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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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QUEST SOLUTION, INC.; HTS IMAGE  
PROCESSING, INC.; HTS (USA) INC.,

Plaintiffs,

v.

REDLPR, LLC; SAGY AMIT; JEREMY  
BARKER; RIVERLAND TECHNOLOGIES  
LLC,

Defendants

**MEMORANDUM DECISION  
AND ORDER  
RE: TRADE SECRETS**

Case No. 2:19-cv-437-CW-DBP

Judge Clark Waddoups

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## **INTRODUCTION**

This case involves license plate recognition (“LPR”) technology and systems. Defendants Jeremy Barker and Sagy Amit are former employees of Plaintiff HTS (USA) Inc. (“HTS (USA)”) who resigned their employment after HTS (USA) was sold and new management allegedly engaged in dishonest business practices. Shortly after resigning, Barker, Amit and three other individuals formed RedLPR, LLC (“RED”) as a competing business. Plaintiffs contend the defendants<sup>1</sup> misappropriated trade secrets when they left and have harmed Plaintiffs due to the defendants’ use of such trade secrets. Plaintiffs also assert claims for breach of fiduciary duty, tortious interference with economic relations, unjust enrichment, unfair competition, and breach of implied covenant of good faith and fair dealing (collectively “Non-Trade Secret Claims”).

On April 28, 2021, this court denied Defendants’ first Motion for Summary Judgment and granted Plaintiffs’ Rule 56(d) motion. More than two years later, after further developments in this case, the court reopens its April 2021 ruling and considers it together with Defendants’ second Motion for Summary Judgment, and Mr. Amit’s Motion to Dismiss. Due to the complexity of the case and other issues at hand, however, this memorandum decision only addresses Plaintiffs’ trade secret claims.<sup>2</sup> The court concludes that Defendants did not misappropriate trade secrets and grants summary judgment in favor of Defendants on those claims.

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<sup>1</sup> Riverland Technologies LLC has been dismissed without prejudice. Order (ECF No. 121). Accordingly, in this decision, the term “Defendants” or “the defendants” refers only to Jeremy Barker, Sagy Amit, and RedLPR, LLC.

<sup>2</sup> The court will address Plaintiffs’ Non-Trade Secret Claims and whether sanctions should be imposed against Plaintiffs in a later decision.

### **COMPLEXITY OF THE RECORD AND IDENTITY OF PLAINTIFFS**

The record in this matter is one of the most challenging records to navigate that the court has experienced. At times, emails have been submitted that refer to an attachment, but with no attachment submitted concurrently. If the record contains the attachment, it must be located in another portion of the record. Substantive materials have been attached to non-dispositive motions, and the court has had to locate the documents across the docket. Because of how the record has developed and some of the conduct in this case, it has been more difficult to sort through the facts.<sup>3</sup>

Another area of confusion pertains to who the plaintiffs are. The Amended Complaint lists Quest Solution, Inc. (“Quest”); HTS Image Processing, Inc.; and HTS (USA) as Plaintiffs. Amended Complaint, ¶¶ 20–22 (ECF No. 39). According to the Amended Complaint, HTS Image Processing, Inc. and HTS (USA) Inc. are wholly owned subsidiaries of Quest. *Id.* ¶¶ 21–22. The Complaint and Amended Complaint define Plaintiffs collectively as “HTS.” Because Plaintiffs are distinct legal entities, Plaintiffs failure to distinguish among them is problematic. The court will address this issue further below. For now, where possible, the court will identify Plaintiffs’ entities by name, and where there is an ambiguity or inability to determine the proper actor, the court will refer to the actor as Plaintiffs.

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<sup>3</sup> In part, the proceeding is also challenging because Amit is a *pro se* litigant on complicated legal issues and RED’s counsel appears to have limited litigation experience.

## **FACTUAL BACKGROUND**

### **LPR Overview**

“LPR systems photograph vehicles and digitize license plate characters using optical character recognition” via “cameras, computers, and software.” Mot. for S. Jdmt., at 8 (ECF No. 50-1).<sup>4</sup> The camera component is configured “to capture clear images of moving objects under challenging lighting and environmental conditions.” *Id.* at 9. The computer software processes the image and identifies the license plate number via optical character recognition (“OCR”) engines. This allows LPR systems to be utilized in parking facilities at airports, hospitals, universities, businesses, etc. LPR systems also are used at tolling locations and by law enforcement.

Most LPR systems are fixed installations, which are mounted on poles at a fixed location. Barker Depo., at 47 (ECF No. 219-2). When an LPR system is mounted on a car, that is called “mobile license plate recognition.” *Id.* The LPR field is competitive, with LPR companies vying for market shares or niche markets. *See, e.g.*, Email (ECF No. 50-3) (requesting competitive bidding for an airport project where “all [had] been enquiring for some time concerning” the project); Email, at 2 (ECF No. 50-4) (remarking on the competitive process for awarding projects); Mississippi Complaint, ¶ 11 (ECF No. 35-2) (asserting “LPR industry is a highly competitive industry”).

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<sup>4</sup> When the court provides a pincite to the record, it refers to the ECF pagination at the top of the page rather than pagination found elsewhere on the document. Because the record includes deposition testimony and hearing transcripts, reference to the ECF pagination helps unify the pincite location.



## Summary of Entities and Individuals

### A. Plaintiffs

Prior to 2018, the entities at issue were Hi-Tech Solutions Ltd. (Israel) (“Hi-Tech”);<sup>5</sup> and HTS (USA), doing business as HTS Americas. Hofman Decl., ¶ 6 (ECF No. 116-1); Email, at 1 (ECF No. 267-15); Registration of HTS Americas, at 2 (ECF No. 60-2). As a parent company, Hi-Tech formed HTS (USA) to support and grow LPR sales in the United States. Email, at 2 (ECF No. 267-15); Barker Depo., at 35 (ECF No. 219-2). Both companies were small, with only four employees at HTS (USA). Barker Depo., at 35, 63 (ECF No. 219-2) (stating it was a small company); Barker Depo., at 26–27 (ECF No. 220-1) (stating number of employees). Nevertheless, the companies deployed their LPR systems throughout the United States and many nations.

In or about January 2018, Teamtronics Inc. purchased Hi-Tech and HTS (USA). Email, at 1–2 (ECF No. 267-15). Later that year, Teamtronics changed its name to HTS Image Processing, Inc. Email, at 1 (ECF No. 267-15). Thus, Teamtronics and HTS Image Processing, Inc. are the same entity. In or about October 2018, Quest acquired HTS Image Processing through a related party transaction. *Id.* at 1, 3.

Plaintiffs assert their technology “reflect[s] over 20 years of research and development (R&D),” and their “operations leverage decades of industry knowledge, reputation, and strategic business development.”<sup>6</sup> Amended Complaint, ¶¶ 3–4 (ECF No. 39). Yoram Hofman founded

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<sup>5</sup> The record contains an additional reference to HTS, Ltd., but it is unclear if that is a separate entity from Hi-Tech, an abbreviation of the name, or a “doing business as” entity. Email, at 5 (ECF No. 267-15).

<sup>6</sup> The use of “Plaintiffs” in this paragraph is loosely done because Plaintiffs were not associated until 2018, and they have not distinguished who developed the technology. Nor have Plaintiffs distinguished who holds the industry knowledge and reputation, who has done the business development, and how sales are recognized among the various entities.

Hi-Tech and is now Plaintiffs' Chief Technology Officer ("CTO"). Hofman Decl., ¶¶ 1, 6 (ECF No. 116-1). Hofman is listed as the inventor of patented technology related to LPR systems. *Id.* ¶ 6.

At least HTS (USA) is well-recognized in the LPR field. It is unclear how well the other entities are recognized. HTS (USA) has sold its systems "primarily to (i) parking garage owners and operators ('Operators'); and (ii) manufacturers, suppliers, builders, and/or installers of parking systems ('Installers')." Mot. for S. Jdmt., at 8–9 (ECF No. 50-1).

#### **B. Barker**

Defendant Barker has extensive experience with LPR systems. He has been employed in the LPR field "since 2007 and [has] worked on LPR systems in 8 countries across 3 continents." Barker Aff'd, ¶ 4 (ECF No. 50-22). In 2013, Hi-Tech "was a small company and . . . they were looking to grow into America." Barker Depo., at 35 (ECF No. 219-2). John Whiteman, CEO at HTS (USA), approached Barker, based on Barker's reputation in the LPR field, and offered him employment. *Id.* at 33. Barker joined HTS (USA) in 2013 as a Field Engineer, but he also "was in close touch with everybody in the Israeli office." *Id.* at 62, 81–82.

Hi-Tech did not have a mobile product in 2013. *Id.* at 47–48. Part of Barker's prior experience was selling and servicing mobile LPR systems for a fleet of vehicles. Barker Depo., at 27–30 (ECF No. 219-2). Based on Barker's background, one of Barker's first tasks for Hi-Tech "was to write the marketing research document governing [a] new mobile product." *Id.* at 47. "The whole company worked on it," but Barker "wrote the requirements," and participated in the testing. *Id.* at 48. Barker's knowledge allowed him to train others at the company to help them

“understand how the product is actually used in the field,” with the expectation that the product would be improved for customers. *Id.* at 51–53.

Barker also changed how HTS installed their systems to increase accuracy when reading license plates. Since 2007, Barker has been “deploying two cameras side by side,” one that is infrared and one that is color, so license plates can be read better under varying environmental situations. Barker Depo., at 91 (ECF No. 219-3). When Barker joined HTS (USA), “Whiteman was selling single cameras.” *Id.* at 93. Barker advised him to discontinue doing so because it decreased accuracy. *Id.* Approximately four months after Barker started at HTS (USA), the company “no longer sold single cameras in the United States,” which also increased revenue. *Id.*

When Whiteman left HTS (USA) to work for a competitor, HTS (USA) promoted Barker to Vice President of Sales & Marketing. Based on Barker’s knowledge, skills, and roles, Barker was considered a key employee at HTS (USA) and by Hi-Tech. Whiteman Depo., at 87 (ECF No. 220-2); Hofman Depo., at 88–89 (ECF No. 220-3).

### **C. Amit**

Whiteman has known Defendant Amit since approximately 2008, and over the years, encouraged him to work at HTS (USA). “In or about August 2016,” Amit accepted Whiteman’s offer and became the “Director of Sales-West.” Amit Decl., ¶ 10 (ECF No. 50-2); Amended Complaint, ¶ 65 (ECF No. 39). Amit subsequently became HTS (USA)’s “international director of sales.” Amit Decl., ¶ 83 (ECF No. 50-2); Amit Depo., at 104 (ECF No. 219-1). Amit has “more than 25 years” of experience “in the video security industry, with a particular focus on closed-circuit television (‘CCTV’), and Video Content Analysis (‘VCA’).”<sup>7</sup> Amit Decl., ¶ 3 (ECF No.

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<sup>7</sup> CCTV is “also known as video surveillance,” and VCA “is the capability of automatically analyzing video to detect and determine temporal and spatial events.” Amit Decl., ¶ 3 nn. 1–2

50-2) (footnotes omitted). He has “worked with various companies that sell and/or install Internet Protocol Video (essentially internet-connected video), LPR, and other types of VCA for more than 15 years.” *Id.* ¶ 4.

While Barker focused on software, Amit focused on the hardware. He introduced Hitron, a camera manufacturer, to HTS (USA) and Hi-Tech through a prior contact that Amit had at Hitron. *Id.* ¶¶ 30–31; Amit Depo., at 163 (ECF No. 219-1). Amit also tested and recommended a specific Hitron camera for use, which Hi-Tech integrated into its LPR system for use by Hi-Tech and HTS (USA). Amit Depo., at 165; Email Chain, at 1–4 (ECF No. 282-3); Email, at 4–5 (ECF No. 255-1) (approving testing to integrate camera).<sup>8</sup>

Additionally, Amit helped increase HTS (USA)’s revenue through Amit’s sales efforts and customer support. When HTS (USA) hired Barker in 2013, its revenue was \$554,000. Graph, at 4 (ECF No. 148-2). For fiscal year 2015, its revenue had increased to \$2,347,000. *Id.* For fiscal year 2016, revenue was \$2,689,000. *Id.* Once Amit joined HTS (USA) in 2016, revenue for fiscal year 2017 increased to \$4,094,000—the highest record for the company. *Id.* Like Barker, Amit

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(ECF No. 50-2).

<sup>8</sup> As explained in a Memorandum Decision and Order, at 5–6 (ECF No. 249), certain documents have been lodged in this matter. Amit originally submitted the exhibits for use at an evidentiary hearing, which the court subsequently cancelled. Later, Amit referred to some of the exhibits at the April 20–21, 2022 hearing, and opposing counsel had an opportunity to respond. The email chain found at ECF No. 255-1 is one of those documents. *See* Hr. Tr., at 15–20 (ECF No. 277) (discussing the document extensively). Based on the procedural history related to this document and opportunity to respond, the court recognizes the document as record evidence in this matter. The court distinguishes the document from those the Plaintiffs referenced, but never provided to the court. When a document is not provided to the court, it cannot be reviewed, and is not record evidence. *See* Hr. Tr., at 65 (ECF No. 283) (stating if document is not in the record, the court will disregard it).

was considered a key employee due to his knowledge, skills, and role that he had at HTS (USA). Hofman Depo., at 88–89 (ECF No. 220-3).

**D. Riverland Technologies and Members**

i. Riverland

Riverland Technologies, LLC (“Riverland”) is a competing LPR company that develops and sells “software and hardware products and services” in the LPR industry. Byerly Decl., ¶ 3 (ECF No. 50-34). It has both fixed and mobile cameras, and primarily sells its products and services to state and local governments. *Id.* ¶¶ 3, 5–6. Riverland also has its own OCR engine that it developed. *Id.* ¶ 11; Amit Depo. at 156 (ECF No. 219-1). An OCR engine is a software “black box that takes in a picture and spits out a license plate number” based on how the “engine is coded.” Barker Depo., at 44–45 (ECF No. 219-2). Hi-Tech and/or HTS (USA) were aware of Riverland’s mobile technology and “Riverland’s Matrix Core Engine,” and had discussions with Riverland in or about 2016 to explore licensing the technology to benefit Hi-Tech and/or HTS (USA)’s LPR system. Byerly Decl., ¶ 11 (ECF No. 50-34); Barker Depo., at 83 (ECF No. 220-1).

In addition to software, Riverland develops and sells cameras. Byerly Decl., ¶ 5 (ECF No. 50-34). From November 2017 to July 2019, it “designed and developed Riverland’s Matrix Edge dual head camera” that “is operated by Riverland’s proprietary software.” *Id.* ¶ 7. “Dual head cameras contain two camera sensors, one of which is an infrared (“IR”) camera sensor, and one of which is a color camera sensor. Industry standard dual head cameras common in the LPR market also contain an embedded processor . . . .” *Id.* ¶ 6. According to one of Riverland’s founders, “[t]he dual head camera design is common in the LPR industry.” *Id.*; *see also* Dual-Head Specs. (ECF No. 49-50) (showing design and features of dual-head cameras).

Robert Byerly (“Byerly”), Joe Payne (“Payne”), and Rafael Valdepena Aguilar (“Valdepena Aguilar”) are members of Riverland. *See* Byerly Decl., ¶ 23 (ECF No. 50-34). They also became members of RED in their individual capacities. *Id.*

ii. Robert Byerly

Byerly worked for HTS (USA) for a short time “[f]rom February, 2013 until November 2013” as the company’s “Director of National Sales.” Byerly Decl., ¶ 2 (ECF No. 50-34). He subsequently co-founded Riverland. *Id.* ¶ 3.

iii. Joe Payne and Rafael Valdepena Aguilar

Payne has a degree in Electrical Engineering and has “specialized in technology sales and service to Law Enforcement, Local and Federal government, and private enterprise.” Hofman Rpt., at 13 (ECF No. 267-5). Valdepena Aguilar is a “Computer Vision Engineer with a specialized skillset in developing hardware and software for Video content analysis . . . . He has been developing advanced ALPR<sup>9</sup> algorithms for over 14 years and his passion is designing video processing solutions to recognize Objects and automating processes.” *Id.*

**E. REDLPR, LLC**

“[T]he domain www.RedLPR.com was registered on or about October 31, 2018.” Answer, ¶ 113 (ECF No. 41). “REDLPR, LLC [“RED”] was formed as a Mississippi Limited Liability Company on or about January 4, 2019,” and was a competitor of Plaintiffs. *Id.* ¶ 114. Barker was “a Founder and LPR Evangelist” of RED. *Id.* ¶ 187. Amit was “a Founder and Vice President of Marketing” of RED. *Id.* ¶ 186. Byerly, Payne, and Valdepena Aguilar joined RED as individual minority members. Mot. to Dismiss, at 3 (ECF No. 44); Byerly Decl., ¶ 23 (ECF No. 50-34). RED

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<sup>9</sup> LPR systems are sometimes referred to as Automatic License Plate Recognition (“ALPR”) systems or Automatic Number Plate Recognition (“ANPR”) systems.

marketed that it was “the selling arm for the [OCR] engine and the software and hardware manufactured by Riverland,” and that Riverland was RED’s “R&D arm.” Marketing Sheet, at 9 (ECF No. 275-8). In March 2019, RED won first place at an exhibition as “a new coming company.” Hofman Depo., at 73 (ECF No. 220-3); Barker Decl., ¶ 20 (ECF No. 279-2). RED secured its “first official order” on or about March 1, 2019, with an additional order expected. Email and Order, at 1, 11 (ECF No. 275-8). The order was for a “vehicle mounted enforcement and inventory system as a standalone solution.” *Id.* at 5. Plaintiffs filed suit against RED on June 24, 2019. At that time, RED had sold “a total of fifteen lanes worth of equipment to paying customers, equal to about \$45,000 in sales.” Barker Decl., ¶ 21 (ECF No. 279-2).

### **Plaintiffs’ Central Allegations**

When Plaintiffs filed suit in June 2019, they alleged the following main points:

5. In early 2018, two HTS employees – Sagy Amit and Jeremy Barker – conspired to use HTS’ confidential trade secrets and other proprietary information to develop a direct competitor of HTS (formed soon thereafter as RedLPR).
6. In addition to misappropriating HTS’ trade secrets, Amit and Barker misused their positions as HTS employees to actively sabotage HTS’ business interests and tarnish HTS’ longstanding and hard-earned reputation as a leading LPR provider.
7. Shockingly, Amit and Barker engaged in this unlawful conduct ***while still employed by HTS.***
8. Despite collecting salaries and presenting themselves as HTS’ representatives, Amit and Barker spent months brazenly stealing HTS’ trade secrets, building a competing organization, and actively damaging HTS’ business and reputation from within.
9. In August 2018, Amit resigned from HTS. Barker, however, remained an HTS employee.

10. Unbeknownst to HTS, *this conduct was part of a deliberate, calculated plot coordinated by Amit and Barker to conceal their underlying intentions – namely, sabotaging HTS’ interest for the benefit of RedLPR.*
11. While Amit formalized RedLPR’s business operations, Barker remained “on the inside” within HTS for over two months. During this time, Barker provided Amit with frequent updates regarding HTS’ ongoing internal business activities.
12. While remaining an HTS employee, Barker gathered valuable information regarding new business opportunities HTS was pursuing, while simultaneously spreading false information to HTS’ customers and damaging HTS’ reputation.
13. In October 2018, with RedLPR ready for business, Barker resigned from HTS and immediately joined Amit as a co-founder of RedLPR.
14. Amit and Barker’s use of HTS’ trade secrets is apparent in nearly every aspect of RedLPR’s operations.
15. For example, RedLPR has used specifications of HTS’ proprietary imaging units, software applications, and LPR servers to recreate products virtually indistinguishable from those offered by HTS.
16. RedLPR has also utilized HTS’ confidential business plans and other internal documents to systematically target HTS’ customers and submit project bids that under cut those submitted by HTS.
17. Additionally, RedLPR has directly targeted HTS’ customers to whom Amit and Barker previously communicated knowingly false, disparaging information regarding HTS.
18. These actions have caused substantial and irreparable harm to HTS, including lost revenues, reputation harm, and other business interruptions.
19. HTS now seeks to hold Defendants accountable, stop them from further exploiting HTS’ trade secrets, and put an immediate halt to the substantial and irreparable harm and damages Defendants



have caused, and continue to cause HTS as a result of their unlawful activities.

Complaint, at 2–3 (ECF No. 2) (emphasis in original).<sup>10</sup> Plaintiffs stated these allegations, without equivocation, as though the allegations had been confirmed. Although Plaintiffs alleged they were seeking “an immediate halt” to purported harm caused by Defendants, Plaintiffs never filed a motion for temporary restraining order. Nor did they file a motion for preliminary injunction.

Instead, approximately four months after filing their Complaint, Plaintiffs sent a letter (“Alert Letter”) on October 18, 2019 to multiple people in the parking industry on the eve of a large parking industry event. The Alert Letter stated the following:

Recently, HTS conducted an internal investigation and discovered that [Barker and Amit] engaged in a wide-ranging campaign of unlawful conduct. Specifically, the investigation revealed that these employees – **while still employed by HTS** – spent months secretly misappropriating HTS’ technical and business trade secrets. **These stolen trade secrets are the foundation upon which RedLPR was built and currently operates.**

Alert Letter (ECF No. 80-2) (emphasis in original). Plaintiffs stated their assertions as though they had evidence in their possession from an internal investigation. At the April 20, 2022 hearing, Plaintiffs’ counsel stated that “its internal experts, . . . even prior to the outset of this case, analyzed the similarities between the cameras that RedLPR was providing,” and that it “was an extensive pre-filing investigation.” Hr. Tr., at 41 (ECF No. 283). The following details Plaintiffs’ pre-filing investigation.

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<sup>10</sup> Plaintiffs served Amit at a parking industry event in Salt Lake City. Plaintiffs never served Barker. Barker Depo., at 6 (ECF No. 220-1). They merely gave Amit the summons for Barker, without showing that Amit was authorized to accept service on behalf of Barker. Proof of Service, at 2 (ECF No. 8).

## Plaintiffs' Pre-Filing Investigation

### A. March 2019

On March 18, 2019, Ben Kemper, Teamtronics' Chief Financial Officer, reminded the management team that they [REDACTED]

[REDACTED]  
[REDACTED] Email, at 15 (ECF No. 267-2) (emphasis added).

Hofman responded [REDACTED] *Id.* He said [REDACTED] *Id.* According to his review:

[REDACTED]

*Id.* Hofman then concluded, [REDACTED]  
[REDACTED] *Id.* Hofman's email was sent eighteen days after RED sold its first product on March 1, 2019. Hofman never mentioned trade

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<sup>11</sup> The email was largely directed at Amit's actions, and subsequent deposition testimony by Shai Lustgarten, Plaintiffs' CEO, and Hofman show their dislike of Amit. Amit has demonstrated reciprocal feelings. This suit is personal, not just business. Reinitz Decl., at ¶ 16 (ECF No. 267-1) (noting [REDACTED]).

secrets in the email.<sup>12</sup>

Plaintiffs' counsel in California, Marc Mandelblatt, responded to Hofman's email and asked three questions. First, he asked [REDACTED]

[REDACTED] *Id.* at 14. He further asked [REDACTED]

[REDACTED] *Id.* Finally, he asked [REDACTED]

[REDACTED] *Id.* Hofman responded that [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 13–14. Hofman further said that [REDACTED]

[REDACTED] *Id.*

As for [REDACTED] Hofman stated [REDACTED]

[REDACTED] Email,

at 11–12 (ECF No. 267-2). During this same time, Ariel Reinitz, Plaintiff's New York counsel,

who is also a registered patent attorney, [REDACTED]

[REDACTED] *Id.* at 13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 13. Thus, Plaintiffs' focus initially was on [REDACTED]

[REDACTED]<sup>13</sup> Reinitz Decl., at ¶ 9 & n.3,

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<sup>12</sup> Besides not mentioning "trade secrets" in the email, Plaintiffs have acknowledged that [REDACTED] is not a trade secret, and they have not pursued allegations on [REDACTED] as explained further below.

<sup>13</sup> Hofman provided details showing [REDACTED] Email, at 11–12 (ECF No. 267-2). [REDACTED]

(ECF No. 267-1) (stating [REDACTED]). [REDACTED] and Hofman, as Plaintiffs' Chief Technology Officer and patent inventor, was aware that patents involve public disclosures while trade secrets involve only non-public information kept in confidence.

**B. May 2019**

On or about May 14, 2019, Hofman drafted a report detailing his analysis about RED's products. The court details the analysis and places it in context with other facts or evidence in this case.

**i. Riverland NDA and RED's Software**

First, Hofman reported that [REDACTED] Hofman Rpt., at 2 (ECF No. 267-3). Hofman noted that [REDACTED] and [REDACTED] [REDACTED] *Id.* at 4.

Hofman further reported that [REDACTED] [REDACTED] *Id.* at 3. [REDACTED] *Id.* at 8. HTS Americas Inc. is a dba of HTS (USA). Registration, at 2 (ECF No. 60-2). "In approximately 2015, Riverland began using non-disclosure agreements in an effort to protect [Riverland's] intellectual property." Byerly Decl., ¶ 12 (ECF No. 50-34). [REDACTED] [REDACTED] Hofman Rpt., at 7 (ECF No. 267-3). [REDACTED]

[REDACTED] *Id.* at 8. As stated above, it is unclear if the two entities are the same, but both continued to hold the patents rather than Plaintiffs.

[REDACTED] *Id.* [REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED] *Id.*

Plaintiffs assert [REDACTED]

[REDACTED] Reinitz Decl., ¶ 24 (ECF No. 267-1). Plaintiffs inferred that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See id.* ¶¶ 25–26, 35.

ii. Hofman’s Report of RED’s Business Activities

Hofman’s May 2019 report also stated that [REDACTED]

[REDACTED] Hofman Rpt., at 4 (ECF No. 267-3).

Hofman reported on [REDACTED]

[REDACTED] *Id.* at 4–5. Plaintiffs

knew [REDACTED]

[REDACTED] *Id.* Plaintiffs also learned [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 3, 9. Plaintiffs further obtained [REDACTED]

[REDACTED] *Id.* at 11. The emails contained advice [REDACTED]

[REDACTED]

*Id.*; *see also* Reinitz Decl., ¶ 11 (ECF No. 267-1) (noting Amit and Barker’s conduct [REDACTED]

[REDACTED]).

The level of detail Plaintiffs learned about RED shows the openness of competitor pricing, customers, and projects. The LPR industry is competitive where companies watch the competition. For example, shortly after Teamtronics purchased HTS (USA), Shai Lustgarten wanted to leverage data gained from LPR installations. Barker reported to him what other companies were doing, the price of a competitor's systems, and how Plaintiffs' "mobile platform [was] no competition for these guys" because Plaintiffs had some well-known issues to resolve." Email, at 2 (ECF No. 50-23). Nevertheless, Barker explained how Plaintiffs had scored well in "a head-to-head competition" with another company, but Plaintiffs still had "lost the deal." *Id.* Hofman's report and Barker's email show just how much information competitors know about each other in the LPR field.

iii. Hofman's Product Comparison

Additionally, Hofman's report stated that [REDACTED]

[REDACTED] Hofman Rpt. (Product Comparison), at 12 (ECF No. 267-3). He then provided [REDACTED]

[REDACTED] as follows:

[REDACTED]

[REDACTED]

*Id.* Plaintiffs' HTS N70 camera is manufactured by Hitron as Model NAX-2210D1. Hofman's summary failed to report that Amit introduced the applicable camera to Plaintiffs. Amit had a prior relationship with Rony Hage at Hitron, and Amit tested the Hitron camera before recommending it to Plaintiffs. Moreover, Plaintiffs do not have an exclusive use agreement with Hitron, the absence of which allows Hitron to market and sell the model to any competitor of Plaintiffs, including RED. Hence, RED was not precluded from "using the same model."

Hofman next did the following comparisons:



*Id.* Hofman's report does not identify what constituted the trade secret in his comparison. His mobile unit comparison also fails to take into account that Riverland had a functional mobile unit before Plaintiffs, and because Riverland personnel were helping RED, Riverland's technology appeared at play. Because it is common for dual head cameras to operate with two camera sensors, Byerly Decl., ¶ 6 (ECF No. 50-34), one would expect that function to be the same. To the extent there was another function Hofman found similar, he did not report what it was that constituted a trade secret. Nor have Plaintiffs developed any subsequent evidence on this camera's functionality. Hofman's comparison contains no evidence of trade secret misappropriation.

Hofman's third comparison was [REDACTED]

[REDACTED]

Hofman Rpt., at 13 (ECF No. 267-3). A controller in the LPR parking industry is common. Although both controllers have a rugged exterior that is a rectangle, even those features are not identical, and the ports are noticeably different. The side-by-side review was a comparison without meaning. It only looked at the appearance of the product and told what the controller does. It did not identify any trade secret. Since then, Plaintiffs have brought forward no evidence showing RED's controller incorporated a trade secret. The defendants have shown, however, that they independently developed and procured their controller. Garlick Decl., ¶¶ 5–6, 8–9 (ECF No. 166-4) (declaring, as the Display Division Manager of Impact Components ("Impact"), that RED had worked with Impact to design and procure the controller); Email Chain with Garlick (ECF No. 166-51) (showing RED's development and procurement of a controller); Invoice with Impact (ECF No. 166-52) (showing RED's purchase of the controller); Specs (ECF Nos. 166-53, 166-54) (showing design and image of RED's controller).



Hofman's final comparison pertained to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Hofman Rpt., at 13 (ECF No. 267-3). Again, Hofman's focus was on the public facing aspects of RED's product. Plaintiffs contend in their opposition to summary judgment that this shows that their product "factored into Defendants' development activities." Mem. in Opp'n, at 16 (ECF No. 209). When developing REDNexus, Barker, Amit, and Valdepena Aguilar discussed how it should look and function. REDNexus is a graphical user interface run by software. Amit Depo., at 220 (ECF No. 219-1). It allows viewing by the user, generation of alerts, and so forth. *Id.* Barker voted not to change its look. Email, at 1 (ECF No. 209-13). Amit stated, however, "I feel like REDnexus is also very similar in look and functionality to HTS SeeControl. If we are putting forward the effort we might as well complete the transformation. I think the alert screen need[s] to look different and also the reports." *Id.* Amit explained during his deposition that "there were certain similarities in *the look* of the software that the Riverland folks developed to *the look* of HTS software, and we were not interested in exactly the situation we're in now where HTS thought that it has anything to do with - - with their software." Amit Depo., at 221 (ECF No. 219-2)

(emphasis added). Amit believed RED also viewed the interfaces of other manufacturers to obtain ideas about how to change REDNexus. *Id.* at 222.

Although the email discussion about REDNexus pertained to the look and functionality of the interface, Plaintiffs changed Amit's statement to, "[i]f we are putting forward the effort *we might as well complete the transformation* [of HTS' software]." Mem. in Opp'n, at 16 (ECF No. 209) (emphasis in original) (second alteration in original). Plaintiffs also represented that RED had internally characterized "their early development activities as a 'transformation' of HTS software." *Id.* The email quoted above, however, did not mention software or the transformation of HTS' software. It focused on how the alerts, reports, and so forth looked and functioned.

SeeControl is the interface Plaintiffs' customers use, and Plaintiffs have publicly demonstrated the look and functionality of SeeControl at trade shows. Hr. Tr., at 186–189 (ECF No. 283). Plaintiffs admitted at the April 20, 2022 hearing that the graphical user interface, including the order of options, are not trade secrets because of their visibility. Hr. Tr., at 187–88 (ECF No. 283). Additionally, Plaintiffs conceded that if RED asked Riverland to implement public features of a product, it "would not be misappropriation." *Id.* at 190. Plaintiffs further stated they are not claiming SeeControl's interfaces as trade secrets.<sup>14</sup> *Id.* at 186, 188. Consequently, this part of Hofman's report also did not involve a trade secret analysis.<sup>15</sup>

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<sup>14</sup> At the April 20<sup>th</sup> hearing, Plaintiffs limited their argument about RED's user interface to whether RED used *any* information originating from Plaintiffs regardless of whether it was a trade secret or not. Hr. Tr., at 196–97 (ECF No. 283). Use of non-trade secret information does not place a material fact in dispute about whether the defendants misappropriated a trade secret.

<sup>15</sup> After Hofman finished his report, [REDACTED] so that is not before the court. Reinitz Decl., ¶¶ 38–39 (ECF No. 267-1).

Hofman concluded his report by stating, [REDACTED]

[REDACTED]

Hofman Rpt., at 5 (ECF No. 267-3), which comment focused was on [REDACTED]

**C. Focus on RED in June 2019**

**i. May 14, 2019 Report Updated**

Although [REDACTED]

[REDACTED] by June 12, 2019, the focus had shifted.

Haim Nissenson became involved in the matter.<sup>16</sup> He asked Hofman and others to [REDACTED]

[REDACTED] Email, at 1, 3–4 (ECF No. 267-8) (email chain with [REDACTED]

[REDACTED]. Nissenson also inquired [REDACTED]

[REDACTED]<sup>17</sup> *Id.* at 1. Thus, the focus had shifted away from [REDACTED]

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<sup>16</sup> Haim Nissenson also appears to be known as Carlos Jaime Nissenson (“Nissenson”). Form 8-K, at 2 (ECF No. 166-28); Form 10-K, at 37 (ECF No. 300-3). He is the father of Guy and Niv Nissenson. The court will refer to Guy by his first names to distinguish him from his father. Guy was the CEO of Hi-Tech and/or HTS (USA) when Teamtronics purchased the companies, and Nissenson was involved in the purchase. Amit Depo., at 92 (ECF No. 219-1); Lustgarten Depo., at 25 (ECF No. 220-4) (testifying that Nissenson introduced Lustgarten to “HTS”). When Teamtronics changed its name to HTS Image Processing, Inc. and Quest then acquired it, Nissenson and Shai Lustgarten were on both sides of the deal as a related party transaction. Form 8-K, at 2 (ECF No. 166-28). Nissenson also acts as a consultant for Plaintiffs, with a salary of \$30,000 a month to act in that role. Form 10-K, at 12, 37 (ECF No. 300-3); Hr. Tr., at 97–98 (ECF No. 277).

<sup>17</sup> In answer to Haim’s question, Barker and Amit did not sign a non-disclosure agreement or a non-compete agreement. Hr. Tr., at 127 (ECF No. 283). Plaintiffs assert that Barker and Amit nevertheless had confidentiality obligations arising from other sources. The court will address the assertion below.

The following day, on June 13, 2019, Reinitz sent an email to Hofman stating, [REDACTED] [REDACTED] Email, at 1 (ECF No. 267-2). A few minutes later, Hofman sent Reinitz a [REDACTED] [REDACTED] in an email titled “Trade secrets.” Email, at 1 (ECF No. 267-3). Hofman attached the May 14, 2019 report he had compiled. *Id.* at 2–13. Nissenson was copied on Hofman’s email, and Hofman informed Reinitz in the same email that [REDACTED] [REDACTED] *Id.* at 1 (emphasis added).<sup>18</sup> A subsequent communication shows a teleconference was set up for June 14, 2019. Email, at 1 (ECF No. 267-4); *see also* Email, at 1 (ECF No. 267-5) (noting meeting had occurred).

Around the time when Nissenson spoke with Reinitz, Nissenson requested additional information, which Hofman provided on June 16, 2019. Email, at 1 (ECF No. 267-5). The additional information included [REDACTED] [REDACTED] *Id.* at 3–4. It also included [REDACTED] [REDACTED] *Id.* at 5. Hofman’s updated report included [REDACTED] [REDACTED] *Id.* at 4. Hofman asserted that [REDACTED] [REDACTED]

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<sup>18</sup> The court emphasizes where Nissenson was located and his role in this matter because Plaintiffs would not produce him for deposition on the ground he was “not a U.S. resident. He’s not an executive of HTS,” and Plaintiffs’ counsel could not “ascertain what testimony Mr. Nissenson could provide that has any relation to the issues, the claims or the defenses in this case, beyond, I would say, Mr. Amit’s assertion.” Hr. Tr., at 110–11 (ECF No. 277). Mr. Amit’s assertions are that Nissenson has engaged in abusive litigation tactics in other cases and was misusing the companies that are suing the defendants for his own gain. Mr. Amit attempted to show Nissenson was doing the same in this case.

[REDACTED] *Id.* Hofman then provided the following examples:

[REDACTED]

[REDACTED]

*Id.* As for Barker, Hofman stated the following:

[REDACTED]

*Id.* at 6. The examples Hofman provided support Amit's knowledge about LPR systems. Amit prepared the documents to share with external consultants and partners. The "LPR-Holistic approach" document contains 52-pages of marketing information about where LPR systems are used, who some of Plaintiffs' customers are, what airport proposals Plaintiffs had pending, how Plaintiffs' LPR systems looked and are installed, and so forth. Hofman's report shows the document was shared *externally* with the people and entities listed in Hofman's report.

As for the price lists, the Roadmap, and so forth, the court will address them later in this decision.

ii. Hofman's List of Items

On June 18, 2019, Hofman provided Reinitz [REDACTED]

[REDACTED]” Email, at 4 (ECF No. 267-9). Hofman listed:

[REDACTED]

*Id.* at 5. The court notes that Hofman did not reference the Competitors Comparison and 2018 SOTU documents in his report or communications with Reinitz. Those documents were presented, along with the Roadmap, in February 2018 when Barker, Amit, and others met with their new managers from Teamtronics. Video A\_6\_ SLC PowerPoints (ECF No. 201); Barker Decl., ¶ 2 (ECF No. 279-2) Plaintiffs are claiming some or all of the Competitors Comparison and 2018 SOTU. Trade Secret Ident., at 28–36 (ECF No. 116). Trade secret protection entails knowing what information is at issue and protecting it. Because Hofman was addressing Barker and Amit’s access to confidential information, and Plaintiffs have put these documents at issue as a trade secret, the failure to include them supports that Hofman was not working off of a trade secret list or file that Plaintiffs kept. Instead, Hofman worked to compose a list for litigation.

After receiving Hofman’s latest list, however, it still missed the mark on what constitutes a trade secret. Reinitz informed Hofman that [REDACTED]

[REDACTED]

[REDACTED] Email, at 4 (ECF No. 267-9). Reinitz wanted

[REDACTED] *Id.* at 4.

Hofman, however, has continued to assert a broad view about what constitutes theft. On June 20, 2019, he commented to counsel, [REDACTED]

[REDACTED] Email, at 1 (ECF No. 267-14) (emphasis added).<sup>19</sup> Hofman also testified at his deposition on February 22, 2022, that RED “100 percent” stole all of Plaintiffs’ equipment, hardware, and software. Hofman Depo., at 70 (ECF No. 220-3). Hofman testified that Amit knew what customers Plaintiffs “sold to,” and that Amit met with them, exchanged emails with them, and “had everything.” *Id.* at 72. Hofman also testified that Riverland and Bob Byerly also had copied from Plaintiffs when Byerly had worked for them. Indeed, “[e]verybody could copy, especially if they work in the company.” *Id.* at 73. The court notes if everyone can copy, it raises the question about how well the alleged trade secrets were protected.

Amit then asked Hofman whether he “believe[d] in free competition.” *Id.* at 74. Hofman said he did “within the law,” and then told Amit that Defendants “should have gone on to a . . . different field. Not the same - - same customers, same equipment, same design, same everything. Copy-paste, copy-paste.” *Id.* at 74–75. Thus, according to Hofman, if one has worked for Plaintiffs and leaves, the person must enter a different field, with different customers, and different products.

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<sup>19</sup> Trade secret theft pertains to non-visible elements that cannot be seen or readily identified by users and the public. As for non-visible elements, Hofman stated [REDACTED]

[REDACTED] Email, at 1 (ECF No. 267-14) (emphasis added). It is unclear from Hofman’s list what practices and methodologies those might be.

iii. The Declared Smoking Gun Email

After Hofman sent his list to Reinitz on June 18, 2019, later that same day, Reinitz sent Hofman an email, and copied Nissenson, informing them [REDACTED]

[REDACTED] Email, at 1–2 (ECF No. 267-9). Reinitz stated the email [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 2. The draft email states the following:

To our dear customers, partners, friends,

**I would like to inform you that we have decided to resign our post at HTS due to severe incompatibility with the new management team.**

The past Eight months have been some of the most difficult times in our careers to date.

Since the acquisition, in the beginning of 2018, our team went through financial and moral abuse beyond anything we experienced before:

1. Our Healthcare coverages were canceled without notice while our whole team was traveling for business, took us 3 months to recover health plans
2. Our 401K contributions have been illegally confiscated bi-weekly Since March with no resolution as of yet
3. Our owed commissions and bonuses still haven't been paid, for the whole year of 2017, and current for 2018

These are just examples of some of the personal issues our U.S. team had to deal with.

From a business perspective the situation is worse:

1. Our vendors/suppliers have not been paid since the acquisition – some have threatened a law suite [sic]



2. HTS partner integration group has not been paid and all PARCS integrations have been halted since Jan 2018
3. Our delivery ETA's extended from 2–4 weeks to 8–12 weeks and delivery dates are still unreliable
4. Due to shortage of HR our R&D deliveries have been delayed by months, some crucial bugs included

We decided to share this dire situation with you,<sup>20</sup> our customers/friends, out of a sense of loyalty and trust. **One of the things that kept us fighting for the past few months was the strong sense of loyalty and responsibility to you, our partners.**

It is hapless that we have reached this point, but after months of fighting and yelling and false promises, we are confident that sharing the situation with all of you is the only responsible thing left for us to do.

The utter neglect of our new management team is unfathomable to us, and as such, the best we can do is provide you all with an advance notice of what to expect.

“Its not personal, it's just business” seems like a chewed up cliché when you invest your whole in the success of a company.

For us, it is the 11<sup>th</sup> hour to let go of our false hopes and optimism that things will get better.

We hope that this unfortunate situation will not hurt our future relationships with all of you, and we look forward to see you all very soon on the other side. . .

Sincerely yours,

Jeremy and Sagy

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<sup>20</sup> The defendants provided evidence that supports Teamtronics, who evolved into Plaintiffs, treated its employees poorly, such that they had to file suit to obtain relief. The evidence supports that Teamtronics also did not pay vendors timely or provide products to customers when expected, thereby causing harm. The court has created an Appendix hereto that details some of the evidence and places the above draft email in context.

*Id.* at 3 (emphasis in original).

Upon seeing the email, Hofman remarked, [REDACTED] *Id.* at 1. Reinitz noted again that [REDACTED]

[REDACTED] *Id.* Plaintiffs and counsel did not seem to ponder that if there was such a plot, and one was careful to cover tracks by sending the email from another account, it would leave the question why the draft was left in the employee's email folder. Additionally, rather than pausing because the email said, "we have decided to resign our post at HTS," *id.* at 3 (emphasis added), and that did not happen, Plaintiffs concluded the plans must have changed and that change was to facilitate theft of Plaintiffs' trade secrets. Thus, it seems Plaintiffs simultaneously concluded (1) that the email was sent, (2) but the email must have been modified to include only Amit because Barker did not resign until October 16, 2018,<sup>21</sup> (3) the reason Barker did not resign is because, after the email was drafted, the defendants changed their plan to facilitate trade secret misappropriation, (4) the new plan required Barker to stay on the inside to funnel trade secrets to Amit, (5) the defendants covered their tracks by having Amit send the email from a different account, and (6) the defendants must have forgotten about the draft email when they were covering up their plot.

Yet, there is no evidence in the record to show the email was sent. As stated before, the email was in the "Draft" folder, and does not show it was forwarded to another account. The "To" field was left blank. Draft Email, at 3 (ECF No. 267-9). Nor is there a report from anyone in the industry that they received the email, even though Plaintiffs were able to gather significant intel on RED through industry contacts and were tracking the defendants. There also is no evidence

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<sup>21</sup> Email (ECF No. 281-14) (stating Barker resigned); Barker Decl., ¶ 17 (ECF No. 279-2) (stating Barker's resignation date).

that Barker funneled confidential information to Amit while Barker remained at HTS (USA) after Amit resigned. Instead, Plaintiffs appear to rely on a text Amit sent to Barker on August 30, 2018 that asked, “Did you send me the NDA back?,” for support of the plot. Email, at 1 (ECF No. 267-10). It is unclear how that supports Plaintiffs’ assertions that Barker and Amit plotted to steal Plaintiffs’ alleged trade secrets. When a record merely contains suspicion, conjecture, and speculation it does not raise a material fact in dispute. Plaintiffs’ smoking gun analysis contains unchecked conjecture. Neither the smoking gun analysis nor the other parts of the pre-filing investigation support what Plaintiffs asserted in their Complaint and the Alert Letter.

#### **D. In Camera Filing of Pre-Investigation Documents**

Before turning to the next issue, the court addresses Plaintiffs’ *ex parte* and *in camera* filing of their pre-investigation documents. Plaintiffs filed the documents to oppose a Rule 11 sanctions motion. Plaintiffs asserted they did so “for the limited purpose of demonstrating the adequacy and reasonableness of [their] prefiling investigation.” Mot. for *In Camera* Review, at 1 (ECF No. 256). They further asserted they “have not and do not waive any applicable privileges or protections in connection with this request.” *Id.* at 2.

At times, a court has authorized *in camera* review when a party is opposing a Rule 11 motion. *See Icon Health & Fitness, Inc. v. Park City Entm’t Inc.*, No. 1:10-cv-195, 2011 WL 2636829, at \*2 (D. Utah July 6, 2011). Other courts have not allowed it because it provides the opposing party with “no opportunity to review or respond to” the information. *ESIP Series I, LLC v. doTerra Int’l, LLC*, No. 2:15-cv-779-RJS, 2022 WL 656777, at \*7 n. 69 (D. Utah Mar. 4, 2022). Moreover, when a party proceeds to submit attorney-client information or work product information voluntarily to the court, “with the intent to rely on the materials to support its

opposition” to sanctions, it can constitute a waiver of the privilege. *Shared Med. Res., LLC v. Histologics, LLC*, No. SACV 12-0612 DOC, 2012 WL 5570213, at \*3–4 (C.D. Cal. Nov. 14, 2012) (distinguishing when *in camera* review is appropriate under Rule 11). This precludes a party from using privileged information both as a sword and a shield. *Id.* at \*2 (citations omitted). Ultimately, the totality of the circumstances must be evaluated to determine whether to allow *in camera* review.

In this case, the court granted Plaintiffs’ motion to file the documents *in camera*, based on the limited information Plaintiffs provided in their motion (ECF No. 256), but the court further stated upon such review, the court would “determine if the documents should be disclosed to the defendants.” Order (ECF No. 261). Plaintiffs still elected to file the documents, despite knowing the documents may be disclosed.

In total, Plaintiffs filed twenty-three exhibits. The following summarizes some of the content of what was filed *ex parte* and *in camera*: (1) a screenshot of a RED webpage; (2) the Riverland NDA signed by Amit on behalf of HTS Americas; (3) the draft email in Amit’s email file; (4) a December 2018 calendar item between Amit and Barker after they left HTS (USA); (5) an email between RED and TIBA; (6) Amit’s 2016 Employment Agreement with HTS (USA); (7) HTS’s User Manuals; (8) a Press Release about Quest’s acquisition of HTS Image Processing; (9) the settlement agreement with Riverland; (10) Amit’s email to Plaintiffs for the Rule 11 safe harbor provisions; and (11) emails between the parties in this case involving settlement discussions.

Plaintiffs made no attempt to redact privileged information from non-privileged information to provide the defendants a fair opportunity to respond. Plaintiffs included information that was known to Defendants and not privileged (Amit’s email, a RED calendaring

item, a RED email, Amit's employment agreement, the Riverland NDA, settlement discussions). Plaintiffs also included information that was known to customers (user manuals, email with a customer, screenshot from RED's website). Additionally, Plaintiffs included information that did not pertain to their pre-filing investigation (settlement discussions in 2022).

Because fact discovery had closed prior to Plaintiffs filing the documents *in camera*, and the court had already heard oral argument on the dispositive motions, Plaintiffs cannot contend they had to keep all the information from the defendants to protect Plaintiffs' investigation. Plaintiffs engaged in sharp practices to deprive the defendants an opportunity to respond to Plaintiffs' arguments and treated *non-privileged* information as a sword and shield. For the portions of Plaintiffs' submission that contained attorney-client or work product information, the information raises the concerns stated above. When one makes the types of allegations that Plaintiffs made in their complaint, and then engages in sharp practices while responding to a Rule 11 motion, it is not well-taken. The court concludes the defendants have a right to see this information.<sup>22</sup>

### **Plaintiffs' Trade Secret Identification**

The court next addresses Plaintiffs' trade secret identification. The defendants have moved to dismiss Plaintiffs' trade secret claims on the ground that Plaintiffs have failed to identify their claimed trade secrets with the requisite degree of specificity under federal and state laws. The following are Plaintiffs' trade secret identifications as they have evolved in this case.

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<sup>22</sup> The court will allow Plaintiffs to address whether the disclosure should be limited only to the defendants.

**A. Assertions in First Complaint**

Plaintiffs filed their Complaint in June 2019 and identified two categories of trade secrets: technical and business. As to the technical trade secrets, Plaintiffs’ original Complaint asserted RED “has used specifications of HTS’ proprietary imaging units, software applications, and LPR servers to recreate products virtually indistinguishable from those offered by HTS.” Complaint, ¶ 15 (ECF No. 2). After stating HTS has developed “pioneering technologies” over the course of 20 years, Plaintiffs asserted HTS offers “proprietary imaging units, including specialized cameras and illumination devices optimized for LPR applications,” and “a suite of proprietary software applications, including image processing and management platforms.” *Id.* ¶¶ 38–40. Plaintiffs also asserted “HTS’ develops and sells servers, terminals, and other computing devices configured and optimized for use in LPR applications. Each of these technologies incorporate technical trade secrets developed by HTS, including technical know-how, secrets, and other confidential information not known outside HTS.” *Id.* ¶¶ 41–42.

Next, Plaintiffs asserted that Barker and Amit “had access to and knowledge of HTS’ trade secrets, including the described technical trade secrets.” *Id.* ¶ 58, 64. According to Plaintiffs, “Amit participated in the development of HTS’ imaging units, including cameras optimized for use in LPR applications.” *Id.* ¶ 69. “Barker also gained internal knowledge of HTS’ technical products and R&D practices over his five-year employment with HTS.” *Id.* ¶ 70. Then, according to Plaintiffs, RED “used HTS’ technical trade secrets,” as described above, and “[i]n only a few months,” brought “a suite of LPR products to market” that “are indistinguishable from products developed by HTS over decades of R&D.” *Id.* ¶ 111.

The allegations swept broadly and vaguely across the technical areas of Plaintiffs' business. The allegations included all cameras; all software, including all image processing and management platforms; all servers, terminals, and computing devices optimized for the LPR field; all technical know-how, etc., and that such unspecified trade secrets were incorporated in an unspecified manner into the defendants' products, such that the products were indistinguishable.

The allegations also swept broadly across Plaintiffs R&D efforts when reporting that the defendants had brought a product to market within months. Plaintiffs knew at the time, however, that the defendants had gone into business with key personnel from Riverland who already had their own OCR engine and LPR product line. They also knew those members from Riverland were providing their expertise to RED, including their expertise in LPR design. Yet, Plaintiffs never mentioned Riverland in their Complaint, nor did they mention the other members of RED or their expertise and technology they brought to RED.

As to the business trade secrets, Plaintiffs asserted they maintain "numerous internal business plans, documents, and other materials. Among these materials is HTS' internal 'sales pipeline' document which details hundreds of current and future business opportunities HTS is positioning itself to obtain." Complaint, ¶ 49 (ECF No. 2). Additionally, Plaintiffs asserted that "HTS' pipeline also includes detailed technical specifications, pricing information, cost of goods sold (COGs) information, and other related parameters" including "internal HTS insight" based on "decades of experience and hundreds of industry relationships" *Id.* ¶¶ 49–51. Thus, according to Plaintiffs, the "pipeline is effectively a strategic 'X-ray' of its entire business operations and prospects." *Id.* ¶ 52. Plaintiffs further alleged RED "used HTS' confidential customer and

prospective customer information, and aggressively pursued such customers to choose [RED's] offerings over HTS.” *Id.* ¶ 116.

Plaintiffs’ business trade secrets also sweep broadly, but Plaintiffs at least identified the sales pipeline by name and also referenced “HTS’ confidential customer and prospective customer information” as more focused allegations.

### **B. Plaintiffs’ Interrogatory Response**

Not surprisingly, the defendants asked Plaintiffs to “[i]dentify with specificity each trade secret YOU allege Defendants misappropriated from Plaintiffs.” Interrogatory Response No. 1, at 4 (ECF No. 50-37). Plaintiffs responded on February 5, 2020, which was approximately eight months after filing their Complaint, four months after sending the Alert Letter to the industry, and one month before the COVID-19 pandemic became an issue in the United States, as follows:

HTS’ technical trade secrets; HTS’ business trade secrets; development information and technical [¶ 15] specifications of HTS’ proprietary imaging units, [¶ 39] including cameras optimized for use in LPR applications, [¶ 40] software applications, [¶ 41] LPR servers, terminals, and other computing devices configured and optimized for use in LPR applications; [¶ 42] HTS’ technical know-how; [¶ 16] HTS’ confidential business plans and internal documents; [¶ 49] HTS’ internal ‘sales pipeline’ documents detailing HTS’ current and future business opportunities; [¶ 50] HTS’ pricing information; [*Id.*] HTS’ cost of goods sold (COGS) information and other related parameters; [¶ 51] HTS’ internal insight, gained from HTS’ experience and industry relationships, regarding HTS’ expected likelihood of being selected for given project(s); [¶ 109] HTS’ detailed price quotes; [*Id.*] HTS’ cost margins; [¶ 12] business opportunities available to HTS; [¶ 74] HTS’ sales margins per customer; [*Id.*] parameters used by HTS to prepare and submit bids for LPR projects; [¶ 116] HTS’ customer and prospective customer information.



*Id.* The inserted paragraph numbers before the specified recitations correspond to the paragraphs in the Complaint. When the response is viewed carefully, one sees that Plaintiffs merely repeated what they had stated in their Complaint, without any further elucidation.

**C. Motion to Amend Complaint and Amended Complaint Allegations**

In September 2020, Plaintiffs filed a Motion for Leave to File Amended Complaint and Join Parties that was four pages long. It stated, “[d]uring discovery . . . , HTS has uncovered evidence of *recent events* giving rise to additional claims in this case,” and “HTS *recently learned of additional conduct* by [the defendants] giving rise to additional claims in this case.” Mot. for Leave to Amend, ¶¶ 5–6 (ECF No. 33) (emphasis added). The motion referred the court to the proposed Amended Complaint for further details. *Id.* ¶ 6. A magistrate judge granted the motion and Plaintiffs filed an Amended Complaint on October 15, 2020 (ECF No. 39).

Plaintiffs added Riverland Technologies LLC to the Complaint. Redline Amended Complaint, ¶ 26 (ECF No. 33-5). Plaintiffs then added “the design and development of a dual-head camera with embedded LPR processing capabilities” to their list of trade secrets. *Id.* ¶ 72. Plaintiffs also included allegations about the NDA between Riverland and HTS Americas, that Amit had signed, as showing that Amit had disclosed trade secrets to Byerly. *Id.* ¶¶ 100–03. Finally, Plaintiffs asserted that RED started marketing a new product in July 2020 called “RedMatrix,” which was “a dual-head camera with embedded LPR processing.”<sup>23</sup> *Id.* ¶ 130. Plaintiffs further alleged “Riverland designed, developed, and/or manufactured the RedMatrix camera using HTS’ trade secrets provided by Amit.” *Id.* ¶ 134.

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<sup>23</sup> July 2020 was almost two years after the defendants had left HTS (USA), and Plaintiffs knew neither Amit nor Barker had worked substantively on a dual-head camera while at HTS (USA).

Plaintiffs attached a copy of the NDA and a copy of the back of a dual head camera. NDA (ECF No. 33-2); Image of Dual Head Camera (ECF No. 33-3). Plaintiffs had knowledge of the NDA and a dual head mobile camera by May 2019, as is evidenced by Hofman's report above. This information was not newly known or newly discovered. Once RED marketed a new dual head camera, though, Plaintiffs acted to bring in Riverland and halt RED's marketing of the product. As with other allegations, Plaintiffs never identified what trade secrets Amit purportedly disclosed to Riverland that were then incorporated into RedMatrix.

The record evidence shows that on July 7, 2017, Amit sent an email to his contact at Hitron that indicated HTS (USA) would like to develop a dual head camera similar to Genetect's competing product. Email, at 1 (ECF No. 282-6). Amit included an image of Genetect's product and stated how HTS (USA) would like a "White LED camera side by side with the IR LED's" to replace existing cameras in the "short and long range (5–50mm)." *Id.* Hitron then drafted front and side view renderings, with stated filter options, and provided the renderings to Amit. Email, at 3–4 (ECF No. 282-7). In February 2018, a meeting was held with the new management team from Teamtronics. Amit and Barker presented a "2018 State of the Union" or "SOTU" document to orient management about HTS (USA). The document contained a "product wish list," which showed the dual-head camera rendering that Amit had obtained from Hitron. 2018 SOTU, at 22 (ECF No. 99-2). At the same meeting, a "RoadMap 2018" document was discussed. It contained information about products, areas of weakness, and included a "high-level" plan to release a dual head camera. Roadmap, at 8, 28 (ECF No. 75-2).

Plaintiffs tied the NDA to the RedMatrix dual head camera in its Amended Complaint. That is what allowed Plaintiffs to bring Riverland into this dispute. The record shows, however,

that Plaintiffs' evidence contains only preliminary information about the dual-head camera, and that it was Amit who initiated obtaining such a camera. Plaintiffs have presented no evidence that Plaintiffs developed the dual-head camera while Amit and Barker were employed at the company, or that Amit and Barker had access to any information beyond the renderings stated above. Thus, the connection between the NDA and RedMatrix, as a fully functioning camera, is not supported.

As for the image that Hofman included in his May 2019 report, it pertains to a mobile unit, and it is unclear what camera it was and how it connects to the dual-head cameras reported in the documents above. What is clear in the evidence, however, is information about Riverland's dual head camera. As stated above, Riverland designed and developed the Matrix dual head camera from November 2017 to July 2019. Byerly Decl., ¶ 7 (ECF No. 50-34). There is no evidence in the record to the contrary. "In mid-2020, Riverland and RED entered into a Value Added Reseller (Distributor) Agreement . . . ." *Id.* ¶ 8. That agreement "allowed RED to resell and distribute Riverland's Matrix Edge Camera, and to re-label Riverland's Matrix Edge Cameras using REDmatrix/RED central naming conventions. Only subsequent to entry into the Distribution Agreement did RED begin reselling the Matrix Edge Camera under its own private label." *Id.* Plaintiffs have presented no evidence to controvert what dual-head camera RED marketed under the Distribution Agreement, or otherwise refute Byerly's declaration. The court notes Byerly's declaration was filed on January 15, 2021, in conjunction with the defendants' first Motion for Summary Judgment.

#### **D. Amended Interrogatory Response**

Approximately two months after the defendants filed their first Motion for Summary Judgment and Byerly's declaration, Plaintiffs amended their interrogatory response, and attached

a 17-page list of their trade secrets on or about March 3, 2021. Amended Response to Interrogatory No. 1, at 4–21 (ECF No. 75-6). Plaintiffs identified such things as “correspondence (over 100’s of emails) between HTS and Hitron,” *id.* at 4, “HTS’ ‘SeeFusion’ algorithms,” *id.* at 5, “Detailed analysis of HTS’ ‘slow speed’ cameras, including ‘N50,’ ‘N60,’ and ‘N70,’ models,” *id.*, and of its “high-speed cameras,” *id.* at 8, and the “dual head embedded camera” development. *Id.* Two days later, Plaintiffs filed their opposition to summary judgment, and filed a concurrent Rule 56(d) motion to allow more time for discovery.

#### **E. The Court’s Warnings**

On April 28, 2021, the court issued a Memorandum Decision and Order (ECF No. 112), *Quest Solution, Inc. v. RedLPR, LLC*, No. 2:19-cv-437, 2021 WL 1688644 (D. Utah Apr. 28, 2021). The court set forth the standard for identifying trade secrets adequately under state and federal law. Mem. Dec., at 4–5. The court also stated that if Plaintiffs were asserting “a compilation as a trade secret, it must identify with reasonable particularity how the combination ‘is outside the general knowledge and not readily ascertainable by proper means.’” *Id.* at 6 (quoting *Brigham Young Univ. v. Pfizer, Inc.*, 861 F. Supp. 2d 1320, 1323–24 (D. Utah 2012)).

The court noted that “[t]he parties [had] engaged in a meet and confer, but HTS has not remedied the inadequacies of its disclosures.” *Id.* The court informed Plaintiffs that their “trade secret identification remains both too vague and over-inclusive. The court therefore direct[ed] HTS to identify its claimed trade secrets with the required degree of specificity.” *Id.* The court expressly warned Plaintiffs that “[a]nother opportunity will not be afforded by the court.” *Id.*

As for the NDA, the court was persuaded that it created a material issue of fact that could not be decided on summary judgment. *Id.* at 7. Upon further development and understanding of

the record, however, the court concludes its ruling was erroneous, and will address the issue further below.

The court also addressed Plaintiffs' Rule 56(d) motion. Due to the Alert Letter reporting that an internal investigation had revealed that Barker and Amit stole trade secrets while still employed at HTS (USA), and that the stolen trade secrets were the foundation of RED's operations, the court informed Plaintiffs "there needs be strong evidence to support such accusations." *Id.* at 10. The court found it "troubling that HTS has failed to identify its trade secrets appropriately and is now asserting it needs discovery to prove misappropriation and use of HTS' technology." *Id.* The court then "caution[ed] HTS against using these proceedings to harm a competitor based on mere supposition,"<sup>24</sup> and that "[i]mproper use of litigation is not taken lightly by this court." *Id.*

#### **F. Plaintiffs' Final Trade Secret Identification**

On May 21, 2021, Plaintiffs filed their final trade secret identification, about two and a half months after filing their previous 17-page trade secret identification. Plaintiffs' final Trade Secret Identification states the "trade secrets at issue in this case are set forth in detail" in the document "and in the accompanying declaration of Yoram Hofman." Trade Secret Ident., at 2 (ECF No. 116). Plaintiffs' trade secret identification is 42-pages long (the "trade secret identification" or "Identification") and Hofman's declaration is 20 pages. *Id.*; Hofman Decl. (ECF No. 116-1).

Besides Hofman's declaration, the Identification has three attachments. One is Hitron's camera specification sheet for Model NAX-2210D1, which Plaintiffs refer to as their N70 camera. Compilation One (ECF No. 116-2). Plaintiffs inserted questions on some of the items, to which

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<sup>24</sup> At the time of the court's ruling, it did not have the information about Plaintiffs' pre-filing investigation detailed above.

Hitron responded. The document is claimed as a compilation. Another attachment is “N70 Open Action Items,” where topics for the camera development are grouped, with notations on actions and how items were resolved. Compilation Two (ECF No. 116-3). The document also is claimed as a compilation. The third document is one version of Plaintiffs’ Sales Pipeline (ECF No. 116-4). The Sales Pipeline is an ongoing document, with versions before and after the one identified. The version attached to the trade secret identification was last updated on August 13, 2018, a few days after Amit resigned, and is claimed as a compilation as well.

Determining which portions of the documents are Plaintiffs’ claimed trade secrets and which are not is challenging. At the April 2022 hearing, the court noted the challenges of the document. Hr. Tr., at 58 (ECF No. 283). In response, Plaintiffs’ counsel stated the trade secret identification attempted to explain the context of the trade secrets and the process to show it was not something simple to develop. *Id.* at 59. The problem, however, is that Plaintiffs did not label sections as introductory or background to separate information that was mere context from Plaintiffs’ claimed trade secrets.

i. Hitron Vendor and Factors Considered

For example, on page 3 of the Identification, the page has an opening section entitled “HTS’ Identification of Trade Secrets.” Trade Secret Ident., at 3 (ECF No. 116). That section is immediately followed by a subsection entitled “HTS’ technical trade secrets.” *Id.* Under that subsection, Plaintiffs explained how it sought a new camera manufacturer and what factors it considered when selecting Hitron. *Id.* Within that same subsection, Plaintiffs referred to the attachments related to the N70 camera. From this, the defendants and the court were supposed to

discern which portions of the subsection were mere background and which are claimed trade secrets.

ii. Hitron Bug

Plaintiffs also claimed that when they learned something did not work, that “negative know-how” also is a trade secret. Hr. Tr., at 32, 61–62 (ECF No. 283). Plaintiffs have cited no authority for that proposition. And when Plaintiffs identified a bug, and “Hitron developed and provided a firmware update” to resolve it, that was listed too. Trade Secret Ident., at 6 (ECF No. 116). During the April 20, 2022 hearing, the court asked if “Hitron would be precluded from resolving that bug for any subsequent camera customers?” Hr. Tr., at 46 (ECF. No. 283). Plaintiffs’ counsel responded “to the extent that that bug was - - arose as in the context of the other changes, tweaks and improvements HTS would be making, our position would be yes. If it was, I don’t know, a bug in the generic operation of Hitron’s cameras, probably not.” *Id.* The Identification does not state in which category the bug falls and Plaintiffs have provided the court no additional information about it.

iii. Dual Head Embedded Camera

Plaintiffs also continued to claim the dual head embedded camera as a trade secret despite the dearth of evidence on this issue. Trade Secret Ident., at 7 (ECF No. 116). Plaintiffs had Byerly’s declaration about RED using Riverland’s dual head camera under a licensing and branding agreement, and Plaintiffs had no evidence to controvert it. Yet, Plaintiffs still claimed it. Plaintiffs further claimed as a trade secret the 2018 SOTU document drafted by Barker and Amit that showed Hitron’s renderings and the specifications that Amit had requested. *Id.* at 8. Besides the specifications being based on Amit’s knowledge, Hitron’s renderings were derived from an

example Amit gave Hitron of a competitor's dual-head camera. To claim the fully functioning RedMatrix camera must have incorporated Plaintiffs' trade secret under such circumstances was so unsupported that it constitutes abusive litigation practices.

iv. Breadth of Hitron's Camera Claims

The court also notes the breadth of Plaintiffs' camera claims. In the original Complaint, first interrogatory responses, and Amended Complaint, Plaintiffs referred to their proprietary imaging units that included optimized cameras. Plaintiffs did not limit the scope of which cameras they claimed. Plaintiffs amended Response to Interrogatory No. 1 referred to the N70 camera by name, but Plaintiffs did not limit their claimed trade secrets to the N70 camera. It claimed "HTS' proprietary 'slow speed' imaging units," plus "HTS' proprietary 'mobile' imaging unit," and "HTS' proprietary 'high speed' imaging units." Resp. Interrog. No. 1, ¶ 1.A (slow speed cameras), ¶ 1.B. (mobile camera), ¶ 1.C (high speed cameras) (ECF No. 75-6). These same categories are repeated in Plaintiffs' final trade secret identification, as follows:

1. HTS' technical trade secrets.

A. Design and development information, technical specifications and configurations, and strategic considerations associated with the development, manufacture, integration, and deployment of *HTS' proprietary 'slow speed,' 'mobile,' and 'high speed' imaging units.*

Trade Secret Ident., ¶ 1.A. (ECF No. 116) (emphasis added). In keeping with this breadth, Plaintiffs claimed Slide 9 from the Roadmap is a trade secret that lists seven cameras across the three categories, with abbreviated notations about them. *Id.* ¶ 1.B (Slide 9 of Roadmap); *see also* Mem. in Opp'n, at 13 (ECF No. 73) (informing court the Roadmap "also contains corresponding



information regarding HTS' high speed and mobile cameras. . . . None of it is believed to be 'public' or 'industry knowledge.'").

The court addressed the breadth of Plaintiffs' trade secret claims at the April 20<sup>th</sup> hearing, and stated it appears to "claim every aspect of HTS's business." Hr. Tr., at 199 (ECF No. 283). Plaintiffs' counsel responded that they had not tried to claim all of Plaintiffs' technology. *Id.* He provided the following example,

The cameras, we've never claimed that HTS - - every aspect of HTS's cameras or every aspect of the - - every camera I mean that HTS sells, . . . probably at least half a dozen different models of cameras, we haven't listed all of those, *we have listed effectively one maybe there was a second one that was in development, the dual head camera*, but we identified a specific camera and specific features . . . .

*Id.* at 200 (emphasis added). The record shows the contrary. Plaintiffs repeatedly listed cameras across three categories when identifying their trade secrets.

The above examples are merely from the first 9-pages of Plaintiffs' trade secret identification versus selecting a smattering across 42-pages. These types of issues, however, are throughout Plaintiffs' Identification. The examples show the morass the defendants and the court have faced in trying to determine what trade secrets are at issue both because of how they were identified and how they have continued to change over the course of this litigation.

#### **G. Plaintiffs' Failure to Apprise of Trade Secrets Remaining at Issue**

During a hearing on April 21, 2022, Plaintiffs' counsel asserted that Plaintiffs did identify their trade secret from "the outset, prior to discovery." Hr. Tr., at 46 (ECF No. 277). The above iterations show the contrary. Plaintiffs' counsel then remarked, "do we have evidence to support every one of the identified trade secrets to go to the jury? I will – we don't." *Id.* The court

responded, “That’s what we’re here about. If you don’t have the evidence, just concede it so I can get rid of that.” *Id.* Yet, as of this day, Plaintiffs have not done so, thereby leaving the defendants and the court still guessing what is at issue.

### **Defendants’ Asserted Independent Development**

The court now turns to the defendants’ assertion of independent development. Although Plaintiffs have not identified their trade secrets appropriately, the defendants attempted to address them in a second Motion for Summary Judgment, wherein the defendants asserted they independently developed their products, services, vendors, and customer base. Second Mot. for S. Jdmt., at 9, 31 (ECF No. 166). Plaintiffs responded by stating the defendants were putting up strawmen because Plaintiffs never claimed customers or vendors as a trade secret. Mem. in Opp’n, at 4 (ECF No. 209). The court disagrees the defendants created strawmen arguments. As stated above, Plaintiffs’ trade secret identification is confusing, overbroad, and vague about what trade secrets are at issue. The court and the defendants have been left to guess about what is claimed.

Despite the breadth of areas Plaintiffs have listed, there are certain technologies and business documents that have received greater focus in this case. They are Plaintiffs’ N70 camera compilations, the Sales Pipelines, pricelists, and the SeeFusion algorithm and/or Plaintiffs’ software.<sup>25</sup> This section addresses those areas and couples Plaintiffs’ trade secret identification with other evidence in the record, briefing, and oral argument on the issues.

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<sup>25</sup> Plaintiffs stated the following in opposition to the second Motion for Summary Judgment: “Plaintiffs’ prior submissions (e.g., ECF Nos. 73, 116, and 174, which are incorporated by reference in their entirety), HTS identified with requisite specificity the trade secrets at issue in this case, including HTS’ proprietary SeeFusion algorithm, aspects of the design and development of its N70 LPR camera, its internal ‘sales pipeline’ spreadsheets, and other information.” Mem. in Opp’n, at 34 (ECF No. 209). Hence, these areas of focus.

### A. N70 Camera Development

As discussed above, Hitron manufactures the NAX-2210D1 camera,<sup>26</sup> which Plaintiffs market as the N70 camera. For ease of reference, the court refers to Hitron's camera as the NAX camera. Evidence in the record shows that RED considered different LPR cameras, but chose to use the same camera that Plaintiffs use. Amit Decl., ¶¶ 24, 26–31 (ECF No. 166-2). Using the same camera model is not a trade secret violation. Thus, the focus is not on what camera model was used, but on the modifications Plaintiffs made to the camera. Hr. Tr., at 28 (ECF No. 283) (contending Plaintiffs' focus was not on the camera model, but on the "know-how" to make it into the N70 camera). Plaintiffs are claiming two development "compilation[s], the specific changes and the negative know-how" as trade secrets. Hr. Tr., at 62 (ECF No. 283).

Hitron's specification sheet for the NAX camera is detailed. NAX Specs (ECF No. 166-31). When compared to Compilation One, the details are arranged differently, but the information in the base specifications is essentially the same.<sup>27</sup> *Cf* NAX Specs (ECF No. 166-31) *with* Compilation One (ECF No. 116-2). What varies between the two documents are the questions Plaintiffs posed about features, the insertion of the I/O schematic, and the addition of a "General Points" section.<sup>28</sup>

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<sup>26</sup> The camera has different model numbers depending on if it is a color or IR lens, what the IR wavelength is, and if the camera has a logo or not. *See* Compilation Two, at 8 (ECF No. 116-3); Order by RED (ECF No. 166-32) (matching Hitron model numbers for the cameras ordered by RED).

<sup>27</sup> The weight of the camera appears to have updated, along with a "Face Detector" feature. *Cf* NAX Specs (ECF No. 166-31) *with* Compilation One, 1–2 (ECF No. 116-2). Neither are at issue in this case.

<sup>28</sup> The General Points section consists of further questions and answers on points appropriately named "General," such as what the warranty is, what colors are available for the sunshield, what

Because Compilation One largely consists of that which is already in the public *and* in that specific “combination of characteristics,”<sup>29</sup> coupled with the camera features being apparent to anyone who uses them, the court asked Plaintiffs’ counsel to identify what made the Compilations a trade secret from which RED benefited. Hr. Tr., at 37–39 (ECF No. 283). Plaintiffs’ counsel responded it was knowing how “to make the changes to the specification.” *Id.* at 38. The court continued to press for specificity on the issue, and eliminated that “key features . . . about how many mega-pixels the camera has, the type of shutter, the image, the type of lens it uses,” and other features stated on the specification are not claimed by Plaintiffs as trade secrets. *Id.* at 42–44. Instead, the competitive advantage appears to be focused on three specific features Plaintiffs incorporated into the N70: the solution to the I/O schematic, the IR illumination wavelengths, and the power supply. *Id.* at 29–30.

According to the Plaintiffs, “it took HTS eight months to figure out how to optimize that off-the shelf camera,” where “we need to change the illumination in a certain way, we need to change the relay in a certain way.” *Id.* at 31. Plaintiffs’ counsel asserted at the April 20<sup>th</sup> hearing that Defendants made the same modifications to RED’s camera, and they did so “with almost surgical precision.” *Id.* at 29, 31, 35. The court now turns to the three modifications.

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is the vandal resistance rating, is there an illumination sensor, and so forth. Compilation One, at 2 (ECF No. 166-2).

<sup>29</sup> *Harvey Barnett, Inc. v. Shidler*, 338 F.3d 1125, 1130 (10th Cir.2003) (noting public information combined in a non-public way “may yield a competitive advantage” when the combination is “taken together”). The distinguishing factor in this case is the public information and the specific manner of combining that public information are known in the LPR industry as discussed further below.

i. Isolation of I/O

Plaintiffs desired an isolated input/output to “protect the camera from external devices problems,” and their proposed I/O schematic showed “the Alarm Out is implemented on a relay (24VDC/1A).” Compilation One, at 2 (ECF No. 116-2). Plaintiffs provided Hitron a diagram of the circuit. *Id.* Hitron stated it would work on isolating the input/output and provide a design. Compilation Two, at 1 (ECF No. 116-3). *Id.* About three weeks later, on August 19, 2017, Hitron directed Plaintiffs to “see worksheet ‘Hitron’ for IO design.” *Id.* Then on October 27, 2017, Hitron stated it would send a sample of the “new I/O interface.” *Id.* Compilation Two contains a schematic different from that provided to Hitron by Plaintiffs. *Cf id.* at 9 with Compilation One, at 2 (ECF No. 116-2). Hitron’s comments seem to indicate that it designed the schematic in Compilation Two. Other than Plaintiffs stating it was an iterative process, Plaintiffs provided no further information about how or who designed that schematic. Plaintiffs assert, however, that the defendants misappropriated the technology.

Plaintiffs cite to RED’s development log to support their assertion. The log contains approximately two hundred line-items detailing RED’s development of their products over the course of a year. RED Dev. Log, at 1–2 (ECF No. 225-6) (showing entries from January 2019 through February 2020).<sup>30</sup> One of line items was created on January 6, 2019 by “Rafael Valdepena,” a member of RED, who helped develop Riverland’s OCR engine and specializes in

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<sup>30</sup> Although RED brought a product to market within four-and-a-half months after Barker left HTS (USA), one must consider that timeframe within context. As discussed above, RED joined with members of Riverland as RED’s R&D arm because Riverland already had an experienced LPR systems developer, an OCR engine and software, and hardware. Riverland also had a mobile LPR system. After RED sold its first product on or about March 1, 2019, it continued working on modifications through February 2020 with the help of Riverland’s developer. When considered in context with the other evidence in the record, for the reasons discussed below, no reasonable jury could conclude that the defendants misappropriated Plaintiffs’ alleged trade secrets.

developing LPR systems. Amit Depo, at 193 (ECF No. 219-1) (watching Valdepena test the software in 2012); Amit Decl., ¶ 52 (ECF No. 166-2); RED’s webpage, at 13 (ECF No. 267-5) (noting Valdepena’s background). Valdepena Aguilar’s entry states, “[t]he New N70 Camera has the input and output together in one cable instead two cables like the previous N70[;] we need confirm and review this will work [because it] has only a ground common cable for both.” RED Dev. Log, at 1 (ECF No. 225-6). Defendants claim the reference to N70 was shorthand because the NAX model number was harder to state. Even if that is so, the reference shows that RED was aware of Plaintiffs’ isolated input/output and was evaluating the issue for its own product.

On March 19, 2019, Hitron sent Amit an email and asked for confirmation on “the alarm out . . . we will use the ‘relay’ alarm out” for RED’s camera. Email, at 3 (ECF No. 166-56). The following day, Amit asked Hitron, “[c]an we get a separate relay for the alarm out? Does it currently share the same common wire with the alarm in? We are having issues with the shared alarm-in cable of the first order.” *Id.* at 4. On March 25, 2019, Hitron responded, “[p]lease review the attached images. Alarm out is same as the cameras you are previously used to working with – (Relay alarm out).” *Id.* at 6. Amit reviewed and approved the schematic. *Id.* at 7. The defendants did not provide a copy of the attached schematic, so it is unknown if it matched the schematic in Compilation One or the schematic in Compilation Two or neither. Nevertheless, the evidence supports that Plaintiffs and RED made the same or similar I/O change and that their respective cameras have the same or similar alarm out relay that is isolated from the input. Plaintiffs assert this shows misappropriation of their trade secret.

At the time Plaintiffs were developing the NAX camera into the N70, Amit was employed at HTS (USA) and sent an internal email to several people. He asked whether Plaintiffs were

“asking Hitron to replace their input or their output?? Two separate circuits.” Email, at 3 (ECF No. 255-1). Avi Shviki responded to Amit’s email and inserted the schematic shown in Compilation One, that Plaintiffs had sent to Hitron, showing isolation of the alarm in/alarm out.

*Id.* at 1. Shviki also informed Amit of the following:

Just to be clear, I’ve performed a short search on our competitor’s web site (ARH and Hikvision). Please see from their data sheets the IO interface details: HikVision: as you can see the *Output relay* is 24VDC/1A or AC 110VAC/0.5A (*just like in the above electrical drawing*) this *relay* is usually used to trigger the gate/barrier internal motor.

....

From ARH Data sheet: see the blue description, both the *In and Out* lines are *optically isolated*.

*Id.* at 1–2 (emphasis added). Shviki included screenshots of the competitors’ specification with the I/O information. *Id.* at 2. Thus, with a quick search, Plaintiffs identified two competitors who had isolated I/O interfaces on publicly available specification sheets. Defendants have provided additional specifications from other competitors. Genetec’s AutoVu™ SharpV camera has “2 inputs / 2 outputs (opto-isolated).” Genetec Specs., at 5–6 (ECF No. 49-50). PIPS Technology (“PIPS”) also has “Opto-isolated output to synchronize with external illuminator,” along with an “opto-isolated input triggering.” PIPS Specs., at 9 (ECF No. 49-50). Plaintiffs’ I/O solution was a known solution in the industry.

ii. IR Wavelength Illumination

For the IR illumination wavelengths, Plaintiffs asked Hitron for “850 nm, 730nm, 940nm.” Compilation One, at 1 (ECF No. 116-2). Hitron responded that “850nm, 730nm, 940nm will be supported.” *Id.* Subsequently, RED requested that Hitron incorporate “730nm and 850 nm” as

soon as possible into RED's camera. Email, at 14 (ECF No. 166-56). Wavelength 940nm was not mentioned in RED's email, so RED's camera differs in that regard, and did not use the same combination. The combination of all three wavelengths, however, is disclosed on Plaintiffs' published specification sheet. Plaintiffs' N70 Specs., at 4 (ECF No. 166-11). Furthermore, as is seen on the competitor's specifications, disclosure of the camera's wavelengths is common when identifying a camera's features. *See, e.g.*, Genetec Spec., at 6 (ECF No. 49-50) (disclosing IR illumination of "940nm, 850nm, 740nm and 590nm"); PIPS Tech., at 9 (disclosing IR illumination of "750nm, 850nm, and 940nm").

iii. Power Supply

The power supply claim is less clear than the other two modifications. Plaintiffs asked for a 24V DC, but Hitron responded and said it "supports 12VDC and PoE only." Compilation One, at 2 (ECF No. 116-2). To the extent Plaintiffs are asserting the 24V DC is a trade secret for use with an opto-isolated interface, the court notes that PIPS specification has a "Power Requirement" that is "[a]vailable in 24VDC." PIPS Specs., at 9 (ECF No. 49-50). This means all three trade secrets claimed by Plaintiffs individually and in combination (I/O Isolation, IR wavelength combination, and specific Power Supply) also are found on PIPS specification sheet in substantially the same way. And HikVision also has a 24VDC that Plaintiffs attempted to copy for their product.

Plaintiffs did not use that power supply, though, because it was not available from Hitron. This is evident from Plaintiffs' published specification, which states the N70's power requirement is "PoE+ . . . , DC12V." Plaintiffs' N70 Specs., at 4 (ECF No. 166-11). Because that power supply is unchanged from Hitron's NAX camera, it remains unclear what the trade secret is pertaining to



the power supply. The court further notes that it asked Plaintiffs' counsel at the April 20, 2022 hearing if Plaintiffs' "specifications include the information about the relay [output], the wavelength, and the power supply." Hr. Tr., at 31 (ECF No. 283). Plaintiffs' counsel responded, "Not to my knowledge. . . . they wouldn't include information about the changes." *Id.* Yet, a review of Plaintiffs' published specification does show the power supply information and the illumination wavelengths were disclosed. Plaintiffs' N70 Specs., at 4 (ECF No. 166-11).

Based on the information contained in Plaintiffs' specification and the specifications of their competitors, the claimed trade secrets have been published.

#### **B. Sales Pipeline Spreadsheets**

In addition to the N70 camera development, Plaintiffs assert the defendants misappropriated Plaintiffs' Sales Pipeline spreadsheets. The pipeline contains information about Plaintiffs' "current and future business opportunities" and Plaintiffs' assessment of those opportunities. Trade Secret Ident., at 27 (ECF No. 116). The Sales Pipeline has been identified by name since Plaintiffs filed their first complaint. The document, however, is not an isolated document. It was created sometime in 2016 or before and is updated periodically throughout the year as an ongoing document. Hofman Decl., ¶ 80 (ECF No. 116-1); Email, at 4 (ECF No. 200-1) (stating a form of the pipeline in 2016). There are a number of versions, but Plaintiffs' trade secret identification did not specify which version or versions were at issue. Instead, it broadly claims "HTS' sales pipeline *spreadsheets*, including the August 2018 Pipeline (Exhibit D)." Trade Secret Ident., at 27, 36 (ECF No. 116).

Plaintiffs are claiming the Sales Pipeline as a compilation. Hr. Tr., at 141 (ECF No. 283). In other words, they are not claiming a specific project or customer as a trade secret, but are

claiming the pipeline allows one to focus sales efforts on specific customers. *Id.* at 141–42. The defendants assert in their second Motion for Summary Judgment that they independently developed “their own customer base through the use of personal and professional relationships and publicly available information.” Mot. for S. Jdmt., at 7 (ECF No. 166). Plaintiffs contend the opposite. Specific to the pipeline, Plaintiffs asserted:

RED has continued to access internal HTS materials, including HTS’ Sales Pipeline. RED’s corporate designee also testified RED has solicited numerous projects listed in the pipeline. *See* Exhibit 1-O at 142-143. RED’s designee could not confirm whether or not any of RED’s personnel have accessed or used HTS’ pipeline in connection with RED’s business activities. *Id.*

Mem. in Opp’n, at 18 (ECF No. 209) (footnotes omitted). The court addresses each of these assertions.

i. RED’s Continued Access of Sales Pipeline

Plaintiffs asserted RED has continued to access the Sales Pipeline. Plaintiffs support for this is a video Amit submitted to the court where “Amit demonstrates he maintains a ‘bookmark’ to a copy of HTS’ sales pipeline in his web browser and confirms he has ‘accessed it multiple times.’” Mem. in Opp’n, at 18 n. 31 (ECF No. 209). The video shows Amit accessing the February 23, 2018 version of the Sales Pipeline. Video A\_11\_Complete lack of security, at 10:20 (ECF No. 201) (conventional filing). That version was a topic for discussion at the February 2018 Teamtronics meeting. After Amit left HTS (USA), the log shows Amit accessed the document on October 2, 2019, October 3, 2019, and October 26, 2021 (the date the video was created). *Id.*

Had Plaintiffs provided evidence that RED submitted bids contemporaneous with Amit’s access in October 2019 for a project on the February 2018 version of the Sales Pipeline, a permissible inference would exist that Amit misappropriated a trade secret. Plaintiffs, however,

provided no evidence of this nature. Moreover, the temporal difference between February 2018 and October 2019 is twenty months. There is no evidence in the record showing why a document almost two years old would be of value to a competitor.

What is in the record is Amit stating he accessed Plaintiffs' documents to defend in this litigation. Video A\_11\_Complete lack of security, at :20, 10:26–10:38 (ECF No. 201); *see also* Video A\_6\_SLC PowerPoints, at :15 (ECF No. 201) (conventional filing) (stating purpose of Amit's videos was to protect evidence and prove defense). His videos supports that he accessed the Sales Pipeline and other documents for litigation purposes. Video A\_11\_Complete lack of security (providing demonstration to the court to show lack of protection for various documents, including the Sales Pipeline). During the April 20<sup>th</sup> hearing, the court asked counsel whether Plaintiffs had any evidence that Amit "accessed it for any purpose other than to defend against the claims made by HTS?" Hr. Tr., at 140 (ECF No. 283). Plaintiffs' counsel responded, "Um, no." *Id.* As stated above, Plaintiffs could have provided evidence of RED submitting bids temporally connected to Amit accessing the February 2018 version of the Sales Pipeline. Plaintiffs have admitted, however, that they have no evidence to support Amit accessing it for any purpose other than to defend in this litigation.

ii. RED's Alleged Testimony about Soliciting Numerous Projects

Plaintiffs' second assertion is that RED's corporate designee had testified that RED "solicited numerous projects listed on the pipeline." Mem. in Opp'n, at 18 (ECF No. 209). The following is an excerpt from the August 2018 Sales Pipeline to help place the deposition testimony in context.

Sales Person	Customer Name	Project Name	...	Probability
...				
Sagy	SECOM	Edison Fast Park		25%
Sagy	SAS San Diego	Ace Parking lots		0%
Sagy	Premium Parking	PREMIUM Parking		10%
Sagy+Jeremy	DESIGNA/SKIDATA/TIBA	Detroit Airport		50%
Sagy	HUB SMB	Various projects		75%
Sagy	TAS Seguridad	Spectrum Malls		50%
Sagy	HUB/DESIGNA	MLA Airport		75%
Sagy	Ohana Controls	Various projects		50%
Sagy	Parkonect	Various projects		75%
Sagy	TAS Seguridad	Pradera Malls		50%

Aug. 2018 Pipeline, at 1 (ECF No. 116-4). All of the customers appear at trade shows. RED Depo., at 145 (ECF No. 219-4) (testifying “[a]ll these people are at trade shows”). The Project Name column generically listed “Ace Parking Lot,” “Premium Parking,” and “Various projects,” without identifying a particular project for those categories, but other lines did state a more specific project. Plaintiffs’ counsel asked whether RED had submitted bids on any projects for the “8/13/18” pipeline. The following colloquy occurred:

A: Okay. I think so.

Q: Is that a “yes”?

A: It’s an “I think so.” If these projects are the same ones that we submitted bids for. I mean, these descriptions are not very robust, and I don’t know if the customer name and project names match up with things that we have submitted bids on, but I believe so.

Q: Sure. To your - - we’ll go with that. To the best of your knowledge, which projects listed in Exhibit . . . has RedLPR submitted bids on?

A: Mmm. Well, that’s the thing. I mean, that doesn’t really count, because bids would go to a different person. The customer is not the same. The whole situation changed. So I don’t - - I don’t really know how to answer the question.

RED Depo., at 142–43 (ECF No. 219-4). Counsel then changed to asking about customers before turning back to asking about projects. *Id.* at 143–47.

After being asked again if RED had submitted bids to any projects on the list, Barker responded, “Various projects, yeah, we’ve submitted bids for various projects. Parking lots, yeah, we’ve submitted bids for parking lots.” *Id.* at 147. Barker then explained he picked out “Various projects,” from the column since “they’re all inclusive.” *Id.* at 149. As for “Ace Parking lots,” Barker answered, “Has RedLPR submitted any bid to any Ace representative across the country for one of their parking lots? . . . Yes.” *Id.* Same was true for Premium Parking. *Id.*

Counsel asked Barker about approximately 33 other project lines of the document. *Id.* at 147–156. The only specific project Barker knew RED had submitted a bid on was the Miami Airport. *Id.* at 149. In June 2020, Designa put out a Request for Quotation “to ensure that all LPR Vendors [had] an equal opportunity to submit a competitive proposal” on the Miami International Airport. Email, at 1 (ECF No. 166-7). The project was not a confidential project known only to HTS (USA).

The all-inclusive categories of every project that a customer has across the nation does not prove trade secret misappropriation or create a material fact in dispute. Nor does it equate to an admission of soliciting numerous projects on the list. Thus, contrary to Plaintiffs’ representation, RED did not admit to soliciting numerous projects from the August 2018 Sales Pipeline or other versions of the pipeline. As for the Miami project, although RED bid on it, it did not win the bid. HTS Image Processing Inc. won it. Email, at 1 (ECF No. 166-8). Plaintiffs have made no connection between RED’s bid and the Sales Pipeline. Plaintiffs must do more than point to one

line on a compilation, particularly when that one line is not a confidential project known only to HTS (USA). Plaintiffs failed to do so.

iii. Alleged Inability to Confirm Actions of Other RED Members

Plaintiffs' final assertion to show the defendants used the Sales Pipeline is that "RED's designee could not confirm whether or not any of RED's personnel have accessed or used HTS' pipeline in connection with RED's business activities. *Id.*" Mem. in Opp'n., at 18 (ECF No. 209). The "*Id.*" references back to pages 142 and 143 of RED's deposition. Those pages do not contain the referenced testimony. About 15 pages after the cited pages, Plaintiffs' counsel asked:

Q: . . . did RedLPR use any HTS materials in preparing any of those bids?

A: Not to my knowledge.

Q: Okay. Did you prepare personally all those bids?

A: No.

Q: Other than yourself, who prepared the bids that you just testified about?

A: Sagy.

Q: Do you know if Mr. Amit used any HTS materials in preparing any of the bids he submitted?

A: I don't know.

RED Depo., at 158. Plaintiffs' counsel did not ask Amit during Amit's deposition whether he had used the sales pipeline to prepare any bids. *See generally* Amit Depo. (ECF No. 219-1). Plaintiffs provided no evidence of Amit doing so, other than the access discussed above for purposes of litigation. Plaintiffs also provided no evidence of any RED personnel accessing or using the Sales Pipeline. The assertions in Plaintiffs' briefing are not supported by the evidence.

iv. The Charlotte Airport Project

At the April 20<sup>th</sup> hearing, Plaintiffs' counsel asserted the defendants "were empowered to go and to sort of almost surgically identify specific customers" and "promote a competing solution that they had just recently developed in a manner that undercut the bids that the defendants were already aware of." Hr. Tr., at 143 (ECF No. 283). Although Plaintiffs did not come forward in their briefing to support that assertion, the court asked Plaintiffs' counsel to state what evidence they had that the defendants used the pipeline to benefit RED. *Id.* at 143-44. Plaintiffs' counsel responded, "[t]he evidence would include several of the projects, one of them I know is Charlotte [Airport]," and that access to the pipeline allowed the defendants to undercut Plaintiffs' bid. *Id.* at 144. Counsel further represented that "in a number of circumstances," the defendants "undercut HTS's already existing bids that the defendants were involved in providing," which was tied to access to the pipeline. *Id.* at 145.

The court asked counsel to identify where "the Charlotte project [is] listed on the pipeline." *Id.* at 146. Plaintiffs' counsel said he "would have to go through the acronyms to unpack some of this." *Id.* at 147. At that point, counsel stated "there were a number of pipelines. This was the one that we selected. . . . This is from August 2018, the Charlotte project I believe was bid in October." *Id.* There is no October 2018 pipeline in the record. The August 2018 Pipeline is the latest version in the record, and it does not have the Charlotte Project on it.

The court now turns to Barker's deposition. Barker was asked about the Charlotte project during the deposition and about an email chain with an initial date of October 7, 2018. Barker Depo., at 49 (ECF No. 219-3). The email's subject line was "Charlotte-Douglas Airport RFP Mobile LPI Requirements." *Id.* Barker received the email "just a few days before [he] formally



resigned from [HTS (USA)].” *Id.* at 48. The email stated, “Hi Jeremy, there are extensive requirements in the spec listed for mobile [license plate inventory] system.” *Id.* at 51. “Two vehicle units are required in addition to 15 handhelds.” *Id.* “Can you please work through the requirements below and provide your feedback? Can you also provide a quotation for the units<sup>31</sup> above and the current cut sheets? I will need this back as soon as possible but definitely no later than Thursday next week.” *Id.* at 51–52 (cleaned up). Barker responded a few days later and attached a “compliance matrix.” *Id.* at 52. Barker testified he did not recall how long it took him to prepare the document, but “[p]robably not very long. It’s not a complicated list of questions,” and he answered “yes” to many of the question. *Id.* at 53. Barker explained, “[t]he airport puts out a list publicly of the things they want” and “then we say hey, here’s how ours works.” *Id.*

Plaintiffs’ opposition to summary judgment does not address Barker’s testimony or the compliance matrix. Plaintiffs asserted at the April 20<sup>th</sup> hearing that the defendants undercut their bid, but Plaintiffs did not provide evidence to support the assertion. The record contains evidence that Barker responded to a request for information on the Charlotte project shortly before he resigned from HTS (USA), but it is unknown what information was shared on the compliance matrix and how that information connects to RED’s bid on the Charlotte project because Plaintiffs did not provide supporting documents.

Barker testified that Amit was the primary person at RED who was in contact with Designa—the entity seeking bids on the Charlotte Airport project. *Id.* at 54. During Amit’s

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<sup>31</sup> As discussed in the next section, Plaintiffs have disclaimed that their pricelists and customer quotes are trade secrets, unless they were identified on Plaintiffs’ trade secret identification. The Charlotte Project is not identified. *See* Trade Secret Ident. (ECF No. 116). Nor does Hofman mention the Charlotte Project in his declaration attached to the identification. *See* Hofman Decl. (ECF No. 116-1).



deposition, Amit testified that RED was awarded the Charlotte Airport project. Plaintiffs, however, did not ask Amit further questions about the Charlotte Airport project to connect it to Plaintiffs' trade secret allegations. Nor have Plaintiffs made the connection in their briefing or during oral argument.

At the April 20<sup>th</sup> hearing, Plaintiffs' counsel asserted several times that Plaintiffs had documents to support assertions. On April 24, 2022, the court issued the following Order:

On several occasions, Plaintiffs have cited an email that contains attachments and rely upon the attachments, even though Plaintiffs did not provide the attachments to the court. Plaintiffs also have cited slide excerpts, without producing the document from which the slides were derived or the context for the slides. At the April Hearing, Plaintiffs stated they could produce the underlying documents. On or before **May 6, 2022**, the court directs Plaintiffs to supplement the record with the underlying documents on which they rely.

Mem. Dec., at 5 (ECF No. 249) (emphasis in original). As to the Charlotte Project, it was cited at the hearing to support Plaintiffs' proposition that the defendants misappropriated the Sales Pipeline. Plaintiffs, however, did not provide the court with further documents about the Charlotte Airport project. When Plaintiffs assert the defendants used the Sales Pipeline as a surgical tool to undercut their bid on the Charlotte Project, but do not produce a Sales Pipeline with that project on it, or any other document to support their assertion, Plaintiffs cannot sustain this claim of trade secret misappropriation.

### **C. Pricelists**

The court now turns to Plaintiffs' pricelists. In Defendants' second Motion for Summary Judgment, they asserted RED's pricing information was "either developed independently . . . or acquired through publicly available means." Mot. for Sum. Jdmt., at 9 (ECF No. 166). Defendants

further stated that they negotiated “pricing ad hoc based on required quantities,” and there was nothing unique in the industry as to how their pricing was derived. *Id.* at 13; *see also* Amit Decl., ¶¶ 31, 47–49, 62, 66 (ECF No. 50-2); Amit Decl., ¶ 65 (ECF No. 166-2) (discussing pricing in the industry). During the April 20<sup>th</sup> hearing, the court asked why Plaintiffs classified their pricelists as trade secrets. Plaintiffs’ counsel responded as follows:

[T]he trade secret, as far as the pricing would go, would be the specific - - certain specific spreadsheets which tracked HTS’s pricing over time and with respect to specific customers. That compilation of information our view is [that] was something that was not known, it wasn’t just confidential but that was a trade secret in the context of its business.

Hr. Tr., at 64 (ECF No. 283). To clarify, the court stated, “Let me repeat what I think you just said to me. You’re claiming as a trade secret that our pricings have evolved from this amount to a different amount, it could be higher or lower.” *Id.* Counsel replied,

to be clear, that is to distinguish not a specific pricing quote to a specific customer, we have never - - I don’t believe we have ever claimed that a, you, telling a customer we’ll sell you a camera for \$2,000 I don’t believe we ever claimed that as a trade secret. But HTS maintains and, again, I believe we identified the documents.

*Id.* at 64–65. Counsel then referenced page 38 of the Identification, which identifies the “2016 core price list,” the “price table 2018,” and “one or two others.” *Id.* at 65. He acknowledged, however, not all may be included in the record. *Id.*

i. 2016 Core Price List

According to Plaintiffs, the 2016 Core Price List is found at ECF No. 75-4. *See* Mem. in Opp’n, at 11, 13, 16 (ECF No. 73) (citing Exhibit 1-K, which corresponds to ECF No. 75-4). The exhibit contains three separate documents, with pricing and COGS from 2015 and 2016. Pricing

is across a broad category of products. Notably, however, the N70 camera was not on the pricelists because Plaintiffs were not introduced to the camera until 2017.

Plaintiffs have not specified how pricelists from 2015 and 2016 were relevant to or used by RED in 2019. Instead, in its opposition to the second Motion for Summary Judgment, Plaintiffs merely cited to their trade secret identification as evidence about the value of such lists to Plaintiffs. Mem. in Opp’n, at 10 (ECF No. 209). Plaintiffs also cited to Barker’s deposition where Barker acknowledged he considered COGS information to be confidential. *Id.* at 11. Even assuming the pricelists are valuable to the company and that Barker knew COGS should be kept confidential, Plaintiffs came forward with no evidence to show a material fact in dispute about whether the defendants independently developed their own pricing. Plaintiffs did not connect any portion of the 2016 Core Price List to RED’s products and pricing. Simply presenting a document, without more, is insufficient to show a material fact in dispute.

ii. Customer Price Quotes

Plaintiffs trade secret identification also includes the following pricelists:

HTS’ detailed price quotes, including as provided to: SAS Access Systems on November 30, 2016; HUB Parking on March 30, 2017; HUB Parking on September 27, 2017, SAS Access Systems on October 16, 2017; Ohana Controls on March 1, 2018; Ohana Controls on January 5, 2018, HUB Parking on August 9, 2018.

Trade Secret Ident., at 36 (ECF No. 116). In opposition to the first Motion for Summary Judgment, Plaintiffs filed an email that Amit had sent to SAS Access Systems, dated November 30, 2016. Mem. in Opp’n, at 11 (ECF No. 73) (citing Ex. 1-L, at 1 (ECF No. 73-13)). A customer asked for a price list and Amit sent the “latest price list.” Email, at 1–2 (ECF No. 73-13). An attachment to the email is entitled “HTS VRS Price List 2016,” *id.* at 1, which list is found in the record at ECF

No. 75-5.<sup>32</sup> The document is marked “For Internal Use Only” and “Confidential.” The document appears to correspond to the 2016 Core Price List discussed above, but without the COGS and discount margins. *Cf* HTS VRS Price List 2016 (ECF No. 75-5) *with* HTS VRS Price List 2016, at 4–5 (ECF No. 75-4). The document merely contains a product and a price for that product. Because it does not track pricing over time, does not include COGS, and does not reference any customer, the document does not fall within the parameters stated by counsel at the April 20<sup>th</sup> hearing as to why the pricelists are trade secrets versus simply being confidential.

Moreover, when Amit sent the document to the customer, he did not require a non-disclosure agreement and did not place limitations on its use. Email, at 1 (ECF No. 73-13). Amit highlighted the relevant parts on the pricelist for the customer because he stated there were parts that were older or for other applications. *Id.* The yellow highlighted portions refer to products that have not been raised or addressed,<sup>33</sup> so their pricing is not at issue in this case. HTS VRS Price List 2016, at 2–3 (ECF No. 75-5); Hr. Tr., at 200 (ECF No. 283) (asserting only one camera and one in development were at issue). Again, Plaintiffs have failed to connect the dots. Besides not showing how a pricelist from 2016 was relevant to or used by RED in 2019, Plaintiffs have failed to show how a pricelist is a trade secret when it was disclosed to one or more customers without a non-disclosure agreement or limitation on use.

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<sup>32</sup> The document is the sealed version of ECF No. 73-14, which redacted version is also referred to as Exhibit 1-M in Plaintiff’s opposition to summary judgment. Mem. in Opp’n, at 11 (ECF No. 73).

<sup>33</sup> Submitting a pricelist of all product offerings does not raise a trade secret claim for those products.

For the “Ohana Controls on January 5, 2018” pricelist, it consists of a proposed price, with a large quantity discount. Email and Quote, 1–2 (ECF No. 99-3). It does not track pricing over time. It does not contain COGS. It contains the unit price, the percentage discount, and the resulting discount amount. Thus, it does not meet the criteria Plaintiffs’ counsel specified for it to be a trade secret. To the extent Plaintiffs assert the discount amount is what makes it a trade secret versus merely being confidential, the “HTS 2018 Price List for DESIGNA Global” contains the same original price and same discount percentage for *every* line item stated on the Ohana price quote. *Cf* Ohana Controls on January 5, 2018 pricelist, at 2 (ECF No. 99-3) *with* DESIGNA Pricelist, at 1–2 (ECF No. 166-21). The Designa pricelist is not under seal, so it is not even being treated as “confidential” in this matter, much less a trade secret. Plaintiffs have shown no meaningful difference between the two documents, other than the “Ohana” pricelist being marked confidential. Thus, Plaintiffs’ designation of the document as a trade secret is not well-taken.

For the other pricelists stated in the block quote, it is unclear where they are in the record or if they are in the record. It therefore is unknown how the pricelists in the block quote are distinguishable from the non-trade secret price quotes found at ECF Nos. 50-11, 50-12, 166-20, and 166-21.

iii. Price Table 2018

As for the Price Table 2018, it also is unclear where it is found in the record or if it is in the record. Plaintiffs report, however, that it contains the following:

HTS’ pricing for specific imaging units (including N50, N60, and N70 models), lane controllers (including from ASUS and Vecow), embedded imaging units, SeeMobile and SeePatrol, VRS Application module licenses, overview imaging units, peripherals, controller cabinets, communications peripherals, triggers, power supplies, rack adapters, illumination units, lenses, encoders, and technical support.

Trade Secret Ident., at 38 (ECF No. 116). They further report it contains COGS, “discounted pricing, and profit margins for specific imaging units (including N50, N60, and N70 models),” and a number of other products. *Id.* at 39. Plaintiffs’ Identification reported what the Price Table allegedly contained, not what the defendants allegedly misappropriated. To the extent Plaintiffs were claiming all parts of Price Table 2018, the Identification was overbroad and inappropriate because it does not appear that all products are at issue in this case (*i.e.*, SeePatrol, Vecow, rack adapters, and so forth). To the extent Plaintiffs were claiming misappropriation only for part of the table, Plaintiffs’ Identification was too vague because it did not state which parts were at issue.

For example, Plaintiffs’ Identification references pricing for the N50, N60, and N70 cameras. Yet, if counsel’s representation at the April 20<sup>th</sup> hearing is accepted, the N50 and N60 cameras are not at issue. *See* Hr. Tr., at 200 (ECF No. 283). As for the N70 camera, Plaintiffs’ counsel admitted nothing precluded “Hitron from telling [a] customer what the price is that it sold the cameras either to [RED] or to HTS.” *Id.* at 62. A customer also could have asked Hitron for a better deal than what Plaintiffs received without running afoul of a trade secret. *Id.* at 63. Plaintiffs’ Identification, briefing, and oral argument do not address or show that RED used the pricing or COGS for the N70 camera, nor for the other products listed. As stated above, Plaintiffs merely cited to their trade secret identification and Barker’s testimony that COGS are confidential. Moreover, because it is unclear where the Price Table 2018 is in the record or if it is in the record, the court has no date for the document, other than 2018. The date of implementation matters because both Defendants left HTS (USA) in 2018 and Plaintiffs have not shown what knowledge Barker and Amit had of the document.

The Identification has the appearance that Plaintiffs included all that they could include rather than merely including that which they purport the defendants misappropriated. Plaintiffs' opposition to summary judgment has failed to show there is a material fact in dispute as to the pricelists. This is so for the pricelists the court addressed above and the remaining pricelist categories in Plaintiffs' trade secret identification.

**D. Plaintiffs' Software and SeeFusion Algorithm**

The final trade secret allegation is that Defendants misappropriated Plaintiffs' SeeFusion algorithm. Plaintiffs use two separate cameras, one that captures black and white images with infrared illumination, and a second that captures colored images with white light. Hofman Decl., ¶ 40 (ECF No. 116-1). Plaintiffs then developed technology to process the images and select those most likely to yield accurate results. Hofman explained it as follows:

HTS . . . developed an associated image processing algorithm and implemented this algorithm with its OCR engine. *Using this algorithm* (known internally at HTS as "SeeFusion" or "Synergism"), *HTS' OCR engine processes* the respective B&W and color images to *determine which image(s) are likely to yield the most accurate LPR result(s) when further processed* by the OCR engine.

...

[T]he image(s) *determined by the SeeFusion/Synergism algorithm* to be most likely to yield accurate LPR results are then further processed by the OCR engine.

*Id.* ¶¶ 41–42 (emphasis added).

Plaintiffs did not refer to the SeeFusion algorithm in their Complaint, or in their February 5, 2020 interrogatory responses, or in their Amended Complaint. Not until two days before Plaintiffs had to respond to a motion for summary judgment did they state the algorithm was in play. *Cf* Interrogatory Response No. 1 (ECF Nos. 50-37, 50-39) *with* Amended Interrogatory

Response No. 1, at 5, 10 (ECF No. 75-6). The Amended Interrogatory Response is dated was March 3, 2021, almost two years after the case was filed.

In their opposition to the first Motion for Summary Judgment, Plaintiffs relied on a video presentation<sup>34</sup> Amit gave in November 2020 and asserted the defendants effectively admit to misappropriating Plaintiffs' algorithm on the video. Mem. in Opp'n, at 5, 18 (ECF No. 73). Plaintiffs report, without explanation about who transcribed the recording, that Amit stated the following:

So what do we do differently? So we design our own cameras. And we typically use multiple cameras per lane, meaning that we take an infrared camera and we take a color camera. As you can see we also designed a color camera that has [white] light illumination. So that becomes very useful at night. And you can see the result at the bottom. So this is the RedLPR license plate and the color image can be read with a color camera then the infrared image can be read, *and they go into our algorithm and we basically pick the best picture out of the best image between the cameras...*

Reinitz Decl., ¶ 28 (ECF No. 73-1) (emphasis added) (ellipses in original). Because RED's algorithm selects the best picture from two cameras, and there is one color camera and one IR camera, Plaintiffs contend Defendants stole Plaintiffs' trade secret. Mem. in Opp'n, at 5, 19 (ECF No. 73).

Selecting the best image from two cameras and illuminations is disclosed technology. Furthermore, Amit did not state that the RED algorithm selects the best image for further processing by the OCR engine. He only stated the algorithm selected the best image. His narrative lacks the "pre-processing step" that Plaintiffs assert is part of their algorithm. Hr. Tr., at 114 (ECF

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<sup>34</sup> A subscription is required to view the video recording, and the recording has not been provided to the court.



No. 283) (describing “taking inputs from two different cameras” and pre-processing the image “before it goes to the OCR” engine).

Plaintiffs also report that Amit presented “several slides” on the video, one of which had the heading “Multiple cameras increase accuracy.” Mem. in Opp’n, at 18 (ECF No. 73). Plaintiffs note how RED’s installation uses a similar configuration as Plaintiffs, and the November 2020 presentation also referred to the “flux capacitor” and “secret sauce” illustration as follows:



*Id.* at 5.

Plaintiffs compare Amit’s November 2020 video presentation about RED’s products with Amit’s work at HTS (USA). Plaintiffs refer to an email that Amit sent to a customer. *Id.* at 14–15. As stated above, Plaintiffs deploy a white light camera and an infrared (“IR”) camera on each project that takes multiple pictures of the target vehicle’s license plate as it approaches. While Amit worked at HTS (USA), a customer asked for more information about how the process worked. Email, at 1, 3 (ECF No. 73-8). The customer asked Amit whether “[t]he three images are taken from the [white] light camera or the IR camera.” *Id.* at 1.

Amit explained, “Both cameras take multiple images each as soon as a vehicle triggers the loop. Out of these images (Color and IR) our *software* picks the best for OCR. The one that is automatically picked is cropped and that is the third image of the cropped plate.” *Id.* (emphasis added). Amit further explained that “[t]he process of picking the best image for OCR is fully automated,” and that “the algorithm will pick” between the images depending on the various factors. *Id.* Amit then provided the following operational summary:

To clarify, one of the biggest challenges in reading U.S. license plates is the inconsistency. Background and lettering vary by color, reflectivity, graphics, fonts, and letter/number shapes and colors. *The feature unique to our LPR engine is the ability to take multiple images from multiple cameras and automatically identify the best readable image.* We call this algorithm “SeeFusion.” SeeFusion is HTS proprietary “secret sauce” that makes our accuracy rates in the U.S. better than most. It is our “Flux Capacitor.”

*Id.* at 1–2 (emphasis added); *see also* Email, at 1 (ECF No. 73-9) (emailing another customer about use of two cameras and attaching a presentation that Amit used “with consultants to explain this and other things”); Presentation (ECF No. 73-10) (providing a 52-page “Holistic View” of LPR).

The presentation Amit provided to consultants detailed how LPR systems work, and Amit maintained the “secret sauce” and “flux capacitor” themes with the following illustration:



Presentation, at 16; Mem. in Opp’n, at 5 (ECF No. 73). Because the illustrations are similar and Amit’s explanation of what the algorithms do is similar, Plaintiffs assert “Defendants themselves all but admit to misappropriating HTS’ trade secrets.”<sup>35</sup> Mem. in Opp’n, at 5 (ECF No. 73).

The court has already rejected Plaintiffs’ assertion when addressing the first Motion for Summary Judgment. The court explained that “[k]nowledge about a product feature does not equate to knowing the algorithm behind the feature. Marketing brochures commonly describe features based on *what* they do versus *how* they do it. It is the ‘how’ that constitutes HTS’ trade secret.” Mem. Dec., at 7 (ECF No. 112). Amit’s marketing materials show Amit explained the algorithm publicly based on what it does. For the algorithm to be a trade secret, it must be something more than what has been publicly explained.

There has been some confusion about what the algorithm is. Consequently, the court reviews what has been stated about the algorithm. Amit stated in his email to the customer that the software selected the best image. Hofman’s declaration, attached to Plaintiffs trade secret identification, explains the OCR engine uses the algorithm, and it is the algorithm, at the OCR engine stage, that determines the best image for further processing by the engine.

Additionally, while deposing Hofman, Amit asked Hofman what SeeFusion was. Hofman responded that it creates a “kind of a synergism between sources, outputs,” where “the past history DLL converges results to come up with the final result.”<sup>36</sup> Hofman Depo., at 99 (ECF No. 220-

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<sup>35</sup> Plaintiffs have not denied that Amit created the above marketing materials for HTS (USA) and RED. Due to their visual similarities, the court asked Plaintiffs whether they were asserting copyright infringement. Plaintiffs are not doing so. The court will address any other Non-Trade Secret claim in a separate memorandum.

<sup>36</sup> Hofman’s LPR developments pertain to neural networks that require deep learning. A “DLL” is a Deep Learning Library. Barker testified he would have to spend hours obtaining videos from installation sites, send them to headquarters, in order to improve the accuracy of the installation

3). Hofman thought that was unique to “HTS” because it took different spectrums together. *Id.* Amit asked Hofman if SeeFusion is “part of the software package,” and Hofman said “Yes.” *Id.* Amit then asked, “if somebody wants to take advantage of your [SeeFusion] algorithm, if I go to one of your customers sites here in San Diego, can I just login to the computer and grab the [SeeFusion] package and install it on mine?” *Id.* at 100. Hofman replied, “No, it’s part of our internal algorithms.” *Id.* Amit next asked “[h]ow do you secure your algorithms that are built into your software from being stolen.” *Id.* Hofman explained the software is “wrapped,” and “spread on different sections of our solution,” such that it cannot be copied because “you need to know how it’s built and, uh, decipher.” *Id.*

The defendants assert in their second Motion for Summary Judgment that they independently developed their own software, and they explained the core piece of their software was the OCR engine that Riverland had previously developed in 2012. Second Mot. for S. Jdmt., at 9 (ECF No. 166). RED’s counsel explained the defendants’ understanding that “the algorithms are on their – are coming in from their source code, from HTS’s source code. They keep that under lock and key, you know. They – so anything related to the software, the defendants didn’t have access to it . . . . So they would not have been able to misappropriate it.” Hr. Tr., at 5 (ECF No. 283).

Plaintiffs’ counsel responded, “the source code and the algorithm, our view has always been, those are two different things,” and “[t]he algorithm is the process by which the software, in other words, the steps that the software implements.” *Id.* at 89–90, 100. It is “the sequence of operations, the specific ways in which the software gets, you know, takes input and generates an

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and train their algorithm. RED Depo., at 180–81 (ECF No. 219-4). That difficulty with installs was one of the things RED sought to change with its product. Hr. Tr., at 5, 7 (ECF No. 277).

output.” *Id.* at 90. And because Amit allegedly described the same steps for RED’s LPR system, Plaintiffs contend this is circumstantial evidence that the defendants are using the same algorithm. *Id.* at 90–93, 97, 101. Plaintiffs “take issue with the claim that . . . there was no way that any HTS algorithm could have found its way into Riverland software.” *Id.* at 107. Thus, while the algorithm is not part of the source code, according to Plaintiffs, the algorithm is part of the software, but can run on a different language because it provides operational steps that can be implemented with any software language. *Id.*

Plaintiffs further assert the defendants received training on the algorithm. *Id.* at 101. They provided an email wherein Amit asked for training on the algorithm, Email, at 2 (ECF No. 209-18), and it is undisputed that Barker and Amit traveled to Israel on multiple occasions while employed at HTS (USA). Plaintiffs provided no specifics, however, on what training Barker and Amit received at the event. Plaintiffs did not ask Barker or Amit about their training on the algorithm during their depositions. Instead, Plaintiffs asked Barker about it during a 30(b)(6) deposition. Barker explained he was not a coder, so they did not need the algorithm explained that way. RED Depo., at 181 (ECF No. 219-4). Instead, they needed to know how the algorithm functioned in the finished product so when they were in the field, they would know how to improve its functionality to help customers. *Id.* at 181–82.

Plaintiffs did not provide contrary evidence to show the defendants were given the algorithm and trained on the step-by-step operational sequences versus how the product functions. Plaintiffs could have provided affidavits from trainers who attested specifically to what training Barker and Amit received. They did not do so. Instead, Plaintiffs rely on one slide from a 130-page documents and assert, “that was part of the training, the internal training, that the defendants

participated in [and had] training on that specific algorithm.” Hr. Tr., at 111 (ECF No. 283); *see also* Hofman Decl., ¶¶ 43–45 (attesting that relevant personnel received training to give them a deeper understanding of the algorithm and “enable them to more effectively deploy and support HTS’ LPR solutions”). The 130-page document is entitled Falcon Eyes: LPR Course. It is dated May 12, 2014. Falcon Doc., at 1 (ECF No. 268-3). Barker had joined HTS (USA) by then, but Amit had not.

The document does not refer to HTS (USA), Hi-Tech, or any iteration of those two names that existed in 2014. Instead, the name and logo on the document is “DIS.”<sup>37</sup> The presentation focused on the DC–201 camera and how it works with the LPR system.<sup>38</sup> *Id.* at 14, 17, 26. Slide 51 is titled “Cameras synergism,” and shows that an image is processed based on the license plate color and languages. *Id.* at 51. The slide depicts a dual head camera with an IR camera and color camera in the same unit. *Id.*; *see also id.* at 26, 56–58. Thus, Slide 51 teaches a dual head camera configuration and not the separate cameras at issue in this case.

At the April 20<sup>th</sup> hearing, Plaintiffs’ counsel stated the following:

[W]here the SeeFusion algorithm comes in and when there are images coming from two independent cameras with different configurations, white and infrared. . . . There certainly are dual head cameras. . . . [T]here are cameras that internally within a single camera may have two different lenses. That’s a different configuration that is different from HTS’s in a number of reasons not the least of which again is one camera, one box versus two. . . . [W]here the SeeFusion algorithm comes in is the fact you’re having

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<sup>37</sup> The nature of the document is similar to the *external* training presentations Amit developed where he listed the entity receiving the training. *See* Presentation (ECF No. 73-10) (listing Walker Consultants logo, but also listing HTS logo on document unlike the Falcon Eyes document).

<sup>38</sup> The DC-201 camera is not at issue in this case. It appears similar to Plaintiffs’ VRS-DC1201a camera, which also is not at issue in this case. *See* Camera Spec., at 4 (ECF No. 50-6).

images coming in from two independent sources<sup>39</sup> and evaluating those which may just in context be oriented, they may be angled from different angles for different reasons.

...

[W]e don't claim that simply installing two different cameras on a wall is in and of itself a trade secret, but I'm simply pointing that out in the context of the SeeFusion that is where the algorithm comes in to read those inputs, to pre-process them before one of those - - the images from one of those two cameras under different settings are going to be subsequently provided to the OCR, to the optical character recognition engine, that is ultimately going to read the license plate result that is spit out by the system.

Hr. Tr., at 213–14 (ECF No. 283). Because Plaintiffs distinguish their SeeFusion algorithm as being operational when there are two different cameras versus a single camera having two lenses, the algorithm shown on Slide 51 is inapplicable. Moreover, stating there is a pre-processing step before the images are provided to the OCR engine contradicts Hofman's declaration where he asserts the OCR engine selects the best image for further processing by the OCR engine.

Plaintiffs identified the SeeFusion algorithm by name and they have described what it does. Importantly, however, they never produced the algorithm itself during discovery. The defendants requested it. Email, at 11 (ECF No. 170-3). Plaintiffs, however, had no internal written document detailing the SeeFusion algorithm and they did not provide the algorithm's operational sequence until after the April 20–21, 2022 hearing. The Plaintiffs provided a declaration by Hofman on June 28, 2022, which identifies some or all of the algorithm sequential steps. Hofman Decl. (ECF No. 293). The algorithm appears to span over three pages of steps and sequences, *id.* ¶¶ 16–26,

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<sup>39</sup> Plaintiffs' counsel asserted it was unheard of in the industry to use two separate cameras in the parking industry. Hr. Tr., at 114 (ECF No. 283). Barker testified in deposition to the opposite and that he brought the concept to HTS (USA). Plaintiffs could have refuted such testimony by showing they used two separate cameras before Barker was hired. They did not do so.

with explanations about those steps spanning additional paragraphs. The written document identifying the algorithm's steps and sequences was created after the close of fact discovery. There is no evidence the defendants had access to those steps and sequences, which go beyond what Amit described in the marketing materials he developed. Even if Plaintiffs had provided their algorithm sooner, Plaintiffs have not presented evidence that RED's software selects the best image in the same sequence and manner as Plaintiffs' SeeFusion algorithm. Thus, Plaintiffs have not come forward with evidence to place a material fact in dispute.

### **Failure to Protect**

The defendants further assert that Plaintiffs have failed to protect their alleged trade secrets adequately. The issue is not whether Plaintiffs have protected any information. It is whether they adequately protected the alleged trade secrets in this case. Plaintiffs have marked some of their documents "confidential," but have been inconsistent on which documents receive that marking.

#### **A. Use of Confidentiality Agreements**

Plaintiffs assert they "routinely used nondisclosure and confidentiality agreements in its dealings with outside parties and employees." Mem. in Opp'n, at 20 (ECF No. 174). Plaintiffs further assert they "utilized proprietary notices, company policies, and confidentiality disclaimers." *Id.* at 21.

##### **i. Absence of Confidentiality Agreements with Employees**

As stated above, HTS (USA) had four employees. None of the four employees signed a nondisclosure or noncompete agreement, including Barker and Amit, during the time Barker and Amit were employed at HTS (USA).



Plaintiffs assert Barker and Amit's original employment contracts contained confidentiality obligations. The contracts state, "[u]pon termination of your employment you shall return to the company all equipment, materials and documents given to you by the company or generated during your employment with the company." Contracts, at 2 (ECF No. 49-6, 49-37). The language encompasses all items and is not specific to confidential and trade secret documents.

Plaintiffs also attempt to rely on the TriNet handbook. TriNet provided human resource services and employee benefits to HTS (USA) employees. The TriNet handbook informed employees about their benefits and compensation package, and also included employee obligations, such as the obligation to keep confidential information confidential. *See, e.g.*, TriNet Handbook, at 16–17, 35–37 (ECF No. 174-30). Teamtronics acquired HTS (USA) in or about January 2018. As explained more fully in the Appendix hereto, by March 1, 2018, Teamtronics had terminated the TriNet contract and cancelled TriNet employee benefits without prior notification to any HTS (USA) employee. Email, at 2 (ECF No. 183-4); Email, at 1 (ECF No. 50-33). Thus, Plaintiffs' reliance on a contract they unilaterally chose to terminate shortly after Teamtronics acquired HTS (USA) does not show Plaintiffs routinely imposed confidentiality obligations. At most, it shows that prior to Plaintiffs' involvement, HTS (USA) employees had notice to keep confidential information confidential. Trade secret protection requires ongoing efforts. It is not enough to point to a contract that Plaintiffs terminated shortly after acquiring HTS (USA).

Plaintiffs also have attempted to rely on a 2018 Employee Agreement and Employee Handbook. *See, e.g.*, Mem. in Opp'n, 8–10 (ECF No. 73). They contend the documents are applicable because Amit and Barker continued working for HTS (USA) after receiving them. In

response to Amit’s suit against Plaintiffs in California to regain his commissions and benefits, *see* Appendix, at 111–12 attached hereto, Plaintiffs moved to compel arbitration under the terms of the Employee Agreement. The Superior Court of California denied the motion on the ground that “there was *no signed agreement* to arbitrate, nor was there *an implied agreement*.” Minute Order, at 1 (ECF No. 80-8) (stating “[t]he Court hears oral argument and confirms the tentative ruling”). The California court expressly rejected Plaintiffs’ argument that Amit’s continued employment created a “unilateral implied-in-fact” agreement. *Id.* at 2. The facts pertaining to Barker are substantially the same. Trade secret protection depends on established policies and procedures. Plaintiffs have not shown that here.

ii. Confidentiality Agreements with Outside Parties

Next, Plaintiffs provided a Declaration of John Whiteman to show they protected their alleged trade secrets. “From 2011 to 2016, [Whiteman] was CEO of plaintiff HTS (USA), Inc.” Whiteman Decl., ¶ 5 (ECF No. 174-15). He attested that while he worked for HTS (USA) from 2011 to 2016, he “executed numerous nondisclosure or confidentiality agreements (“NDAs”) with multiple outside parties,” and that “was a routine practice at HTS to protect the company’s proprietary technical and business information.” *Id.* ¶ 6. He further attested that “[o]n some occasions HTS would provide its own NDA for the other party to sign. Other times the other party would provide the NDA.” *Id.* ¶ 7. Whiteman provided examples of differing NDAs from 2015 to 2016. NDA Agmts. (ECF Nos. 174-17, 174-18, 174-19, 174-20).

Plaintiffs also provided three other NDAs during the time both Barker and Amit were with HTS (USA). One was the NDA required by Riverland, with Riverland’s logo. A second was an NDA required by Scheidt & Bachmann, with that company’s logo. Email, at 1 (ECF No. 174-10);

Confidentiality Agmt. (ECF No. 174-11). A third was a Department of Defense project where HTS (USA) required an NDA before disclosing any information to Grupo TAS Corp. Emails (ECF Nos. 174-12, 174-13); TAS NDA (ECF No. 174-14); *see also* Reply in Supp. Mot. to Dismiss, at 8 (ECF No. 183) (remarking that NDA was required by Department of Defense contract). Plaintiffs therefore have provided evidence that they sought an NDA sometimes to protect confidential information, even if outside parties most often were the ones to request an NDA.

iii. Relationship with Hitron

Plaintiffs have asserted that “Hitron and HTS acknowledged the need for an NDA in connection with the discussions between them” as well. Mem. in Opp’n, at 11 (ECF No. 73). Plaintiffs provided an email thread where Hitron stated, “NDA – please advise when we can receive the doc for review,” and Plaintiffs responded, “[a]ttached NDA template for your review/signature.” Email, at 1 (ECF No. 73-16).<sup>40</sup> Plaintiffs did not provide the document attached to the email. In their Reply brief, the defendants attached the document. The document was an unsigned and incomplete template, with Hi-Tech defined as the company and no corresponding entity or project identified. NDA Template, at 3–6 (ECF No. 96-2). No signed document has been produced. Hr. Tr., at 24 (ECF No. 283). Plaintiffs assert, however, there was a non-disclosure agreement between the parties based on their understanding. *Id.* at 24, 26–27. Other than the email, Plaintiffs have not provided any support as to what that understanding might be and the scope of its coverage. Nor did Plaintiffs identify with whom Hitron contracted. And

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<sup>40</sup> The email was dated July 11, 2017, which corresponds to when entries started on the Compilation One and Two documents for the N70 development.

despite Hitron making similar modifications to the N70 camera for RED, Plaintiffs have made no effort to enforce the alleged verbal understanding against Hitron. *Id.* at 27–28.

Hitron remains free to make the same modifications in any camera they market to other competitors, including the NAX camera at issue. They are free to use the same alarm out relay known to competitors. They are free to use the same IR wavelengths, also known to competitors. And the power supply on Hitron’s NAX camera preceded Plaintiffs’ use of the model and has remained unchanged. This means Hitron remains free to continue using that as well.

#### **B. February 2018 Meeting**

Teamtronics held a meeting in February 2018 to orient the new management. Multiple documents were shared at the meeting including the Sales Pipeline (February 2018 version); the Roadmap 2018; a State of the Union presentation; and a Competitor’s Comparison.<sup>41</sup> Following the meeting, all presentations except the Sales Pipeline were placed on OneDrive, and a link was sent to some of those participating at the company. Email, at 7 (ECF No. 148); Video A\_6\_SLC PowerPoint and Video A\_9\_SLC PowerPoint (ECF No. 201) (conventional filing). Amit demonstrated on the videos presented to the court that the February 2018 link is still active and is not password protected. The drive also has a download tab, and Amit demonstrated on a video that the documents may be downloaded. *See* Video A\_9\_SLC Power Points, at :44–1:20. Although Amit is no longer employed at HTS (USA), he still has access to the documents via that link.

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<sup>41</sup> The Roadmap 2018 was created on February 10, 2018 and last modified on February 19, 2018. Video A\_11\_Complete lack of security, at 6:39 (ECF No. 201). The State of Union document was created by Barker and Amit. *Id.* at 8:45. It was created on December 18, 2017 and last modified on February 18, 2018. *Id.* at 9:34. The dates show the documents were created shortly before the February 2018 meeting, without a significant time investment.

The February 2018 Sales Pipeline was separately uploaded on February 23, 2018, and is still accessible without any password protection. Video A\_11\_Complete lack of security, at 10:18. Amit does not state to where it was uploaded, but the URL indicates that it is a “Google Docs” file.

Plaintiffs’ counsel stated during the April 21, 2022 hearing that they could not take down the documents because Amit conveyed that would be spoliation of evidence. Hr. Tr., at 124 (ECF No. 277). He posed the question, “what else are we to do in the context of this case other than leave it and, again, take the position . . . that there was nothing, nothing improper or unreasonable about the security measures. The only access were to specific individuals who had access to the link.” *Id.* at 124–25.

Amit left HTS (USA) in August 2018 and Barker left in October 2018. The lawsuit was filed in June 2019, which was approximately one and a half years after the documents were uploaded to OneDrive and Google Docs with no password protection or set date for the links to expire. Plaintiffs’ explanation does not explain their lack of protection before Amit ever asserted a spoliation claim.

### **C. No List or Trade Secret Training**

The court detailed Plaintiffs’ pre-filing investigation above. Because Hofman is Plaintiffs Chief Technology Officer and founder of Hi-Tech, he should have known what trade secrets Plaintiffs have, if any. Hofman’s reports, emails, and deposition testimony show, however, that he does not know what constitutes a trade secret and what does not. Despite Hofman being one of Plaintiffs’ internal experts, Hr. Tr., at 41 (ECF No. 283), he had no list of Plaintiffs’ trade secrets

[REDACTED] Email, at 4 (ECF No. 267-9).

Due to Hofman’s lack of knowledge, not surprisingly, Plaintiffs have provided no evidence they trained staff on what were and were not trade secrets. They did not train staff on what to do with links to alleged trade secret documents. They did not train staff on how to handle trade secret information while all HTS (USA) employees worked from home. And there appears to have been no training on the distinction between what is confidential versus a trade secret. Finally, Plaintiffs have been inconsistent in marking their alleged trade secrets as “Confidential.”

#### **D. Riverland and RED Software**

Although Riverland had its own LPR business, software, OCR engine, and cameras before Amit met with Riverland in approximately June 2018, and Riverland asked Amit on behalf of HTS (USA) to sign an NDA that Riverland had drafted, Plaintiffs assert the NDA supports that Amit gave confidential information to Riverland *and* the Riverland individuals used that information to develop RED’s product line.<sup>42</sup>

Plaintiffs asserted in their Amended Complaint that “[u]pon information and belief Riverland designed, developed, and/or manufactured the RedMatrix camera using HTS’ trade secrets provided by Amit.”<sup>43</sup> Amended Complaint, ¶ 134 (ECF No. 39). Plaintiffs further asserted,

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<sup>42</sup> Byerly stated in a Declaration that Amit had contacted him “about purchasing MAV manufactured cameras,” while Amit was employed at HTS (USA). Byerly Decl., ¶ 13 (ECF No. 50-34). Riverland did not have any in stock, but Byerly wanted to discuss whether HTS (USA) would be interested in reselling a new camera that Riverland was releasing shortly. *Id.* Byerly attested he asked for the NDA, and although it references working on camera design, that never happened. *Id.* at ¶¶ 14–15. He further attested that Amit “never disclosed any HTS information to Riverland.” *Id.* ¶¶ 16, 18. Amit left HTS (USA) not long after signing the NDA on behalf of HTS Americas.

<sup>43</sup> The RedMatrix is the dual-head camera. RedVision 312 is the camera that corresponds to

upon information and belief, that after Amit departed from HTS (USA), he “provided further HTS trade secrets to Riverland,” that addressed “internal development activities relating to the design and development of proprietary imaging units including dual-head cameras with embedded LPR processing capabilities.” *Id.* ¶¶ 135–36; *see also id.* at ¶ 185 (alleging misappropriation of “LPR camera design documents and plans”). Plaintiffs alleged Riverland used the trade secrets not just for RED products, but “to benefit Riverland’s ongoing operations.” *Id.* ¶ 158.

On March 5, 2021, Plaintiffs asserted that the software developed by Riverland for RED also may have “incorporate[d] HTS’ trade secrets.” Mem. in Opp’n, at 15 (ECF No. 73). Again, Plaintiffs relied upon the NDA to assert it did “not *preclude the possibility* that [RED’s] *software* incorporates HTS’ trade secrets” because the NDA contemplated that proprietary information would be exchanged between HTS and Riverland. *Id.* at 12 (emphasis added). Plaintiffs acknowledge that the defendants had no access to Plaintiffs’ source code. *See* Hr. Tr., at 89 (ECF No. 283) (stating source code is not “at issue here. We don’t claim that the defendants had access to that.”). The only other software-related item is Plaintiffs’ algorithm.

On March 24, 2022, about one year after Plaintiffs opposed the first summary judgment motion, Plaintiffs asserted that Amit and Barker had “partnered with Riverland,” shortly after resigning, and “quickly began promoting (to the same set of customers) cameras and software virtually identical to those provided by HTS.” Mem. in Opp’n, at 34 (ECF No. 209). Plaintiffs denied that “RED’s software was independently developed by Riverland,” and asserted that the defendants “utilized HTS materials in their software development efforts.” *Id.* at 11–12. The evidence Plaintiffs relied on for that assertion are the defendants’ use of non-trade secret

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Hitron’s NAX camera.

documents, and because the defendants used non-trade secret documents, Plaintiffs contend RED's software was not independently developed. *Id.* at 15 (citing Email (ECF No. 209-12)).<sup>44</sup> Finally, Plaintiffs asserted Barker and Amit lacked personal knowledge about "the contents of RED's software and its development" because Riverland developed it, and therefore, the defendants could not opine on the matter to rebut Plaintiffs' assertions.<sup>45</sup> *Id.* at 12.

Plaintiffs originally moved to amend their Complaint on September 8, 2020 to add Riverland. Mot. to Amend (ECF No. 33). Riverland preemptively sued Plaintiffs, OMNIQ Corp., and RED on September 21, 2020 in Mississippi. Riverland Complaint (ECF No. 35-2). Riverland asserted that Plaintiffs have "made misrepresentations of fact," including "representing that Riverland's LPR hardware and/or software impermissibly contains or replicates HTS's intellectual property." *Id.* ¶ 18. Riverland cited to Plaintiffs' proposed Amended Complaint. *Id.* ¶ 19. Riverland sought declaratory judgment "that the hardware and software provided by Riverland to RedLPR consists solely of proprietary intellectual property owned exclusively by Riverland," and that none of the products contain trade secret information owned by Plaintiffs. *Id.* ¶ 22.

After Plaintiffs were permitted to amend their complaint in this case, Riverland moved to dismiss Plaintiffs' suit against it in this court based on lack of jurisdiction. Mot. to Dismiss (ECF

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<sup>44</sup> Plaintiffs provided evidence that the defendants had two non-trade documents from HTS (USA). One document was a SeeMobile training kit from 2015. Training Kit (ECF No. 241-2). The other was the SeeMobile Application User's Manual (ECF No. 241-4). The third attachment to Email (ECF No. 209-12) was "REDnexus Inventory Definitions," which was a RED document.

<sup>45</sup> Plaintiffs took this position due to an affidavit filed in the Mississippi case by Amit. The court has read the affidavit and concludes it does not stand for the proposition asserted by Plaintiffs. Amit Mississippi Aff'd (ECF No. 209-14). The defendants are not software developers, but that does not mean Riverland developed the software without the benefit of Barker and Amit's knowledge and experience about the parking industry.



No. 44). On June 15, 2021, Plaintiffs filed a stipulated motion “to dismiss all claims . . . against Riverland without prejudice.” Stipulated Mot., at 2 (ECF No. 120). Neither Plaintiffs nor Riverland disclosed that five days earlier, they had entered into a confidential settlement agreement in the Mississippi case. *See* Riverland Agmt., ¶ III.G. (ECF No. 242-1). In that settlement, both parties agreed to dismiss their claims against each other without prejudice. *Id.* ¶ III.

The remaining terms of the settlement agreement are notable both for what they contain and what they do not contain.<sup>46</sup> Within five days of signing the document, Riverland and its members agreed “to divest their ownership of all membership interest held or owned in RedLPR, LLC by selling or otherwise transferring such membership interest to RedLPR, LLC or RedLPR’s other members.” *Id.* ¶ III. A. Within the same time period, Riverland agreed to terminate “the Riverland Value Added Reseller (Distributor) Agreement . . . between Riverland and RedLPR, LLC dated May 5, 2020.” *Id.* ¶ III.B. Riverland further agreed to the following:

Riverland will not knowingly license, sell, or otherwise supply to any of the RedLPR Parties, or any entity in which any of the RedLPR Parties (individually or collectively) possess(es) a 50% or more ownership interest, or are employed or engaged as executive or managerial level employees(s), *for any purpose, any cameras, software, applications, or services not ordered from Riverland as of the effective date of this Agreement*; Nothing in this Agreement is intended to prevent Riverland from providing product support, for a period of 90 days following termination of the Distributor Agreement, to customers who obtained Riverland’s products from RedLPR, LLC.

*Id.* ¶ III. C (emphasis added). The restriction on doing business with RED, Barker, or Amit is not limited in time.

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<sup>46</sup> Plaintiffs assert that Riverland approached Plaintiffs to settle, and it was Riverland who proposed to terminate relations with the defendants. Reinitz Decl., ¶¶ 63–67 (ECF No. 267-1). Whether that is so is not relevant to determining if Plaintiffs adequately protected their alleged trade secrets.

In turn, Plaintiffs agreed not to assert, publish, or communicate that Riverland's products contained Plaintiffs' trade secrets or that Riverland misappropriated any of Plaintiffs' trade secrets, except to allow Plaintiffs to assert such claims against the defendants in this case. *Id.* ¶ III.D. Plaintiffs agreed that if they were asserting Riverland "misappropriated or infringed upon HTS's intellectual property or proprietary information," Plaintiffs would "take necessary steps" to file such assertions under seal so they would not be disseminated. *Id.*

Plaintiffs and Riverland agreed to keep the settlement agreement confidential and not to release it "to any individual or entity not a party to this agreement other than the individual members or shareholders of the HTS entities and/or Riverland and their attorneys." *Id.* ¶ III. G. The parties also declared they "jointly participated in the negotiations and drafting of the Agreement," and such actions were equally done. *Id.* ¶ V.

Terminating the Distributor Agreement precluded RED from continuing to sell Riverland's dual-headed camera under RED's brand. And because RED's products were integrated and operated through Riverland's software and OCR engine, RED no longer had a functioning LPR system to market. They also had no support to service products already sold once the 90-day support period ended. The Settlement Agreement effectively shut down RED's business.

The Settlement Agreement, however, contains no provision protecting use of Plaintiffs' alleged trade secrets. Although Riverland cannot do business with the defendants, they remain free to market, license, sell, or otherwise supply any of their products to any other person. This is so even though Plaintiffs continue to assert in this case that Riverland incorporated Plaintiffs' alleged trade secrets (camera design, dual-head camera in total, software, and algorithm) into products for the benefit of RED and Riverland's business. Plaintiffs required no cease and desist,

no licensure between Plaintiffs and Riverland, and no payment from Riverland for Riverland being allowed to continue marketing, licensing, and selling products that allegedly incorporate Plaintiffs' trade secrets.

## **ANALYSIS**

### **I. STANDARDS OF REVIEW**

#### **A. Motion to Dismiss**

Amit filed a Motion to Dismiss<sup>47</sup> on the ground that Plaintiffs have failed to identify the trade secrets at issue sufficiently to state a claim for relief. Mot. to Dismiss (ECF No. 148). Amit attached several exhibits to his motion. Plaintiffs opposed the motion, attached thirty-five exhibits, and incorporated the background section of their memorandum in opposition to the first summary judgment motion. Mem. in Opp'n, at 4 (ECF No. 174). Plaintiffs also acknowledged in their opposition that they anticipated Amit's motion would be converted to a summary judgment motion. *Id.* at 1 n.1. Amit then filed a Reply that attached further exhibits (ECF No. 183). Pursuant to Rule 12(d), the court treats the motion to dismiss as a summary judgment motion because matters outside of the pleadings have been presented by the parties and not excluded by the court. Additionally, based on the nature of the briefing, the court concludes the parties have had "a reasonable opportunity to present all the material that is pertinent to the motion." Fed. R. Civ. P. 12(d) (2023).

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<sup>47</sup> Barker and RED moved to be added as parties to the motion. Rule 20 Motion to Add (ECF No. 204). Although Rule 20 is not the typical procedure to join a motion, the court recognizes the defendants' intent to move jointly for the Motion to Dismiss.

## **B. Summary Judgment**

Having converted Amit's Motion to Dismiss to a Motion for Summary Judgment, the court has two motions for summary judgment before it. As stated above, Amit seeks dismissal on the ground that Plaintiffs have failed to identify their trade secrets appropriately, and the other Defendants joined the motion. The defendants also seek summary judgment on the ground that Plaintiffs have failed to protect any alleged trade secret, and that RED independently developed its products without the use of Plaintiffs' alleged trade secrets.

"Summary Judgment is appropriate when 'the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Dullmaier v. Xanterra Parks & Resorts*, 883 F.3d 1278, 1283 (10th Cir. 2018) (quoting Fed. R. Civ. P. 56(a)). If a movant shows the "absence of evidence to support the nonmoving party's case," the burden then shifts to the nonmovant "to identify specific facts that show the existence of a genuine issue of material fact." *Geometwatch Corp. v. Behunin*, 38 F.4th 1183, 1200 (10th Cir. 2022) (quotations and citations omitted). This means, "the nonmovant must present sufficient evidence in specific, factual form for a jury to return a verdict in that party's favor." *Id.* (quotations and citations omitted).

While evidence is "construed in the light most favorable to the non-moving party," a factual dispute must be genuine and not "some metaphysical doubt." *Id.* (quotations and citations omitted). This is so because the law permits only *reasonable* inferences to be drawn in the light most favorable to the non-moving party. *Id.* "[A]n inference is unreasonable if it requires a degree of *speculation* and conjecture that render the factfinder's findings *a guess or mere possibility*." *Id.* (emphasis in original) (quotations, citations, and alterations omitted). Thus, speculative,

conjectural, or abstract evidence is not enough to create a material fact in dispute. Likewise, “statements of mere belief,” suspicion, or “[u]nsubstantiated allegations carry no probative weight in summary judgment proceedings.” *Id.* (quotations and citation omitted). “For there to be a ‘genuine’ dispute of fact, there must be more than a mere scintilla of evidence, and summary judgment is properly granted if the evidence is merely colorable or is not significantly probative.” *Id.* (quotations and citation omitted). Absent meeting that standard, no reasonable jury could find in the non-moving parties’ favor.

As discussed further below, the defendants have shown the absence of evidence to support Plaintiffs’ trade secret claims. The burden therefore shifted to Plaintiffs to present sufficient evidence from which a reasonable jury could return a verdict in their favor. Plaintiffs have failed to do so.

## **II. FEDERAL TRADE SECRETS ACT**

Plaintiffs assert claims under the federal Defend Trade Secrets Act (“DTSA”), 18 U.S.C. § 1836, and the Utah Uniform Trade Secrets Act, Utah Code Ann. § 13-24-1 *et seq.* The standards for both are similar because Congress relied on the Uniform Trade Secrets Act when drafting federal legislation, but they are not entirely the same. The court therefore addresses to two acts separately.

### **A. Federal Particularity Requirement for Trade Secret Identification**

Trade secrets are not registered because they obtain their value by not being known to the public. “This raises the possibility that the trade secret owner will tailor the scope of the trade secret in litigation to conform to the litigation strategy.” *TLS Mgmt. and Mktg. Srvs., LLC v. Rodriquez-Toledo*, 966 F.3d 46, 52 (1st Cir. 2020). This is shown when a trade secret is “described

. . . differently at each stage of the litigation.” *Next Commc’ns, Inc. v. Viber Media, Inc.*, 758 F. App’x 46, 49 (2d Cir. 2018). When this occurs, a defendant has an unknown landscape against which to defend.

To address this concern, federal courts typically require a plaintiff to “describe the subject matter of the trade secret with *sufficient particularity* to separate it from matters of general knowledge in the trade or of special knowledge of those persons skilled in the trade.” *InteliClear, LLC v. ETC Glob. Holdings, Inc.*, 978 F.3d 653, 658 (9th Cir. 2020) (emphasis in original) (quotations, citation, and alteration omitted); *see also Orizon Aerostructures, LLC v. Crumley*, No. 2:23-CV-02069-EFM, 2023 WL 3376774, at \*3 (D. Kan. May 11, 2023) (stating “plaintiff’s sweeping arguments, conclusory assertions, indefinite descriptions, and unspecific evidence are insufficient to establish a trade secret under the DTSA”). Plaintiffs must “refer to tangible trade secret material” versus mere “catchall phrases” or categories or “lists of general areas of information.” *InteliClear, LLC*, 978 F.3d at 658. In this sense, “tangible” does not preclude “intangible” trade secrets, but it does require definiteness of what is claimed so as to set the boundaries and scope of the trade secret. Merely referring to a trade secret by a phrase or category fails this standard because what is included in the phrase or category can be changed throughout the litigation.

Typically, “[o]ne expects a trade secret to be rich in detail.” *BondPro Corp.*, 463 F.3d at 710. The type of detail matters, however, because the detail must be on the trade secret at issue. In *IDX Systems Corp. v. Epic Systems Corp.*, 285 F.3d 581, 583 (7th Cir. 2002), the Seventh Circuit addressed whether “a 43-page description of the methods and processes underlying and the inter-relationships among various features making up IDX’s software package [was] specific enough.”

The Court noted that the “43 pages describe[d] the software.” *Id.* at 584. Nevertheless, it did “not separate the trade secrets from the other information that goes into any software package. Which aspects are known to the trade, and which are not?” The Court stated, “a plaintiff must do more than just identify a kind of technology and then invite the court to hunt through the details in search of items meeting the statutory definition.” *Id.*

Similar to the trade secret identification in *IDX Systems Corp.*, Plaintiffs’ trade secret identification is both overbroad and vague. One is left to wonder what parts of the identification are claimed trade secrets and which are not. Plaintiffs have provided five iterations through their complaints, discovery responses, and latest filing. The court provided specific instructions when it held Plaintiffs’ fourth iteration did not sufficiently identify Plaintiffs’ trade secrets. Plaintiffs did not correct the problems in its fifth iteration.

There are many versions of the Sales Pipeline, but Plaintiffs did not specify which version or versions are at issue. Plaintiffs broadly claimed the N50, N60, and N70 cameras, along with the cameras that are slow speed, mobile, and high speed. Plaintiffs did not specify what aspect of the technology was a trade secret. Plaintiffs detailed the contents of Compilations One and Two, but provided no separation of what was known in the industry and what was unique in the compilation information to provide economic value from not being known. When asked about the bug that *Hitron* corrected, Plaintiffs could not say what type of bug it was and whether it would be appropriate to claim as a trade secret. In its fifth iteration, Plaintiffs claimed items such as SeeManager and an autonomous SeeMobile product as trade secrets even though that technology has not been at issue in any briefing before the court. The court could say more, but the above illustrates Plaintiffs failed to identify the trade secrets at issue with sufficient specificity.

Additionally, Plaintiffs stated during the April 20<sup>th</sup> hearing that some of their asserted trade secrets were no longer at issue due to lack of evidence of misappropriation. Plaintiffs have not informed the defendants or the court which ones are no longer applicable. The defendants and the court are left to guess what remains at issue from an already overbroad and vague trade secret identification.

As for Plaintiffs' SeeFusion algorithm, the court provides a more particular analysis of it. In *Givaudan Fragrances Corp. v. Krivda*, 639 F. App'x 840, 843 (3d Cir. 2016), a company asserted a former employee and his new employer misappropriated "hundreds of secret fragrance formulas from Givaudan databases." The defendants asked Givaudan to identify the formulas "with some specificity." *Id.* The company refused to provide the formulas. *Id.* Instead, it only provided a print list identifying the name of the formula. *Id.* The list "did not reveal the specific ingredients for each fragrance formula." *Id.* Further discovery requests were made, and the company ultimately "provide[d] detailed ingredient information and specific percentage amounts for 34 fragrance formulas," but would not provide the formulas for the remaining fragrances. *Id.* Without the specific formulas, the defendants asserted they "had no basis for investigation and/or comparison." *Id.* at 844.

The trial court granted summary judgment in favor of the defendants on all formulas not disclosed. *Id.* The court noted that had the formulas been disclosed, "appropriate discovery procedures could have precisely identified whether [the defendants] had received any or all of the allegedly purloined formulas." *Id.* The Third Circuit affirmed the grant of summary judgment because information "on the remaining formulas was too vague because the exact ingredients for each formula were not disclosed and the nonspecific formula names that did appear on the list . . .



did not provide [the defendants] with any information from which they could compare formulas in [the new employer's] database.” *Id.* at 845.

In this case, Plaintiffs quoted marketing materials that Amit developed and shared with customers and vendors, while he was at HTS (USA), to identify their algorithm. If Plaintiffs’ algorithm is only that stated in the marketing materials, Plaintiffs have no trade secret due to its public disclosure. Plaintiffs, however, indicated there were specific steps and sequences that allowed them to obtain better license plate recognition than their competitors. The defendants essentially asked Plaintiffs for the formula to be produced during fact discovery. As in *Givaudan Fragrances Corp.*, had Plaintiffs provided the formula, one could investigate and compare it to RED’s products. Plaintiffs never provided it until after the close of fact discovery and after oral argument on the summary judgment motions. Plaintiffs’ failure to provide the algorithm’s formula left the defendants unable to defend because Plaintiffs’ identification was too vague.

Because Plaintiffs failed to identify their trade secrets with sufficient particularity Defendants are entitled to summary judgment in their favor on Plaintiffs’ DTSA claim.

#### **B. Federal – Defend Trade Secrets Act**

Even if Plaintiffs had identified their trade secrets with sufficient particularity, they fail to meet the DTSA’s statutory requirements. Under federal law, “[a]n owner of a trade secret that is misappropriated may bring a civil action . . . if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce.” 18 U.S.C. § 1836(b)(1). “Owner” is defined as “the person or entity in whom or in which rightful legal or equitable title to, or license in, the trade secret is reposed.” *Id.* § 1839(4). “Trade secret” is defined as:

[A]ll forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans,

compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing . . . .

*Id.* § 1839(3). The above applies only if “the owner thereof has taken reasonable measures to keep such information secret,” and “the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.” *Id.* § 1839(3)(A)–(B). Reverse engineering and independent derivation are considered proper means. *Id.* § 1839(6)(B).

Summarizing the above, a person asserting trade secret misappropriation must show: (1) it is the owner of the alleged trade secret; (2) the product or service was used in interstate commerce; (3) the owner took reasonable measures to preclude disclosure of the alleged trade secret; (4) the alleged trade secret has actual or potential economic value from not being generally known; and (5) besides not being generally known, the alleged trade secret cannot be readily ascertainable.

i. Owner of the Trade Secret and Use in Interstate Commerce

As stated above, Plaintiffs have collectively referred to three entities as “HTS.” Defendants have raised two concerns about who the real parties in interest are. First, at a hearing on April 21, 2022, Amit requested that OMNIQ Corp. be “included as a plaintiff to this action.” Hr. Tr., at 93 (ECF No. 277). When Plaintiffs filed their Amended Complaint on October 15, 2020, Quest had already changed its name to OMNIQ Corp. in November 2019. Form 10-K, at 11 (ECF No. 300-3) (stating an amended “Certificate of Incorporation” was filed “with the Secretary of State of Delaware” whereby Plaintiffs “changed our name from Quest Solution, Inc. to OMNIQ Corp.”).

Accordingly, the Amended Complaint failed to identify one of the parties correctly, and Amit's oral motion is well-taken. The court grants the oral motion and orders that OMNIQ Corp. be substituted in place of Quest Solutions, Inc. in the case caption.

Second, Defendants have asserted that the complaint "defines Plaintiffs collectively as 'HTS' and improperly asserts identical allegations and claims on behalf of all Plaintiffs without distinction." Mot. for S. Jdmt., at 7 n.1 (ECF No. 50-1). Amit also has asserted that the corporate veil should be pierced among the various entities. Defendants are correct that Plaintiffs were not distinguished in the complaint, and many of the documents also refer to HTS without distinction as to who HTS is.

"The law presumes that a holding or parent company has a separate corporate existence and is treated separately from the subsidiary." *Cyprus Amax Mins. Co. v. TCI Pac. Commc'ns, LLC*, 28 F.4th 996, 1007 (10th Cir. 2022) (quotations and citations omitted). This means "a parent corporation and its subsidiary are treated as separate and distinct legal persons even though the parent owns all the shares in the subsidiary and the two enterprises have identical directors and officers. Such control, after all, is no more than a normal consequence of controlling share ownership." *Medina v. Four Winds Int'l Corp.*, 111 F. Supp. 2d 1164, 1169 (D. Wyo. 2000) (quotations and citations omitted).

Additionally, after the United States Supreme Court issued *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), the Tenth Circuit ruled "the complaint must give the court reason to believe that *this* plaintiff has a reasonable likelihood of mustering factual support for *these* claims." *Ridge at Red Hawk, L.L.C. v. Schneider*, 493 F.3d 1174, 1177 (10th Cir. 2007) (emphasis in original).

Because of the separate legal structures, it was important for Plaintiffs to identify which intellectual property was owned by which entity and which entity allegedly suffered harm from the misappropriation. Plaintiffs have not made this distinction or shown that all Plaintiffs hold the same assets and have suffered the same harm. Moreover, Rule 17(a)(1) of the Federal Rules of Civil Procedure requires that an action “be prosecuted in the name of the real party in interest.” By failing to identify the entities separately, it remains unknown which entity is the real party or parties in interest for trade secret misappropriation.

[REDACTED]

[REDACTED] Email, at 8 (ECF No. 267-2). Title never changed to Teamtronics, HTS Image Processing, Quest Solutions, or OMNIQ. [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 2, 8. In so doing, Hofman stated that [REDACTED] *Id.* at 8. It is unknown if Hi-Tech or HTS Ltd. transferred any trade secrets to Plaintiffs or if it has retained them [REDACTED] Because Plaintiffs assert *HTS* developed the trade secrets at issue, the reference can be to any one of the Plaintiffs or to Hi-Tech or HTS Ltd., who are non-plaintiffs.

The defendants noted the problem with Plaintiffs grouping everyone together as early as January 15, 2021, when they filed their first Motion for Summary Judgment. Mot. for S. Jdmt., at 7 n.1 (ECF No. 50-1), but Plaintiffs have continued to reference Plaintiffs collectively as HTS. Because Plaintiffs have failed to show which, if any of them, are the owner of the alleged trade secrets, Plaintiffs have failed to satisfy the first element under the DTSA.

There is no dispute, however, that the second element of the DTSA has been satisfied because the products at issue have been used in interstate commerce.

ii. Reasonableness of Measures to Protect a Trade Secret and Competitive Economic Value

The third element under the DTSA evaluates whether an owner adequately protected the alleged trade secret. “Reasonable efforts to maintain secrecy need not be overly extravagant, and absolute secrecy is not required.” *AvidAir Helicopter Supply, Inc. v. Rolls-Royce Corp.*, 663 F.3d 966, 974 (8th Cir. 2011) (citations omitted). In *Yellowfin Yachts, Inc. v. Barker Boatworks, LLC*, 898 F.3d 1279, 1300 (11th Cir. 2018), the Court stated that “limiting employee access to the [trade secret] and password-protecting the computer network . . . were positive steps in securing the alleged trade secret.” (Citation omitted). If a company has password protection for all its documents in the normal course of business, however, password protection alone fails to distinguish regular documents from trade secret documents. Typically, a company “must use additional measures to protect the confidentiality of” a trade secret. *Starsurgical Inc. v. Aperta, LLC*, 40 F. Supp. 3d 1069, 1082 (E.D. Wis. 2014); *see also Abrasic 90 Inc. v. Weldcote Metals, Inc.*, 364 F. Supp. 3d 888, 902 (N.D. Ill. 2019) (noting company “took no measures to protect [trade secrets] that were in any way different (much less more exacting) than the steps that it took to protect information that was indisputably not a trade secret”).

In *Abrasic*, the Court stated having “departing employees . . . return company property when their relationship with the company ends is a routine, normal business practice, but precautions must go beyond normal business practices for the information to qualify for trade secret protection.” *Id.* (citation omitted). The Court found that the company had done “virtually nothing to protect . . . information to preserve its status as a trade secret.” *Id.* at 898. The company had not required those with access to trade secrets to sign NDAs. *Id.* The company did not “define, delineate, or specify which information was considered confidential,” beyond mere generalized

language in an employee handbook. *Id.* at 899 (citation omitted). “[F]iles were not encrypted, and there were no restrictions on employees’ ability to access, save, copy, print, or email the information at issue.” *Id.* at 901. When employees departed from the company, they were not asked “what information they possessed” or given admonishments, and the company did not demand the “return of any specific information.” *Id.* at 900 (citation omitted).

In this case, Plaintiffs assert they: (1) marked some of their trade secrets “Confidential,” (2) used NDAs; (3) used “notices, company policies, and confidentiality disclaimers, provisions, and agreements.” Mem. in Opp’n, at 6 (ECF No. 174). Plaintiffs’ efforts, however, have the same problems found in *Abrasic*. Plaintiffs were inconsistent in what documents were marked “Confidential,” and admit some of their alleged trade secrets have no markings. Although the TriNet handbook had a generalized notice to keep confidential information confidential, Plaintiffs did not create a list or train staff on what documents were trade secrets, and Plaintiffs then terminated the TriNet contract. Plaintiffs also were inconsistent in requiring NDAs, and it is undisputed that Barker and Amit did not sign employee NDAs while at HTS (USA).

Plaintiffs assert they use secured servers and email accounts, Hr. Tr., at 127 (ECF No. 283), but they have not shown what additional measures they took to protect alleged trade secrets beyond what they do in the ordinary course of their business. Links to alleged trade secret documents had no expiration date and no password protection. Even after Amit and Barker and other employees left the employ of Plaintiffs, the links remained active. As Amit demonstrated on a video, the documents may be downloaded with no restrictions. When Amit left, Plaintiffs did not ask for him to return his company laptop or information stored on it. When Barker left, they did seek the return of certain items, but other files were merely returned via Dropbox, leaving Barker with a

copy of the information. Email (ECF Nos. 96-11). The email shows no distinction between regular business documents and protected business documents. Plaintiffs' actions fail to show they took additional measures to protect their alleged trade secrets.

Plaintiffs also failed to execute the proposed NDA with Hitron when Plaintiffs were working with Hitron to develop the N70 camera. Although Hitron shared an I/O schematic with RED that was like the one in the N70, Plaintiffs have taken no action against Hitron to preclude it from using that schematic in the NAX camera or any other camera that Hitron manufactures.

Most troubling, however, is Plaintiffs' settlement agreement with Riverland. Plaintiffs have asserted that information about their cameras and software was shared with Riverland and that the information was used not only to benefit RED, but also to benefit Riverland. The scope of Plaintiffs' assertions encompass the N70 camera, dual-head cameras, SeeMobile information, SeeFusion algorithm, and any other item that falls within the camera and software categories. Plaintiffs' settlement agreement with Riverland appears to have focused on severing Riverland's ties to RED, thereby effectively putting RED out of business and ensuring Amit and Barker had no opportunity for future business with Riverland. The agreement, however, does not preclude Riverland from continuing to use, license, or sell any of the trade secret information purportedly obtained from Plaintiffs and incorporated into the products that Riverland markets.

Although Plaintiffs have had a customer execute an NDA on a few occasions and have marked some documents confidential, no reasonable jury could conclude that Plaintiffs' measures were adequate to protect their alleged trade secrets.

As to the fourth element, when one fails to take adequate measures to protect a trade secret, it "is persuasive evidence that the secret has no real value." *BondPro Corp. v. Siemens Power*

*Generation, Inc.*, 463 F.3d 702, 708 (7th Cir. 2006) (discussing comparable state law to this element); *see also Abrasic 90 Inc.*, 364 F. Supp. 3d at 903 (concluding company’s conduct was consistent with the information having “negligible value to a competitor”). It also can “set[] a trap, since a company that ferrets out information that the originator does not think special enough to be worth incurring any costs to conceal will have no reason to believe that it *is* a trade secret.” *BondPro Corp.*, 463 F.3d at 708 (emphasis in original).

Here, Plaintiffs claim \$25 million in damages, but its actions are not commensurate with their alleged trade secrets having economic value.

iii. No General Knowledge and Cannot Be Readily Ascertained

The fifth element requires showing the alleged trade secret was not generally known and cannot readily be ascertained. In *BondPro Corp.*, the court noted that certain technology could not be a trade secret because “others in the trade” already knew the method as shown by another company describing the “method in advertising materials.” *Id.* at 709.

In this case, the defendants have shown that the purportedly unique combination of the N70’s features was known in the industry. The defendants provided specification sheets of Plaintiffs’ competitors, which show the same “unique” combination of features, with one exception where a competitor used a wavelength illumination of 750nm instead of 730nm. That difference was readily ascertainable by viewing Plaintiffs’ published specification sheet where it listed all the wavelength illuminations for the N70 camera. Additionally, Plaintiffs themselves used the websites of their competitors to compare features and incorporate a feature into their own product.



This was true for the N70 camera and for Plaintiffs' proposed dual-head camera. Plaintiffs' dual-head camera design was modeled off of Genetec's camera, which design is visible to anyone seeing the camera. The preliminary specifications provided by Hitron were based on known technology. In contrast, RED's dual-head camera was licensed from Riverland, and it is undisputed that Riverland developed that camera using its proprietary information.

The Sales Pipeline taken as a whole, the 2015 and 2016 Core Price Lists with COGS, are of such a nature that they may not be readily known. The SeeFusion algorithm depends on its scope. To the extent Plaintiffs maintain Amit's video presentation concerning RED's algorithm is the SeeFusion algorithm, Amit disclosed that algorithm to vendors and customers in an email and marketing materials while at HTS (USA). It therefore is known. If Plaintiffs maintain that Amit merely was describing what the algorithm does versus the exact steps for how it is done, and the "how" is kept confidential, then a fact finder may reasonably conclude that the algorithm is not generally known or readily ascertained.

In summary, Plaintiffs have failed to identify the owner of the alleged trade secrets at issue. They have failed to take reasonable measures to preclude the disclosure of the alleged trade secrets. They have failed to show the alleged trade secrets had economic value to a competitor when Plaintiffs have taken so little care to protect the information. Although the other elements may be met in whole or in part, Plaintiffs' failure to satisfy the first, third, and fourth elements bars their claim for trade secret misappropriation under the DTSA.

### **C. Independent Development**

In addition to the above elements, to establish a claim for misappropriation of a trade secret under the DTSA, a plaintiff also must show the defendants "acquisition, use, or disclosure of the

trade secret without consent.” *API Americas Inc. v. Miller*, 380 F. Supp. 3d 1141, 1148 (D. Kan. 2019) (citations omitted). Plaintiffs have not done so.

The defendants assert they independently developed their products without use of Plaintiffs’ alleged trade secrets. “[I]ndependent development is inextricably linked to ‘use’ in trade secret misappropriation” because “if there is proof that the defendant independently developed a technique that resembles the trade secret, then the defendant did not ‘use’ the trade secret.” *Moore v. Kulicke & Soffa Industries, Inc.*, 318 F.3d 561, 567, 572 (3d Cir. 2003). In *Moore*, the Third Circuit concluded that “[s]ince independent development is essential to whether the defendant ‘used’ the plaintiff’s trade secret, . . . the plaintiffs must disprove independent development in order to make out the elements of the tort of trade secret misappropriation.”<sup>48</sup> *Id.* at 572.

The concurring opinion in *Moore* found the discussion on “use” unnecessary because “the jury found there was no trade secret communicated to the defendant,” and therefore, the defendant could not have “wrongfully used the non-existent trade secret communicated to it.” *Id.* at 574. The point is well-taken because “use” must be of a trade secret for it to be relevant.

In this case, Plaintiffs have not shown that the N70 camera development and technology constituted a trade secret because the key aspects that made the combination unique were used in the substantially the same manner by Plaintiffs’ competitors. Additionally, Plaintiffs have not shown that they adequately protected the technology, even if it was a trade secret, to retain its

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<sup>48</sup> Although *Moore* pertained to Pennsylvania law, the “use” element has a similar application under the DTSA, and the court finds the Third Circuit’s reasoning persuasive. Accordingly, it applies the same here.

status. Because the N70 is not a trade secret, the court does not address whether the defendants used any of the technology.

The Sales Pipeline is the type of business document that can constitute a trade secret. Plaintiffs, however, failed to identify the relevant version of it and because there are many versions of the Sales Pipeline, that failure left Plaintiffs' trade secret claim overbroad and vague. Moreover, Plaintiffs have failed to come forward with relevant evidence of use. Although Amit has accessed the February 2018 version of the Sales Pipeline since leaving HTS (USA), Plaintiffs admit they have no evidence to show such access was not in furtherance of Amit's defense in this suit, as Amit said. Moreover, Plaintiffs failed to protect the February 2018 version of the Sales Pipeline adequately.

Plaintiffs assert there is evidence the defendants used another Sales Pipeline version because the defendants bid on the Charlotte Airport project. Plaintiffs, however, did not provide any Sales Pipeline that has the Charlotte Airport project on it. Nor did it provide the document that Barker worked on shortly before leaving HTS (USA) so one could assess whether it would be of value to a competitor. Plaintiffs also did not provide RED's bid on the Charlotte Airport project for comparison. Plaintiffs have made assertions, but they did not follow-up the assertions with evidence.

Plaintiffs' pricelists may or may not be trade secrets. Plaintiffs' Identification was overbroad and vague when identifying the pricelists actually at issue, and the court has been unable to find some of them in the record. Merely listing certain pricelists and their contents did not identify the alleged trade secret at issue. Even if the pricelists had been identified, Plaintiffs have failed to show what evidence of use they have. They also have failed to show why information

several years old would be of value to RED. Amit informed a customer to disregard certain information on an HTS (USA) pricelist because it was old. If the information was so old at the time Amit shared it with a customer that it should be disregarded, it was even older and of less value by the time RED was formed. RED has explained that its pricing is based on a formula that one can find on the internet, Hr. Tr., at 12–13 (ECF No. 277), and its bids to customers were on an ad-hoc basis. Plaintiffs have not provided evidence to the contrary.

As for the SeeFusion algorithm, Plaintiffs have asserted the technology was incorporated into RED and Riverland's product. If that is the case, Plaintiffs have not protected the technology because Riverland has no limitation on its use, other than being precluded from doing business with the defendants. Thus, Plaintiffs have not shown they have a trade secret. Even if Plaintiffs have a trade secret, they have not shown use. Their evidence consists of a slide from a Falcon Eyes presentation on a dual-head camera; an email stating the defendants requested training on the algorithm, and Amit's marketing video being similar to marketing materials he developed while at HTS (USA).

The court has already ruled that the marketing materials are not evidence of trade secret misappropriation. Mem. Dec., at 7 (ECF No. 112). As for the slide from the Falcon Eyes presentation, the slide is inapplicable because it pertains to a dual-head camera and the Falcon Eyes presentation lacks connection. The presentation was from 2014 and it had a logo on it that is not connected to any of Plaintiffs' names. Turning to the email where Amit asked for training on the algorithm, the email does not specify if it was training on function or the sequences. In contrast, Barker testified during deposition it was only on function. Finally, Plaintiffs never produced the SeeFusion algorithm until after the close of discovery and after the hearing on the

second Motion for Summary Judgment. Plaintiffs also have not provided RED's algorithm for comparison. Plaintiffs have failed to show use or that a disputed issue of material facts exists on this matter.

Based on the above, the court concludes that no reasonable jury could conclude that Defendants violated the DTSA. Accordingly, Defendants are entitled to summary judgment on Plaintiffs' federal trade secret claim.

### **III. UTAH TRADE SECRET LAW**

#### **A. Utah Law – Generally**

Utah follows the Uniform Trade Secrets Act. “To establish a claim for misappropriation of trade secrets under Utah law,” a plaintiff is “required to show (1) the existence of a trade secret, (2) communication of the trade secret to [a defendant] under an express or implied agreement limiting disclosure of the secret, and (3) [the defendant’s] use of the secret that injured [the plaintiff].” *Bimbo Bakeries USA, Inc. v. Sycamore*, 39 F.4th 1250, 1261 (10th Cir. 2022) (quotations, citation, and alterations omitted); *see also* Utah Code Ann. § 13-24-2 (2023) (defining “misappropriation”). Utah’s trade secret statute “does not impose a ‘particularity’ standard.” *USA Power, LLC v. PacifiCorp*, 2016 UT 20, ¶ 48, 372 P.3d 629, 649. Nevertheless, “[t]he trade secret at issue . . . must be defined in a manner that allows the fact-finder to determine if a trade secret exists under the statute,” and “‘to allow a determination by the court.’” *Id.* & n.45 (quoting *Healthcare Servs. of the Ozarks, Inc. v. Copeland*, 198 S.W.3d 604, 611 (Mo. 2006)).

“As a property right, the trade secret is protected against its appropriation or use without the consent of the owner.” *Microbiological Rsch. Corp. v. Muna*, 625 P.2d 690, 696 (Utah 1981). The owner, however, “may not arbitrarily pronounce anything a trade secret.” *Id.* at 697 (citation

omitted). “There must be a delineation between the general knowledge and experience of the employee and the trade secrets of the employer.” *Id.* Thus, “[t]he threshold issue in every case is whether, in fact, there is a trade secret to be misappropriated.” *Id.* at 696.

In this case, Plaintiffs have failed to identify their trade secrets to allow the factfinder, this court, and the defendants to know what is at issue. As stated above, Plaintiffs’ trade secret identification has the appearance that Plaintiffs included all that they could include rather than merely including that which they purport the defendants misappropriated. Plaintiffs mixed trade secret information with information Plaintiffs have later said was not their claimed trade secrets. Plaintiffs did not produce their algorithm, identify the relevant version of the Sales Pipeline, or show why the pricelists discussed above are at issue for alleged misappropriation. They merely stated what the pricelists encompass without identifying which aspects of it were relevant to this case, and they did not provide evidence that the defendants used the information.

## **B. Compilations**

Plaintiffs contend Utah law applies to the compilations they have identified for the N70 camera.<sup>49</sup> Similar to the DTSA, Utah also protects a compilation as a trade secret. When “a unique combination of generally known elements or steps” presents “a valuable contribution,” it may “qualify as a trade secret.” *Microbiological Rsch. Corp.*, 625 P.2d at 696. “The combination must differ materially from other methods revealed by the prior art.” *Id.* When literature can be readily assembled “by one who is normally skilled in the field,” the combination “may no longer be entitled to protection.” *Id.*

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<sup>49</sup> To the extent Plaintiffs assert the same for the Sales Pipeline, Plaintiffs have failed to provide evidence to show use.

*Bimbo Bakeries USA, Inc.* also is instructive. The Tenth Circuit “start[ed] with the *individual* elements of Bimbo Bakers’ compilation.” *Bimbo Bakeries USA, Inc.*, 39 F.4th at 1262 (emphasis added). It did so based on *USA Power, LLC v. PacifiCorp*, 372 P.3d 629, 651 (Utah 2016), wherein the Utah Supreme Court “declin[ed] to consider the compilation as a whole because some elements were not generally known or readily ascertainable.” *Bimbo Bakeries USA, Inc.*, 39 F.4th at 1262. According to the Utah Supreme Court, “a compilation of information within the public domain may constitute a trade secret,” as long as that compilation of information is “not itself . . . generally known or readily ascertainable.” *USA Power, LLC*, 372 P.3d at 651 (quotations and citations omitted). When information has not been publicly disclosed, however, the Utah Supreme Court stated the entire compilation does not need to be analyzed. *Id.* Instead, in *USA Power, LLC*, the Court only analyzed the non-publicly disclosed elements to determine if they were a trade secret.<sup>50</sup> *Id.* The Tenth Circuit followed that instruction in *Bimbo Bakeries* and focused on each element of the compilation rather than the compilation as a whole. *Bimbo Bakeries USA, Inc.*, 39 F.4th at 1262.

In this case, the compilations for the N70 camera appear to be information that is readily known. The features are shown on Hitron’s specification sheets, Plaintiffs’ specification sheets, and the specification sheets of competitors in an industry where the competitors look at each other’s products. When viewed in combination, the information can be readily discerned.

Even if one looks at the N70s individual elements, however, it would not change the analysis. The three features that Plaintiffs assert make the N70 camera unique are found

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<sup>50</sup> The Utah Supreme Court also noted the protective measures that the plaintiffs had instituted. *Before* disclosing confidential information, it required non-disclosure agreements for the particular project. *USA Power, LLC*, 372 P.3d at 638, 640.

individually and in substantially the same combination on a competitors' specification sheet. Accordingly, Plaintiffs have failed to meet the threshold issue of showing that the N70 compilations are a trade secret.

### **C. Knowledge and Skill**

Utah courts recognize that “[t]he law encourages competition and supports an individual right to exploit [one’s] skill and knowledge,” while at the same time, protecting against “unfair trade practices.” *Microbiological Rsch. Corp. v. Muna*, 625 P.2d 690, 697 (Utah 1981). “The provisions in the Defend Trade Secrets Act guaranteeing its coexistence with state trade secret laws were included, in part, to ensure that state laws offering employees greater protections to move to work for new employers in the same field were not impinged.” Unfair (improper) means—Civil—Under federal law—Defend Trade Secrets Act, 1 Pat. L. Fundamentals § 4:18.50 (2d ed.) In Utah, there is a distinction between confidential information that cannot be used, and an “employee’s own faculties, skill and experience” that can be used. *Microbiological Rsch. Corp.*, 625 P.2d at 697. “[R]egardless of whether the defendant learned the information at issue from his employer, he cannot be sued for trade secret misappropriation if the information is already known to others in the defendant’s field of expertise.” *Gen. Water Techs. Inc. v. Zweden*, 2022 UT App 90, ¶ 38, 515 P.3d 956, 967 (quotations, citations, and alteration omitted).

Here, Plaintiffs have failed to distinguish between a trade secret and the information that the defendants legitimately may use in competition. The defendants came to HTS (USA) with existing knowledge that benefited Plaintiffs. Use of two cameras, knowledge about mobile LPR systems, knowledge about camera manufacturers and the introduction of the Hitron NAX camera to Plaintiffs are some of these areas. To the extent the defendants learned information while at



HTS (USA), Plaintiffs were obligated to identify what was already known in the industry and what could be readily ascertained.

Projects, including the Charlotte Airport project, were put out for bid in the industry. Customers were known from trade shows. Graphical user interfaces are public facing technology. Dual head cameras are common in the industry both in terms of how they function and their appearances. Plaintiffs failed to engage with these issues.

Accordingly, for the reasons stated above, the court concludes Defendants are entitled to summary judgment on Plaintiffs' state trade secret claims.

#### **IV. PRIOR DENIAL OF SUMMARY JUDGMENT**

The court denied without prejudice the defendants' first Motion for Summary Judgment on April 28, 2021 and granted Plaintiffs' Rule 56(d) motion. Mem. Dec., at 14 (ECF No. 112). Plaintiffs asserted the NDA with Riverland raised disputed issues of material fact. The court agreed. It held that "[a]lthough defendants have provided affidavits that contest the meaning of the non-disclosure agreement and HTS' relationship with Riverland, disputed issues of material fact exist about the nature of the relationship and the meaning of the non-disclosure agreement." *Id.* at 7. Based on the court's ruling, Plaintiffs contend material issues of fact remain and this case must proceed to trial. The court disagrees.

The motion was denied without prejudice, and in the same order, the court allowed further discovery. Technology ceases to be a trade secret if it is not protected adequately. Based on the new information in the record, no reasonable jury could conclude that the NDA constitutes evidence that Amit shared Plaintiffs' technological trade secret information with Riverland and Riverland then incorporated it into RED and/or Riverland's products.

**CONCLUSION**

For the reasons stated above, the court grants summary judgment (ECF Nos. 148 and 166<sup>51</sup>) in favor of Defendants on Plaintiffs' federal and state trade secret claims, and hereby dismisses Counts I and II of the Amended Complaint (ECF No. 39) with prejudice. The court further directs that OMNIQ Corp. be substituted in place of Quest Solutions, Inc. Because OMNIQ Corp. is merely a name change, the business and contact information shall otherwise remain the same.

DATED this 3<sup>rd</sup> day of August, 2023.

BY THE COURT:

  
\_\_\_\_\_  
Clark Waddoups  
United States District Judge

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<sup>51</sup> To the extent Defendants moved for summary judgment on Plaintiffs' non-trade secret claims under ECF No. 166, the court will address that portion of the motion together with the reopened first motion for summary judgment (ECF No. 49).

## **APPENDIX**

### **Teamtronics' Era from January 2018 to September 2018**

#### **A. Teamtronics' Treatment of Employees**

When Teamtronics acquired Hi-Tech and HTS (USA) in early 2018, problems arose almost immediately after the acquisition. In 2012, Whiteman set up the TriNet contract to provide services and benefits to HTS (USA) employees. Whiteman Decl., ¶ 15 (ECF No. 174-15); *see also* TriNet Requisition (ECF No. 174-27). Barker's employment agreement stated benefits would commence on his start date, including "TriNet PEO medical, dental, disability and life insurance benefits." Barker Agmt., at 2 (ECF No. 49-37). Additionally, he was eligible to participate in a 401K plan, with the company matching "up to 4% of earnings contributed by the employee." *Id.* Amit's employment agreement contained those same provisions. Amit Agmt., at 2 (ECF No. 49-6).

When Teamtronics took over, it cancelled HTS (USA)'s employee benefits on March 1, 2018, with no notification to the employees. Email, at 2 (ECF No. 183-4); Email, at 1 (ECF No. 50-33). Although Teamtronics cancelled all benefits, it continued deducting premiums for health insurance from employee paychecks without providing health insurance. *See* Email, at 2 (ECF No. 181-3) (requesting return of deductions). It also continued deducting 401K contributions from employee paychecks without depositing the contributions into a 401K account. Email, at 2 (ECF No. 181-3) (requesting return of deductions and contributions). Teamtronics informed employees:

Due to complexities in the acquisition of HTS USA Inc. by Teamtronics Inc., we have had some delays in the setup of payroll & benefits. Due to these delays, the company will continue to withhold from your semi-monthly paycheck the same health premiums deductions for Medical, Dental and Vision Insurance, and you will be considered fully covered by the company until the date

at which the insurance is effective. During this time the company will cover 100% of those benefit costs that you and your family incur.

Concerning the 401K, we will continue to withhold your previously set deduction percentage that was elected while you were employed with Trinet, and HTS USA INC. will match your 401k election [up to 3%], which once the 401k is affective [sic], will be deposited into your 401K account. You will be able to elect your investment choices and the company will also deposit a one-time additional amount into your 401K to make up for potential market gains that may have been missed due to timing.

Kemper Ltrr. to Barker, at 5 (ECF No. 243-5); Kemper Ltrr. to Amit, at 14 (ECF No. 233). Besides withholding premiums and contributions, without providing actual health insurance or a 401K plan, Teamtronics refused to pay Barker and Amit commissions they had earned. Amit resigned in August 2018. As of that date, Teamtronics had not fulfilled its representations. Amit had to file suit to obtain his commissions<sup>52</sup> and the return of “401K contributions” that never had been deposited.<sup>53</sup> Barker and another employee likewise had to file suit. Anderson Decl., ¶ 12 (ECF No. 148).

**B. Non-payment to Vendors and Impact on Customers**

In 2017, HTS (USA) had its highest revenue year. 2018 SOTU, 2–3 (ECF No. 99-2). When Teamtronics acquired the company, the trajectory of growth did not continue in 2018.

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<sup>52</sup> In response to an interrogatory, Plaintiffs admitted to owing Amit \$68,656 in commissions. Response to Interrogatory No. 7, at 15 (ECF No. 183-4).

<sup>53</sup> After Amit sued Plaintiffs, they matched his 401K and added on a fifteen percent appreciation reportedly to return more than what Amit would have received if the deductions from his paycheck had been invested. Response to Interrogatory No. 9, at 15 (ECF No. 183-4) (remarking on 401K reimbursement and Plaintiffs paying “an additional 15% appreciation” after Amit sued Plaintiffs); *see also* Paycheck History, at 21 (ECF No. 183-4) (showing 401K Match Pay and 401K 15% Appreciation not paid until November 2018, three months after Amit resigned).

Teamtronics management<sup>54</sup> paid vendors late despite making promises of payment to them. This interrupted the supply chain and resulted in late delivery of products to all its customers as well.

i. Early Concerns

Barker raised concerns early with Teamtronics management team about fulfilling customer orders timely. By March 20, 2018, Barker had emailed Uziel about a down payment that had been made on a purchase “order in December/January,” but it still was not expected to ship for another three weeks.” Email, at 1 (ECF No. 281-2). Barker informed Uziel that it was “totally unacceptable that on the one hand we’re being pressured to sell and on the other hand we can’t ship for 10 weeks while at the same time fielding debt collection calls from vendors.” *Id.*

Another early warning occurred around this same timeframe. TIBA is a large player in the LPR parking industry, and it has various dealers. Ohana is one of TIBA’s dealers. Ohana sent a purchase order on January 22, 2018. Email, at 3 (ECF No. 50-24). On March 26, 2018, the Ohana contact sent an email to Barker asking for a status update. *Id.* at 3. Barker, in turn, asked for an internal update. *Id.* at 2. Uziel responded that they were “pushing as hard as we can to ship . . . this week,” but we are waiting on computers. *Id.* Barker responded that the delays were having an impact, and asked if there was anything he could do to help Teamtronics management understand “this is really starting to damage our reputation?” *Id.* at 1–2. Barker remarked that he had “been told for a few weeks now that the vendor payments should have gone out,” and he was “struggling to understand how this could not be viewed as an absolute emergency at this point.”

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<sup>54</sup> Teamtronics management through Shai Lustgarten, as Chief Executive Officer, and Ben Kemper, as the Chief Financial Officer were at the center of the concerns. Eli Uziel was the Chief Operations Officer, officed in Israel. Email, at 1 (ECF No. 281-2). He was responsible for supplying needed hardware, *see id.*, and factors into the discussion about how Teamtronics was operating.

*Id.* at 2. Uziel suggested they “review all urgent matters.” *Id.* at 1. Barker agreed, but said as far as he saw, “you and I don’t have an emergency – we have a slowly crumbling set of clients. [Kemper] and [Lustgarten] have the emergency, and I don’t seem to be able to communicate to them the urgency of getting this stuff out regardless of the cost.” *Id.*

ii. Scope of the Problem

On April 11, 2018, Barker sent Lustgarten an email detailing open sale orders and their estimated supply dates. Email, at 1 (ECF No. 281-5). Barker reported on seven customers who were angry over the estimated delivery dates. *Id.* Barker also reported that “ALL of our main customers, and some new ones, have orders awaiting shipment. We can’t push for new sales until we figure out how to deliver PO’s in hand faster.” *Id.*

On April 19, 2018, Lustgarten sent an email to Barker and Amit asking them to send him “the recent awarded projects and their value” for discussion. Email, at 2–3 (ECF No. 50-25). Barker informed Lustgarten that they had been copying him on all purchase orders. *Id.* at 1. Nevertheless, they provided a spreadsheet that had been created on April 10, 2018. *Id.* at 1–2; Email, at 2 (ECF No. 281-5). Barker stated again “that *all* of our existing customers have placed orders and are awaiting equipment.” Email, at 1 (ECF No. 50-25) (emphasis in original). He further informed Lustgarten the company had “more than \$650,000 in cash billable as soon as we can ship,” with “hundreds of thousands” more expected on a future order. *Id.*

iii. Hitron

In 2017, Hitron worked with Hi-Tech and HTS (USA) to provide them the N70 camera. Yet, Teamtronics would not pay Hitron after Teamtronics acquired Hi-Tech and HTS (USA). On April 18, 2018, Barker emailed Teamtronics management about “outstanding vendor payments

and what's barring us from making money now." Email, at 2 (ECF No. 50-16). He recommended determining which vendors were "still owed . . . that are actually preventing us from shipping product." *Id.* He specifically noted the increased number of orders for Hitron cameras, and he projected the increase would continue. *Id.*

On April 20, 2018, Amit sent a follow-up email to Kemper, and copied the remainder of Teamtronics management. *Id.* at 1. Amit reported that he had spoken to "Rony [Hage] from Hitron," and learned that Hitron had not "received a single dollar" of payment. *Id.* Amit noted that "Hitron is our newest partner that pushed real hard to get us cameras on time last year when no one else would." *Id.* Amit asked again for an update about vendor payments. *Id.*

Approximately two months later, on June 18, 2018, Hage sent Kemper and Lustgarten an email. He set forth a payment schedule where Hitron would be paid \$239,000 by the end of the month. Email, at 2 (ECF No. 50-17). Nine days later, on June 27, 2018, Hage sent another email because "HTS" had not "meet the payment schedules that [were] confirmed." *Id.* at 2. Hage informed them that Hitron expected \$239,000 "before the end of the week." *Id.*

On June 28, 2018, Hage sent another email stating he had spoken to Lustgarten about "the past due invoices." *Id.* at 1. Hage stated if payment was not received, Hitron Korea would "take legal action." *Id.* Hage noted that Hitron had "been promised for the past several months that payment [would] be made. However, [Hitron had] yet to receive payment based on HTS' confirmation of payment." *Id.* Hage asked for a "favorable response" so they could "begin reestablishing [a] relationship." *Id.*

iv. Precision Technology Solutions

On June 11, 2018, Precision Technology Solutions sent Plaintiffs a purchase order. It was for a SeeMobile system requiring four MAV cameras. Email, at 3 (ECF No. 50-26). On July 11, 2018, Barker asked Uziel and another for an update on fulfilling the order. *Id.* at 2. On July 16, 2018, Barker sent another email asking for an update “asap.” *Id.* Uziel responded that “[t]he promised date was based on the assumption we will get the Mav cameras by now since MAV has it on hand. We have not received it yet. I strongly suggest to involve [Kemper] on that urgent matter.” *Id.* at 1.

That same day, July 16, 2018, Barker sent an email to Lustgarten and Kemper. He informed them the promised delivery date was two days earlier. *Id.* Barker reported that “[t]he Vehicle for the mobile system is *at the installer’s office now pending installation* for equipment for which we don’t even have a ship date. I’ve reached out to [Uziel and another] several times . . . to remind them that this was coming and that it was time sensitive. I did not receive updates nor a warning that this would be *impossible given our current lack of operational ability.*” *Id.* (emphasis in original).

Barker also reported that the sale was “based on this delivery timeline” and “[t]he timeline was cleared with [Uziel].” *Id.* Barker then recommended Teamtronics management contact the president of Precision, and Barker gave them the contact information. *Id.* Barker informed management that “[t]his is the first in a line of incoming nightmares based on our inability to procure and deliver product,” and that “Precision is a TIBA dealer and this news will spread.” *Id.* Barker further gave another example of a pending problem. *Id.* Despite Barker’s urging, Lustgarten and Kemper would not call Precision. Barker Decl., ¶ 10 (ECF No. 279-2).



On Friday, July 20, 2018, the situation was still unresolved, but an HTS (USA) employee promised components would be delivered by Monday, July 23, 2018. Email, at 3 (ECF No. 50-27). When that day came, Barker had to inform the customer the components would not arrive until Wednesday morning. *Id.* at 2. He apologized for the delay. *Id.* at 2–3. The customer responded that the delay “pose[d] a tremendous issue logistically.” *Id.* at 2. The president of Precision then became involved and informed Barker, “[t]his is unacceptable” due to collective commitments and travel arrangements surrounding the install. *Id.* at 1.

Barker then emailed Uziel and the other members of Teamtronics management. He informed them “[t]his is getting more and more complicated the longer we fail to ship.” *Id.* at 1. Barker reported that he had “received a call from our largest customer today wondering about the status of their April order, which is not scheduled to ship completely until August 31.” *Id.* Barker informed them his “reputation can’t keep us afloat much longer, and after being yelled at from people in 3 different states before 8 am this morning I’m making my final plea to you that its in your hands to make this work or let it collapse in the next several weeks.” *Id.* Barker further stated, “[t]he deals I’m yelled at comprise roughly \$125k + \$175K +\$44k, meaning that there’s \$1.1mm in incomplete deals that will be yelling shortly and that I can’t handle.” *Id.*

On July 25, 2018, MAV’s Managing Director informed Kemper and Uziel that MAV had yet to receive payment. Email, at 2 (ECF No. 50-28). The Managing Director asked for confirmation of “payment in the next 3 hours for shipment today.” *Id.* The following day, Kemper responded that he was buried, but would “send the payment details soon.” *Id.* On July 30, 2018, the Managing Director sent another email to Kemper. He stated MAV had not received the “\$30k last week as you offered and promised. How do we proceed now as I cannot take your word as a

promise unless you have already transferred funds last week without letting me know. None were in our bank from you today.” *Id.* at 1–2. On August 5, 2018, Kemper responded that his family was dealing with a medical situation. *Id.* at 1. The Managing Director forwarded the email to Barker and Barker forwarded it to Amit for context. *Id.*

By August 19, 2018, the Managing Director reached out to Uziel, with Barker copied. While expressing sympathy for Kemper’s situation, he stated “[w]e do need payment for old invoices before I am willing to ship new product and we do have that product still on our shelves awaiting your payment.” Email (ECF No. 50-29). In other words, the problem in the supply chain was solely due to Teamtronics’ non-payment to MAV.

v. Communications & Network Solutions Inc.

German Medina worked as an outside consultant to generate business for Plaintiffs. A person from Communications & Network Solutions Inc. (“CNSI”) contacted Medina on July 2, 2018, about a past due shipment. CNSI reported it had “been more than 10 weeks since I placed my order with SmartScan/HTS. You provided a delivery date of 6/30/2018. This has not happened. CNSI is now behind schedule and in risk of losing this final order to the City of Hialeah for not delivering HTS products. I need my product shipped immediately.” Email (ECF No. 281-7). Medina contacted Lustgarten and stated “we are now at risk of losing Hialeah PD as a client. . . . Please advise.” *Id.* (ellipses in original).

vi. Comm-Port

On July 13, 2018, Comm-Port sent Amit, Uziel, and others an email asking for an update on fulfilling a purchase order and stated, “we cannot sit here in dark not knowing.” Email (ECF No. 73-19). Amit apologized and said they had “no update from our HQ.” *Id.* He further said, “I

can assure you that Jeremy and I have already done everything in our power to try to rectify this situation. If it makes you feel any better, you are not the only customer awaiting equipment from HTS . . . ‘A Sorrow shared is a Sorrow Halved’ type of thing . . . .” *Id.* Amit then expressed that “this is the worse situation a sales person can be in, as it effects our relationships with our customers, and delays our commission.”<sup>55</sup> *Id.*

On August 6, 2018, Comm-Port sent Amit another email about non-receipt of parts. Email (ECF No. 50-30). He wanted to know the number for Teamtronics CEO. *Id.* Comm-Port reported it had received products, but a missing part made the products “useless.” *Id.* Comm-Port then stated, “[h]opefully someone at HTS reaches out to me, we trusted HTS and designed them as a part of our product line, had we known that they are going to be so irresponsible after the buyout we would have built our solution with other LPR manufacturer.” *Id.* Amit drafted the “smoking gun email” on the same day.

### **C. Other Facts**

Most of the above was included as evidence when the defendants first moved for summary judgment. In their opposition briefs, Plaintiffs provided no contrary evidence to show that they had treated their vendors or customers differently than the evidence above so indicates. As indicated above, Barker and Amit were not the only individuals reporting to Teamtronics’ management about the imminent loss of customers. German Medina did as well.

When Hofman was deposed, Amit asked him if he was aware of the vendor and customer issues. Hofman responded that Plaintiffs “faced them in Israel as well, those shortages,” but as “a

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<sup>55</sup> Plaintiffs assert the email from Amit constitutes disparagement and breach of fiduciary duty. Mem. in Opp’n, at 20, 35 (ECF No. 73). The court will address Plaintiffs’ claim in a separate memorandum on the non-trade secret claims.

fair company,” they would “either compensate them or make them happy other way.” Hofman Depo, at 79 (ECF No. 220-3). Hofman, nevertheless, remarked that during the transition, he “focused on our most difficult army system,” which “is not your petty parking, um, um, systems.” *Id.* at 80. Thus, while Teamtronics’ employees and the consultant were trying to help the vendors and customers involved with LPR parking systems, Plaintiffs’ Chief Technology Officer did not see them as important. Hofman further chastised Amit during the deposition for not being more patient with the situation and told Amit he lacked the will to find a way through. *Id.* at 75–76. This is so after Amit went without commissions, a 401K, and healthcare for months. When the chief officers of a company treat employees, vendors, and customers as they did, and then reprimand an employee for not doing more, it well-illustrates why Amit and Barker left Plaintiffs’ employment.