Court, Defendants will continue to retain and use BD's trade secret information to enrich themselves and divert business from BD. Pursuant to California Civil Code § 3426.2, BD is entitled to an injunction against the misappropriation and continued threatened misappropriation of trade secrets as alleged herein and further asks the Court to restrain Defendants from using all trade secret information misappropriated from BD and to return all trade secret information to BD.

214. Pursuant to California Civil Code § 3426.4 and related law, BD is entitled to an award of attorney's fees for Defendants' misappropriation of trade secrets.

FOURTH CLAIM FOR RELIEF

(Breach of Contract)
(Against Riley, Yan, Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook)

215. BD repeats and realleges each and every allegation in the foregoing paragraphs 1 through 164 as if fully set forth herein.

216. The Agreement, which Yan, Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook each knowingly and willingly entered into, is a valid and enforceable contract. Additionally, each Individual Defendant executed multiple contracts with BD in which they acknowledged their duties of confidentiality and agreed to protect BD's trade secrets.

217. Riley had a duty to avoid disclosing or misusing BD's trade secrets and confidential information. Riley and BD entered into an express or implied-in-fact contractual employment relationship, in which Riley agreed to BD's restrictions on such information, including the BD Trade Secrets. Additionally, Riley executed multiple contracts with BD in which he acknowledged his duties of confidentiality and agreed to protect BD's trade secrets.

218. BD at all times performed its contractual duties under the Agreement and any other implied contract formed through its employment of Riley, Yan, Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook.

219. During their employment with BD, Riley, Yan, Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook had access to and were exposed to BD confidential, proprietary, and trade secret information.

220. The downloading and taking from BD's premises of the BD Trade Secrets by Riley, Yan, Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook violated their obligation in the Agreement to return all of BD's property at termination, regardless of the format of such property, and irrespective of their later use and disclosure to Cytek of the BD Trade Secrets.

221. The disclosure to Cytek, and use while employed by Cytek, of the BD Trade Secrets by Riley, Yan, Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook violated their obligation in the Agreement not to disclose or use BD confidential information outside the scope of their employment, either during or after their employment at BD.

222. The failure to assign to BD any innovations developed based on BD confidential information within one year after employment at BD by Riley, Yan, Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook violated their obligation in the Agreement to assign any and all such innovations to BD.

223. Defendant Yan secretly filed, while still employed by BD, a patent application on subject matter developed while working for BD and used that patent application to promote his own separate business interests to investors. This was a conflict of interest and further violated Yan's obligations to assign innovations to BD and to not disclose or use BD confidential information outside the scope of his employment at BD.

224. As a direct, foreseeable, and proximate result of the breach of their contracts by Riley, Yan, Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook, BD has been and/or will be damaged in that it has lost or will lose revenue that it would have received but for their breach of those contracts, and BD has suffered or will suffer harm due to their breach.

FIFTH CLAIM FOR RELIEF

(Inducing Breach of Contract)
(Against Cytek, Yan, and Riley)

225. BD repeats and realleges each and every allegation in the foregoing paragraphs 1 through 164 and paragraphs 215 through 224 as if fully set forth herein.

226. There were contracts between BD and Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook, each of whom executed an Agreement and other contracts requiring protection of BD trade secrets.

227. Defendants Cytek, Yan, and Riley knew of the Agreement, other contractual confidentiality obligations of all BD employees, and the fact that each of Defendants Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook were bound by those obligations.

228. Defendants Cytek, Yan, and Riley intentionally caused Defendants Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook to breach their obligations under the Agreement and other contracts with BD as alleged herein.

229. Defendants Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook did in fact breach the Agreement and other contracts with BD as alleged herein.

230. BD has suffered and continues to suffer significant harm from the breach of its contracts with its former employees.

231. Cytek and Yan's conduct was a substantial factor in causing harm to BD.

SIXTH CLAIM FOR RELIEF

(Violation of California Unfair Competition Law)
(Against All Defendants)

232. BD repeats and realleges each and every allegation in the foregoing paragraphs 1 through 165 and paragraphs 225 through 231 as if fully set forth herein.

233. Defendants Cytek, Yan, and Riley engaged in a successful poaching campaign of BD employees, in which they recruited Defendants Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook and induced each to breach the Agreement and other contracts with BD, which are valid and enforceable contracts.

234. As part of the inducement of breach, Defendants Cytek, Yan, and Riley intentionally caused Defendants Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook to breach their contractual obligations to BD as alleged herein.

235. Defendants Cytek, Yan, and Riley knew of the Agreement, other contractual confidentiality obligations of all BD employees, and the fact that each of Defendants Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook were bound by those obligations.

236. Defendants Vrane, Zhang, Gong, Zhong, Jaimes, Reinin, and Shook did in fact breach the Agreement and other contracts with BD as alleged herein.

237. Upon information and belief, Defendant Yan also engaged in unlawful business practices and unfair competition, prohibited under California Business and Professions Code Sections 17200 *et seq.*, by secretly filing a patent application—which he later suppressed—in his own name while still employed by BD, on subject matter that he developed while working at BD, and by communicating with potential investors about the same, including a representative of Fidelity Asia, in violation of his contractual obligations to BD.

238. These acts by the Defendants constitute unlawful business practices and unfair competition prohibited under California Business and Professions Code Sections 17200 *et seq.*

239. The Defendants have all benefited from these acts in the form of unfair advantages in developing, producing, and selling flow cytometers, as evidenced by Cytek's release of two competing flow cytometer products.

240. As a result of such acts, BD has suffered damage in an amount as yet unknown, and, if Defendants' conduct is not stopped, BD will continue to suffer irreparable injury and significant damages, in an amount to be proven at trial.

241. As an additional result of such acts, BD has suffered, and will continue to suffer, irreparable harm by Defendants' unlawful practices and unfair competition, including but not limited to its business reputation, good will, and stature, in the business community and with its customers, for which there is no adequate remedy at law, thereby justifying injunctive relief.

242. Until relief is granted to BD, BD will be harmed and Defendants will be unjustly enriched, which unjust enrichment should be disgorged pursuant to allowable remedies under California Business and Professions Code Sections 17200 *et seq.*

WHEREFORE, BD prays for judgment against Defendants as follows:

1. A permanent injunction against Defendants enjoining them from using BD's confidential and proprietary information, directing return of all of BD's property, and enjoining the sale of any cytometer product that incorporates or was otherwise derived from BD's confidential information;

2. A permanent injunction against Defendants directing them to assign to BD all innovations derived from and/or related to BD confidential information and/or BD Trade Secrets developed within a year of leaving BD, in accordance with the Agreement.

3. A permanent injunction against Defendants enjoining them from inducing BD employees to breach their contractual obligations with BD.

4. An order compelling Defendants to have an independent forensic expert review Defendants' computer systems, including any and all e-mail or cloud storage accounts, and identify and delete any BD confidential information;

5. All compensatory damages pled and proved;

6. Disgorgement of any benefit, unjust enrichment, or monetary gains stemming from misuse of the BD Trade Secrets.

7. BD's lost profits from any lost sales or revenue resulting from misuse of the BD Trade Secrets.

8. Attorneys' fees and costs in the suit herein;

9. Punitive damages in favor of BD and against Defendants;

10. Pre-judgment and post-judgment interest; and

11. Such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

Date: June 8, 2018

By: */s/ James R. Batchelder*

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