

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA**

MALLET AND COMPANY INC.,	)	CASE NO.: 2:19-cv-01409
	)	
<i>Plaintiff,</i>	)	
v.	)	
	)	The Honorable Cathy Bissoon
ADA LACAYO, RUSSELL T. BUNDY	)	
ASSOCIATES, INC., d/b/a BUNDY	)	
BAKING SOLUTIONS, SYNOVA, LLC,	)	
and WILLIAM “CHICK” BOWERS,	)	
	)	
<i>Defendants.</i>	)	
	)	
	)	
	)	
	)	
RUSSELL T. BUNDY ASSOCIATES, INC.	)	
d/b/a BUNDY BAKING SOLUTIONS and	)	
SYNOVA, LLC,	)	
	)	
<i>Counterclaim Plaintiffs,</i>	)	
	)	
v.	)	
	)	
MALLET AND COMPANY INC.,	)	
VANTAGE SPECIALTY CHEMICALS,	)	
INC., ADA LACAYO, and WILLIAM	)	
“CHICK” BOWERS,	)	
	)	
<i>Counterclaim Defendants.</i>		

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**MALLET AND COMPANY INC. AND VANTAGE SPECIALTY CHEMICALS, INC.’S  
PRETRIAL NARRATIVE STATEMENT**

Pursuant to the Court’s Final Pretrial Order (ECF No. 326) and Local Rule 16.1.C.1 of the Western District of Pennsylvania, Plaintiff/Counterclaim Defendant Mallet and Company Inc. (“Mallet”), and Counterclaim Defendant Vantage Specialty Chemicals, Inc. (“Vantage”) submit the following pretrial narrative statement of material facts and statement of all damages claimed.

As discussed in greater detail below, the evidence in this case establishes that Defendants Russell T. Bundy Associates, Inc., d/b/a Bundy Baking Solutions (“Bundy”) and Synova, LLC (“Synova”), along with former Mallet employees Ada Lacayo (“Lacayo”) and William “Chick” Bowers (“Bowers”) knowingly and repeatedly engaged in actions that violated state and federal law and tortiously interfered with Plaintiff’s contractual rights. Indeed, as the Court concluded in its summary judgment ruling in this litigation, the evidence that Mallet has amassed against the defendants is particularly incriminating:

The undersigned has presided over a number of cases in which former employees are alleged to have taken their prior employers’ confidential business information. The specific legal theories for recovery aside, the undersigned can recall only one other case in which the plaintiff’s evidence appeared as incriminating. In that one, the plaintiff-employer possessed video footage from its office lobby, depicting the former employee removing bankers boxes of business documents from its premises . . . In the undersigned’s view, the distinction between the two cases is largely one of format (i.e., paper documents versus digital copies). *See generally* 3d Cir. Opinion (Doc. 143-1) at pgs. 15-19 (summarizing Lacayo’s and Bowers’s efforts at digitized abscondence, and Bundy’s encouragement thereof).

*Mallet & Co. v. Ada Lacayo*, No. 19-1409, 2024 U.S. Dist. LEXIS 57459, at \*3 (W.D. Pa. Mar. 29, 2024). Nothing has transpired since the ruling to alter the Court’s conclusion.

## **I. STATEMENT OF MATERIAL FACTS**

### **A. Summary**

For over 80 years, Mallet has been a key player in the business of developing, manufacturing, and selling baking release agents and the equipment used to apply baking release agents. P-296 (July 29, 2020 Declaration of S. Porzio) ¶ 7. Prior to 2018, Mallet manufactured about 50 different release agents, including several versions of its “Vegalube Super P”, which “is the premier and best-performing baking release agent product in the market.” *See id.* ¶ 62. Mallet’s product formulas, such as the formula for the Vegalube Super P, contribute significantly to

Mallet’s positive reputation and valuable goodwill, and help provide it with a competitive advantage over other release agent manufacturers. *See id.* ¶¶ 9-10.

Around 2016, the Bundy companies—known for their conglomerate of baking industry companies, and in particular, baking pans—decided to enter the baking release agent business. They considered acquiring leading baking release agent company Mallet, but determined it would be too expensive. P-098 (RBUNDY\_00091958-61). Instead, they decided to give their youngest brother Robert “Bob” Bundy the opportunity “to build something on his own.” Oct. 5, 2022 G. Bundy Dep. Tr. (hereafter, “G. Bundy Tr.”) 112:4 – 113:11. Bob Bundy was given a budget of around [REDACTED] to create the new baking release agent company, but he struggled in every way with the project. *Id.* at 121:5-7; 124:20-22. Given the lengthy delays, the project ended up being “months and months and months” behind. *Id.* 138:18-22. Ultimately, Bob Bundy ended up spending some [REDACTED] to create the new company, Synova. Nov. 15, 2022 B. Hallmark Dep. Tr. 164:14 – 165:11.

Unsurprisingly, the delays and cost overruns created tension on the project. Under pressure, Bob Bundy searched for shortcuts—and found them. Instead of entering the release agent market fairly and legally—which would take time, resources, and a lengthy product development cycle—Bundy decided to bypass a lawful process and steal all the information he needed from Mallet.

As described in more detail below, *infra* Section II.B., the evidence overwhelmingly shows that Bundy’s success is due to the systematic targeting of high-level Mallet employees to get the information he needed, including from Shane Zhou, Jim Galicic, Ada Lacayo, Cathy Colley, and Chick Bowers. P-094 (SYNOVA000190); P-359 (MALLET011060-61); P-086 (MALLET000095-96); P-089 (MALLET000097); P-085 (Colley Ex. 8); P-088 (Colley Ex. 5); P-083 (MALLET000155-56); P-084 (MALLET000153-54). Bundy knew each of these Mallet

employees had noncompetition and restrictive covenants, but he chose to ignore them (and in the case of Zhou, offered legal assistance to challenge them) in order to acquire the necessary information. Bundy went so far as to create a fake alias and email account—“John Smith”—to cover up his illicit acts.

In the end, all the unlawful shortcuts paid off. Several years later, Synova is a fast-growing business. This is not surprising because Synova’s top-selling release agents (Supra 130, Supra 120, and Supra 182) [REDACTED] to Mallet’s (Super P, Vegalube Excel, Vegalube 20, and Vegalube No Antioxidants) and are [REDACTED]. See ECF No. 293-74 (Feb. 21, 2023 Expert Report of Eric A. Decker) at 4-5; ECF No. 293-11 (Feb. 21, 2023 Expert Report of Robert McSorley) at 41-45. Moreover, Synova specifically targeted Mallet’s customers and marketed its products as being equivalent to Mallet’s. See *id.* at 46; P-010 (MSHEETS00029972). Rather than admit any wrong doing, Defendants have thrown millions of dollars into this case, using frivolous tactical maneuvers (see ECF No. 249, Synova voluntarily dismissing its “Antitrust” counterclaim) and hiring a vast multitude of experts in a desperate attempt to show that Mallet’s formulas are “generally known” or can be reverse engineered. But as shown below, Mallet’s formulas and customer data are not “generally known”—certainly, they were not known by the Bundys—and cannot be reverse engineered. Instead, the evidence reveals an unlawful scheme of theft and deceit.

## **B. Bundy’s Search for Mallet Employees**

The illicit acts started with Bob Bundy, then Vice President of Operations at Bundy Baking and future CEO of Synova. With the assistance of his brother, Gil Bundy, the Bundys targeted high-level Mallet employees to procure all of the key building blocks they needed to begin the production and sale of release agents on an abbreviated timetable—from plant startup, to product

development, to customer acquisition. The scheme started in 2016 with two then-current Mallet employees, individual defendant and Mallet National Account Manager, William “Chick” Bowers, as well as Mallet lab director Shane Zhou. P-099 (RBUNDY\_00372768); P-101 (RBUNDY\_00275741). Bob and Gil Bundy met personally with Bowers and Zhou at Bundy Baking headquarters in Ohio. The Bundys recognized the knowledge and experience that Bowers and Zhou had from their time at Mallet, and sought to gain information about Mallet’s success so that they could create a competitive company.

First, the Bundys needed detailed information on how to formulate release agent products. Instead of utilizing normal research and development methods, the Bundys turned to Zhou. In an effort to conceal his identity and activities, Bob Bundy created an anonymous email pseudonym “John Smith” at “holsum1908@gmail.com” and began emailing Zhou, pressuring him to turn over Mallet’s confidential release agent formulas and lab information. P-002 (SYNOVA000187); P-003 (SYNOVA001558-61); P-109 (SYNOVA001673). Zhou likewise created an anonymous email pseudonym “Song Tang” to respond. Bundy directly requested ten confidential Mallet product formulas (identified by their unique “[REDACTED]” numbers) from Zhou:

I have a few [Mallet] product ID numbers that I would like to understand the type and general formulas for. If you can’t help, I understand, but I wanted to at least ask the question. The item numbers are [ten Mallet products beginning with prefix “[REDACTED]”].

P-187 (SYNOVA000187). Bob Bundy subsequently asked Zhou to provide him with additional **current** Mallet product formulas. Nov. 17, 2022 S. Zhou Dep. Tr. (hereafter, “Zhou Tr.”) at 117:2-16. Bundy ultimately saved these updated Mallet formulas on a Synova Google Drive shared by Synova/Bundy employees. P-004 (SynovaGoogleDrive\_00003033).

Next, the Bundys needed help designing a release agent facility and creating a manufacturing process. Once again they turned to Zhou, who was invited to communicate directly

with Bundy's plant design engineering firm ADF. P-104 (ZHOU000208); P-105 (ZHOU000061). At Bob Bundy's urging, Zhou attended at least three in-person meetings with ADF in Ohio. At the meetings and via numerous "Song Tang" emails, Zhou provided key input on all material aspects of the new Synova release agent plant, including floor plans, types of equipment to purchase, storage tanks, piping systems, flow rates, and processing methods. Nov. 17, 2022 S. Zhou Dep. Tr. (hereafter, "Zhou Tr.") 131-192; P-003 (SYNOVA001558-61); P-104 (ZHOU000208-10); P-106 (SYNOVA1575-81). All of these actions occurred during a time period when Zhou was prohibited from working for any competitor of Mallet or from disclosing any Mallet confidential information. P-094 (SYNOVA000190).

Bundy and Synova knowingly and deliberately interfered with Mallet's non-compete/confidentiality agreements with Zhou and other former employees. Indeed, Zhou provided his Mallet non-compete/confidentiality agreement to the Bundys and repeatedly expressed concerns to Bob Bundy about violating it. P-002 (SYNOVA000187-88). In response, Bundy promised Zhou that his lawyers would help Zhou with any legal troubles. P-108 (SYNOVA000141-42). Undaunted, Bundy kept pushing Zhou for more and more Mallet information. Zhou ultimately decided that the risks had become too great. He ultimately turned down an offer to work for Bundy for a \$160,000 salary, plus bonus and travel expenses, but accepted \$10,000 from Bundy for the Mallet information he provided. Zhou Tr. 197:10-199:21; P-108 (SYNOVA000141-42).

With information on the manufacturing and product formulations in hand, Bundy next needed customer lists and pricing information. When Synova plant manager, Mick Sheets, set up a process for obtaining information about customer order patterns to assist with building out Synova, Bob Bundy short-circuited Sheets. On November 27, 2017, Sheets emailed Bob Bundy

explaining that Synova “[has] not been in the oil business, so we don’t know what the customer order patterns will look like,” and “that data would be very helpful now since we are still designing the process.” P-112 (SYNOVA000287). Sheets designed a “data collection form” and proposed that the Bundy sales team “contact customers that we trust and gather the information. Once they have completed a form, it would be sent to [Sheets] for compilation.” *Id.* But Bundy had a better idea. On January 16, 2018, Bundy reached out to then-Mallet employee Chick Bowers, asking if he “would be comfortable ... helping [Synova] gather some information about the oils that [its] future customer base will require.” P-112 (SYNOVA000286). Bundy sent Bowers the exact same data collection form Sheets had created to send to Bundy’s customers. *Id.*

For his part, Bowers (who had 35+ years of Mallet experience and customer relationships under his belt) repeatedly forwarded Bundy internal Mallet data repositories with highly-detailed confidential customer sales and pricing information. For instance, from Bowers the Bundys obtained a detailed Mallet 50-page customer list showing all of the names and locations of Mallet’s release agent customers and their purchases of Mallet release agents by product and location over two years. P-005 (RBUNDY\_00188437-50); P-079 (RBUNDY\_00188675-93); P-078 (RBUNDY\_00188865-83). Mallet’s customer list is a textbook example of a trade secret and was certainly confidential information of Mallet as defined in Bowers non-compete and confidentiality agreement. P-084 (MALLET000153) (defining confidential information as including Mallet’s “customers, identity of customers...., [and] amount or kind of customer’s purchases...”).

Mallet’s customer list was not the only confidential information the Bundys extracted from Bowers. At Bundy’s behest, Bowers worked as a double agent for over a year while still employed at Mallet. In addition to Mallet’s customer list, Bowers, using a variety of personal email addresses, sent Bundy a treasure trove of information, including Mallet internal emails about its

customers. P-006 (BOWERS\_0000802-25); P-131 (BOWERS\_0000285-87); P-129 (BOWERS\_0000393-95); P-126 (BOWERS\_0000594-95); P-130 (BOWERS\_0001530); P-125 (BOWERS\_0001579-80). Bowers was ultimately hired as Business Development Manager at Synova, where he interacted directly with Mallet's key release agent customers. And Bowers seemingly had no remorse for his actions, admitting that he was not authorized to share those details outside of Mallet. May 20, 2020 W. Bowers Dep. Tr. 146:15 – 147:7 (admitting that he shared “information about Mallet's pricing” with Synova and Bundy and that this was a breach of his duties to Mallet (“Q. . . . you would agree that that breached your duties to Mallet, right? . . . A. Yes.”) (objection omitted). Ultimately, with help from Bowers, Synova has stolen away Mallet business, including business from two of Mallet's largest customers – [REDACTED] [REDACTED] Nov. 15, 2022 W. Hallmark Dep. Tr. 158:22-159:3, 159:20-21.

Bob Bundy further scored a breakthrough when he convinced Ada Lacayo, Mallet's then lab director, to leave Mallet and join Synova. Lacayo was Bundy's key to success. P-114 (BUNDY00010528) (“Home run!” Bundy declared after Lacayo accepted the position.). She had worked for Mallet for 16 years and played an integral role in researching and formulating a number of Mallet's flagship products. Lacayo's non-compete and confidentiality agreement with Mallet, which she disclosed immediately—were of no consequence to Lacayo, Synova, or the Bundys. P-115 (SYNOVA000379). The Bundys convinced Lacayo to violate her Mallet non-compete and join Synova. Knowing she was violating her non-compete agreement with Mallet, Lacayo lied to Mallet. Instead of telling Mallet that she had already accepted a job to work for a start-up competitor, Lacayo told a tale that her mother's health was failing and that she needed to leave the workforce to care for her. P-299 (July 30, 2020 Declaration of A. Lacayo) ¶ 33; July 14, 2020 M. Scolaro Dep. Tr. (hereafter, “Scolaro Tr.”) 232:14-18. Mallet, with no reason to suspect that



anything was amiss, wished Lacayo well. Later, during the course of litigation, Lacayo would pivot and state that she left Mallet to take care of her sick dog. May 26, 2020 A. Lacayo Dep. Tr. (hereafter, “Lacayo 2020 Tr.”) 152:5-17. In fact, neither of Lacayo’s concocted stories were true, as her last day at Mallet was the same day as her first day at Synova. P-119 (MALLET000589-92); P-117 (BUNDY00010758).

At the outset, Bundy and Synova put tremendous pressure on Lacayo to perform—quickly. Synova manager Sheets sent Lacayo an expected “Timeline” even before she began her new job at Synova. P-118 (LACAYO\_0002666). The “Timeline” directed Ms. Lacayo to provide “product blend recipes” by March 15, 2018, approximately one month after her Synova start date of February 12, 2018. *Id.* At that time, Synova did not even have an operational lab or plant. Sept. 29, 2022 M. Sheets Dep. Tr. 233:17:18 (“We didn’t have an operating plant until ’19.”) And Lacayo could never work fast enough. Sheets testified that he became frustrated with Lacayo because “she was slow” and “she was not meeting my . . . direction or my work expectations.” *Id.* at 256:6-10.

Lacayo took her own shortcuts. She came to Synova prepared to do so—just days before her interview with Synova, Lacayo copied thousands of Mallet files onto a USB drive, which included top-level folders named “Mallet Lab Methods”, “MRO Project”, “Supplier Approval Program” and “Supplier Information”. *See* ECF No. 293-10 (Feb. 21, 2023 Expert Report of A. Reisman, Section V.B) ¶¶ 30-34, Ex. 3. In addition, Lacayo emailed Mallet formulas and confidential information to her personal Gmail address almost immediately before leaving Mallet. P-210 (LACAYO\_0002552-54); P-124 (LACAYO\_0019427-29); P-116 (LACAYO\_0002549-51); P-120 (MALLET000635-46).

When Mallet discovered Lacayo's misappropriation, Mallet sent a cease-and-desist letter and, in response, Lacayo promised to delete the emails from her Gmail. P-121 (MALLET000068-70); P-122 (LACAYO\_0002095-96). But Lacayo lied again. She did not delete the emails or Mallet release agent formulas—all of which ended up on the Synova computer system—nor did she disclose to Mallet that she had amassed over 20,000 pages of documents containing Mallet trade secrets and confidential information, including over 1,000 Mallet files downloaded in anticipation of working for Bundy/Synova. P-014 (LACAYO\_000009-50); P-050 (LACAYO\_000094-175); ECF No. 293-10 (Reisman Rpt.) ¶¶ 73-75.

Bundy's desire for Mallet's confidential information did not stop with Bowers, Zhou, and Lacayo. In the winter of 2018, Bundy also contacted Jim Galicic, Mallet's former Vice President of Manufacturing, to acquire additional information regarding Mallet's proprietary release agents. Bundy went so far as to drive to the home of Galicic, an elderly retiree and former-Mallet employee who had [REDACTED], to present him with gifts of Bundy baking pans in exchange for several additional Mallet release agent formulas. Nov. 2, 2022 J. Galicic Dep. Tr. (hereafter, "Galicic Tr.") 12:4-8; 61:23-63:18; 64:1-2; 67:25-68:3; P-009 (BUNDY0002163). Bundy later saved those six Mallet formulas in Synova's Google Drive. P-008 (SynovaGoogleDrive\_00003857-3863).

It was only when Mallet employees subsequently saw Lacayo at a trade show working for Synova in September 2019 that the Bundy scheme began to unravel. It rapidly became clear that Lacayo had been secretly formulating release agents for a competitor during the heart of her non-compete period.

And while this litigation followed, Defendants' unlawful conduct did not stop. While this lawsuit was pending, Synova hired a fifth Mallet employee—Cathy Colley—who, like the others,

was bound by a Mallet non-compete and non-disclosure agreement. P-127 (SYNOVA000134-36); P-088 (ECF No. 46-6). Colley, whose specialty was in quality control and food safety measures, was to work directly for Lacayo. It wasn't until Mallet notified Colley via letter that she was similarly bound by the restrictive covenants that she voluntarily ended her relationship with Synova.

### **C. Overwhelming Evidence of Theft**

Beyond the overwhelming factual evidence of theft, described *supra*, Section I.B., Plaintiff's experts have further discovered significant evidence of Mallet's confidential information in the hands of Defendants. Lacayo herself retained thousands of Mallet files following her departure from Mallet and beginning of her new position at Synova. ECF No. 293-10 (Reisman Rpt.) ¶ 10. Not only did Lacayo copy 2,102 files onto a USB drive in one sitting a few days before her Mallet departure, she also emailed several of Mallet's trade secrets, including screenshots of formulas, to her private Gmail account, and retained multiple other USB drives containing Mallet's trade secret information. *Id.* ¶¶ 30-34. While Lacayo claims that she did not know she had this information or that she retained it to answer follow up questions from her Mallet supervisor after she left, neither justification is credible. If Lacayo had already accepted a position at a competitor, and knew she was going to quit her job at Mallet, why else would she be sending voluminous, years-old confidential Mallet information to her personal Gmail account? And these are just a few examples of the thousands of confidential Mallet documents found in Lacayo's possession following her Mallet departure.

In addition to the Mallet documents Lacayo sent to her personal Gmail, Lacayo also printed some 130 pages of Mallet formulas and processes just months before her departure. P-011

(Summary Chart Pursuant to Fed. R. Evid. 1006 Mallet Formulas Produced by A. Lacayo). These documents were later discovered in her garage during the course of litigation.

Ultimately, many of these stolen Mallet documents made their way onto Synova's computer systems and file servers. Mallet's forensic expert identified 1,400 files on Lacayo's Synova computer that were exact matches of Mallet documents originating from Lacayo's Mallet computer, and over 3,000 files that were near-duplicates. ECF No. 293-10 (Reisman Rpt.) ¶¶ 81, 86. Moreover, the forensic evidence demonstrates that, while working at Synova, Lacayo connected several USB drives containing Mallet information to her Synova computer and opened such files on several occasions. *Id.* ¶ 49; ECF No. 293-10 (April 21, 2023 A. Reisman Rebuttal Expert Report) ¶ 22. And while attempting to investigate and determine all of the instances in which Lacayo used this stolen Mallet information would be a massive (and in some instances, impossible) forensic undertaking, Mallet's forensic expert was still able to uncover instances of use. ECF No. 293-10 (Reisman Rpt.) ¶¶ 87-91.

This was the evidence that the forensic expert was able to uncover despite his inability to analyze Lacayo's computer activity during the first three months of her employment at Synova. *Id.* ¶¶ 42-44. Importantly, Defendants' forensic expert was not able to rebut this evidence, because he could not. Instead, he offers explanations—beyond the realm of the expertise of a forensic analyst—regarding the rationale behind why Lacayo would have accessed Mallet information on her Synova computer or whether the Mallet information constitutes a trade secret. ECF No. 293-10 (Reisman Rebuttal Rpt.) ¶¶ 3, 29; March 23, 2023 Expert Report of B. Creasy ¶¶ 29-28 (noting that Lacayo kept information in her personal Gmail account for the purpose of responding to requests from Mallet employees). That “opinion” is in actuality an unproven theory better left to the fact finder.

#### **D. Identification of Trade Secrets**

Mallet has identified, with specificity, all of the product formulas and customer information that it asserts constitute trade secrets and were misappropriated by Defendants in this case. *See* P-001 (Nov. 3, 2022 Mallet’s Amended Trade Secrets List). Trade Secrets Nos. 1–63 on Mallet’s Amended Trade Secrets List reflect Mallet’s release agent product formulations, including but not limited to specific percentage compositions of product ingredients, grades of product ingredients, mixing procedures, other manufacturing protocols, and potential adjustments to the product formulations. *See id.*

Trade Secret No. 64 comprises of a compilation of Mallet’s release agent sales unit volumes (in pounds) over the course of two years—2015 and 2016—broken down by product, customer location, and customer group. P-005 (RBUNDY\_00188437-450); P-078 (RBUNDY\_00188865-883); P-079 (RBUNDY\_00188675-693). It also identifies Mallet’s key sales personnel for each Mallet customer. *Id.*

Trade Secret No. 65 comprises of a compilation of Mallet’s studies of the performance of Mallet’s Vegalube Super P pan oil product and associated cost savings that a customer can achieve, including when used with different types of bread products (e.g., white bread, whole wheat bread, multi-grain bread) and different types and sizes of pans (e.g., Pullman Pan, 20 oz. pan, 1-lb pan, Dutch Country pan). P-006 (BOWERS\_0000802-25). These studies took place over many years—including in 2001, 2002, 2006, 2007, 2009, 2011, and 2012—and include those studies prepared for specific Mallet customers such as [REDACTED]. *See id.*

Defendants assert a multitude of complaints about this Mallet trade secret list, none of which has merit. First, they contend that single ingredient, “commoditized” two-or-three ingredient products, and “old” products are not trade secrets. But the single and two-ingredient

products that appear on Mallet’s trade secret list are formulas Bob Bundy specifically requested from Shane Zhou. P-002 (SYNOVA000187). Moreover, “old” product formulas that have been modified or which are no longer in use still have value. For example, the evidence substantiates that Lacayo misappropriated and used at least two “old” Mallet formulas (Vegalube Excel PHO and Vegalube 20 PHO) to create Synova’s Supra 182. *See infra*, Section I.H.

There is no doubt that the formulas and processes identified above are trade secrets. This has been confirmed by witnesses from both Mallet and Synova. For instance, Robert Mallet testified that he “absolutely” believed that Mallet held trade secrets during his tenure at the company. Those trade secrets, he testified, were Mallet’s “formula and process.” May 9, 2022 R. Mallet Dep. Tr. 90:15-20. Bob Wilhelm—Mallet’s product development lead and a veteran in the baking release agent industry—similarly testified that the Mallet formulas for Vegalube Excel and Super P were confidential and “secret” to Mallet and that he would “absolutely not” be comfortable sharing those formulas with another company. May 12, 2022 R. Wilhelm Dep. Tr. (hereafter, “Wilhelm Tr.”) 8:1-9:10; 212:18 – 214:8. Mr. Wilhelm further testified that while, in his experience, customers would ask for the percent composition of ingredients in Mallet’s release agents, Mallet did not ever give those to customers: “we got around that by giving them a range of the ingredients.” *Id.* at 113:18 – 114:25.

At her deposition, Ada Lacayo was asked, “When you were working for Synova, do you know whether Synova considered its formulas to be confidential?,” and Lacayo answered, “***I think everyone does consider their formulas confidential, absolutely.***” Dec. 8, 2022 A. Lacayo Dep. Tr. 154:13-19 (emphasis added). Chick Bowers also agreed that product formulas are confidential at his deposition. May 20, 2020 W. Bowers Dep. Tr. 125:11 – 126:22 (“Q. [I]f Mallet had something like that, a written document, showing how its processes would work, you would agree

with me that you would not be entitled to share that with its competitors? A. “Specifically, formulas, which I had no access to. . .”).

#### **E. Development of Mallet’s Trade Secrets**

The formulation of many of Mallet’s release agent formulas, including Vegalube Super P, took substantial research, effort and time. *See* P-296 (July 29, 2020 S. Porzio Decl.) ¶¶ 62. Both Mallet and Synova witnesses testified that it can take a long time to formulate and test new products. Ms. Roja Ergun, former technology director at Mallet, testified that it “can take up to several years” to formulate a release agent. P-305 (Aug. 4, 2020 Preliminary Injunction Hearing Tr.) at 52:6-8. Bob Wilhelm, who was director of product development at Mallet, testified that it “took a while” to develop certain Mallet products. May 12, 2020 W. Wilhelm Dep. Tr. 155:24 – 156:10. After working at Mallet in product development for some two decades, it took Mr. Wilhelm a few months to develop Mallet’s Super P in the laboratory. *Id.*; P-087 (MALLET010996-98). And even Synova’s lab director, Amanda Tallarico (née Amanda Miller), testified that “[n]ew product formulation can be a lengthy process” because “[y]ou have to create the proper blend of ingredients and specification from customers, as well as do the application testing to ensure that it performs how it should.” Oct. 18, 2022 A. Miller Dep. Tr. 98:22 – 99:4, 99:6-13; *see also* June 19, 2023 L. Rodriguez-Saona Dep. Tr. 81:8-82:1 (testifying that it would likely take longer than a year to have a product to actually sell to customers).

#### **F. Protection of Trade Secrets**

Mallet has also sufficiently established that it protected its trade secrets. The law does not require a company to take every possible measure to protect its trade secrets, only reasonable measures. *See, e.g., Houser v. Feldman*, 569 F. Supp. 3d 216, 229-30 (E.D. Pa. 2021) (“Based on the [Defend Trade Secrets Act’s] use of the word “reasonable,” it is clear that an owner need not

take “every conceivable measure” to shroud his or her trade secret in absolute secrecy.”). Mallet has met that burden.

First, Mallet required its employees (including Lacayo and Bowers) to sign restrictive covenants and noncompetition agreements to protect Mallet’s confidential information. P-297 (July 29, 2020 Decl. of R. Ergun) ¶ 23. Second, Mallet restricted access to its lab and formulas in order to protect its trade secrets. May 3, 2022 C. Colley Dep. Tr. 128:9-24 (testifying that while she worked at Mallet, “[w]e had a safe” in the lab “where we kept the formulas locked up . . . with a combination.”). Moreover, the only Mallet employees who had access to the Mallet safe where the formulas were kept were two other lab employees. *Id.* at 130:6-17. Third, the lab was not readily accessible and it was closely monitored. It was only accessible to those who required access, a badge was needed to obtain lab access, and cameras monitored the lab area. P-297 (Ergun Decl.) ¶ 27. Fourth, Mallet limited dissemination of highly confidential information—such as formulations—even internally. For instance, when laboratory employees and technical service team members gave presentations to Mallet’s sales team (including Bowers), they would not share the details of Mallet’s formulation. May 18, 2020 R. Ergun Dep. Tr. (hereafter, “Ergun Tr.”) 30:23 - 31:5; P-297 (Ergun Decl.) ¶¶ 29-30; May 20, 2020 C. Bowers Dep. Tr. (hereafter, “Bowers Tr.”) 144:4-6; P-296 (Porzio Decl.) ¶ 22. Fifth, Mallet employees were also trained and provided information on the importance of protecting trade secrets from the beginning of their employment. P-296 (Porzio Decl.) ¶ 23 (“Mallet and Vantage regularly train Mallet employees on their obligation to maintain the confidentiality of Mallet’s confidential, proprietary, and trade secret information.”). Lastly, Mallet required that its employees sign the Mallet Employee Handbook, which included additional company requirements regarding maintaining the confidentiality of sensitive business information. P-096 ¶¶ 20-21. Indeed, Sections 402 and 406 of the Mallet



Employee Handbook forbid employees from “transmitting Mallet’s trade secrets or Confidential Information to outside individuals or companies not authorized to receive the information.” P-298 (July 29, 2020 Decl. of B. Topercer) ¶ 30. All of this evidence demonstrates that Mallet took the necessary reasonable steps to protect its trade secrets.<sup>1</sup>

### **G. Mallet Formulas Are Not In the Public Domain**

While the Bundys and Synova vigorously maintain that Mallet’s product formulations are “in the public domain,” no witness, fact or expert, could identify even one example of a Mallet release agent formula in the public domain. For instance, Defendants hired a Hostess employee, Ron Wilson, to serve as an industry “expert” to opine that Mallet’s general product formulas are “generally known” in the industry. But at his deposition, Wilson testified that industry professionals, including himself, do not know the formulas that Mallet uses. June 9, 2023 R. Wilson Dep. Tr. (hereafter, “Wilson Tr.”) 90:16-21 (“Q: So are you saying that the industry professionals and veterans of the industry ... know the formulas that Mallet uses? A. No.”); *id. at.* 92:20 – 93:1, 94:5-10 (explaining that for Mallet Vegalube Super P, he knows the ingredients, but he does not know the formula; “Do I know the percentages? No.”). Similarly, none of Defendants’ fact witnesses could provide a “generally known” Mallet formula. *See, e.g.*, Bundy Tr. 269:14-19.

Bundy and Synova also point to Mallet’s product labels and specification sheets as evidence of disclosures; however, none of those lists contain the *percentages* of the ingredients or the formula mixing instructions. *See* ECF No. 293-74 (Decker Rpt.) ¶¶ 55, 66, 74, 105; *see also*

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<sup>1</sup> To the extent Defendants point to Anthony Galicic’s use of a handheld word processor as evidence of Mallet’s failure to adequately protect its trade secrets, such argument is a red herring. Galicic’s use of such devices was a standalone incident under unique circumstances. As he testified during his deposition, Galicic, a longtime and loyal Mallet employee, had [REDACTED], necessitating the need for such devices to assist with his memory. Galicic Tr. 114:20-115:11. He testified that he forgot about the devices and accidentally retained them at his home after departing Mallet. Those circumstances do not prove that Mallet did not adequately protect its trade secrets. Moreover, Defendants have not even been able to prove that Mallet confidential information existed on such word processor devices, as no information has been obtained from them during the course of the litigation.

May 12, 2022 R. Wilhelm Dep. Tr. at 105:21-106:13 (“[T]here is no way that you can look at a label and say oh, yeah, this is the percentages of the ingredients.”). In many cases, the ingredient lists do not even identify the actual product ingredients with certainty (for example, they may simply indicate that the product contains soybean oil, coconut oil, *or* canola oil, among other ingredients). As a result, the ingredients listed on the label are not sufficient to constitute public disclosure.

While Bundy and Synova have identified a handful of archaic release agent formulas in expired patents and in a few trade publications, none of these publicly available release agent formulas correspond to any Mallet release agent formula. For instance, Defendant’s patent expert David Oberdick conducted a robust search which included text searching, patent classification searching, and patent citation searching using numerous databases and patent offices around the world. ECF No. 260-64 (March 23, 2023 Expert Report of D. Oberdick) at 9-10. While Oberdick narrowed his search to seven main patents, none of those patents disclosed the specific combination of ingredients used in the Mallet formulations, or their respective percentage weights. *Id.* at 13-34. In fact, each of the seven references disclosed many different possible ingredients and broad ranges for each of those ingredients, which could be uniquely combined to produce thousands, if not tens of thousands, of different possible release agent formulations. Given the robustness of the search performed by Oberdick, Mallet’s patent expert, John Floros, concluded that if Mallet’s formulations were in the public domain, Oberdick would have located them. ECF No. 293-8 (April 21, 2023 Expert Report of J. Floros) ¶ 26. Floros thus concluded that “[t]ellingly, Oberdick does not point to any reference, or combination of references, that disclose these specific formulations. This demonstrates that, contrary to Oberdick’s contention, the Mallet . . . formulations are not generally known in the field.” *Id.*

Defendants’ only specific examples of Mallet formulas that are “generally known” and “readily ascertainable” are Mallet’s Vegalube 20 and Vegalube 40, but these are good examples of products for which the precise formulas are *not* widely known. Defendants claim it was well known in the industry that Vegalube 20 and Vegalube 40 contained 20% and 40% mineral oil, respectively, with the addition of emulsifiers or surfactants. But, in fact, the formulas for these two products are *not* 20/80 or 40/60. P-045 (LACAYO\_0000096); P-047 (LACAYO\_0000097).

#### **H. Use of Trade Secrets**

There is no doubt that Bundy and Lacayo used Mallet’s propriety release agent formulas, created and refined over decades, as the templates for a series of “knock-off” Synova products. Lacayo’s Synova lab notebooks and Monthly Planner show that she used Mallet product formulas to create the Synova knock-offs. P-082 (SYNOVA0002125-2213); P-080 (LACAYO\_0002041-87). Plaintiff’s expert chemist, Eric Decker, compared the Mallet product formulas in Lacayo’s possession to Synova’s formulas to conclude that “[i]t is highly improbable that Ms. Lacayo would have independently come up with a nearly identical percent composition for each ingredient” in Synova’s products. ECF No. 293-74 (Feb. 21, 2023 Expert Report of Eric Decker) at 19. Additionally, Lacayo’s Synova Lab notebook and Synova’s records show no product testing, product failures, or development refinements that even Synova/Bundy’s own expert food chemist witness, Dr. Luis Rodriguez-Saona, testified he would expect if a release agent product were developed independently. June 19, 2023 L. Rodriguez-Saona Dep. Tr. 53:16-60:1; 77:1-84:22.

By way of example, three of Synova’s [REDACTED]—Supra 130, Supra 120, and Supra 182—[REDACTED]—Super P, Vegalube Excel, Vegalube 20, and Vegalube No Antioxidants. ECF No. 293-11 (McSorley Rpt.) at 67, Apx. 5.4.1. As described in more detail below, there is direct evidence that Lacayo took and used these

Mallet formulas to develop Synova's copycat versions. Moreover, despite Bundys and Synova's argument that their product formulas were "reformulated" following Lacayo's departure, the below-referenced evidence shows that Synova's *current* product formulas continue to be identical or nearly identical to Mallet's.

*i. Supra 130.* The evidence shows that Lacayo plainly used Mallet's Super P NH formula to develop Synova's bestselling and flagship product, Supra 130. An identical copy of the Mallet formula for Super P, NH, found in Lacayo's garage, was also found copied into her Synova workbook. P-076 (LACAYO\_0000167); P-082 (SYNOVA002125, 2127). In her work for Synova, reflected in her Synova workbook, Lacayo used Mallet's Super P NH formula to create "Super 130", [REDACTED]. P-082 (SYNOVA0002145). Lacayo also copied this same formula into her personal calendar (used during her time at Synova). P-080 (LACAYO\_0002064). Ultimately, Lacayo used this identical version of Mallet's Super P NH formula as the final Synova "Supra 130", [REDACTED] P-123 (SynovaAL-00010752). On December 21, 2018, Lacayo sent herself a spreadsheet with the final Synova Supra 130 formula, which copied the Mallet Super P NH formula [REDACTED]. Moreover, an updated version of the December 2018 final excel spreadsheet, dated March 2019, contains the same formulation for Supra 130. P-143 (SynovaGoogleDrive\_00002724).

When asked whether the formulas are almost identical at her deposition, Lacayo's only response was, "Is it almost identical? It's not identical." Dec. 8, 2022 A. Lacayo Dep. Tr. (hereafter, "Lacayo 2022 Tr.") 134:21-135:1. Moreover, the *current* Synova formula for Supra 130 remains unchanged, negating any argument that Synova "reformulated" its most profitable product following Lacayo's departure. P-142 (SYNOVA002527). Plaintiff's food science and oil

expert, who analyzed the Mallet and Synova materials and Lacayo's lab notebooks, opined that "it is my opinion that Ms. Lacayo got the formula for Synova's Supra 130 from Mallet's Super P NH and Super P PHO formulas." ECF No. 293-74 (Decker Rpt.) ¶ 15. And in fact, Synova specifically marketed Supra 130 as a replacement for Mallet's Super P. P-010 (MSHEETS\_00029972). Supra 130 is Synova's [REDACTED] ECF No. 293-11 (McSorley Rpt.) at 66-67.

*ii. Supra 120.* Similarly, a nearly-identical copy of Mallet's Vegalube Excel PHO, a copy of which was found in Lacayo's garage, was discovered in her 2018 Synova workbook. P-060 (LACAYO\_000128); P-082 (SYNOVA002128). Lacayo used this copy of Mallet's formula to create Synova's [REDACTED] Supra 120. Lacayo's Supra 120 product is [REDACTED] to Mallet's Vegalube Excel PHO product, with the exception that, given FDA regulations, Synova moved from a [REDACTED] [REDACTED] ECF No. 293-74 (Decker Rpt.) ¶ 54. The December 2018 and March 2019 formulas for Supra 120 continued to be [REDACTED] to the Mallet Vegalube Excel PHO formula. P-123 (SynovaAL-00010752); P-143 (SynovaGoogleDrive\_00002724).

Moreover, the current formula for Supra 120 is similar to what Lacayo formulated and [REDACTED] to Mallet's formula for Vegalube Excel PHO. P-142 (SYNOVA002527). Mallet's expert opined that "[i]t is highly improbable that Ms. Lacayo would have independently come up with [REDACTED] [REDACTED] in Supra 120." ECF No. 293-74 (Decker Rpt.) ¶ 55.

*iii. Supra 182.* Lacayo also used the Mallet Vegalube 20 and Mallet Vegalube No Antioxidants formulas as a starting point to develop Supra 182. ECF No. 293-74 (Decker Rpt.) ¶¶

102-105. For instance, a [REDACTED] copy of Mallet's Vegalube 20, a copy of which was found in Lacayo's garage, was discovered in her 2018 Synova workbook. P-047 (LACAYO\_000097); P-082 (SYNOVA002209). Similarly, Lacayo's 2018 Synova workbook's notes on Supra 182 contained [REDACTED] to Mallet's Vegalube No Antioxidants. P-140 (MALLET014034); P-082 (SYNOVA002209).

Moreover, the current formula for Supra 182 is similar to what Lacayo formulated and [REDACTED] to Mallet's formula for Vegalube 20 and Vegalube No Antioxidants. P-142 (SYNOVA002527). Mallet's expert opined that "Lacayo copied the Vegalube 20 formula from Mallet." ECF No. 293-74 (Decker Rpt.) ¶ 16. Together, Supra 120, 130, and 182 represent [REDACTED] [REDACTED] ECF No. 293-11 (McSorley Rpt.) at 66-67. And as Plaintiff's damages expert opined, "had Synova not, early on, obtained the formulas for Supra 120, 130 and 182, it could not have offered release agent formulations with which commercial bakeries—including Mallet's customers—were familiar." *Id.* at 67.

***iv. Other Synova Products.*** Other Mallet formulas from the box in Lacayo's garage appear in her Synova workbook. For example, the Mallet formula for Band Oven Release Oil, which was found in her garage, contains an [REDACTED]—in Lacayo's Synova workbook, as shown below. P-039 (LACAYO\_0000039); P-082 (SYNOVA002178). When asked at her deposition whether she agreed that this copy of the formulas in her Synova workbook is [REDACTED], Lacayo answered:

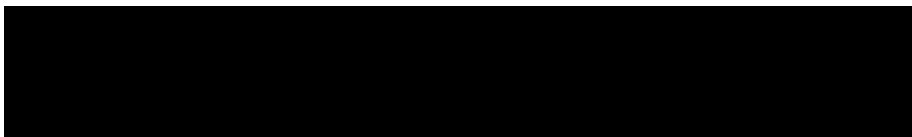
[REDACTED]

Lacayo 2022 Tr. 145:9-19 (emphasis added).

As another example, an identical version of the Mallet formula for Slicer Blade Oil, another formula found in Lacayo's garage, was also found in Lacayo's Synova workbook. P-042 (LACAYO\_0000047); P-082 (SYNOVA002183). When questioned about this similarity at her deposition, Lacayo responded:

**Q.** So Ms. Lacayo, if you line these formulas -- Mallet formula up with the slicer blade formula in your notebook?

**A.** Uh-huh.



**Q.** And do you have any memory of why the Mallet slicer blade oil formula for the Vegalube slicer blade formula would be in your Synova notebook from 2018?

**A:** No, I think it's working on that project for the blades, but no, it has – this is not the same application, and it's – I don't think that Synova ever made this or had this put together, so.”

Lacayo 2022 Tr. 150:1-18. Ultimately, Lacayo admitted that she “wrote down” the Mallet Slicer Blade release agent formula into her Synova notebook. *Id.* 151:13-152:1.

Synova and Bundy also knew that Lacayo had Mallet confidential information in her possession. On November 5, 2019, Lacayo uploaded a Synova formula and processing document to the Synova Google Drive, which contained confidential Mallet information. P-012 (SynovaAL\_00008310); Oct. 6, 2022 R. Bundy Dep. Tr. (hereafter, “Bundy Tr.”) 279:3-283:20. On November 6, 2019—the same day Bundy received the summons in this lawsuit—Robert Bundy emailed a Synova employee asking where the document came from and who could see it. P-012 (SynovaAL\_00008310); Bundy Tr. 221:9-222:22. When he was told that Lacayo uploaded the document and “many people can see it, including the sales team,” Lacayo instructed another Bundy employee to delete the document. P-012 (SynovaAL\_00008310).

### **I. Mallet’s Formulas Cannot Be Reverse Engineered**

Defendants also argue that Mallet’s formulations cannot constitute trade secrets because they can be “reversed engineered.”<sup>2</sup> Yet Defendants hired two experts who failed to support this theory. First, Synova hired the premier, global reverse-engineering firm Eurofins. However, Eurofins was unable to accurately determine the percentage of each ingredient in Mallet’s Vegalube Super P. P-136 (AMILLER\_00016207). Next, Defendants retained reverse engineering and gas chromatography expert, Dr. Lee Polite, to make a second attempt at reverse engineering Mallet’s products. But while Polite purported to have “reversed engineered” three Mallet products (Super P, Vegalube Excel, and Vegalube 1100), and three Synova products (Supra 120, 130, and 182), Dr. Polite later admitted that he was given the formulations for each product ahead of time. ECF No. 294-42 (May 19, 2023 Rebuttal Report of L. Polite) at 7 (“It was mentioned that I had an advantage because of my access to some of the batch blending files, or the expected results. ... I did have access to the formulas prior to starting my analyses.”). At his deposition, Dr. Polite explained that Synova’s lawyers did in fact send him the target formulas ahead of time: “They said, here’s our batch information that we have. Here’s six samples we want you to analyze.” June 7, 2023 L. Polite Dep. Tr. (hereafter, “Polite Tr.”) 71:13-22. So, “I knew ... what their target was, ... it was certainly a guideline.” *Id.* 72:1-7. Dr. Polite testified, he “looked at” the formula information and found “some of it was useful.” *Id.* 72:8 – 73:3. Thus, Dr. Polite’s methodology is wholly unreliable.

Furthermore, Mallet hired Eurofins to replicate Dr. Polite’s method—*but did not provide the formulas in advance*. Without the formulas, Eurofins was unable to reverse engineer the six products. And Mallet’s gas chromatography expert, Dr. Robert McGorin, explained that even if a

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<sup>2</sup> Reverse engineering is a process in which a product, in this case a release agent, is deconstructed to extract information regarding that products design, *i.e.* the percent composition of each ingredient.



company threw resources at the project, with money, people and equipment, they could only get within a 10-20% range of a release agent formula. June 20, 2023 R. McGorin Dep. Tr. (hereafter, “McGorin Tr.”) 88:10-89:2. Even Synova’s own lab director agreed that gas chromatography (Polite’s methodology) would not produce exact results for component ingredients, but could only provide results “[w]ithin a specified range.” Oct. 18, 2022 A. Miller Dep. Tr. 35:2-37:2.

Finally, Synova’s corporate representative admitted that Synova did not in fact reverse engineer Mallet’s products. Nov. 29, 2022 W. Hallmark Dep. Tr. 90:19-22.

#### **J. Lacayo and Bowers Had Breached Their Contracts With Mallet**

As a condition of his first employment with Mallet in 1978, Bowers executed a covenant (the “First Bowers Covenant”). P-083 (MALLET000155-56); *see also* May 20, 2020 Bowers Dep. Tr. 113:3–19. In 1981, Mallet rehired Bowers. May 20, 2020 Bowers Dep. Tr. 123:17-19. As a condition of his rehire, Bowers executed a second covenant (the “Second Bowers Covenant”) with Mallet “right around” his return to the company in 1981.<sup>3</sup> P-084 (MALLET000153-54); *see also* May 20, 2020 Bowers Dep. Tr. 123:20–124:6, 130:20–131:2. Bowers worked as a sales representative for Mallet until early 2019. *See id.* 123:11-19; P-296 (Porzio Decl.) ¶¶ 44-51; Oct. 26, 2022 Bowers Dep. Tr. 434:12-15. He was promoted to National Accounts Sales Representative in September 2000, and then to National Account Manager/Director in January 2013. P-280 (Amended Complaint, ECF No. 40, ¶¶ 42-43); Oct. 26, 2022 Bowers Dep. Tr. 434:12-435:7.

In each of the two Covenants, Bowers acknowledged that:

[I]n the course of his employment it is and will be necessary for him to obtain information concerning Company’s sales, sales volume, sales methods, customers, identity of customers, identity of key purchasing personnel in employ of customers, amount or kind of customer’s purchases from Company, Company’s sources of supply, identity or number or location of Company’s salesmen or sales representatives, formulae, processes, methods, machines, manufactures,

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<sup>3</sup> The Bowers Covenants also contain a choice of law provision stating that the Covenants will be governed by Pennsylvania law. *Id.*

compositions, ideas, improvements or inventions belonging to Company or relating to Company's affairs.

P-083 (MALLET000155-56); P-084 (MALLET000153-54).

Moreover, in each of the two Covenants, Bowers recognized that the use or disclosure of such information "would constitute a breach of trust and cause irreparable injury to Company." *Id.* Bowers also recognized that it "is vital to the protection of Company's goodwill, and to the maintenance of Company's competitive position that he be under restraint against disclosing to others or using to his own advantage any information regarding Company's affairs." *Id.*

Finally, in each of the two Covenants, Bowers agreed that,

so long as he is employed by Company and after his employment is terminated, whether with or without cause, he shall not disclose any information regarding Company's affairs, and he also covenants that so long as he is employed by Company and for a period of two (2) years after his employment is terminated, whether with or without cause, he shall not, directly or indirectly, as individual or partner, or as director or officer of any corporation, or in any other capacity whatsoever, be employed by or engage in, or be connected with, any business competitive with Company's business, and he agrees that any such direct or indirect connection that he might have with any competing business enterprise shall be presumed to be incompatible with and a violation of his covenant not to use or disclose any information regarding Company's affairs.

*Id.*

Similarly to Bowers, Lacayo signed a covenant when she was first hired by Mallet in 1997 (the "First Lacayo Covenant"). P-086 (MALLET000095-96); May 26, 2020 Lacayo Dep. Tr. 43:23 – 44:1. Lacayo was employed with Mallet until approximately 2000. May 26, 2020 Lacayo Dep. Tr. 45:4-6. On October 16, 2006, Mallet rehired Lacayo as Director of Laboratory Services. May 26, 2020 Lacayo Dep. Tr. 50:6-24. Lacayo later served as Director of Technical Services until she left Mallet in February 2018. *See id.* 113:8–114:15; P-296 (Porzio Decl.) ¶ 39.

When Lacayo began working again at Mallet in 2006, Lacayo executed a second covenant (the “Second Lacayo Covenant”) along with all of her other new hire paperwork.<sup>4</sup> P-089 (MALLET000097); May 26, 2020 Lacayo Dep. Tr. 51:1-21.

In each of the two Covenants, Lacayo acknowledged that:

[I]n the course of [her] employment it is and will be necessary for [her] to obtain information concerning Company’s sales, sales volume, sales methods, customers, identity of customers, identity of key purchasing personnel in employ of customers, amount or kind of customer’s purchases from Company, Company’s sources of supply, identity or number or location of Company’s salesmen or sales representatives, formulae, processes, methods, machines, manufactures, compositions, ideas, improvements or inventions belonging to Company or relating to Company’s affairs.

P-089 (MALLET000097). In each of the two Covenants, Lacayo recognized that the use or disclosure of such information “would constitute a breach of trust and cause irreparable injury to Company.” *Id.* Moreover, Lacayo recognized that it “is vital to the protection of Company’s goodwill, and to the maintenance of Company’s competitive position that [s]he be under restraint against disclosing to others or using to [her] own advantage any information regarding Company’s affairs.” *Id.*

Finally, in each of the two Covenants, Lacayo agreed that,

so long as [s]he is employed by Company and after [her] employment is terminated, whether with or without cause, [s]he shall not disclose any information regarding Company’s affairs, and [s]he also covenants that so long as [s]he is employed by Company and for a period of three (3) years after [her] employment is terminated, whether with or without cause, [s]he shall not, directly or indirectly, as individual or partner, or as director or officer of any corporation, or in any other capacity whatsoever, be employed by or engage in, or be connected with, any business competitive with Company’s business, and [s]he agrees that any such direct or indirect connection that [s]he might have with any competing business enterprise shall be presumed to be incompatible with and a violation of [her] covenant not to use or disclose any information regarding Company’s affairs.

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<sup>4</sup> The Covenants also contain a choice of law provision stating that the Covenants will be governed by Pennsylvania law. *Id.*

*Id.*

The Zhou, Galicic, and Colley covenants contained similar provisions to Bowers’ and Lacayo’s covenants. P-094 (SYNOVA000190); P-359 (MALLET011060-61); P-088 (ECF No. 46-6); P-085 (Colley Ex. 8). And as discussed *supra*, Section I.A., the Bundys knew about these covenants as early as 2016, and chose to ignore them.

Moreover, despite Synova’s knowledge of the existence of the existence of these covenants, while this lawsuit was pending and approximately one year after leaving Mallet, on December 6, 2019, Synova entered into an Independent Contractor Agreement with former Mallet employee Cathy Colley to assist with writing food certifications for baking release agent products. P-127 (SYNOVA000134-135). Under the Independent Contractor Agreement, Colley agreed to “provide writing skills and abilities to the Company,” particularly with respect to “writing of procedures, and other documentation for GFSC (Global Food Safety Certificates, BRC, FCCS, ISS).” *Id.*

Colley’s work for Synova was in direct violation of this covenant. Indeed, Synova’s corporate representative, Synova President William Hallmark, testified that Colley did work for Synova relating to HACCP. Synova 30(b)(6) Nov. 29, 2022 Hallmark Dep. Tr. 145:2-12. On January 14, 2020, in responses to Mallet’s interrogatory requests for this lawsuit, Synova informed Mallet that it hired Colley for work “involv[ed] with release agents and/or related equipment” and that Colley “reported to Lacayo.” P-279 (Jan. 14, 2020 Synova’s Resps. to Mallet’s First Set of Interrogs. No. 11, 18). As a result, on February 3, 2020, after learning of Colley’s work for Synova, Mallet, through counsel, sent Colley a cease-and-desist letter reminding Colley of her contractual obligations:

Mallet is sending you this letter to remind you of your post-employment obligations to [Mallet] because it understands that you have entered into an Independent

Contractor Agreement with Synova, a direct competitor of Mallet, that we understand may violate your contractual obligations to Mallet.

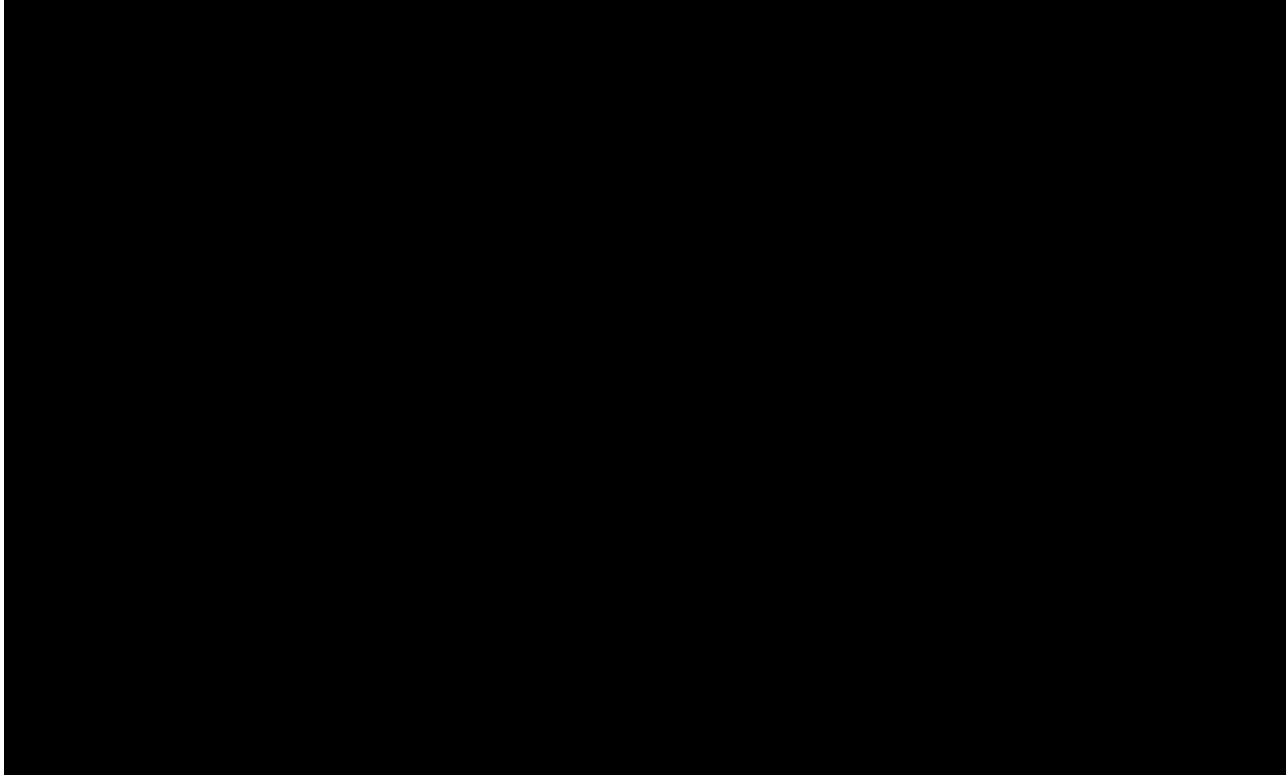
P-282 (ECF No. 46-6). It further stated that “Mallet considers [Colley] joining Synova to be a direct violation of the Covenant” and demanded that Colley comply with the terms of the agreement “to avoid further legal action by Mallet to protect its rights and enforce the Covenant.” *Id.* Upon receipt of the February 3, 2020 letter from Mallet’s counsel on or around February 4, 2020, Ms. Colley terminated her Independent Contractor Agreement with Synova. May 3, 2022 Colley Dep. Tr. 97:24-98:2, 166:1-13.

## **II. STATEMENT OF DAMAGES**

Mallet has produced documentary, testimonial, expert opinion, and other evidence regarding the damages that it incurred relating to all claims in the Amended Complaint that Mallet brought against Defendants in this lawsuit, including breach of contract (Count I), breach of fiduciary duty (Count II), tortious interference with contractual relations (Count III), Federal Defend Trade Secrets Act (Count IV), actual or threatened misappropriation of trade secrets and confidential information in violation of the Pennsylvania Uniform Trade Secrets Act (Count V), inevitable disclosure of confidential information and trade secrets (Count VI), aiding and abetting breach of fiduciary duty (Count VII), conversion (Count VIII), and unfair competition (Count IX). *See, e.g.*, Dec. 9, 2022 J. Tinge Mallet 30(b)(6) Dep. Tr. 27:21–28:15 (testifying regarding loss of customers due to Bowers’ actions); ECF No. 293-11 (Feb. 21, 2023 R. McSorley Initial Report; April 21, 2023 R. McSorley Reply Report; R. McSorley Reports Errata).

To remedy the misappropriation of Mallet’s 65 Asserted Trade Secrets, including 63 Product Formulations (Trade Secrets 1–63), Mallet’s Customer Sales List (Trade Secret 64), and the Product Savings Comparison (Trade Secret 65), Mallet will seek the full range of damages that it is entitled to recover under the Defend Trade Secrets Act (“DTSA”), the Pennsylvania Uniform

Trade Secrets Act (“PUTSA”), as well as Pennsylvania common law. As of June 2024,<sup>5</sup> Mallet calculated its actual and compensatory damages, punitive damages, attorneys’ fees and costs, and prejudgment interest as follows:



Under the DTSA and PUTSA, Mallet is entitled to the actual losses caused by the Defendants’ misappropriation of the asserted trade secrets as well as the Defendants’ unjust enrichment that is not addressed in calculating actual losses. ECF No. 293-11 (McSorley Reply Rpt.) at 20 (citing 18 U.S.C. § 1836(b)(3)(B); *PNC Mortg. v. Superior Mortg. Corp.*, 2012 WL 628000, at \*24 (E.D. Pa. Feb. 27, 2012)). As to lost profits, McSorley apportions his lost profits damages calculation in a number of different ways. Specifically, he provides a detailed analysis breaking down the Mallet financial data by product, customer, and quarter and/or year. ECF No. 293-11 (April 21, 2023 R. McSorley Reply Report) at Updated Apx. 4.0 – 4.6 (Lost Profits).

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<sup>5</sup> Mallet reserves the right to update these damages calculations up to the date of trial.

Defendants criticize this approach by arguing that Mallet's lost profits are duplicative of Synova's unjust enrichment because they are based on the same sales. But while Mallet's lost profits calculation is limited to release agent sales to common customers of both Mallet and Synova, Synova's unjust enrichment calculation is based on additional sales to other customers as well. Moreover, Defendants fail to offer any explanation for how costs that Synova avoided in the research and development of the asserted trade secrets are duplicative of the other two damages calculations.

Defendants' critique of Mallet's unjust enrichment calculations are similarly unavailing. Defendants criticize McSorley's use of Mallet's release agent profitability data to calculate Synova's profit-based unjust enrichment, rather than using Synova's profitability data. However, Synova did not produce any costs of goods data specific to Synova's release agent products sales. Moreover, McSorley's method is supported by the comparability of Mallet's and Synova's pricing and products (including that Defendants touted their top-selling products as "equal to" Mallet's), among other factors. In fact, Defendants' own damages expert, Douglas King, has used the same approach in a prior litigation. There, King, working on behalf of a well-established plaintiff company, calculated unjust enrichment profits of the defendant start-up using the plaintiff's financial data.

Mallet is also entitled to punitive damages under the applicable law. Under both DTSA and PUTSA, when "willful and malicious misappropriation" exists, a plaintiff may recover up to double its compensatory damages. Given that the Court has already described Defendants' misconduct as "purposeful," and found that they were "[a]ctively concealing plans to form a competing company; [and were] using employee status to copy documents onto external storage drives" (ECF No. 109 ¶¶ 52, 58), Mallet believes it is entitled to recover punitive damages.

In addition to monetary damages, Plaintiff seeks injunctive relief in the form of a Consent Decree as follows:

- A change of Synova release agent product line name “Supra” that is deceptively similar to Mallet’s “Super” product line (and are based on same formulas).
- Imposition of a 4% running royalty pursuant to license on Synova’s products Supra 110, Supra 120, Supra 130, and Supra 182 which are [REDACTED] of Mallet products and three of which were marketed to customers as equal to Mallet products.
- A notice protocol requiring Synova/Bundy to provide advance written notice of the hiring of any current or former Mallet employees.

### **III. CONTACT INFORMATION OF WITNESSES AND POTENTIAL WITNESSES**

#### **Fact Witnesses**

1. Roja Ergun (Liability)  
30 Forsythe Road  
Pittsburgh, PA 15220  
Phone: c/o Carmine Zarlenga, Esq.  
Live testimony expected.
2. Michael Savidakis (Liability)  
1751 Lake Cook Road, Ste 550  
Deerfield, IL 60015  
Phone: c/o Carmine Zarlenga, Esq.  
Live testimony expected.
3. Ben Topercer (Liability)  
15825 88th Street  
Bristol, WI 53104  
Phone: c/o Carmine Zarlenga, Esq.  
Live testimony expected.
4. Robert Shane Porzio (Liability)  
8907 Heydon Hall Cir  
Charlotte, NC 28210  
Phone: c/o Carmine Zarlenga, Esq.  
Live testimony expected.
5. Matthew Conti (Liability)  
1751 Lake Cook Road, Ste 550  
Deerfield, IL 60015  
Phone: c/o Carmine Zarlenga, Esq.  
Live testimony expected.



6. Jan Tinge (Liability and Damages)  
1751 Lake Cook Road, Ste 550  
Deerfield, IL 60015  
Phone: c/o Carmine Zarlenga, Esq.  
Live testimony expected.
7. Allison Butler (Liability and Damages)  
1751 Lake Cook Road, Ste 550  
Deerfield, IL 60015  
Phone: c/o Carmine Zarlenga, Esq.  
Live testimony expected if necessary.
8. Robert Bundy (Liability)  
c/o Ronald L. Hicks, Jr., Esq. and Carolyn B. McGee, Esq.  
Porter Wright Morris & Arthur LLP  
Six PPG Place, Third Floor  
Pittsburgh, PA 15222.  
Live testimony or video testimony by prior deposition expected.
9. Gil Bundy (Liability)  
c/o Ronald L. Hicks, Jr., Esq. and Carolyn B. McGee, Esq.  
Porter Wright Morris & Arthur LLP  
Six PPG Place, Third Floor  
Pittsburgh, PA 15222  
Live testimony or video testimony by prior deposition expected.
10. Ada Lacayo (Liability and Damages)  
328 Michigan Avenue  
Lower Burrell, PA 15068  
Phone: 724-980-7325  
Live testimony expected.
11. William “Chick” Bowers (Liability and Damages)  
965 Club House Boulevard  
New Smyrna Beach, FL 32168  
Phone: 386-314-9701  
Live testimony expected.
12. William Hallmark (Liability and Damages)  
c/o Ronald L. Hicks, Jr., Esq. and Carolyn B. McGee, Esq.  
Porter Wright Morris & Arthur LLP  
Six PPG Place, Third Floor  
Pittsburgh, PA 15222  
Live testimony or video testimony by prior deposition expected.

13. Amanda Tallarico (Liability)  
c/o Ronald L. Hicks, Jr., Esq. and Carolyn B. McGee, Esq.  
Porter Wright Morris & Arthur LLP  
Six PPG Place, Third Floor  
Pittsburgh, PA 15222  
Live testimony or video testimony by prior deposition expected.
14. Tom Coles (Liability)  
c/o Ronald L. Hicks, Jr., Esq. and Carolyn B. McGee, Esq.  
Porter Wright Morris & Arthur LLP  
Six PPG Place, Third Floor  
Pittsburgh, PA 15222  
Video testimony by prior deposition expected.
15. Mick Sheets (Liability)  
c/o Ronald L. Hicks, Jr., Esq. and Carolyn B. McGee, Esq.  
Porter Wright Morris & Arthur LLP  
Six PPG Place, Third Floor  
Pittsburgh, PA 15222  
Video testimony by prior deposition expected.
16. Shane Zhou (Liability)  
c/o James A. Buster, Esq.  
Miller Johnson  
45 Ottawa Ave. SW, Suite 1100  
Grand Rapids, MI 49503  
Video testimony by prior deposition expected.
17. Cathleen Colley (Liability)  
860 Corbett Drive  
Pittsburgh PA 15234  
(412) 341-9016  
Live testimony expected if necessary.

**Expert Witnesses**

1. Eric Decker (Liability)  
102 Holdsworth Way  
Amherst, MA 01003  
Phone: c/o Carmine Zarlenga, Esq.  
Live testimony expected.
2. Robert McGorin (Liability)  
100 Wiegand Hall  
Corvallis, OR 97331  
Phone: c/o Carmine Zarlenga, Esq.

Live testimony expected.

3. Neil Spingarn (Liability)  
13071 Marcy Ranch Road  
Santa Ana, California 92705  
Phone: c/o Carmine Zarlenga, Esq.  
Video testimony expected.
4. Andrew Reisman (Liability)  
2885 Lake Ridge Lane  
Weston, FL 33332  
Phone: c/o Carmine Zarlenga, Esq.  
Live testimony expected.
5. John Floros (Liability)  
PO Box 30003, MSC 3470  
Las Cruces, NM 88003-8003  
Phone: c/o Carmine Zarlenga, Esq.  
Live testimony expected if necessary.
6. Robert Stoll (Liability)  
1500 K Street NW, Suite 1100  
Washington, DC 20005  
Phone: c/o Carmine Zarlenga, Esq.  
Live testimony expected if necessary.
7. Robert McSorley (Damages)  
200 West Madison Street  
Suite 1020  
Chicago, IL 60606  
Phone: c/o Carmine Zarlenga, Esq.  
Live testimony expected.

#### **IV. DESIGNATION OF WITNESS TESTIMONY**

Plaintiffs propose to designate the deposition testimony of several witnesses in addition to, or in lieu of, live testimony. The proposed designations are provided in the attached **Exhibit A**.

#### **V. EXHIBIT LIST**

The bates numbers, exhibit numbers, and descriptions of all evidence Plaintiffs expects to offer are provided in the attached **Exhibit B**.

## VI. LIST OF LEGAL ISSUES TO BE ADDRESSED AT THE FINAL PRETRIAL CONFERENCE

Plaintiffs expect that the legal issues addressed in the parties' motions in *limine*, voir dire, and jury instruction disagreements not yet due will need to be addressed at the final pretrial conference. ECF No. 326.

## VII. LIST OF EXPERT DISCLOSURES

Plaintiff has disclosed the following expert reports in this litigation pursuant to Rule 26(a)(2). Plaintiff notes that the sealed and redacted versions of its expert reports (with the exception of Dr. Neil Spingarn's report and the exhibits to Andrew Reisman's reports), were previously filed on the docket during the summary judgment phase. The ECF citations for each report can be found below. The expert report of Neil Spingarn is provided in the attached **Exhibit C**, while the exhibits to Andrew Reisman's reports are provided in the attached **Exhibits D-G**.

1. Eric Decker (partially sealed)  
Sealed Version: ECF No. 294-44  
Public Version: ECF No. 293-74
2. Robert McGorin (partially sealed)  
Sealed Version: ECF No. 294-6  
Public Version: ECF No. 293-9
3. Andrew Reisman (partially sealed)<sup>6</sup>  
Sealed Version: ECF No. 294-7  
Public Version: ECF No. 293-10
4. John Floros (partially sealed)  
Sealed Version: ECF No. 294-5  
Public Version: ECF No. 293-8
5. Robert Stoll (not sealed)  
Public Version: ECF No. 293-14
6. Robert McSorley (partially sealed)  
Sealed Version: ECF No. 294-8

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<sup>6</sup> The exhibits to Mr. Reisman's reports were not previously filed. Given the size of these exhibits, Plaintiffs will be submitting a separate docket entry for these exhibits (**Exhibits D-G**).

Public Version: ECF No. 293-11

7. John Scalf (partially sealed)  
Sealed Version: ECF No. 263-29  
Public Version: ECF No. 260-65

8. Neil Spingarn (partially sealed)  
Attached hereto as **Exhibit C**.

## VIII. RESERVATION OF RIGHTS

Plaintiffs reserve the right to supplements this Pretrial Statement up to and including the time of trial in accordance with the Federal Rules of Civil Procedure and with Local Rules of Court.

Plaintiffs reserves the right at the time of trial to call as a witness any person, and to introduce any exhibit or testimony identified or referred to in the pleadings, discovery, deposition transcripts, expert disclosures, and/or Pretrial Statement filed in this action. Plaintiff reserves the right to call any individual or representative listed in the Defendants' Pretrial Statement prior to or during trial.

Plaintiff reserves the right to call as a witness anyone who they become aware of through any form of discovery or inquiry into any matter up to and including at the time of trial.

Date: November 25, 2024

Respectfully Submitted,

/s/ Carmine R. Zarlenga

Carmine R. Zarlenga (DC Bar No. 386244)  
E. Brantley Webb (DC Bar No. 1014561)  
Catherine Medvene (DC Bar No. 1616838)  
*Admitted Pro Hac Vice*  
MAYER BROWN LLP  
1999 K Street NW  
Washington, DC 20006  
czarlenga@mayerbrown.com  
bwebb@mayerbrown.com  
cmedvene@mayerbrown.com

Elaine Liu (IL Bar No. 6321015)  
*Admitted Pro Hac Vice*  
MAYER BROWN LLP  
71 S Wacker Dr  
Chicago, IL 60606  
Telephone: (312) 701-8360  
Facsimile: (312) 782-0600  
eliu@mayerbrown.com

Marla N. Presley (PA Bar No. 91020)  
Laura C. Bunting (PA Bar No. 307274)  
JACKSON LEWIS P.C.  
1001 Liberty Avenue, Suite 1000  
Pittsburgh, PA 15222  
Telephone: (412) 232-0404  
Facsimile: (412) 232-3441  
marla.presley@jacksonlewis.com  
laura.bunting@jacksonlewis.com

*Attorneys for Plaintiff/Counterclaim  
Defendant Mallet and Company Inc.,  
Counterclaim Defendant Vantage Specialty  
Chemicals, Inc.*