

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 2915

AMERICAN CIRCUITS, INC.,

Plaintiff,

v.

BAYATRONICS, LLC; JAYESH G.
PATEL; DIRK A. WARRINER;
KISHOR KOLADIA; DAHYALAL
GAJERA; ASHWIN J. SANGANI;
and SAMIR PATEL,

Defendants.

**ORDER AND OPINION ON
DEFENDANTS BAYATRONICS, LLC,
DIRK A. WARRINER, KISHOR
KOLADIA, DAHYALAL GAJERA,
ASHWIN J. SANGANI, AND SAMIR
PATEL'S MOTION FOR SUMMARY
JUDGMENT¹
[Public]**

1. **THIS MATTER** is before the Court on the 31 May 2023 filing of Defendants Bayatronics, LLC (“Bayatronics”), Dirk A. Warriner (“Mr. Warriner”), Kishor Koladia (“Mr. Koladia”), Dahyalal Gajera (“Mr. Gajera”), Ashwin J. Sangani (“Mr. Sangani”), and Samir Patel’s (“Mr. Patel,” and all together, “Bayatronics Defendants”, and with Jayesh Patel, “Defendants”) Motion for Summary Judgment (the “Motion”). (ECF No. 101 [“Mot.”].) Pursuant to Rule 56 of the North Carolina Rules of Civil Procedure (the “Rule(s)”), Bayatronics Defendants seek entry of judgment in their favor on all claims brought against them by Plaintiff American Circuits, Inc. (“ACI”).

¹ Recognizing that this Order and Opinion cites to and discusses the subject matter of documents that the Court has allowed to remain under seal in this action, and out of an abundance of caution, the Court filed this Order and Opinion under seal on 29 November 2023. (See ECF No. 115.) On 8 December 2023, the parties notified the Court that all parties conferred and agreed that there is no material in this Order and Opinion that requires sealing. Accordingly, the Court now files this public version of the Order and Opinion, and will promptly unseal the previously filed version, (ECF No. 115.)

2. For the reasons set forth herein, the Court **GRANTS** in part and **DENIES** in part the Motion.

Lord Law Firm, PLLC, by Harrison A. Lord and Kevin Sweat, for Plaintiff American Circuits, Inc.

Robinson Elliott & Smith, by Dorothy M. Gooding and William C. Robinson, for Defendants Bayatronics, LLC, Dirk A. Warriner, Kishor Koladia, Dahyalal Gajera, Ashwin J. Sangani, and Samir Patel.

Robinson, Judge.

I. INTRODUCTION

3. This dispute arises out of Defendant Jayesh Patel’s (“Jayesh Patel”) resignation from ACI,² and his alleged access to, and downloading and transmitting of, ACI’s confidential and/or trade secret information to the Bayatronics Defendants. ACI contends that the Bayatronics Defendants conspired to, and did, use the confidential information and alleged trade secrets to gain a competitive advantage over it.

4. The issue now before the Court is whether summary judgment is appropriately granted in the Bayatronics Defendants’ favor as to all five claims raised by ACI against them.

II. FACTUAL BACKGROUND

5. The Court does not make findings of fact when ruling on a motion for summary judgment. “[T]o provide context for its ruling, the court may state either those facts that it believes are not in material dispute or those facts on which a material dispute forecloses summary adjudication.” *Ehmann v. Medflow, Inc.*, 2017

² Jayesh Patel did not join in the Motion or file a separate motion for summary judgment.

NCBC LEXIS 88, at *6 (N.C. Super. Ct. Sept. 26, 2017); *see also Hyde Ins. Agency, Inc. v. Dixie Leasing Corp.*, 26 N.C. App. 138, 142 (1975) (encouraging the trial court to articulate a summary of the relevant evidence of record to provide context for the claims and motion(s)).

A. The Parties

6. ACI is a North Carolina corporation that provides electronics products, parts, and engineering services, and specifically manufactures over 250 types of circuit boards. (First Am. Verified Compl. ¶¶ 1, 15, 17, ECF No. 19 [“Verified Compl.”].)³

7. Bayatronics is a North Carolina limited liability company that produces and assembles circuit boards. (Verified Compl. ¶¶ 2, 43.)

8. Jayesh Patel is a resident of Mecklenburg County, a former employee of ACI, and a founding member of Bayatronics. (Verified Compl. ¶¶ 3, 9.)

9. Mr. Warriner and Mr. Patel are founding members of Bayatronics and are North Carolina residents. (Verified Compl. ¶¶ 4, 8, 9.)

10. Mr. Koladia and Mr. Gajera are also founding members of Bayatronics and are Texas residents. (Verified Compl. ¶¶ 5, 6, 9.)

11. Mr. Sangani is also a founding member of Bayatronics and is a resident of Indiana. (Verified Compl. ¶¶ 7, 9.)

³ Although a “trial court may not consider an unverified pleading when ruling on a motion for summary judgment,” verified complaints may be treated as affidavits for that purpose. *Rankin v. Food Lion*, 210 N.C. App. 213, 220 (2011) (citation omitted).

B. Jayesh Patel's Employment at ACI

12. Jayesh Patel began working for ACI in 2016 as its Operations Manager, where he led a production and manufacturing team consisting of twenty producers, in connection with overseeing the inventory of materials to produce circuit boards. (Verified Compl. ¶ 28.) As ACI's Operations Manager, Jayesh Patel was allowed high-level access to the company's database server. (Bookmarked Dep. Excerpts at Ketul Gondha 159:12–20, ECF No. 103.9 ["K. Gondha Dep."].)⁴ The database server housed ACI's company records involving sales opportunities, key customer information, inventory, production data and equipment maintenance procedures, historical job data, and ACI's future business plans. (Verified Compl. ¶ 30.)

13. To ensure protection of its potentially confidential information, ACI requested Jayesh Patel sign two documents when he accepted the role of Operations Manager: (1) a written offer of employment, (Verified Compl. Ex. A ["Offer Ltr."]), and (2) a Noncompetition, Nonsolicitation and Confidentiality Agreement (the "Confidentiality Agreement"), (Verified Compl. Ex. B ["Confidentiality Agt."]).

14. The Confidentiality Agreement provided that Jayesh Patel would protect ACI's confidential, proprietary, and trade secret information, including:

information about the Company's Business, its products, services, data, documentation, sales, vendors, suppliers, financial and business operations, business methods and processes, capabilities and weaknesses, its pricing, strategic and marketing plans, accounts, customer lists, data and information provided by customers or business

⁴ Rather than filing the deposition transcripts in their entirety, the parties have filed excerpts of deposition transcripts. For ease of citation, the Court cites to deposition excerpts located at ECF No. 103.9 as follows: ([First Name initial, Last Name] Dep. []–[]), but cites to the deposition testimony excluded from ECF No. 103.9 as follows: ([Last Name] Dep. []–[], ECF No. [].)

partners (including personally identifiable information), the Company's dealings and relationships with its prospective and actual customers and its employees (employee data), processes, methods, work-product and all other information not generally known or readily ascertainable that has commercial value to the Company and that gives the Company an advantage over competition.

(Confidentiality Agt. ¶ 3(a).)

15. The Confidentiality Agreement further provides that Jayesh Patel would “use the Confidential Information only for performance of [his] role with and obligations owed to [ACI],” and would “not disclose, transfer, duplicate, or reproduce the Confidential Information in any form” (Confidentiality Agt. ¶ 3(c).)

C. Jayesh Patel Leaves ACI for Bayatronics

16. Prior to his employment with ACI, Jayesh Patel worked at electronic manufacturing company Solectron with Mr. Warriner, Mr. Patel⁵, and Mr. Sangani, where Mr. Warriner, Jayesh Patel, and Mr. Patel worked on the assembly line and Mr. Sangani worked as a repair technician. (D. Warriner Dep. 15:6–8, 27:25–28:5; A. Sangani Dep. 11:11–13; S. Patel Dep. 37:18–38:2; J. Patel Dep. 71:11–17, 76:2–79:3.)

17. Mr. Warriner and Mr. Sangani remained in touch following the conclusion of their employment at Solectron, and later discussed starting a business together. (D. Warriner Dep. 28:19–29:7.) Mr. Sangani knew of Mr. Gajera and Mr. Koladia's interest in investing in an electronics manufacturing business. (D. Warriner Dep. 30:22–31:2, 31:10–18; A. Sangani Dep. 13:5–24.)

⁵ Jayesh Patel and Samir Patel share no relation.

18. In August 2020, Mr. Sangani, Mr. Warriner, and Jayesh Patel began emailing to discuss whether Jayesh Patel would be able to provide a list of potential customers. (August 2020 Email Chain, ECF No. 110.7 [“Aug. 2020 Emails”].) After Mr. Warriner and Mr. Sangani discovered that Jayesh Patel and Mr. Patel were attempting to start their own electronic manufacturing business, Mr. Warriner and Mr. Sangani pitched the idea of the four going into business together. (A. Sangani Dep. 12:6–19.)

19. In November 2020, Defendants met in San Antonio, Texas to discuss forming Bayatronics, where they discussed each person’s role and prior professional experience. (A. Sangani Dep. 13:14–18; D. Gajera Dep. 28:23–29:9; D. Warriner Dep. 33:4–9; J. Patel Dep. 68:24–69:5; S. Patel Dep. 25:12–24; K. Koladia Dep. 31:12–23, 36:15–21, ECF No. 110.8 (stating that their experience was a compelling factor for Mr. Koladia and Mr. Gajera’s investment in Bayatronics).) At this meeting, Jayesh Patel was asked if he signed a non-compete while employed at ACI, to which he responded that he did not. (D. Warriner Dep. 33:10–14.) Mr. Warriner later testified that, based on industry standards, he expected Jayesh Patel to be subject to a nondisclosure agreement. (D. Warriner Dep. 110:4–11.)

20. Defendants filed Bayatronics’s Articles of Organization on 13 January 2021, (*see* Verified Compl. Ex. C [“Arts. Org.”]) and signed the Bayatronics Operating Agreement between late October through early November 2021, thereby making the individual defendants members of Bayatronics, (*see* Index Br. Supp. Ex. 1, ECF No. 103.1 [“Opt. Agt.”]). Jayesh Patel was still working for ACI at this time. (Verified

Compl. ¶¶ 44, 50; *see* Opt. Agt. at PATEL 02220.) Throughout 2021, Defendants internally circulated business plans, draft agreements, loan documents, real estate options, and financial projections. (Verified Compl. ¶ 49.)

21. In 2021, in an effort to obtain financing, the members of Bayatronics drafted a business plan (the “Business Plan”), as required by its bank. (Br. Supp. 6 n.3; *see generally* Index Br. Opp. Ex. 1.1, ECF No. 110.2 [“Business Plan”].) The Business Plan includes a list of Bayatronics’s competitors, which includes ACI, and states that Bayatronics’s competitive advantages are making “high-quality electronic components at a fair and reasonable price” and providing “repair services with fast turnaround times.” (Business Plan at PATEL 02640.) The Business Plan also includes Jayesh Patel’s resume, which lists ACI as his current employer, (Business Plan at PATEL 02658), and a chart that lists the initials of customers and their potential revenue projections, (Business Plan at PATEL 02679; D. Warriner Dep. 134:4–18, ECF No. 111.1).

22. On 11 January 2022, Jayesh Patel notified ACI that he was resigning from the company effective 25 January 2022, and that he would be joining former colleagues in a new business venture. (Verified Compl. ¶¶ 62–63.)

23. ACI’s Chief Executive Officer, Ketul V. Gondha (“Mr. Gondha”), confronted Jayesh Patel after discovering that the new business venture, Bayatronics, was a direct competitor of ACI. (Verified Compl. ¶ 67.) Mr. Gondha informed Jayesh Patel that he was in direct violation of his Confidentiality Agreement. Jayesh Patel

responded by denying having signed an agreement as claimed by Gondha.⁶ (Verified Compl. ¶ 69.)

D. ACI Documents Transferred via Two USB Devices

24. After discovering that Jayesh Patel was working for a direct competitor, ACI began investigating whether Jayesh Patel violated any terms of the Confidentiality Agreement. (Verified Compl. ¶ 87.) ACI hired Clark C. Walton (“Mr. Walton”) of Reliance Forensics, LLC to conduct a digital forensic analysis of Jayesh Patel’s ACI computer, and to summarize his findings in a report (the “Walton Report”). (Verified Compl. ¶ 88; *see* Digital Forensic Expert Report of Clark C. Walton, Esq., ECF No. 110.12 [“Walton Report”].)

25. Mr. Walton determined that Jayesh Patel accessed several files on ACI’s servers on several dates between 1 December 2021 and 28 January 2022, including ACI_Quality_Manual-Rev.K.pdf., Process Flow documents, SMT Logs, Company_Name_Alternatives.xlsx, Quotes_Orders.doc, and PCBC_2019_Attendees_Opt_In_List_Max_Edit.xlsx. (Verified Compl. ¶¶ 93, 97; Aff. Anatoly Streletsky ¶¶ 9, 12(b), ECF No. 4 [“Streletsky Aff.”].)⁷ In addition to those documents, Mr. Walton determined that, on 7 September 2021, Jayesh Patel accessed ten of ACI’s vendor nondisclosure agreements (“NDAs”). (Verified Compl. ¶ 98; Streletsky Aff. ¶ 12(a).) Further, it appears that Jayesh Patel accessed the following broad

⁶ Jayesh Patel maintains that he did not sign the Confidentiality Agreement. (Aff. Jayesh Patel ¶ 10, ECF No. 40 [“Patel Aff.”].)

⁷ Anatoly Streletsky is ACI’s Assistant Vice President of Operations and Information Technology Manager. (Streletsky Aff. ¶ 2.)

categories of files just before his departure on 28 January 2022: machine maintenance procedures; job notes; project lists; inventory files; and historic employee activity. (Verified Compl. ¶ 96; Streletsky Aff. ¶ 11.)

26. In his forensic analysis, Mr. Walton used the forensic tool EnCase to obtain the USB device history of Jayesh Patel's ACI computer. (Aff. Clark Walton ¶ 10, ECF No. 5 ["Walton Aff."].) The Walton Report provides that three different USB devices were plugged into Jayesh Patel's ACI computer on 26–27 January 2022. (Walton Aff. ¶ 12(b).) Further, the Walton Report provides that Jayesh Patel transferred ACI files from his computer onto two USB devices on 28 January 2022 prior to his departure. (Walton Report ¶ 28(a).)

27. Following the initiation of this action, Mr. Walton conducted a similar digital forensic analysis on Mr. Warriner's personal laptop. (Walton Report ¶ 16.) Mr. Walton found that, of the two USB devices Jayesh Patel used, one was plugged into Mr. Warriner's personal laptop on at least five different occasions between November 2021 and January 2022, and the other was plugged in at least once in January 2022. (Walton Report ¶ 18(f).)

28. Mr. Walton used the forensic method of "hashing," which generates a unique identifier for every file on a device.⁸ (Walton Report ¶ 21.) Once the files on Jayesh Patel's USB devices were given a "hash" value, Mr. Walton ran a report to compare those documents with the documents found on Mr. Warriner's computer.

⁸ The Walton Report explains that if two electronic files have the same "hash" value, they are generally identical files. (Walton Report ¶ 21.)

(Walton Report ¶ 22.) Mr. Walton determined that over ninety files on Jayesh Patel's USB devices were "exact matches" to those found on Mr. Warriner's computer.

(Walton Report ¶ 23.) Additionally, it was later discovered that, prior to submitting the computer for forensic analysis, Mr. Warriner deleted two folders from his computer that contained ACI files. (D. Warriner Dep. 51:2–9.)

29. Defendants hired forensic expert John Akerman ("Mr. Akerman") to evaluate whether any of the ACI data described by Mr. Walton existed on Bayatronics's server. (Report & Aff. John W. Akerman, ECF No. 103.6 ["Akerman Report"].) Mr. Akerman utilized several forensic methods, including: (1) reviewing the "Author" on all files; (2) running searches of key terms, such as American, Circuit, Sok,⁹ Ketul, Gondha, and Streletsky; and (3) conducting a hash comparison, like that conducted by Mr. Walton. (Akerman Report ¶ 9.) Mr. Akerman ultimately determined that three documents on Bayatronics's server shared a hash value with the documents found on Jayesh Patel's USB devices: (1) Paste_NC258_6337_AIM.pdf; (2) Paste_RoHS_NC_258_SACE305_AIM.pdf; and (3) Customer_List_Flex.xlsx. (Akerman Report ¶¶ 10(a)–(c).)

III. PROCEDURAL BACKGROUND

30. The Court sets forth herein only those portions of the procedural history relevant to its determination of the Motion.

31. This action was initiated on 22 February 2022 on the filing of ACI's Verified Complaint. On 15 March 2022, ACI filed its First Amended Motion for Injunctive

⁹ Peter Sok was ACI's Inventory Manager during the relevant period. (Verified Compl. ¶ 47.)

Relief and Verified Complaint (“Verified Complaint”), thereby adding the Bayatronics Defendants to this suit. (*See generally* Verified Compl.)

32. ACI alleges five claims for relief against the Bayatronics Defendants in the Verified Complaint: (1) misappropriation of trade secrets, (Verified Compl. ¶¶ 137–50); (2) unfair and deceptive trade practices under the Unfair and Deceptive Trade Practices Act, (Verified Compl. ¶¶ 151–56); (3) civil conspiracy, (Verified Compl. ¶¶ 157–61); (4) unjust enrichment, (Verified Compl. ¶¶ 162–65); and (5) punitive damages, (Verified Compl. ¶¶ 166–68).

33. On 15 April 2022, the Bayatronics Defendants filed their Answer to the Verified Complaint. (ECF No. 49.)

34. All discovery was completed on 1 May 2023. (*See* ECF No. 90.)

35. On 31 May 2023, the Bayatronics Defendants filed the Motion. Following full briefing on the Motion, the Court held a hearing on the Motion on 22 August 2023 (the “Hearing”) at which all parties were represented through counsel. (*See* ECF No. 114.)

36. The Motion is ripe for resolution.

IV. LEGAL STANDARD

37. Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C.G.S. § 1A-1, Rule 56(c). “A ‘genuine issue’ is

one that can be maintained by substantial evidence.” *Dobson v. Harris*, 352 N.C. 77, 83 (2000).

38. The moving party bears the burden of showing that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Hensley v. Nat’l Freight Transp., Inc.*, 193 N.C. App. 561, 563 (2008). The movant may make the required showing by proving that “an essential element of the opposing party’s claim does not exist, cannot be proven at trial, or would be barred by an affirmative defense, or by showing through discovery that the opposing party cannot produce evidence to support an essential element of her claim.” *Dobson*, 352 N.C. at 83 (citations omitted).

39. “Once the party seeking summary judgment makes the required showing, the burden shifts to the nonmoving party to produce a forecast of evidence demonstrating specific facts, as opposed to allegations, showing that he can at least establish a *prima facie* case at trial.” *Gaunt v. Pittaway*, 139 N.C. App. 778, 784–85 (2000). The Court must view the evidence in the light most favorable to the nonmovant. *Dobson*, 352 N.C. at 83. However, the nonmovant “may not rest upon the mere allegations or denials of [its] pleading, but [its] response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If [the nonmovant] does not so respond, summary judgment, if appropriate, shall be entered against [the nonmovant].” N.C.G.S. § 1A-1, Rule 56(e).

V. ANALYSIS

40. The Bayatronics Defendants contend that summary judgment is appropriate on all claims raised against them. As set forth above, ACI alleged five claims for relief against the Bayatronics Defendants. The Court addresses each of the five claims set forth in the Verified Complaint in turn. (See Verified Compl. ¶¶ 137–68.)

A. Misappropriation of Trade Secrets

41. ACI alleges that the Bayatronics Defendants misappropriated its trade secrets in violation of the North Carolina Trade Secrets Protection Act, N.C.G.S. § 66-152 *et seq.* (the “NCTSPA”). ACI alleges that Jayesh Patel accessed, downloaded, and transferred ACI’s files to the Bayatronics Defendants, in violation of the NCTSPA, to gain an advantage over, and directly compete with ACI. (Verified Compl. ¶¶ 141–47.)

42. The Bayatronics Defendants now seek dismissal of ACI’s claim for misappropriation of trade secrets, contending that ACI has identified no protectable trade secrets and that, even if it does, ACI has not presented evidence of the Bayatronics Defendants’ alleged misappropriation. (Br. Supp. Bayatronics Defs.’ Mot. 15, 19, 24, ECF No. 102 [“Br. Supp.”].)

43. “A threshold question in any action involving allegations of misappropriation of trade secrets is whether the information in question constitutes a trade secret under the [NCTSPA]” *Koch Measurement Devices, Inc. v. Armke*,

2015 NCBC LEXIS 45, at *10 (N.C. Super. Ct. May 1, 2015) (citing *Combs & Assocs. v. Kennedy*, 147 N.C. App. 362, 369 (2001)).

44. Under the NCTSPA, a trade secret is defined as:

business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

N.C.G.S. § 66-152(3).

45. Our courts have identified six factors that should be considered when determining whether information is a trade secret:

(1) the extent to which the information is known outside the business; (2) the extent to which it is known to employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of [the] information to [the] business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could properly be acquired or duplicated by others.

Combs, 147 N.C. App. at 369–70 (citations omitted).

46. “[A] plaintiff must identify a trade secret with sufficient particularity so as to enable a defendant to delineate that which he is accused of misappropriating and a court to determine whether misappropriation has or is threatened to occur.” *Krawiec v. Manly*, 370 N.C. 602, 609 (2018) (citation omitted). A plaintiff may not simply make “general allegations in sweeping and conclusory statements, without

specifically identifying the trade secrets allegedly misappropriated.” *Washburn v. Yadkin Valley Bank & Tr. Co.*, 190 N.C. App. 315, 327 (2008).

47. The Bayatronics Defendants contend that ACI has failed to identify which documents it contends constitute trade secrets with sufficient particularity. (Br. Supp. 15.) More specifically, the Bayatronics Defendants contend that it is an “impossible task” to parse through the two USB drives at issue to determine which documents ACI considers trade secrets. (Br. Supp. 18.)

48. There appear to be three distinct groups of alleged trade secrets: (1) the file titled *Customer_List_Flex.xlsx*; (2) all other broadly defined categories of information; and (3) the specifically identified files and documents *ACI_Quality_Manual-Rev.K.pdf*, *SMT Assembly Logs*, *Quotes_Orders.doc*, *Company_Name_Alternatives.xlsx*, specific Process Flow documents, and *PCBC_2019_Attendees_Opt_In_List_Max_Edit.xlsx* (together, the “Specifically Identified Trade Secrets”). The Court addresses these three groups in turn.

1. The Customer_List_Flex.xlsx File

49. First, the Bayatronics Defendants contend that the three files identified by Mr. Akerman to be on both the USB devices and the Bayatronics server are not trade secrets: (1) *Customer_List_Flex.xlsx*, (2) *Paste_NC258_6337_AIM.pdf*, and (3) *Paste_RoHS_NC_258_SACE305_AIM.pdf*. (Index Ex. Reply, Ex. 8, 11, 12, ECF Nos. 111.8, 111.11–12.) The spreadsheet titled *Customer_List_Flex.xlsx* is the only alleged trade secret that was filed with the Motion for the Court’s review.¹⁰

¹⁰ ACI represented to the Court at the hearing that the files *Paste_NC258_6337_AIM.pdf* and *Paste_RoHS_NC_258_SACE305_AIM.pdf* do not contain trade secret information.

50. To survive summary judgment, a plaintiff “must allege facts that would allow a reasonable finder of fact to conclude that the information [at issue] was not ‘generally known or readily ascertainable.’” *Area Landscaping, L.L.C. v. Glaxo-Wellcome, Inc.*, 160 N.C. App. 520, 525 (2003) (citation omitted).

51. The Bayatronics Defendants argue that the information contained in Customer_List_Flex.xlsx is “openly available to the public” and that “anyone with access to the internet” could ascertain the information therein. (Reply Supp. Mot. 7, ECF No. 113 [“Reply”].) ACI disagrees, contending that this list was created by Peter Sok while he was employed by ACI, (*see supra* note 9), and that it contains information about ACI’s customers, prospective customers, and projected revenue for such customers, (Pl.’s Br. Opp. Mot. 21, ECF No. 109 [“Br. Opp.”]; *see* Second Aff. Anatoly Streletsky ¶ 6, ECF No. 108 [“Second Streletsky Aff.”]).

52. The Court, having reviewed the Customer_List_Flex.xlsx file, determines that the file arguably contains information that is or may qualify for protection under the NCTSPA. The file contains a number of entities identified as customers. For each entity listed, the document provides the customer’s name, address, and phone number, as well as a description and photo of the customer’s product manufactured by ACI, with a potential whole number revenue figure. (*See* ECF No. 111.8.)

53. While customer lists, when compiled with pricing and bidding formulas, qualify as a trade secret under the NCTSPA, the Court’s prior decisions do not consider a customer list “containing only information that is easily accessible through a telephone book or other readily available sources to be a trade secret.” *Bldg. Ctr.*,

Inc. v. Carter Lumber of the North, Inc., 2017 NCBC LEXIS 85, at *19–20 (N.C. Super. Ct. Sept. 21, 2017). The Court concludes that, for purposes of determination of Defendants’ request for summary judgment, the record before the Court does not definitively disclose that the qualitative information found within the Customer_List_Flex.xlsx file can be acquired by searching each company online.

54. First, there is no showing how a competitor, without ACI’s information, could readily determine what products ACI was manufacturing for each of its customers. Further, the revenue figure presented in the file appears from the evidence to be ACI’s opinion about possible sales to each of the listed entities. Based on this evidence, the Court concludes that the Customer_List_Flex.xlsx can be a protectable trade secret under the NCTSPA.

55. Therefore, there Court hereby **DENIES** in part the Motion as to ACI’s claim for misappropriation of trade secrets as it relates to the Customer_List_Flex.xlsx file.

2. The Other Broadly Defined Categories of Information

56. ACI alleges that the

files containing Machine Maintenance Procedures, Job Notes, Project Lists, Inventory Files, Historic Employee Activity . . . NDAs, [and] those files (and any such similar files containing similar types of data) identified as Exhibits A through E of the Affidavit of Mr. Streletsky, and Exhibit B to the Affidavit of Mr. Walton

contain trade secret information protected under the NCTSPA. (Verified Compl. ¶ 102.) Within this extensive list, ACI has failed to identify any specific files that might contain trade secret information.

57. For example, ACI makes the general assertion that the files listed in “Exhibits A through E of the Affidavit of Mr. Streletsky” contain trade secrets that the Bayatronics Defendants have misappropriated. (Verified Compl. ¶ 102.) However, those Exhibits contain hundreds of files, with names that range in descriptiveness from “forklift_training.pdf” to “Book1.xlsx.” (Streletsky Aff. Exs. A, C.) Without identifying the specific files and documents that purportedly contain trade secret information, and the specific information within each document that warrants protection under the NCTSPA, it is nearly impossible for the Bayatronics Defendants to know which files contain trade secret information that they are accused of misappropriating.

58. “[S]weeping and conclusory statements, without specifically identifying the trade secrets allegedly misappropriated,” will not suffice. *Washburn*, 190 N.C. App. at 327.

59. Therefore, the Court hereby **GRANTS** in part the Motion as to ACI’s claim for misappropriation of trade secrets as it relates to the following broadly defined categories of files containing information on: Machine Maintenance Procedures, Job Notes, Project Lists, Inventory Files, Historic Employee Activity, Exhibits A through E of Mr. Streletsky’s Affidavit, and Exhibit B to Mr. Walton’s Affidavit. This explicitly excludes the Customer_List_Flex.xlsx file as discussed above, (*see supra* Part V.A.1), and the Specifically Identified Trade Secrets addressed below (*see infra* Part V.A.3).

3. Specifically Identified Files and Documents

60. As to the third category of documents, ACI has sufficiently identified the Specifically Identified Trade Secrets that it contends are worthy of trade secret protection. (Verified Compl. ¶¶ 93, 97.)

61. The Verified Complaint specifically provides the name of each file; detailed information about the content of each file, including how it is utilized by ACI; how ACI developed this information; and whether each file would be valuable to a competitor. (Verified Compl. ¶ 97.) For example, Quote_Orders.doc is alleged to be a “confidential file” that “lists [ACI’s] circuitry board suppliers, their contact information, [and] guidance on which circuit boards to order from which suppliers.” (Verified Compl. ¶ 97(a)(i).) ACI alleges that this list “took [it] years to develop” and that it would be “of significant value to a competitive company.” (Verified Compl. ¶ 97(a)(i).)

62. Further, ACI specifically states that the files beginning with “SMT Assembly Logs” followed by the relevant date, were developed by ACI, and contain trade secrets. (Verified Compl. ¶ 93.) ACI claims that each of “[t]hese logs represent a different week of performance on [its] robotic machines that maximize [its] efficiency” and that they contain “certain details of the run or job for a particular customer[,]” including information like the customer’s name, quantity, number of components, number of feeders, number of producers, and amount of time to manufacture. (Verified Compl. ¶ 93.) ACI affirms that if a competitor had this information, the competing company could provide a more accurate quote to a

customer and better compete in terms of production and quality. (Verified Compl. ¶ 93.)

63. The Bayatronics Defendants raise no argument or rebuttal in the briefing to negate these specific verified allegations relating to each file, leaving them seemingly uncontested. The Bayatronics Defendants simply state that, as to this category of information, there is “nothing remotely of value to any of [ACI]’s competitors.” (Br. Supp. 20.)

64. No party has submitted the Specifically Identified Trade Secrets for the Court’s review. Without access to each Specifically Identified Trade Secret, the Court must rely on ACI’s allegations within the Verified Complaint and each party’s arguments within their respective briefs.

65. On the record before the Court, it appears that ACI has sufficiently identified its Specifically Identified Trade Secrets, as defined above, such that the Bayatronics Defendants have notice of what they allegedly misappropriated.

66. The Court therefore proceeds to the remaining analysis to determine whether the misappropriation of trade secrets claim survives summary judgment based on the Specifically Identified Trade Secrets and the Customer_List_Flex.xlsx file (together, the “Alleged Trade Secrets”).

4. Reasonable Efforts to Maintain Secrecy

67. Even if a Court determines that specifically described information may otherwise qualify as a protectable trade secret, the Court must also evaluate whether the Alleged Trade Secrets were subject to reasonable efforts to maintain their secrecy.

68. “No trade secret will be found if . . . there is no evidence indicating that the plaintiff undertook efforts to ensure the information’s secrecy.” *Safety Test & Equip. Co. v. Am. Safety Util. Corp.*, 2015 NCBC LEXIS 40, at *26 (N.C. Super. Ct. Apr. 23, 2015) (citing *Bank Travel Bank v. McCoy*, 802 F. Supp. 1358, 1360 (E.D.N.C. 1992) (indicating that, absent reasonable security measures, a trade secret cannot exist)); see N.C.G.S. § 66–152(3). “[T]he [NCTSPA] calls for a fact-specific inquiry regarding whether efforts were ‘reasonable.’” *RoundPoint Mortg. Co. v. Florez*, 2016 NCBC LEXIS 18, at **36 (N.C. Super. Ct. Feb. 18, 2016).

69. The Court begins by examining ACI’s corporate policies. See *Edgewater Servs., Inc. v. Epic Logistics, Inc.*, 2009 NCBC LEXIS 21, at *12–14 (N.C. Super. Ct. Aug. 11, 2009) (reviewing a company’s safeguards, protocols, and procedures to determine whether the company has made reasonable efforts to safeguard its trade secrets).

70. First, Jayesh Patel’s employment with ACI was contingent upon the signing of the Confidentiality Agreement. The Confidentiality Agreement explicitly included a nondisclosure and confidentiality provision that required each employee to use ACI’s confidential information “only for performance of his/her role with and obligations owed to [ACI],” and to “not disclose, transfer, duplicate, or reproduce the Confidential Information in any form[.]” (Confidentiality Agt. at ¶ 3(c).)

71. Second, ACI requires a username and password to gain access to servers that contain the Alleged Trade Secrets, with different employees having more or less restricted access depending on their roles and responsibilities. As the Operations

Manager, which was a position that enjoyed high-level access to ACI's confidential information, (Verified Compl. ¶ 30), Jayesh Patel had a username and password which provided him access to that server.

72. Password protection of trade secrets kept in computerized databases is one measure our courts have considered reasonable, with other demonstrated efforts, to meet the obligations of maintaining secrecy. *Safety Test & Equip. Co.*, 2015 NCBC LEXIS 40, at *27–28. Further, our Court of Appeals has suggested that a password-protected database should limit access to top-level employees. *TSG Finishing, LLC v. Bollinger*, 238 N.C. App. 586, 589 (2014) (noting that plaintiff's computers were password-protected with additional passwords required to access production information).

73. Given that ACI required all employees to sign employment agreements that contain a confidentiality provision, and ACI maintained its Alleged Trade Secrets on a password-protected server, the Court cannot conclude, as a matter of law, that ACI failed to take reasonable efforts to maintain the secrecy of the Alleged Trade Secrets. Even if ACI allowed Jayesh Patel to maintain access to the server after he gave notice of his resignation, his employment agreement remained in effect and limited his ability to share ACI's information with those outside of the company.

5. Misappropriation of ACI's Alleged Trade Secrets

74. The Bayatronics Defendants argue that the facts surrounding Jayesh Patel's access to ACI's Alleged Trade Secrets and the subsequent transfer of those

files, establish that Defendants did not acquire or use that information. (Br. Supp. 24.)

75. Misappropriation is the “acquisition, disclosure, or use of a trade secret of another without express or implied authority or consent, unless such trade secret was arrived at by independent development, reverse engineering, or was obtained from another person with a right to disclose the trade secret.” N.C.G.S. § 66-152(1). A plaintiff can establish a *prima facie* case of trade secret misappropriation by “introducing substantial evidence that the person against whom relief is sought both: (1) knows or should have known of the trade secret; and (2) has had a specific opportunity to acquire it for disclosure or use or has acquired, disclosed, or used it without the express or implied consent or authority of the owner.” N.C.G.S. § 66-155.

76. This Court has held that

evidence that a former employee had access to, and therefore an “opportunity to acquire,” an employer’s trade secrets, without more, is not sufficient to establish a *prima facie* case of misappropriation. Rather, the employer must establish either that the former employee accessed its trade secrets *without authorization* or provide other sufficient evidence of misappropriation to raise an inference of actual acquisition or use of its trade secrets.

Am. Air Filter Co. v. Price, 2017 NCBC LEXIS 9, at *22 (N.C. Super Ct. Feb. 3, 2017).

77. The Bayatronics Defendants do not deny that Jayesh Patel took the information in question with him either before or at the time of his resignation. Rather, they contend that, even if Jayesh Patel misappropriated the information, ACI has provided no evidence that any files on the two USB devices have been used by Bayatronics, LLC, or that Defendants Mr. Koladia, Mr. Gajera, Mr. Sangani, or Mr.

Patel ever knew of, knowingly viewed, or obtained any benefit from any document on either of the two USB drives. (Br. Supp. 24.) Further, the Bayatronics Defendants contend that there is no evidence that Bayatronics or Mr. Warriner ever knew or had reason to know that any document uploaded to Mr. Warriner's laptop contained trade secret information belonging to ACI. (Br. Supp. 24.) Finally, the Bayatronics Defendants argue there is no evidence that Mr. Patel has purposely shared any information belonging to ACI with them. (Br. Supp. 24.)

78. ACI, however, relies on inferences to be drawn from the facts surrounding the development of Bayatronics, Jayesh Patel's transferring of files and documents to Mr. Warriner, and the Bayatronics Defendants' continued access to Jayesh Patel while employed by ACI as evidence of the Bayatronics Defendants' actual misappropriation of trade secrets. ACI also points to evidence indicating that Mr. Warriner attempted to delete the information downloaded by him from Jayesh Patel as circumstantial evidence of his wrongdoing.

79. ACI must identify the actual acts of misappropriation with adequate specificity to enable the Court to determine whether misappropriation has occurred. *Washburn*, 190 N.C. App. at 327 (dismissing misappropriation of trade secret claim because plaintiff did not "identify with sufficient specificity either the trade secrets . . . or the acts by which the alleged misappropriations were accomplished").

80. Circumstantial evidence can be sufficient to support a claim for misappropriation of trade secrets. *See Med. Staffing Network, Inc. v. Ridgeway*, 194 N.C. App. 649, 658 (2009) ("[d]irect evidence . . . is not necessary to establish a claim

for misappropriation of trade secrets; rather, such a claim may be proven through circumstantial evidence”). While a plaintiff may rely on circumstantial evidence to prove its misappropriation claim, there must be “substantial evidence (1) that the wrongdoer accessed the trade secret without consent, or (2) of misappropriation resulting in an inference of actual acquisition or use of the trade secret.” *Addison Whitney, LLC v. Cashion*, 2017 NCBC LEXIS 23, at **18 (N.C. Super. Ct. Mar. 15, 2017).

81. ACI contends that its circumstantial evidence is sufficient to show, at least at this stage, that the Bayatronics Defendants knew Jayesh Patel had access to ACI’s server containing the Alleged Trade Secrets, and that the Bayatronics Defendants had continued access to the ACI materials Jayesh Patel transferred to Mr. Warriner. (Br. Opp. 21.)

82. The evidence in the record, specifically the forensic findings of Mr. Walton, is sufficient to show that Mr. Warriner viewed, possessed, and had continued access to the Alleged Trade Secrets as they were uploaded onto his computer by Jayesh Patel. Further, there is sufficient evidence provided by Mr. Akerman, to show that files belonging to ACI were found on Bayatronics’s server, without any justification for how this came to be.

83. This evidence, paired with the knowledge of Jayesh Patel’s role at ACI and the continuous development of Bayatronics, supports the Court’s determination that ACI has produced sufficient evidence to permit an inference of misappropriation by Bayatronics and Mr. Warriner, and genuine issues of material fact remain regarding

whether Bayatronics and Mr. Warriner's access to Jayesh Patel and ACI's Alleged Trade Secrets resulted in the acquisition and/or using of ACI's Alleged Trade Secrets.

84. Therefore, the Court hereby **DENIES** the Motion for Defendants Bayatronics, LLC and Dirk A. Warriner as it relates to ACI's claim for misappropriation of trade secrets, to the extent it requests dismissal as to ACI's Alleged Trade Secrets.

85. However, ACI has failed to produce sufficient evidence that Mr. Gajera, Mr. Koladia, Mr. Sangani, or Mr. Patel viewed, utilized, or even had knowledge of the Alleged Trade Secrets. The only evidence related to these Defendants and the Alleged Trade Secrets is the August 2020 email chain between Mr. Warriner, Mr. Sangani, and Jayesh Patel. (Br. Opp. 19.) In the email chain, Mr. Warriner states that he needs to "see if Jay can give me a list of potential customers," to which Mr. Sangani responded by asking for Jayesh Patel to "share the potential customer" However, there is no evidence that Mr. Sangani asked for a list of *ACI customers*, and even if he had, there is no evidence that Mr. Sangani ever viewed, utilized, or knew of any such list.

86. This is simply not enough. *See Safety Test & Equip. Co.*, 2015 NCBC LEXIS 40, at *28–29 (noting that a trade secret claimant must "identify the actual acts of misappropriation with adequate specificity"); *see also Addison Whitney*, 2017 NCBC LEXIS 23, at *18 (holding that "a wrongdoer's access to and opportunity to acquire a trade secret—without more—is insufficient").

87. As such, there is insufficient evidence to permit an inference of misappropriation by Mr. Gajera, Mr. Koladia, Mr. Sangani, and Mr. Patel. Therefore, the Court hereby **GRANTS** the Motion for Defendants Kishor Koladia, Dahyalal Gajera, Ashwin J. Sangani, and Samir Patel as it relates to ACI's claim for misappropriation of trade secrets, and that claim is **DISMISSED** to that extent.

B. Unfair and Deceptive Trade Practices

88. A claim for unfair and deceptive trade practices under the UDTPA requires proof of “(1) an unfair or deceptive trade practice, (2) in or affecting commerce, which (3) proximately caused actual injury to the [plaintiff].” *Nucor Corp. v. Prudential Equity Grp., LLC*, 189 N.C. App. 731, 738 (2008).

89. In alleging its claim for violations of the UDTPA, ACI relies on the same facts underlying its misappropriation of trade secrets claim. A claim for misappropriation of trade secrets may support a claim for violation of the UDTPA if the misappropriation satisfies the three required elements for an unfair trade practice claim. *Drouillard v. Keister Williams Newspaper Servs., Inc.*, 108 N.C. App. 169, 172 (1992).

90. The Bayatronics Defendants' sole argument in support of the Motion is that the claims for misappropriation of trade secrets, unjust enrichment, and civil conspiracy are “inseparably intertwined” with ACI's claim under the UDTPA, and as a result of ACI failing to present substantial evidence required to support those claims, the UDTPA claim fails as well. (Br. Supp. 30.)

91. The Court has dismissed ACI's claims for misappropriation of trade secrets, civil conspiracy, and unjust enrichment (*see supra* Part V.A. and *infra* Parts V.C. and V.D.), as to Defendants Kishor Koladia, Dahyalal Gajera, Ashwin J. Sangani, and Samir Patel. Therefore, the Court hereby **GRANTS** the Motion as to ACI's unfair and deceptive trade practices claim for Defendants Kishor Koladia, Dahyalal Gajera, Ashwin J. Sangani, and Samir Patel.

92. However, ACI's misappropriation of trade secrets claim survives summary judgment as to Bayatronics and Mr. Warriner to the extent expressed earlier (*see supra* ¶ 84), and as such, that claim, and the conduct alleged therein, serves as support for ACI's unfair and deceptive trade practices claim.

93. Therefore, the Court hereby **DENIES** the Motion for Defendants Bayatronics and Dirk A. Warriner as to ACI's unfair and deceptive trade practices claim.

C. Civil Conspiracy

94. The Bayatronics Defendants request summary judgment on ACI's claim for civil conspiracy, arguing that ACI has not provided sufficient evidence of an agreement between any of the Bayatronics Defendants that would support such a claim. (Br. Supp. 28.)

95. Civil conspiracy requires a showing of "(1) an agreement between two or more individuals; (2) to do an unlawful act or to do a lawful act in an unlawful way; (3) resulting in injury to plaintiff inflicted by one or more of the conspirators; and (4)

pursuant to a common scheme.” *Strickland v. Hedrick*, 194 N.C. App. 1, 19 (2008) (citations omitted).

96. It is well established that

[t]here is no independent cause of action for civil conspiracy. Only where there is an underlying claim for unlawful conduct can a plaintiff state a claim for civil conspiracy by also alleging the agreement of two or more parties to carry out the conduct and injury resulting from that agreement.

Toomer v. Garrett, 155 N.C. App. 462, 483 (2002) (citations omitted).

97. The Court has determined that ACI’s claim for misappropriation of trade secrets survives summary judgment for Defendants Bayatronics and Mr. Warriner as to the Alleged Trade Secrets because a genuine issue of material fact remains for a jury. As such, ACI’s claim for misappropriation of trade secrets may serve as the requisite underlying tort to support ACI’s claim for civil conspiracy against the Bayatronics Defendants. *See Am. Air Filter Co.*, 2017 NCBC LEXIS at *32 (“Since [Plaintiff’s] claims for misappropriation and unfair trade practices survive dismissal, these claims can serve as the requisite underlying torts for a civil conspiracy claim.” (cleaned up)); *see also Koch Measurement Devices*, 2015 NCBC LEXIS 45, at *26 (“To establish a claim for civil conspiracy, a plaintiff must show an ‘overt act’ committed by *at least one conspirator* in furtherance of the conspiracy.” (quoting *Dove v. Harvey*, 168 N.C. App. 687, 690 (2006) (emphasis added))).

98. ACI must offer “proof of an agreement between two or more persons” to establish a civil conspiracy claim. *Sellers v. Morton*, 191 N.C. App. 75, 83 (2008) (quoting *Dove*, 168 N.C. App. at 690–91). “Although civil liability for conspiracy may

be established by circumstantial evidence, the evidence of the agreement must be sufficient to create more than a suspicion or conjecture[.]” *Cameron v. New Hanover Mem’l Hosp., Inc.*, 58 N.C. App. 414, 438 (1982) (citation omitted). A motion for summary judgment “triggers the plaintiff’s responsibility to produce facts, . . . sufficient to show that he will be able to prove his claim at trial.” *Morrison-Tiffin v. Hampton*, 117 N.C. App. 494, 505 (1995).

99. ACI contends that the Defendants “entered into an agreement to act pursuant to a common scheme to unlawfully and tortiously compete with ACI” and that the conspiracy “was successful” by Defendants utilizing ACI’s resources to develop a competing venture. (Verified Compl. ¶ 159.) The unlawful act alleged by ACI is the misappropriation by Jayesh Patel of ACI’s confidential business information and trade secrets, for the benefit of the Bayatronics Defendants. (Verified Compl. ¶ 159.)

100. The Bayatronics Defendants have challenged ACI’s evidentiary showing of an agreement amongst the Defendants, and ACI must come forward with a forecast of evidence in support of its civil conspiracy theory. After a thorough review of the record in this case, the Court, construing the evidence in ACI’s favor, concludes that circumstantial evidence of an unlawful agreement between the Defendants does not rise above mere suspicion or conjecture. At most, ACI has shown that Defendants were actively working together to start a business, which included meeting with all members, signing an Operating Agreement, and drafting a Business Plan. Following the inception of Bayatronics, Jayesh Patel informed ACI of his resignation, after

which he accessed and downloaded files on ACI's server and transferred those files to Mr. Warriner via two USB devices. However, this is not evidence of an *agreement* between Defendants that one or more of them would misappropriate ACI's Alleged Trade Secrets for the purpose of forming and furthering a competing venture.

101. There is no justifiable basis to conclude that these acts were in pursuit of an agreement or common scheme, even though they all relate to the formation and development of Bayatronics.

102. Therefore, the Court hereby **GRANTS** the Motion as it relates to ACI's civil conspiracy claim, and it is **DISMISSED** with prejudice.

D. Unjust Enrichment

103. A claim for unjust enrichment "is neither in tort nor contract but described as a claim in quasi contract or a contract implied in law." *Booe v. Shadrick*, 322 N.C. 567, 570 (1988). To establish a claim for unjust enrichment, "a party must have conferred a benefit on the other party," and "[t]he benefit must not be gratuitous and it must be measurable." *Id.* at 570.

104. The Bayatronics Defendants first argue that a claim for unjust enrichment is "an alternative claim for breach of contract," that ACI has failed to bring a breach of contract claim against the Bayatronics Defendants, and that therefore summary judgment is appropriate. In this respect, Defendants misapprehend the law.

105. While a claim for unjust enrichment cannot stand where an express contract exists covering the same subject, *Vetco Concrete Co. v. Troy Lumber Co.*, 256 N.C. 709, 714 (1962), a party is permitted to plead a claim for unjust enrichment in

the alternative to a claim for breach of contract, *Bandy v. Gibson*, 2017 NCBC LEXIS 66, at *11 (N.C. Super. Ct. July 16, 2017). Therefore, ACI is not required to assert a breach of contract claim against the Bayatronics Defendants in order to assert a claim for unjust enrichment.

106. The Bayatronics Defendants further argue that ACI has provided no evidence that it actually conferred any benefit on Defendants, or that there is any contract implied in law between ACI and the Bayatronics Defendants. (Br. Supp. 29.) They contend that ACI's unjust enrichment claim focuses on the Bayatronics Defendants having conferred a benefit upon themselves, given that it is alleged that Mr. Patel—a member of Bayatronics—retained trade secret information when he left ACI and allegedly shared that information with the Bayatronics Defendants. (Br. Supp. 29.)

107. ACI, however, contends that it conferred “the benefit of access to its confidential information upon [Jayesh] Patel,” because he and ACI entered into the Confidentiality Agreement, and that through the Defendants' conspiracy, all Defendants obtained the benefit of that confidential information, and it would be inequitable for them to retain that benefit. (Br. Opp. 28.)

108. However, ACI has alleged a taking of information in violation of Jayesh Patel's Confidentiality Agreement, not a willing transfer of that information to the Bayatronics Defendants. *See, e.g., Albritton v. Albritton*, 2021 NCBC LEXIS 53, at **33–36 (N.C. Super. Ct. June 7, 2021) (“Neither the allegations nor the facts in evidence support a claim for unjust enrichment. Movants have not alleged that

[Plaintiffs] *conferred* benefits upon Defendants, but, rather, that Defendants took assets belonging to [Plaintiff].” (emphasis in original); *Klos Constr., Inc. v. Premier Homes & Props., LLC*, 2020 NCBC LEXIS 85, at *48–51 (N.C. Super. Ct. July 21, 2020) (dismissing a claim for unjust enrichment where “it is undisputed that the [] Defendants took any benefit of Plaintiff’s goodwill”); *KNC Techs., LLC v. Tutton*, 2019 NCBC LEXIS 72, at *36–37 (N.C. Super. Ct. Oct. 9, 2019) (stating that “a claim for unjust enrichment must be based on a contract implied in law in which one party has provided a benefit to another, such as goods or services, for which the first party should rightfully be compensated”).

109. The access granted to Jayesh Patel as a benefit of his Confidentiality Agreement, and his alleged wrongful taking and disseminating of that information to the Bayatronics Defendants, does not support a claim for unjust enrichment against the Bayatronics Defendants. ACI did not voluntarily confer a benefit on the Bayatronics Defendants. Rather, the evidence is clear that, at most, Jayesh Patel wrongly misappropriated or retained trade secret information which the Bayatronics Defendants ultimately received.

110. Accordingly, the Court hereby **GRANTS** the Motion as to ACI’s unjust enrichment claim, and the claim is **DISMISSED** with prejudice.

E. Punitive Damages

111. North Carolina General Statutes § 1D-15 specifically sets forth the circumstances appropriate for awarding punitive damages. “While punitive damages shall not be awarded against a person solely for breach of contract, they may be

awarded if the claimant proves liability for compensatory damages, as well as one of the following aggravating factors: (1) fraud; (2) malice; or, (3) willful or wanton conduct.” *BluSky Restoration Contrs., LLC v. Brown*, 2022 NCBC LEXIS 124, at **41–42 (N.C. Super. Ct. Oct. 20, 2022) (quoting N.C.G.S. § 1D-15(a), (d) (cleaned up)). “North Carolina courts have repeatedly held that ‘a claim for punitive damages is not a stand-alone claim.’” *Beam v. Sunset Fin. Servs.*, 2019 NCBC LEXIS 56, at **29–30 (N.C. Super. Ct. Sept. 3, 2019) (internal citations omitted). “A claim for punitive damages may succeed only if plaintiffs prove . . . [liability] for compensatory damages and [that] their injury was the result of fraud, malice, or willful or wanton conduct” under N.C.G.S § 1D-15. *Funderburk v. JPMorgan Chase Bank, N.A.*, 241 N.C. App. 415, 425 (2015).

112. Accordingly, the Motion is hereby **GRANTED** for punitive damages and that claim is hereby **DISMISSED**. This holding does not impair ACI’s ability to seek punitive damages for conduct which may later be found to meet the statutory requirements of N.C.G.S. § 1D-15, *et seq.*

VI. CONCLUSION

113. For the foregoing reasons, the Court hereby **GRANTS** in part and **DENIES** in part Bayatronics Defendants’ Motion as follows:

A. The Court **GRANTS** the Motion in part as to ACI’s misappropriation of trade secrets claim for Defendants Kishor Koladia, Dahyalal Gajera, Ashwin J. Sangani, and Samir Patel; and for Defendants Bayatronics and Dirk A. Warriner to the limited extent it seeks dismissal of the broad

categories of information listed in paragraph 59 of this Opinion, and the claim is **DISMISSED** to that extent;

B. The Court **GRANTS** the Motion in part as to ACI's unfair and deceptive trade practices claim for Defendants Kishor Koladia, Dahyalal Gajera, Ashwin J. Sangani, and Samir Patel, and that claim is **DISMISSED** to that extent;

C. The Court **GRANTS** the Motion in part as to ACI's civil conspiracy claim for all Bayatronics Defendants, and that claim is **DISMISSED**;

D. The Court **GRANTS** the Motion in part as to ACI's unjust enrichment claim for all Bayatronics Defendants, and that claim is **DISMISSED**;

E. The Court **GRANTS** the Motion in part as to ACI's punitive damages claim for all Bayatronics Defendants, and that claim is **DISMISSED** without prejudice to Plaintiff's ability to seek recovery of punitive damages if the evidence presented to the jury warrants submission of an issue to that effect.

114. Except as expressly granted above, the Motion is otherwise **DENIED**.

SO ORDERED, this the 8th day of December, 2023.

/s/ Michael L. Robinson
Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases