

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 4094

UNITED THERAPEUTICS
CORPORATION and LUNG
BIOTECHNOLOGY PBC,

Plaintiffs,

v.

LIQUIDIA TECHNOLOGIES, INC.
and ROBERT ROSCIGNO,

Defendants.

**ORDER AND OPINION ON
DEFENDANT ROSCIGNO'S
MOTION FOR SUMMARY
JUDGMENT**

[PUBLIC]¹

1. **THIS MATTER** is before the Court on Defendant Dr. Robert Roscigno's Motion for Summary Judgment (the "Motion") pursuant to Rule 56 of the North Carolina Rules of Civil Procedure (the "Rule(s)"), (ECF No. 209).

2. Having considered the Motion, the related briefing, other relevant matters of record, and the arguments of counsel at a hearing on the Motion held 16 May 2024, the Court hereby **DENIES** the Motion.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Eric M. David, Jim W. Phillips, Jr., and Kasi W. Robinson; McDermott Will & Emery, LLP, by Douglas H. Carsten, Arthur P. Dykhuis, Katherine Pappas, Joshua Revilla, Courtney Seams, and Lillian J. Spetrino; and Goodwin Proctor, LLP, by William C. Jackson, for Plaintiffs United Therapeutics Corporation and Lung Biotechnology PBC.

Parker Poe Adams & Bernstein, LLP, by Stephen V. Carey, Corri A. Hopkins, and Andrew P. Tabelaing; and Cooley, LLP, by Daniel Knauss,

¹ Because certain materials referenced in this Order and Opinion were filed under seal, the Court's ruling was provisionally filed under seal on 25 July 2024. The Court then permitted counsel for the parties to confer and advise the Court whether they contend any matters referenced herein should be sealed. Having afforded the parties this opportunity, the Court now files its Order and Opinion on the public record.

Kyung Taeck Minn, Lauren Strosnick, Brittany N. Cazakoff, Jonathan Davies, Adam Pivovar, Rachel L. Preston, and Sanya Sukduang, for Defendant Liquidia Technologies, Inc.

McGuire Woods, LLP, by David E. Finkelson, Miles O. Indest, Mark E. Anderson, Corinne S. Hockman, and Kyle S. Smith, for Defendant Robert Roscigno.

Earp, Judge.

I. FACTUAL BACKGROUND

3. The Court does not make findings of fact on a motion for summary judgment. Instead, the Court summarizes material facts it considers to be uncontested. *See, e.g., Vizant Techs., LLC v. YRC Worldwide, Inc.*, 373 N.C. 549, 551 (2020).

4. Plaintiff United Therapeutics Corporation (“UTC”) is a Delaware corporation in the business of researching and developing treatments for cardiovascular and pulmonary diseases, including pulmonary arterial hypertension (“PAH”). (Mem. Opp. Def. Dr. Robert Roscigno’s Mot. for Summ. J. [“Pls.’ Br. Opp.”] Ex. 34, ECF No. 256.3.)

5. Defendant Dr. Robert Roscigno (“Roscigno”) was employed by UTC from March 1997 to June 2007.² (Mem. Supp. Def. Dr. Robert Roscigno’s Mot. for Summ. J. [“Def.’s Br. Supp.”] Ex. 6 [“Roscigno Aff.”] ¶¶ 3, 8, ECF No. 212.6 (under seal), ECF No. 223 (public version); Def.’s Br Supp. Ex. 1 [“1997 Agreement”] § 1, ECF No. 212.1.)

² Roscigno served as President of Lung Rx, Inc. a wholly owned subsidiary of UTC. Plaintiff Lung Biotechnology PBC is the successor-in-interest to Lung Rx, Inc. (Second Am. Compl. ¶ 14, ECF No. 154 (under seal), ECF No. 155 (public version).) The Court refers to the entities collectively as “UTC.”

When Roscigno began his employment, he signed an employment agreement (the “1997 Agreement”) that included the following confidentiality provision:

[D]uring [Roscigno’s] employment with [UTC] and following termination thereof for any reason, [Roscigno] shall not (except as authorized in writing by the President or CEO), publish, disclose or use for [his] own benefit or for the benefit of a business or entity other than [UTC], any secret or confidential matter, or proprietary or other information not in the public domain which was acquired by [Roscigno] during employment, relating to [UTC’s] businesses, operations, customers, suppliers, products, employees, financial affairs, trade or industrial practices, trade secrets, technology, know-how or intellectual property.

(1997 Agreement § 4.)

6. After ten years of service and following an “excellent performance review,” Roscigno was offered a new employment agreement with UTC (the “2007 Agreement”). (Def.’s Br. Supp. Ex. 2, ECF No. 212.2.) The 2007 Agreement, which superseded the 1997 Agreement, also included a confidentiality provision, providing in relevant part:

[Roscigno] agrees that [he] has a fiduciary duty to [UTC] and that [he] shall hold in confidence and shall not, except in the course of performing [his] employment obligations or pursuant to written authorization from [UTC], at any time during *or for three years after termination* of [his] relationship with [UTC] knowingly (a) directly or indirectly reveal, report, publish, disclose or transfer the Confidential Information³ or any

³ The 2007 Agreement defines “Confidential Information” as:

(a) any information or material proprietary to [UTC] or designated as confidential either orally or in writing by [UTC]; and (b) any information not generally known by non-[UTC] personnel; and (c) any information which [Roscigno] should know [UTC] would not care to have revealed to others or used in competition with [UTC]; and (d) any information which [Roscigno] made or makes, conceived or conceives, developed or develops or obtained or obtains knowledge or access through or as a result of [Roscigno’s] relationship with [UTC] (including information received, originated, discovered or developed in whole or in part by [Roscigno]) from the initial date of [Roscigno’s] employment with [UTC].

(2007 Agreement § 10(b).)

part thereof to any person or entity; (b) use any of the Confidential Information or any part thereof for any purpose other than for the benefit of [UTC]; (c) assist any person or entity other than [UTC] to secure any benefit from the Confidential Information or any part thereof or (d) solicit (on [Roscigno's] behalf or on behalf of any third party) any employee of [UTC] for the purpose of providing services or products which [Roscigno] is prohibited from providing hereunder.

(Def.'s Br. Supp. Ex. 3 ["2007 Agreement"] § 10(a), ECF No. 212.3 (emphasis added).)

7. In contrast to the confidentiality provision contained in the 1997 Agreement, which was unrestricted by time, the confidentiality obligation in the 2007 Agreement ended three years after Roscigno's employment ended.

8. In addition to the confidentiality provision, section nine of the 2007 Agreement speaks to the ownership of intellectual property and provides:

[Roscigno] agrees that the entire right, title, and interest, in and to all inventions, discoveries, materials, authorship, derivatives and results and proceeds of [Roscigno's] efforts in any form or media, including without limitation, all domestic and foreign patents, trade secrets and copyrights in and to all inventions, processes, written works, and other forms of intellectual property ("Intellectual Property"), which [Roscigno] makes, conceives, reduces to practice or develops, in whole or in part, during the term of this Agreement in the furtherance of [UTC's] business (whether or not made during the hours of employment or with the use of [UTC's] materials, facilities or personnel, either solely or jointly with others), or after termination of employment if such Intellectual Property is based upon Confidential Information, shall be solely and exclusively owned by [UTC], its successors, licensees and assigns, and no other individual or entity shall have any interest therein of any kind or nature.

(2007 Agreement § 9.)

9. The 2007 Agreement, however, was not the only method by which UTC imposed confidentiality obligations on Roscigno. Section three of the 2007 Agreement provides: "[Roscigno] agrees to abide by all employment guidelines and policies as

may be developed from time to time by [UTC] and applicable to all employees of [UTC], including, without limitation, the [UTC] Company Manual[.]” (2007 Agreement § 3(c).) The UTC Employee Handbook states that “[i]t is the policy of [UTC] to ensure that the operations, activities, and business affairs of [UTC] are kept confidential.” (Pls.’ Br. Opp. Ex. 22 [“2004 Employee Handbook”] 8, ECF No. 255.22 (under seal), ECF No. 269.22 (public version).)⁴ If an employee acquires confidential or proprietary information about UTC, company policy requires that the information “must be kept in strict confidence and not be used or disclosed to any other person or entity except as required in the performance of [UTC] duties or as otherwise expressly authorized by [UTC].” (2004 Employee Handbook 8.) The Employee Handbook further mandates that “[a]ll company property and equipment in the employee’s possession or control must be returned prior to the employee’s last day.” (2004 Employee Handbook 7.)

10. Separately, UTC’s Technology Policy provides that all UTC media is company property and forbids the use of electronic media for a purpose that is contrary to UTC’s policies or business interests: “[A]ll employees . . . should remember that electronic media and services provided by [UTC] are [UTC] property and their purpose is to facilitate and support [UTC] business Electronic media cannot be used for knowingly transmitting, retrieving, or storing any communication . . . for any purpose that is illegal or contrary to [UTC’s] policies or

⁴ In 2004, Roscigno acknowledged that he received, understood, and was bound by the policies and obligations in the Employee Handbook. (See Pls.’ Br. Opp. Ex. 23, ECF No. 255.23 (under seal), ECF No. 269.23 (public version).)

business interests.”⁵ (Pls.’ Br. Opp. Ex. 26 [“2002 Technology Policy”] §§ 1(B), 2.6, ECF No. 255.26 (under seal), ECF No. 269.26 (public version).) There are no time limitations on these policies.

11. Roscigno resigned from UTC on 18 June 2007, specifically referencing the 2007 Agreement in his resignation letter. (Def.’s Br. Supp. Ex. 11, ECF No. 212.11 (under seal), ECF No. 228 (public version).) Following his resignation, Roscigno joined GeNO, LLC, where he worked on nitric oxide products unrelated to his work at UTC. (Roscigno Aff. ¶ 9.) In 2011, Roscigno began consulting for Defendant Liquidia Technologies, Inc. (“Liquidia”). He joined Liquidia as an employee in 2015. (Roscigno Aff. ¶ 10.) Liquidia competes with UTC in the development of treatments for PAH. (Roscigno Aff. ¶ 10.)

12. After joining Liquidia, Roscigno “discovered that [he] had old, personal thumb drives in [his] desk drawers that contained a mix of personal information and UTC-related information.” (Roscigno Aff. ¶ 10.) Using a Liquidia computer, Roscigno accessed the information on one of these flash drives “to refamiliarize [himself] with the PAH field, [his] publications, and [his] prior work.” (Roscigno Aff. ¶ 10.)

II. PROCEDURAL BACKGROUND

13. On 10 December 2021 UTC initiated this action, complaining, among other things, that Roscigno’s acquisition and use of UTC’s information while working for Liquidia constitutes trade secret misappropriation. (Compl., ECF No. 3.) It asserted claims under both state and federal law. After the matter was designated

⁵ In 2002, Roscigno acknowledged that he read, understood, and agreed to comply with the UTC Technology Policy. (See 2002 Technology Policy § 10.)

to this Court, Roscigno removed the case to federal court. (Notice of Removal, ECF No. 6.)

14. On 10 January 2022, UTC filed a First Amended Complaint consisting solely of state law claims. (Am. Compl., ECF No. 15.) On 31 March 2022, the case was remanded to this Court. *See United Therapeutics Corp. v. Liquidia Corp.*, 2022 U.S. Dist. LEXIS 123346 (M.D.N.C. Mar. 31, 2022).

15. On 10 May 2022, Defendants filed a motion to dismiss the First Amended Complaint, (ECF No. 22). UTC voluntarily dismissed its claim for conversion on 27 May 2022, (ECF No. 31).

16. On 10 April 2023, UTC moved for leave to amend the First Amended Complaint, (ECF No. 80). By order dated 20 July 2023, the Court granted in part Plaintiff's motion to add Lung Biotechnology PBC as a plaintiff and to amend its allegations supporting its misappropriation of trade secrets claim. Plaintiffs filed a Second Amended Complaint on 7 September 2023, (Second Am. Compl., ECF No. 154 (under seal), ECF No. 155 (public version)).

17. On 5 January 2024, Roscigno filed this Motion seeking summary judgment on Plaintiffs' state law claim for misappropriation of trade secrets, the only claim alleged against him. After full briefing, the Court held a hearing on the Motion on 16 May 2024, at which all parties were represented by counsel. (Not. of Hr'g., ECF No. 275.)

18. The Motion is now ripe for disposition.

III. LEGAL STANDARD

19. “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.’” *Da Silva v. WakeMed*, 375 N.C. 1, 10 (2020) (quoting N.C. R. Civ. P. 56(c)). “A genuine issue of material fact ‘is one that can be maintained by substantial evidence.’” *Curlee v. Johnson*, 377 N.C. 97, 101 (2021) (quoting *Ussery v. Branch Banking & Tr. Co.*, 368 N.C. 325, 335 (2015)). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and means more than a scintilla or a permissible inference.” *DeWitt v. Eveready Battery Co.*, 355 N.C. 672, 681 (2002) (cleaned up).

20. The party moving for summary judgment “bears the burden of establishing that there is no triable issue of material fact[.]” *Cummings v. Carroll*, 379 N.C. 347, 358 (2021) (citation and quotation marks omitted). A movant may satisfy its burden 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 [the] claim[.]” *Dobson v. Harris*, 352 N.C. 77, 83 (2000) (citations omitted). “[T]he trial judge must view the presented evidence in a light most favorable to the nonmoving party.” *Belmont Ass’n v. Farwig*, 381 N.C. 306, 310 (2022) (quoting *Dalton v. Camp*, 353 N.C. 647, 651 (2001)).

IV. ANALYSIS

21. Pursuant to the North Carolina Trade Secret Protection Act, N.C.G.S. §§ 66-152 et seq., the owner of a trade secret must make “efforts that are reasonable under the circumstances to maintain its secrecy.” N.C.G.S. § 66-152(3)(b). Furthermore, a plaintiff asserting a claim for misappropriation must establish by “substantial evidence” that the defendant used the trade secret “without the express or implied consent or authority of the owner.” N.C.G.S. § 66-155(2).

22. Roscigno first argues that he is entitled to summary judgment with respect to Plaintiffs’ misappropriation of trade secrets claim because no trade secrets existed in the first place. By allowing his contractual confidentiality obligations to expire three years post-employment, Roscigno contends that UTC failed to take reasonable measures to protect the secrecy of its information, an essential requirement for the existence of a trade secret. Accordingly, Roscigno argues that “UTC’s self-imposed time limit of three years on the confidentiality, use, and disclosure of its information destroys any claim that such information was a ‘secret’ over eight years later.” (Def.’s Br. Supp. 1-2, ECF No. 213 (under seal), ECF No. 217 (public version).)

23. Relatedly, Roscigno maintains that the plain language of the 2007 Agreement provides that his obligation to protect UTC’s Confidential Information—including any trade secrets—ended on 18 June 2010, three years after his employment with UTC ended. Therefore, he contends, UTC implicitly consented to disclosure of its Confidential Information, including its trade secrets, he was at

liberty to disclose the information, and he cannot be said to have misappropriated it after he went to work for Liquidia more than three years later. (Def.'s Br. Supp. 2.)

24. First addressing whether UTC took reasonable steps to ensure the secrecy of its purported trade secrets given that the language in the 2007 Agreement required only that Roscigno maintain the confidentiality of certain information for three years post-employment, UTC points to its other efforts to secure the information. Among those efforts are the company policies in UTC's Employee Handbook and UTC's Technology Policy. (*See, e.g.*, Pls.' Br. Opp. Ex. 7 ["Troy Dep."] 326:11-14, ECF No. 255.7 (under seal), ECF No. 269.7 (public version) (UTC has "policies, procedures, an employee handbook, [and] a technology policy that articulates the importance of keeping information confidential."); Pls.' Br. Opp. Ex. 1 ["Friedrich Dep."] 94:10-13, ECF No. 255.1 (under seal), ECF No. 269.1 (public version) (explaining that in exit interviews with departing employees UTC discusses its policy for the collection of UTC property).)⁶ Consequently, UTC contends, the 2007 Agreement was not the only effort UTC undertook to maintain the secrecy of its information.

25. On this record, the Court cannot conclude as a matter of law that UTC's efforts to protect its trade secret information from disclosure were unreasonable. Other courts have likewise denied summary judgment on similar showings. *See Medtronic MiniMed, Inc. v. Nova Biomedical Corp.*, 2009 U.S. Dist. LEXIS 142337, at *20 (C.D. Cal. 2009) ("[E]xpiration of [a] Non-Disclosure Agreement is not

⁶ Roscigno contends that UTC did not conduct an exit interview with him after his resignation, but he does not challenge the existence of the policy. (Roscigno Aff. ¶ 8.)

dispositive on the issue of reasonable efforts at secrecy.”); *cf. On-Line Techs. v. Perkin Elmer Corp.*, 141 F. Supp. 2d 246, 256 (D. Conn. 2001) (“[E]ven accepting that the Non-Disclosure Agreement had expired, the Complaint alleges that [plaintiff] had received other assurances regarding [defendants’] intentions to maintain confidentiality. From these allegations, the Court can infer that the Non-Disclosure Agreement was not the only effort on the part of [plaintiff] to maintain the information’s secrecy.”). Indeed, an enforceable nondisclosure agreement is only one tool among many that the owner of a trade secret may use to ensure secrecy, but such an agreement is not required. *Static Control Components, Inc. v. Darkprint Imaging, Inc.* 200 F. Supp. 2d 541, 546 (M.D.N.C. 2002).

26. Roscigno relies on the Wisconsin Court of Appeals’ decision *ECT Int’l, Inc. v. Zwerlein* for the proposition that a plaintiff does not have a protectible trade secret where an employee’s duty to maintain the confidentiality of the trade secret expires after employment ends. 228 Wis. 2d. 343 (1999). There, the court held that when a non-disclosure agreement contains a time limitation, such limitation “manifest[s] an intent that after the expiration of that period a former employee is under no restrictions.” *Id.* at 345. However, unlike the 2007 Agreement, the “Patent and Confidential Information Agreement” in *ECT* specified that it applied to both confidential information and trade secrets.⁷ *See id.* at 354. And, unlike here, there

⁷ Other cases cited by Roscigno are likewise inapposite. In *DB Riley v. AB Eng’g Corp.*, a time-limited confidentiality agreement was just one factor among several that the Court considered when concluding that a plaintiff had not met its burden to prove that it took reasonable steps to preserve the secrecy of its trade secrets. 977 F. Supp. 84, 91 (D. Mass. 1997). *Structured Cap. Sols. v. Commerzbank AG*, is a case involving disclosure of information by a third party that had been bound only by a non-disclosure agreement that

was no indication in the opinion that the plaintiff presented other evidence of its efforts to protect trade secrets.

27. The Court moves next to Roscigno's argument that no misappropriation has occurred because language in the 2007 Agreement establishes that he had implied consent to share UTC's trade secret information with Liquidia if he waited three years after he left employment with UTC to do so. UTC does not agree with Roscigno's interpretation of the 2007 Agreement and asks the Court either to reject it outright or to determine that the language is ambiguous and therefore subject to a jury's interpretation.

28. Interpreting a contract requires the court to examine the language of the contract itself for indications of the parties' intent at the moment of execution. *See Lane v. Scarborough*, 284 N.C. 407, 409-10 (1973). "If the plain language of a contract is clear, the intention of the parties is inferred from the words of the contract." *Walton v. City of Raleigh*, 342 N.C. 879, 881 (1996). However, "[a]n ambiguity exists where the language of a contract is fairly and reasonably susceptible to either of the constructions asserted by the parties. Stated differently, a contract is ambiguous when the writing leaves it uncertain as to what the agreement was[.]" *Salvaggio v. New Breed Transfer Corp.*, 150 N.C. App. 688, 690 (2002) (citation and internal quotation marks omitted).

had expired at the time of disclosure. 177 F. Supp. 3d 816, 835 (S.D.N.Y. 2016). The record in the instant case includes company policies and practices intended to protect the confidentiality of UTC information that are in addition to the 2007 Agreement.

29. While not dispositive, “[t]he fact that a dispute has arisen as to the parties’ interpretation of the contract is some indication that the language of the contract is, at best, ambiguous.” *St. Paul Fire & Marine Ins. Co., v. Freeman-White Assocs., Inc.*, 322 N.C. 77, 83 (1988). However, whether the contract is, in fact, ambiguous is a question for the court to determine. *Lynn v. Lynn*, 202 N.C. App. 423, 432 (2010).

30. Extrinsic evidence may be consulted when the language of a contract is ambiguous. *See, e.g., Inland Am. Winston Hotels, Inc. v. Crockett*, 212 N.C. App. 349, 354 (2011). “If the writing leaves it uncertain as to what the agreement was, parol evidence is competent, not to contradict, but to show and make certain what was the real agreement between the parties.” *Int’l Paper Co. v. Corporex Constructors, Inc.*, 96 N.C. App. 312, 317 (1989). In that event, however, interpretation of the contract is a question of fact for the jury. *Id.*; *see also Schenkel & Schultz, Inc. v. Hermon F. Fox & Assocs., P.C.*, 362 N.C. 269, 273 (2008); *Whirlpool Corp. v. Dailey Constr., Inc.*, 110 N.C. App. 468, 471 (1993); *Martin v. Ray Lackey Enters., Inc.*, 100 N.C. App. 349, 354 (1990) (“[I]ntent is a question of law [only] where the writing is free of any ambiguity which would require resort to extrinsic evidence or the consideration of disputed fact.”); *Cleland v. Children’s Home, Inc.*, 64 N.C. App. 153, 157 (1983) (“Ambiguities in contracts are to be resolved by the jury[.]”).

31. Here, the intent of the parties with respect to whether Roscigno was required to continue to protect trade secret information even though his obligation to protect “Confidential Information” as defined in the 2007 Agreement expired three

years after termination is unclear. Section ten, which requires that Roscigno maintain confidentiality for three years post-employment, applies to Confidential Information generally and neither references trade secrets as a category nor specifies the subject matter of the information it purports to cover. On the other hand, section nine of the 2007 Agreement, which requires that secrecy be maintained indefinitely, specifically uses the term trade secrets. Consequently, the parties, at least at times, treated trade secrets differently when it came to Roscigno's confidentiality obligations than they did other forms of Confidential Information. Thus, it is not clear that they intended for his confidentiality obligation with respect to trade secret information to expire three years after his employment ended.⁸

32. "When an agreement is ambiguous and the intention of the parties is unclear . . . interpretation of the contract is for the jury." *Schenkel & Shultz, Inc.*, 362 N.C. at 273. Accordingly, it will be up to a jury to decide whether the parties intended for trade secret protection to expire three years after the termination of Roscigno's employment.

33. Finally, Roscigno argues that he is entitled to summary judgment with respect to UTC's misappropriation claim because, under the North Carolina Trade Secrets Protection Act, a plaintiff may only recover actual damages that were caused

⁸ Roscigno's position that the three-year limit on his confidentiality obligation in the 2007 Agreement was bestowed as a "special benefit" for his years of service, (Roscigno Aff. ¶ 6), is challenged by the affidavit of Dr. Martine Rothblatt, UTC's CEO. Dr. Rothblatt testified that "[i]t was not the intent of the 2007 Employment Agreement to provide Roscigno with permission to take UTC documents after he left the company and then use them later to compete against UTC." (Aff. of Martine Rothblatt, Ph.D, J.D., M.B.A ¶ 10, ECF No. 256.1.) The parties' intent is a material issue of fact to be determined by a jury.

by misappropriation. (Def.'s Br. Supp. 19.) Given his contention that no misappropriation occurred, Roscigno concludes that, as a matter of law, UTC could not have sustained any damages as a result of misappropriation.

34. UTC contests Roscigno's conclusion that the 2007 Agreement afforded him the ability to take possession of its trade secrets when he left employment so that three years later, he could share them with Liquidia. Among other things, it points to a policy in the Employee Handbook, incorporated into the 2007 Agreement, providing that "[a]ll company property and equipment in the employee's possession or control must be returned prior to the employee's last day." (2004 Employee Handbook 7.) UTC maintains that the documents Roscigno took on a flash drive are company property. (See Friedrich Dep. 153:20-154:1 ("Q: Now, you said that employees have to return UTC documents; is that correct? A: I generally use the term company property so that it's all-inclusive."); Pls.' Br. Opp. Ex. 6 ["Bunce 30(b)(6) Dep."] 146:15-17, ECF No. 255.6 (under seal), ECF No. 269.6 (public version) ("[A]ny document created by [UTC] or by an employee of [UTC] is considered property of [UTC.]").)

35. The Court again concludes that Roscigno is not entitled to summary judgment on this basis. Even if the 2007 Agreement implicitly permitted Roscigno to disclose UTC's trade secrets three years after termination of his employment—which itself is an issue for the jury—UTC has presented evidence to support its position that he never should have taken the documents containing trade secrets in the first place. By statute, trade secret misappropriation is defined to include the unlawful

acquisition of a trade secret, as well as its disclosure. N.C.G.S. § 66-152(1). Therefore, a jury could conclude that misappropriation occurred, and UTC was damaged as early as June 2007, when Roscigno left its employ with company information stored on a flash drive in violation of its policy.

V. CONCLUSION

36. **WHEREFORE**, for the reasons stated herein, Defendant Dr. Robert Roscigno's Motion for Summary Judgment, (ECF No. 209), is **DENIED**.

IT IS SO ORDERED, this 31st day of July, 2024.

/s/ Julianna Theall Earp

Julianna Theall Earp
Special Superior Court Judge
for Complex Business Cases