

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SPARK CONNECTED, LLC, KENNETH
MOORE, EMANUEL STINGU, and
RUWANGA DASSANAYAKE,

Plaintiffs and Counter-Defendants,

v.

SEMTECH CORPORATION,

Defendant and Counter-Plaintiff.

Civil Action No. 4:18-cv-00748

SEMTECH CORPORATION'S MOTION FOR PRELIMINARY INJUNCTION
EVIDENTIARY HEARING REQUESTED

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I. INTRODUCTION

Ken Moore received millions of dollars from Semtech Corporation's ("Semtech") acquisition of his ownership interest in a former business, and in exchange agreed not to compete with Semtech for five years (among other things); but when Semtech terminated his employment two years later, Moore immediately founded Spark Connected, LLC ("Spark") to compete with Semtech. Moore's strategy for competing with Semtech in the wireless power market included recruiting former Semtech employees Emanuel Stingu and Ruwanga Dassanayake to join him at Spark and to bring with them Semtech's trade secrets, in violation of their agreements with Semtech and applicable law. To prevent Counter-Defendants from further gaining an unfair advantage against Semtech, this Court should impose a preliminary injunction.

Wireless power technology is revolutionizing how consumers charge their electronic devices, providing flexibility by eliminating cords and cables from the charging process and creating the ability to charge multiple devices at once. Semtech has distinguished itself in the market through its firmware-based wireless power solutions. Because firmware is a type of software, Semtech's solution can adjust to new standards through a simple software upgrade rather than requiring completely new hardware. Semtech's proprietary wireless power techniques and methods embodied in its firmware are driven by trade secret source code and algorithms that Semtech spent years developing at a cost of many millions of dollars.

Spark, on the other hand, is a new startup that Moore founded shortly after his termination from Semtech. Stingu followed him to Spark shortly thereafter. To avoid the costly and time-consuming process of independently developing wireless power solutions, Stingu retained an electronic storage device containing thousands of files of Semtech's technical confidential information and trade secrets, including Semtech's firmware source code. Moore and Stingu next targeted Dassanayake to work for Spark. While still an employee of Semtech,

Dassanayake began emailing to his personal email account Semtech's marketing trade secrets, including analysis, strategy, and customer contacts and preferences. Counter-Defendants have since continuously used their cache of Semtech's trade secrets to compete unfairly with Semtech.

The evidence set forth below conclusively demonstrates that Semtech is likely to succeed on the merits of its claims and will be irreparably harmed if Counter-Defendants are allowed to continue unfairly competing. Accordingly, the record overwhelmingly supports a Court order for a preliminary injunction (1) enjoining Moore and Spark from conducting any business that competes with Semtech, and (2) enjoining any further use by Counter-Defendants of Semtech's confidential information and trade secrets.

II. STATEMENT OF FACTS

A. Semtech Is A Leading Provider Of Wireless Power Solutions.

Publicly traded for over 50 years with 32 locations across the world, Semtech is a leading analog and mixed-signal semiconductor and advanced algorithm company that develops, designs, and sells semiconductor products for consumer, enterprise computing, communications, and industrial markets. Declaration of Simon Brown ("Brown Decl.") ¶ 4. In the wireless power market, Semtech designs both integrated circuit chips and system schematics and layouts that customers include in and/or use as a reference to make their own wireless power products. *Id.* at ¶ 5. These chips and layouts provide Semtech's customers with the building blocks they need to make wireless power products, for example, a wireless charger or piece of furniture that makes it possible to charge a mobile phone by simply placing it on the charger or tabletop without the need to plug a cord or cable into the phone. *Id.*

B. Semtech Paid Approximately \$45 Million To Acquire Triune Systems, L.L.C. From Ken Moore And Others, For Its Wireless Power Technology.

Ken Moore, with other persons not parties to this lawsuit, held an ownership interest in a company called Triune Systems, L.L.C. (“Triune”), where he served as Vice President of Marketing and Applications. Brown Decl. at ¶ 7. Among other product areas, Triune was developing and engineering wireless power technology. *Id.* at ¶ 8. Stingu also worked at Triune at the time of the acquisition and had served as a Systems Lead there since 2012. *Id.* at ¶ 7.

On March 4, 2015, Semtech acquired Triune for approximately \$45 million in cash consideration, plus the opportunity to receive an earn-out of additional money, through a Purchase Agreement governed by Delaware law. *Id.* at ¶ 7, Ex. 1. Moore received a significant amount from the sale proceeds. *Id.* Semtech specifically targeted Triune for various technologies, including Triune’s wireless power intellectual property. *Id.* at ¶ 8. To protect its investment in acquiring Triune, Moore, an “Owner” and “Seller Party” per the parlance of the Purchase Agreement, agreed to not compete with Semtech for a five-year period from the Closing Date of March 4, 2015:

(a) Restrictions. For a period of five (5) years beginning with the Closing Date (the “Restriction Period:), such Seller Party shall not, and shall not permit any of the Affiliates of such Seller Party to, directly or indirectly, either alone or in association or in connection with or on behalf of any Person now existing or hereafter created (except on behalf of Purchaser, or the Group or any of their Affiliates): (i) be or become engaged in, or participate in, the business of designing, developing, assembling, manufacturing, producing, testing, delivering, installing, marketing, selling or providing circuit solutions, power system and control semiconductor devices or designs (including firmware), reference designs as related to semiconductor devices or products, or semiconductor products for low power energy harvesting, solar power, wireless charging, isolated switching or any other power management application (“Restricted Business”) anywhere in the world (the “Restricted Area”), including being or becoming, directly or indirectly, an organizer, owner, operator, investor, lender, lessor, partner, joint venturer, equityholder, officer, director, employee, manager, representative, associate, advisor, consultant, or agent of, in, to or from any Restricted Business. *Id.* at ¶ 7, Ex. 1, § 7.1(a).

Moore and Stingu became employed by Semtech after the acquisition. *Id.* at ¶¶17, 21. Dassanayake, who did not have any prior relationship with Triune, became employed by Semtech a few months later in August 2015. *Id.* at ¶ 30. In consideration of their employment with Semtech, each of Moore, Stingu, and Dassanayake signed an Employee Confidentiality Agreement and Proprietary Rights Assignment governed by California law, under which they promised “not to use, disclose, disseminate or otherwise communicate, directly or indirectly, in whole or in part, at any time or in any manner . . . any Confidential Information” *Id.* at ¶¶ 17, 21 and 30, Exs. 2, 4 and 11. In turn, “Confidential Information” was broadly defined as follows:

any and all information relating to the Company’s business or operations which is not generally known outside of the Company, [including], but not be limited to, trade secrets, technology, ideas, processes, products, improvements, developments, discoveries, inventions, design, manufacture or sale of the Company’s products or services, computer hardware and software, business or marketing plans, the names and locations of employees, vendors, distributors and customers, equipment and produce design and concepts, research and development, selling, marketing and any actual or contemplated trademark, service mark, trade name or patent application. *Id.*

C. Semtech Owns Wireless Power Trade Secrets That Provide Semtech With A Competitive Advantage.

Since the Triune acquisition, Semtech has continued to invest substantial time, effort, and many millions of dollars into its wireless charging solutions, in the form of thousands of engineering hours, wafer masks, wafers, circuit chips, firmware development, systems design, backend test solutions, test boards, and evaluation boards. Brown Decl. at ¶ 9. This process took years and is continuing today. *Id.*

Developed using proprietary techniques and methods, Semtech’s firmware-based wireless power solution sets Semtech apart from its competitors, which offer a hardware-based solution. *Id.* at ¶ 10. With hardware-based solutions, a change in the physical equipment is

required to adjust to new standards, whereas with firmware-based solutions, such as Semtech's, only a software update is required to adjust to these changes or to customize them for customer-specific needs. *Id.*

Semtech's firmware and the underlying source code and wireless power algorithms are some of Semtech's most important and valuable pieces of intellectual property related to its wireless power solutions. *Id.* at ¶ 11. Developing that firmware took three to four years. *Id.* Stingu, along with other Semtech engineers, was instrumental in developing the firmware at Triune and subsequently at Semtech. *Id.*

Semtech's wireless power solutions contain other proprietary innovations. For example, Semtech's wireless power solutions use a specific single signal that operates at a frequency that minimizes load variation, whereas Semtech's competitors use multiple signals. *Id.* at ¶ 12. Additionally, Semtech has developed a proprietary wireless charging technique that operates at a specific frequency for low-power wireless charging used for wearable devices. *Id.* And Semtech has developed wireless charging solutions that are able to charge devices at a distance greater than the 8 millimeters that is standard in the industry. *Id.* The flexibility of these and other of Semtech's confidential technologies have given Semtech a substantial commercial advantage in the wireless power market, which is burgeoning and changing rapidly. *Id.*

D. After Semtech Terminated Moore, He Recruited Stingu And Dassanayake To Unfairly Compete With Semtech.

In May 2017, Semtech terminated Moore's employment. Brown Decl. at ¶ 20. Upon his departure, he entered into a Separation and General Release Agreement with Semtech, governed by California law, under which he received a substantial severance payment, in exchange for promises to, among other things, (1) "continue to comply with the terms and conditions of employee confidentiality, trade secret, inventions assignment or similar agreement(s) previously

entered into”, and (2) not to retain any document, file or electronic record containing any confidential or proprietary information of Semtech. *Id.* at ¶ 20, Ex. 3. Immediately after leaving Semtech, Moore began laying the groundwork to compete with Semtech and to usurp Semtech’s business by recruiting key employees to join Spark and take Semtech’s confidential information and trade secrets regarding the development, engineering, marketing, and sale of wireless power solutions.

1. **Moore Recruited Stingu From Semtech And Formed Spark.**

As an owner and officer of Triune, and subsequently as a technical and marketing Vice President with Semtech, Moore had detailed knowledge of and access to Semtech’s wireless power trade secrets and other confidential information. *Id.* at ¶ 18. Through their work together at Triune and Semtech, Moore knew what Stingu’s responsibilities were regarding Semtech’s wireless power solutions. *Id.* at ¶ 22.

Thus, it is not a coincidence that only weeks after Moore departed from Semtech in May 2017, Stingu mysteriously began an extended vacation without any prior notice and no set end date that ultimately culminated in his voluntary resignation from Semtech:

- On Monday, May 29, 2017, Stingu emailed his team that he was getting married and would be out that week and possibly early the next week. *Id.* at ¶ 23, Ex. 5. This was the first notice to anyone at Semtech that he would be out of the office or that he was going to get married at that time. *Id.*
- On Friday, June 2, 2017, in response to Semtech’s inquiry about his return, Stingu stated that he may be out that Monday, but that an upcoming meeting would not be a problem. *Id.* at ¶ 23, Ex. 6.
- On Monday, June 5, 2017, Stingu emailed his supervisors that he would be out the

week of June 12 and would let them know about the following week. *Id.* at ¶ 25, Ex.

7. Also, on this date, as Semtech would come to learn, someone whose identity is unknown registered the domain name for Spark's website, sparkconnected.com. *See* Declaration of David Almeling ("Almeling Decl.") ¶ 2, Ex. A (identifying June 5, 2017 as the "Created Date" for this domain); *see also id.* ¶ 3, Ex. B.

- On June 7, 2017, Semtech's HR Manager requested a call with Stingu to understand his plans because his extended vacation had negatively impacted the business. Brown Decl. ¶ 26, Ex. 8.
- On Monday, June 12, 2017, Stingu informed Semtech that he did not intend to return to work and requested termination paperwork. *Id.* at ¶ 27, Ex. 9.
- On June 14, 2017, Semtech informed Stingu that it had accepted his verbal resignation effective as of June 12, 2017, and requested an exit meeting. Stingu responded that he needed to consult with his attorney before doing anything. *Id.* at ¶ 28, Ex. 10. He never participated in an exit meeting. *Id.*

After he departed Semtech, Stingu joined Moore to assist with launching Moore's new wireless power company. *See* Almeling Decl. ¶¶ 5-6, Exs. D-E. On September 11, 2017, Spark was officially formed. *Id.* ¶ 8, Ex. G.

2. **Stingu Refused To Return Semtech's Technical Confidential Information And Trade Secrets Related To Wireless Power Solutions.**

Following his resignation from Semtech in June 2017, Semtech obtained from Stingu multiple of his electronic devices, including his company-issued laptop computer, a portable hard drive, a USB flash drive, and a mobile phone. Declaration of Aaron Read ("Read Decl.") ¶ 6, Ex. B; Brown Decl. ¶ 39. Semtech engaged Aaron Read, a computer forensic expert with Stroz Friedberg, to review and analyze the devices turned over by Stingu. Read Decl. ¶ 2. Mr. Read's

declaration details his findings, including that Stingu deleted potentially incriminating evidence and likely still possesses a large amount of Semtech's confidential information:

- Stingu used a drive running a Linux operating system to conduct work on his company-issued laptop, instead of the internal drive that came with the laptop. *Id.* at ¶ 8. This is not a common practice. *Id.* at ¶ 9. All activity and data on the Linux device is not identifiable from the laptop's internal drive. *Id.* at ¶ 8.
- The portable hard drive returned by Stingu contained over 83,000 files. *Id.* at ¶ 11. Thousands of those files contain Semtech's confidential information and trade secrets, such as Semtech's firmware source code and algorithms, firmware encryption software, and R&D testing results and simulation data. Brown Decl. ¶ 41. The portable hard drive was formatted for the Linux operating system, meaning that the files on the hard drive were copied from a Linux device. Read Decl. ¶ 11. But Stingu did not turn over any Linux device to Semtech, indicating that he is still in possession of the source device containing the files copied to the portable hard drive. *Id.* at ¶ 9.
- The USB flash drive returned by Stingu contained more than 1,100 files. *Id.* at ¶ 14. Many of those files contain Semtech's confidential information, including its trade secrets, described in the previous bullet. Brown Decl. ¶ 40. In fact, all of the files on the USB flash drive are identical matches to files stored on the portable hard drive, but with a different organization and the USB flash drive is formatted for the Windows operating system, indicating that another Windows device was used as a conduit to copy, and then organize, the files from the portable hard drive. Read Decl. ¶ 14. However, there is no evidence of such activity on the Windows drive on the laptop, indicating that Stingu used another Windows device. *Id.* at ¶ 15.

- The mobile phone had been reset to its factory settings, so all of its data was erased before it was returned to Semtech. *Id.* at ¶ 16. This is commonly referred to as “wiping,” which is an attempt to remove data and avoid forensic analysis of the device. *Id.* at ¶ 17.

3. **Moore And Stingu Recruited Dassanayake To Work For Spark While Still Employed By Semtech.**

As a Senior Product Marketing Specialist for Semtech, Dassanayake devoted nearly all of his time to marketing and business development for Semtech’s wireless power solutions. Brown Decl. ¶ 31. Through their work together at Semtech, Moore and Stingu knew that Dassanayake had knowledge regarding confidential aspects of Semtech’s wireless power solutions, including specific customer identities, preferences, pricing and terms, industry competitive intelligence, strategic plans, bill of materials costs, built in overhead markups, and margins. *Id.*

The evidence uncovered by Semtech strongly suggests that, by September 2017 (the same month Spark was officially formed), Moore and Stingu had recruited Dassanayake to join them at Spark. At that time, Dassanayake began acting as a double-agent, not only working at Semtech, but also (secretly) on behalf of Spark. Dassanayake’s covert efforts ended only because Semtech terminated his employment as part of a reduction in force:

- On September 11, 2017, Spark was officially formed. Almeling Decl. ¶ 8, Ex. G.
- On September 28, 2017, Dassanayake sent an email from his Semtech account to his personal Hotmail account with Semtech customer contact information. Brown Decl. ¶ 37(a).
- On November 1, 2017, he sent an email from his Semtech account to his personal Hotmail account with a PowerPoint presentation titled, “Wireless Charging Strategy Review, November 1, 2017.” *Id.* at ¶ 37(b), Ex. 15. This is a 27-slide PowerPoint

presentation detailing Semtech's market analysis; strategy and execution plan for particular markets and products; Semtech's current strengths, opportunities, and weaknesses; and the competitive landscape. *Id.* It is a highly confidential presentation bearing a "Semtech Confidential" mark on each slide. *Id.* Access to this presentation would save a competitor from investing the same time and effort as Semtech in understanding the competitive landscape of the wireless power market. *Id.*

- On November 1, 2017, he sent an email from his Semtech account to his personal Hotmail account with a list of Semtech's wireless power patents with patent numbers, issue dates, and expiration dates, and a list of several unpublished patent applications with application numbers and status. *Id.* at ¶ 37(c), Ex. 16.
- On November 7, 2017, he sent an email from his Semtech account to his personal Hotmail account with a spreadsheet containing wireless charging market analysis. *Id.* at ¶ 37(d), Ex. 17.
- On December 11, 2017, he sent an email from his Semtech account to his personal Hotmail account with a chain of communications with a contact at a Swedish company interested in wireless charging. *Id.* at ¶ 37(e), Ex. 18.
- On January 23, 2018—the day Semtech notified him of his termination—he sent an email from his Semtech account to his personal Hotmail account with a spreadsheet identifying Semtech customers, with certain preferences and contact information. *Id.* at ¶ 37(f). It would enable a competitor to target particular customers and their needs, including specific decision makers, without investing the same amount of time and effort. *Id.*

- On January 25, 2018—the day before Dassanayake’s termination from Semtech was even effective—Stingu sent an email from a Spark email address to Dassanayake’s Semtech email address, with a copy to Moore, about Stingu’s idea for a Spark logo. *Id.* at ¶ 34, Ex. 13.

Dassanayake kept all of these activities secret from Semtech, *where he was still employed*. When Semtech terminated Dassanayake’s employment, he immediately became officially employed by Spark. *See* Almeling Decl. ¶ 7, Ex. F.

Like Moore, upon his departure from Semtech, Dassanayake entered into a Separation and General Release Agreement with Semtech, under which he received a severance payment in exchange for, among others, promises to comply with his prior confidentiality agreements and to not retain any documents or electronic records containing Semtech confidential information. Brown Decl. at ¶ 32, Ex. 12.

E. Spark Demonstrated A Wireless Charging Solution Similar To Semtech’s And Targeted A Semtech Customer.

In March 2018, at the Applied Power Electronics Conference (“APEC 2018”), and only six months after it was formed, Spark demonstrated a wireless charging solution to be used in a wireless charger made by Infineon Technologies AG (“Infineon”), with a description of Spark’s technology that was very similar to Semtech’s. *Id.* at ¶ 35, Ex. 14. For instance, Spark’s solution architecture was firmware-based with the promise of supporting future standards through firmware upgrades. *Id.* Instead of a variable frequency for its hardware architecture, Spark chose a fixed frequency, the same as Semtech. *Id.* Spark’s solution used the same Infineon microcontroller for which Semtech had already written firmware. *Id.* Spark offered fastcharge support, something that Semtech developed, but that other competitors still were not able to offer. *Id.* Moreover, Moore was presenting at Infineon’s booth on behalf of Spark and,

of any number of ways to demonstrate Spark's wireless charging solution, Moore used the exact same demonstration as Semtech—placing tea lights on the charger to power them to show that the charge for the light was wireless. *Id.* Semtech was dismayed to see that it took Spark only a matter of months to develop the same wireless charging solution that Semtech spent several years and significant effort and resources developing. *Id.*

Spark was not just appearing at industry conferences. In August 2018, Semtech's Taiwan sales team learned from a large Chinese company that is both a Semtech vendor and potential wireless charging customer, that it had been contacted by Dassanayake. *Id.* at ¶ 36. This customer reported that Dassanayake promised that Spark would soon be able to offer the same wireless power solution as Semtech, but that Spark's solution would be at a lower price. *Id.* Semtech has been actively working with this customer for a long time on developing a specific wireless charging solution. *Id.* During his time at Semtech, Dassanayake had full knowledge of Semtech's business dealings with this customer, as well as Semtech's bill of materials costs, built in overhead, and markup. *Id.* In other words, Dassanayake was uniquely positioned to offer this customer a wireless charging solution that undercut Semtech's pricing.

The combination of Spark's improper recruitment of Semtech employees, theft of Semtech's confidential information and trade secrets, demonstration and intent to sell a wireless charging solution remarkably similar to Semtech's, solicitation of a Semtech customer, and other acts summarized above demonstrates a clear purpose on Spark's part—to obtain an unfair advantage in competing against Semtech and its wireless power solutions.

III. LEGAL STANDARD

To obtain a preliminary injunction, the moving party must show: (1) a likelihood of success on the merits, (2) a substantial threat of irreparable harm in the absence of an injunction, (3) that the balance of equities tips in the moving party's favor, and (4) that an injunction is in

the public interest. See *Winter v. Nat. Resources Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *AHS Staffing, LLC v. Quest Staffing Grp., Inc.*, -- F. Supp. 3d --, 2018 WL 3870067, at *2 (E.D. Tex. Aug. 15, 2018). “[A]t the preliminary injunction stage, the Court may rely on evidence that would be otherwise inadmissible at trial, including hearsay evidence, to support the preliminary injunction.” *WorldVentures Mktg., LLC v. Rogers*, No. 4:18-CV-00498, 2018 WL 4169049, at *2 (E.D. Tex. Aug. 30, 2018).

To establish a likelihood of success on the merits, the moving party “is not required to prove its case in full at a preliminary injunction hearing.” *AHS Staffing*, 2018 WL 3870067, at *2). Rather, the moving party’s burden is only to present a *prima facie* case. *Id.* This requires only a “reasonable probability of success.” *Nexstar Broad. Grp., Inc. v. Lammers*, No. 08-cv-953, 2008 WL 2620098, at *4 (N.D. Tex. June 27, 2008). Here, Semtech meets and exceeds that burden.

IV. SEMTECH HAS SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS

A. Semtech Will Likely Succeed On Its Breach Of Contract Claims.

1. Moore Breached His Non-Competition Obligation To Semtech.

The Purchase Agreement is governed by Delaware law. Brown Decl. Ex. 1, § 10.1. To establish a breach of contract claim under Delaware law, a party must show: (1) a contractual obligation, (2) breach of that obligation, and (3) resulting damages. *Pilepro, LLC v. Chang*, 152 F. Supp. 3d 659, 682 (W.D. Tex. 2016) (citing *Newport Disc, Inc. v. Newport Elecs., Inc.*, 2013 WL 5797350, at *3 (Del. Super. Ct. Oct. 7, 2013)). Semtech is likely to succeed in proving each of these elements.

First, Moore has a contractual obligation not to compete with Semtech that was part of the Purchase Agreement for the sale of Triune to Semtech. Semtech provided Moore all consideration due to him under the Purchase Agreement. Brown Decl. ¶ 7. Moore

acknowledged receipt of his consideration in the Purchase Agreement. *Id.* at Ex. 1, p. 2. And in exchange for the consideration he received, Moore agreed not to compete with Semtech for a five-year period from March 4, 2015. *Id.* at § 7.1(a).

In the context of selling a business, a non-compete is enforceable to protect that business's goodwill and confidential information. *Tristate Courier and Carriage, Inc. v. Berryman*, 2004 WL 835886, at *10 (Del. Ch. Apr. 15, 2004) (enforcing covenant not to compete contained in stock purchase agreement to protect purchaser and former employer's legitimate economic interests in protecting its goodwill and confidential information). Texas law similarly enforces a covenant not to compete after the sale of a business. *Heritage Operating, L.P. v. Rhine Brothers, LLC*, 2012 WL 2344864, at *5-6 (Tex. App. June 21, 2012) (enforcing 10-year non-compete that was ancillary to a contract for the sale of a business).

Moore seeks to avoid his non-competition obligation by pointing to his employment separation agreement with Semtech and contending that the separation agreement superseded the Purchase Agreement. (Dkt. No. 1, ¶ 19). Neither the law nor facts supports Moore's argument. Moore is not the first one to raise this argument, and courts that have addressed it in a similar factual situation have uniformly rejected it. *See, e.g., Dunn v. Fastmed Urgent Care PC*, 424 P.3d 436, 441 (Ariz. Ct. App. 2018); *Attaway v. Republic Servs. of Ga. LLP*, 558 S.E.2d 846, 848 (Ga. Ct. App. 2002). In *Dunn*, a doctor became employed by the buyer of his business and later argued that the integration clause in his separation agreement with buyer, which contained a six-month non-compete, superseded the five-year non-compete in the purchase agreement for the sale of his business. 424 P.3d at 438–39. The court concluded that “the agreements have a different scope and each is independently enforceable,” reasoning that the purchase agreement established purchase transaction-related obligations and the separation agreement defined post-

employment obligations; the purchase agreement made no mention of employing the doctor, so that agreement's non-compete was independent of any continued employment; and the doctor and buyer were the only parties to the separation agreement, while there were other parties to the purchase agreement. *Id.* at 441–42. The court in *Attaway* reached the same conclusion, explaining “[c]learly, the noncompete covenant ancillary to the sale of the business relates to subject matter entirely different from that of the noncompete covenant ancillary to [employee’s] employment as a manager with [the buyer of his former business].” 558 S.E.2d at 848.

Dunn and *Attaway* are the only cases Semtech has located that address the issue of whether a later employment separation agreement supersedes an earlier sale/purchase agreement. This is in contrast to cases that Counter-Defendants have cited in meet-and-confer letters, which focus on the separate question of whether a later employment separation agreement supersedes an earlier employment agreement. *See, e.g., R. Ready Productions, Inc. v. Cantrell*, 85 F. Supp. 2d 672, 694 (S.D. Tex. 2000); *Carboline Co. v. Lebeck*, 990 F. Supp. 762, 766 (E.D. Mo. 1997). In *Cantrell*, the court concluded that an independent contractor agreement without a non-compete superseded an earlier employment agreement with a non-compete, in part, because both contracts addressed the same subject matter—his employment. 85 F. Supp. 2d at 694. Similarly, in *Lebeck*, the court concluded that a termination agreement superseded an employment agreement, because the termination agreement resolved all matters arising out of the employee’s employment. 990 F. Supp. at 766.

Second, in breach of his covenant not to compete, Moore founded and currently serves as the Chief Executive Officer of Spark—a company that competes directly with Semtech in the wireless power market. The wireless charging solution Moore demonstrated on Spark’s behalf at APEC 2018 and its many similarities to Semtech’s solution show that Spark intended to compete

against Semtech. Brown Decl. ¶ 35. Dassanayake's solicitation of a Semtech customer and his explicit reference to offering the same solution as Semtech, but at a lower price moved Spark's competition from the aspirational to the actual, as Spark is targeting the same markets and customers as Semtech. *Id.* at ¶ 36. Spark is indisputably competing directly with Semtech.

Third, Moore's breach has caused, and will cause, significant harm to Semtech, including the loss of Triune's technology and business goodwill that Semtech purchased for approximately \$45 million and the competitive advantage it derives from its unique wireless power solutions. *Travelhost, Inc. v. Modglin*, 2012 WL 2049321, at *5 (N.D. Tex. June 6, 2012) (recognizing loss of goodwill and competitive advantage from unique product as harm resulting from the breach of a non-compete). The law and good policy require Semtech to compete against other companies and their technologies, but Semtech should not be forced to compete against a cut-rate version of its own stolen technology. Semtech also faces the possible loss of customers, as evident from Spark's solicitation of a Semtech customer. *McKissock, LLC v. Martin*, 267 F. Supp. 3d 841, 858 (W.D. Tex. 2016) (recognizing possible customer loss as harm resulting from the breach of a non-compete). Lastly, Moore received confidential information at Semtech, and, given the similarity between Semtech and Spark, will have difficulty not using that information at Spark, which will result in the loss of that information's value. *Id.*

2. Moore, Stingu, And Dassanayake Breached Their Confidentiality Obligations To Semtech.

Semtech is also likely to succeed in proving its claims that each of Moore, Stingu, and Dassanayake breached their confidentiality obligations to Semtech under various agreements governed by California law. Specifically, under their confidentiality agreements with Semtech, Moore, Stingu, and Dassanayake agreed not to retain, disclose, or use Semtech's confidential or trade secret information. Brown Decl. Exs. 2, 4 and 11, § 3. Moore and Dassanayake even

reaffirmed those obligations in their respective separation agreements. *Id.* at Exs. 3 and 12, §§ 4, 5. To establish these claims, Semtech must show: (1) a contract between the parties, (2) a breach of that contract, (3) resulting damages, and (4) the party's performance of its own contractual obligations. *Texas Advanced Optoelectronic Solutions, Inc. v. Intersil Corp.*, 2015 WL 13469929, at *10 (E.D. Tex. Jan. 29, 2015). Semtech is likely to succeed on proving these claims.

First, Moore's, Stingu's, and Dassanayake's respective confidentiality and separation agreements are valid contracts between the parties, and Semtech has performed all of its obligations under those contracts. In consideration of the confidentiality agreements, Semtech employed each of Moore, Stingu, and Dassanayake up through the dates their employment ended and paid them wages and other benefits accordingly. Brown Decl. Exs. 2, 4 and 11. Further, Semtech paid Moore and Dassanayake the severance payments to which they were entitled under their separation agreements. *Id.* at ¶¶ 20 and 32.

Second, while Semtech has performed its obligations under the various contracts, each of the individual Counter-Defendants has breached their respective agreements with Semtech in the ways described above in Section II and incorporated here. Moore, Stingu, and Dassanayake disclosed and used Semtech's confidential and trade secret information in developing, demonstrating, and marketing Spark's wireless charging solution, as described above. These actions also include Stingu's retention of at least one electronic device containing Semtech's firmware source code and research and development results and data, among other confidential information. Read Decl. ¶ 12; Brown Decl. ¶¶ 39-41. These actions also include Dassanayake emailing Semtech's confidential and trade secret information to his personal email account,

including a marketing strategy presentation and spreadsheet with customer identities and preferences, which he then disclosed and used to solicit Semtech's customer. *Id.* at ¶ 37.

Evidence that a former employee misappropriated confidential information and trade secrets also demonstrates a breach of contract. *AHS Staffing*, 2018 WL 3870067, at *10–11. Further, knowledge of a trade secret together with substantial similarity and accelerated development justify an inference of use. *SPBS, Inc. v. Mobley*, No. 4:18-cv-391, 2018 WL 4185522, at *7 (E.D. Tex. Aug. 31, 2018). That inference is justified based on the facts here: Moore and Stingu had knowledge of Semtech's confidential information and trade secrets and, in only a matter of months, demonstrated a wireless charging solution with significant similarities to Semtech's solution that took years to develop, including a firmware-based architecture, fixed frequency, same microcontroller, and fastcharge support. Brown Decl. ¶ 35.

Third, each of these breaches has caused significant harm to Semtech. Moore, Stingu, and Dassanayake received confidential information and trade secrets at Semtech that they are now using at a competing company, Spark, to unfairly compete against Semtech. *McKissock*, 267 F. Supp. 3d at 858. Counter-Defendants' use of Semtech's confidential information and trade secrets "could result in a loss of value to the trade secrets and information itself, as well as a loss to [Semtech's] business." *Stoneagle Services, Inc. v. Gillman*, 2011 WL 13129085, at *3 (N.D. Tex. Oct. 14, 2011). Semtech also faces the possible loss of customers, as evident from Spark's solicitation of a Semtech customer. *McKissock*, 267 F. Supp. 3d at 858.

B. Semtech Will Likely Succeed On Its Trade Secret Misappropriation Claims.

Semtech is likely to succeed in proving that Counter-Defendants misappropriated trade secrets in violation of the Federal Defend Trade Secrets Act ("DTSA") (18 U.S.C. § 1839, *et seq.*), and the Texas Uniform Trade Secrets Act ("TUTSA") (Tex. Civ. Prac. & Rem. Code § 134A). Under the DTSA, the elements for trade secret misappropriation are (1) the existence of

a trade secret, (2) misappropriation, and (3) use in interstate commerce. 18 U.S.C. § 1836(b)(1); *SPBS*, 2018 WL 4185522, at *3. TUTSA has similar elements to the DTSA. Tex. Civ. Prac. & Rem. Code § 134A.002; *SPBS*, 2018 WL 4185522, at *3. Under TUTSA, a party must show use without authorization, but not that it was used in interstate commerce. *SPBS*, 2018 WL 4185522, at *3.

1. Semtech’s Trade Secrets Derive Significant Value From The Fact That They Are Not Publicly Known.

The DTSA and TUTSA define “trade secret” similarly, in relevant part, as information that “derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information,” and is the subject of reasonable measures to keep it secret. 18 U.S.C. § 1839(3); Tex. Civ. Prac. & Rem. Code § 134A.002(6).

Semtech possesses numerous trade secrets with respect to its wireless power solutions. *See generally* Brown Decl. ¶ 13. Semtech lists the specific trade secrets that are subject to Semtech’s counterclaims against Counter-Defendants in the accompanying Trade Secret Identification as of November 21, 2018. The declaration of Simon Brown explains that Semtech’s trade secrets are not publicly known or readily ascertainable and derive substantial value from that fact. *Id.* at ¶¶ 13, 40 and 41.

These trade secrets are the result of a significant investment of time, effort, and resources. Indeed, Semtech paid approximately \$45 million to acquire Triune for its wireless power intellectual property, including elements of some of these trade secrets. *Id.* at ¶ 7. Semtech then devoted significant time and resources further researching and developing its wireless power solutions. *Id.* at ¶ 9. These trade secrets provide Semtech significant advantages in the wireless power market, because with these trade secrets, a competitor would be able to save the

substantial time, effort, and resources required to develop wireless power solutions, and identify target markets and customers. *Id.* at ¶ 13. Other companies have been unable to duplicate Semtech’s firmware-based technology, at least that is before Counter-Defendants stole that technology. *Id.*

Semtech also takes reasonable measures to protect its trade secrets. For example, Semtech discloses confidential information to employees on a need-to-know basis, and it requires all employees to sign confidentiality agreements. *Id.* at ¶ 14. Likewise, Semtech requires third parties who will receive access to its confidential information to sign non-disclosure agreements. *Id.* Semtech maintains confidentiality policies in an Employee Handbook and Code of Conduct, and it trains its employees on confidentiality. *Id.*

Semtech’s protection measures include electronic and physical security. Access to confidential electronic records, computers, and networks is limited to authorized persons and protected by controls, including unique login credentials. *Id.* at ¶ 15. Semtech also maintains network protections, including firewalls, encryption, and cyber security software. *Id.* Semtech’s facilities, including the Plano, Texas location where Moore, Stingu, and Dassanayake worked, are physically secured against unauthorized access, including using locked doors and keycards. *Id.* at ¶ 16.

2. Counter-Defendants Misappropriated Semtech’s Trade Secrets By Retaining, Disclosing, And Using Them Without Authorization.

The DTSA and TUTSA similarly define “misappropriation,” in relevant part, to mean:

(A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) disclosure or use of a trade secret of another without express or implied consent by a person who—

(i) used improper means to acquire knowledge of the trade secret;

(ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was—

(I) derived from or through a person who had used improper means to acquire the trade secret;

(II) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or

(III) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret.

18 U.S.C. § 1839(5); *see also* Tex. Civ. Prac. & Rem. Code § 134A.002(3). In turn, “improper means” include breach or inducement of a breach of a duty to maintain secrecy of a trade secret.

18 U.S.C. § 1839(6); Tex. Civ. Prac. & Rem. Code § 134A.002(2).

“As a general matter, any exploitation of the trade secret that is likely to result in injury to the trade secret owner or enrichment to the defendant is a ‘use.’ ‘Use’ can be found where the exploitation includes ‘relying on the trade secret to assist or accelerate research or development.’ [P]roof of the defendant’s knowledge of the trade secret together with substantial similarities between the parties’ products or processes may justify an inference of use by the defendant.” *SPBS*, 2018 WL 4185522, at *7 (enjoining former employee from disclosing or using former employer’s confidential information or trade secrets) (internal quotations and citations omitted).

Here, Semtech has presented ample evidence that Counter-Defendants misappropriated Semtech’s trade secrets by retaining, disclosing, and using them. The scope of the misappropriation currently known is detailed in the Statement of Facts above and the accompanying declarations of Aaron Read and Simon Brown. That evidence includes:

- Stingu retained the original electronic device containing Semtech’s confidential information and trade secrets that were copied to the portable hard drive and USB flash drive turned over to Semtech by Stingu. Read Decl. ¶¶ 12, 15; Brown Decl. ¶¶ 40-41.

- Dassanayake emailed himself copies of a strategic presentation, Semtech's wireless power-related patents and patent applications, and a spreadsheet with customer identities, contact information, and preferences. Brown Decl. ¶ 37.
- Spark, Moore, and Stingu developed a wireless charging solution using Semtech's trade secrets to create a copycat solution that is firmware-based, fixed-frequency, uses the same microcontroller, and offers fastcharge support. Spark did this in a matter of only months, whereas Semtech invested *years*. *Id.* at ¶ 35. Accelerated development and similarity of products are strong evidence that Spark misappropriated Semtech's wireless charging trade secrets. *SPBS*, 2018 WL 4185522, at *7.
- Dassanayake misappropriated Semtech's customer, cost, pricing, and margin information by using it to contact a prospective Semtech customer and offering to undercut Semtech's pricing. Brown Decl. ¶¶ 36.

Counter-Defendants engaged in the above actions misappropriating Semtech's trade secrets by retaining, disclosing, and/or using such information on behalf of Spark, without Semtech's authorization and/or in breach of their express obligations under their confidentiality agreements and separation agreements. Brown Decl. ¶¶ 38 and 42. Such actions constitute misappropriation under the DTSA and TUTSA. 18 U.S.C. § 1839(5) and (6); Tex. Civ. Prac. & Rem. Code § 134A.002(2) and (3); *SPBS*, 2018 WL 4185522, at *6.

3. Semtech's Trade Secrets Are Related To Products That Are Used, Or Intended For Use In, Interstate Or Foreign Commerce.

Semtech has 32 locations across the world and sells its wireless power solutions, including its integrated circuit chips and design layouts, to customers throughout the United States and abroad. Brown Decl. ¶ 4-5. Additionally, Spark has used, and clearly intends to use, Semtech's trade secrets for products in interstate and foreign commerce. Spark's website states

that it is “Powering the World, Wirelessly.” Almeling Decl. ¶ 3, Ex. B at p. 2. And as explained above, Spark used Semtech’s trade secret information to solicit business from a Semtech customer that is an international company. Brown Decl. ¶ 36. Spark also partners with various global companies, including Infineon, Magway, and Würth Elektronik GmbH & Co. KG, to provide its wireless power solutions. Almeling Decl. ¶ 3, Ex. B at p. 6-7. Thus, Semtech’s trade secrets relate to products used in, and intended for use in, interstate and foreign commerce.

V. SEMTECH WILL SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION AGAINST COUNTER-DEFENDANTS

A. Semtech Will Be Irreparably Harmed Unless The Court Enjoins Moore And Spark From Conducting Any Business That Competes With Semtech.

Moore expressly agreed to a covenant not to compete with Semtech in the Purchase Agreement, and by founding and operating Spark, he is in breach of that agreement, as set forth above. Courts have long held that “[i]n Texas, injury resulting from the breach of non-compete is the epitome of irreparable injury, so enforcement appears to be the rule rather than the exception.” *McKissock*, 267 F. Supp. 3d at 858; *Am. Exp. Fin. Advisors, Inc. v. Scott*, 955 F. Supp. 688, 693 (N.D. Tex. 1996). Additionally, Moore agreed that an injunction would be available to remedy any breach of his non-compete obligation and that the period of such obligation would be extended for the period he was in breach:

(d) Special Remedies. Such Seller Party agrees that a breach by such Seller Party or any Affiliate thereof of any covenant set forth in this Section 7.1 would cause irreparable harm to Purchaser, that Purchaser’s remedies at Law upon any such breach would be inadequate, and that, accordingly, upon any such breach a restraining order or injunction or both may be issued against such Seller Party or such Affiliate, in addition to any other rights and remedies which are available to Purchaser at law or in equity. . . . In addition, and without limiting any other remedies, the Restriction Period with respect to a Seller shall be extended for the period equal to the time period (if any) that such Seller Party is in breach of this Section 7.1. Brown Decl. Ex. 1, § 7.1(d).

That injunction should extend to Spark as well as to Moore. Faced with circumstances similar to those presented here, courts have enjoined companies, founded by a party subject to a covenant not to compete, from conducting business. *See, e.g., Butler v. Arrow Mirror & Glass, Inc.*, 51 S.W.3d 787, 795–96 (Tex. App. 2001); *DJR Assocs., LLC v. Hammonds*, 241 F. Supp. 3d 1208 (N.D. Ala. 2017) (enjoining former employees and their new company from doing business, pursuant to breach of a covenant not to compete).

In *Butler*, the court enjoined Butler and the company he founded, Reglaze, from doing business, pursuant to a covenant not to compete in his employment agreement with his prior employer, Arrow. *Butler*, 51 S.W.3d at 791. Reglaze appealed, on the ground that it was not a party to the covenant not to compete. *Id.* at 795. The appellate court rejected that argument:

The covenant not to compete specifically provides Butler “will not directly or indirectly, either as an employee, employer, officer, director, consultant, agent, principal, *owner or in any other individual or representative capacity* engage in a business that is in competition with [Arrow].” Butler expressly agreed not to own or work for another business in competition with Arrow. It is uncontroverted that Butler formed ReGlaze a month after he resigned from Arrow, he was its owner and president, and ReGlaze’s sole business purpose was to provide reglazing services for new home builders, a service provided by Arrow. These undisputed facts justify the trial court's injunction against ReGlaze, which was formed by Butler specifically to compete with Arrow. *Id.* at 795–96 (emphasis original).

Like Butler, Moore is subject to a covenant not to compete that he “shall not, and shall not permit any of [his] Affiliates . . . [to] become engaged in, or participate in . . . Restricted Business . . . *including being or becoming, directly or indirectly, an organizer, owner, operator . . .*” Brown Decl. Ex. 1, § 7.1(a). Further, it is undisputed that Moore formed Spark shortly after his employment with Semtech ended, he is Spark’s Chief Executive Officer, and Spark’s business is developing and selling wireless power solutions that compete directly with Semtech. Almeling Decl. ¶¶ 4-5, Exs. C-D.

For all of these reasons, the Court should enjoin Moore and Spark from competing against Semtech for a period of 33 months from the entry of the injunction. The covenant not to compete originally extended to March 4, 2020. Brown Decl. Ex. 1, § 7.1(a). The term of a covenant not to compete may be tolled during the period of the restricted party's breach, particularly when the covenant contains a tolling provision, as the Purchase Agreement here does. *Guy Carpenter & Co. v. Provenzale*, 334 F.3d 459, 464 (5th Cir. 2003); *Deloitte & Touche USA LLP v. Lamela*, 2007 WL 1114075, at *6 (Del. Ch. Apr. 6, 2007); *Amedisys, Inc. v. Interim Healthcare of Wichita, Inc.*, No. 14-1357, 2015 WL 1912308, at *6 (D. Kan. Apr. 27, 2015). The requested 33 months represent the remainder of the period set forth in the Purchase Agreement at the time Spark's website was registered on June 5, 2017, when Moore started competing with Semtech in ongoing violation of his non-compete obligations.

B. Semtech Will Be Irreparably Harmed Unless The Court Enjoins Counter-Defendants' Disclosure And Use Of Semtech Confidential Information And Trade Secrets.

Counter-Defendants should also be enjoined from further retaining, disclosing, or using Semtech's confidential information and trade secrets. Moore, Stingu, and Dassanayake agreed that an injunction would be available to remedy any breaches of their confidentiality obligations:

12. Injunctive Relief. I agree that all of my obligations and promises contained in this Agreement are of a unique and intellectual character which gives them a particular value to the Company. Therefore, I acknowledge that a breach of any of the promises or agreements contained herein will result in irreparable and continuing damage to the Company for which the Company will have no adequate remedy at law. Accordingly, I agree that the company shall be entitled to obtain injunctive relief and/or a decree for specific performance as well as such other relief as a court may deem proper, including but not limited to monetary damages, if appropriate. Brown Decl. Exs. 2, 4 and 11, § 12.

And courts recognize that trade secret misappropriation creates irreparable harm. To show irreparable harm for trade secret misappropriation, a party need only show that "the defendant possesses the trade secrets and is in a position to use them." *WorldVentures*, 2018 WL

4169049, at *7. As explained in *AHS Staffing*, money alone is not an adequate remedy when defendants are in possession of a plaintiff's trade secret information and can benefit from that information without investing the time, expense, and labor otherwise necessary to independently compile that information. 2018 WL 3870067, at *11. Under those circumstances, "[a]ny calculation of monetary damages would fail to fully appreciate the harm done by Defendants' developing [competing products] by skipping the necessary research and development undertaken by every other competitor." *AHS Staffing*, 2018 WL 3870067, at *11.

In *WorldVentures*, the Court enjoined Rogers, a former employee of multilevel marketing company, from using any WorldVentures confidential information or trade secrets. 2018 WL 4169049, at *8. Rogers had access to WorldVentures' trade secrets, including its genealogy, one of its most valuable assets that reveals the identities and associations of representatives in another representative's downline. *Id.* at *1 n.2. Rogers went to work for a direct competitor and used the genealogy to identify and recruit other WorldVentures representatives to join him. *Id.* at *1–2. In granting the preliminary injunction, the Court found that Rogers possessed and already used WorldVenstures' trade secrets to compete with WorldVentures, so irreparable harm could be presumed. *Id.* at *7.

Here, Counter-Defendants are in possession of Semtech's confidential information and trade secrets. Stingu retains possession of at least one electronic device containing Semtech's confidential information and trade secrets. Read Decl. ¶ 12; Brown Decl. ¶ 41. Dassanayake retains possession of Semtech's confidential information and trade secrets that he emailed to his personal email account. Brown Decl. ¶ 37. Like the former employee in *WorldVentures*, Counter-Defendants are in a position to use, and are using, Semtech's trade secrets, as evident

from Spark's demonstration of a wireless charging solution similar to Semtech's, and Spark's solicitation activities regarding a Semtech customer. Brown Decl. ¶¶ 35-36.

Semtech faces further substantial threats of irreparable harm if an injunction is not granted. If Counter-Defendants use Semtech's confidential information and trade secrets, "that could result in a loss of value to the trade secrets and information itself, as well as a loss to [Semtech's] business." *Stoneeagle Services*, 2011 WL 13129085, at *3. Additionally, Dassanayake's offer to undercut Semtech's pricing indisputably demonstrates that Spark is targeting Semtech customers, threatening a loss of those customers. "The loss of good will and customers is generally considered an unquantifiable risk." *TransPerfect Translations, Inc. v. Leslie*, 594 F. Supp. 2d 742, 757 (S.D. Tex. 2009).

Finally, given Spark's hiring practices and the similarity of its business to Semtech, the disclosure and use of Semtech's confidential information and trade secrets by Counter-Defendants will continue absent an injunction. "Where there is a high degree of similarity between the employee's former and future employer, it becomes likely, although not certain that the former's confidential information will be used and disclosed in the course of his work." *McKissock*, 267 F. Supp. 3d at 858 (*quoting TransPerfect*, 594 F. Supp. 2d at 757). Spark purposefully hired Semtech employees who were intimately familiar with Semtech's trade secrets and employed those individuals in positions similar to those they held at Semtech. Spark hired precisely the people needed to misappropriate Semtech's wireless power trade secrets and co-opt Semtech's investment in developing wireless power solutions. As described above, Counter-Defendants have demonstrated their clear willingness to take and use Semtech's trade secret information for their own benefit. Under these facts, there is a strong likelihood that Semtech's former employees will further disclose and use Semtech's trade secrets.

VI. THE BALANCE OF EQUITIES TIPS STRONGLY IN SEMTECH'S FAVOR

The balance of equities strongly favors a preliminary injunction, on both the contract claims and the trade secret claims. First, Moore's breach of his non-compete obligations in the Purchase Agreement "is the epitome of irreparable injury," which Semtech will be forced to suffer if Moore and Spark are permitted to continue competing with Semtech. *McKissock*, 267 F. Supp. 3d at 858. That irreparable harm to a business's operations and competitiveness in the market is greater than any harm a defendant would suffer if the non-compete is enforced, particularly when the defendant cannot demonstrate that he is unable to work elsewhere. *Id.* at 859. That harm is also greater when any harm to the defendant is limited in duration. *Travelhost*, 2012 WL 2049321, at *5 (holding that defendant's harm was less than plaintiff's because defendant was only being held to contractual obligation to not compete for two years).

Here, if Moore and Spark are permitted to continue competing with Semtech, using Semtech's trade secrets no less, Semtech would lose the value of the confidential information it has invested a significant amount of time and money developing, along with its competitiveness in the market. Brown Decl. ¶¶ 9-13. On the other hand, Moore, an executive with over 30 years of experience in the semiconductor industry, cannot reasonably demonstrate that he would be unable to find work elsewhere in the semiconductor industry. Additionally, Semtech is not seeking to enjoin Moore and Spark from pursuing wireless power forever, but only for a period of 33 months from entry of the injunction, which time represents the remainder of the period set forth in the Purchase Agreement at the time Moore started competing with Semtech. Accordingly, any injunction prohibiting Moore and Spark from competing with Semtech in the wireless power market is necessarily limited in time.

Second, the harm from loss of confidential information and trade secrets outweighs any hardship imposed by complying with the legal and contractual obligations. *WorldVentures*, 2018

WL 4169049, at *7 (balance of harms weighed in favor of injunction because “any burden to [the former employee] is lawful and was knowingly agreed to by him”). If Semtech’s request for an injunction is denied, Semtech will be forced to compete against its own confidential information and trade secrets, diminishing their significant value built through significant time, effort, and investment. Brown Decl. ¶¶ 9-13. On the other hand, Semtech merely requests that Counter-Defendants comply with their contractual agreements and statutory legal obligations by refraining from retaining and using Semtech’s confidential information and trade secrets. Given that Counter-Defendants already expressly agreed to do just that in their agreements with Semtech and have no right to use Semtech’s trade secrets in the first place, any hardship to Counter-Defendants is lawful and was knowingly agreed to by them. *WorldVentures*, 2018 WL 4169049, at *7. Thus, any inconvenience of being held to their bargain and legal obligations is vastly outweighed by the real and substantial harm Semtech has already suffered, and will continue to suffer. *Id.* Accordingly, this Court should issue an injunction.

VII. THE PUBLIC INTEREST FAVORS AN INJUNCTION

The public interest clearly favors an injunction here, as there is a strong public interest in vindicating contract rights and enforcing compliance with trade secret law. “[I]t is in the public interest to uphold contracts and to enforce a remedy that is provided for by Texas law.” *McKissock*, 267 F. Supp. 3d at 860. More specifically, it is “in the public interest to enforce valid non-compete agreements.” *WorldVentures*, 2018 WL 4169049, at *7. While there is a public interest in competition and consumer choice, a preliminary injunction against Moore and Spark would not be anti-competitive, as several other companies compete in the wireless power market—lawfully. Brown Decl. ¶ 6. Thus, entering an injunction enforcing Moore’s covenant not to compete serves the public interest.

Moreover, “[t]he purpose of an injunction is to remove the advantage created by the misappropriation. . . . [T]he undoubted tendency of the law has been to recognize and enforce higher standards of commercial morality in the business world.” *AHS Staffing*, 2018 WL 3870067, at *12 (internal citations omitted). Thus, a preliminary injunction serves the public interest when it deprives defendants of the benefit of allegedly misappropriated trade secrets and, in so doing, enforces better business ethics by depriving the alleged wrongdoers of the benefit of their wrongdoing. *Id.*; *SPBS*, 2018 WL 4185522, at *14. Allowing Counter-Defendants’ deliberate acts of trade secret misappropriation to continue unabated fosters a business environment that ultimately discourages innovation and encourages short cuts by taking advantage of others’ work, undermining the public interest. Accordingly, a preliminary injunction here would serve the public interest.

VIII. CONCLUSION

Semtech will be irreparably harmed if Counter-Defendants are permitted to continue unfairly competing with Semtech by using Semtech’s own trade secrets. For these and the other reasons stated above, the Court should grant Semtech’s Motion and enter a preliminary injunction against Counter-Defendants.

Dated: November 21, 2018

Respectfully submitted,

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Semtech Corporation*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on November 21, 2018.

/s/ Roger D. Sanders

CERTIFICATE OF COMPLIANCE

Semtech's counsel has complied with the substantive meet-and-confer requirement in Local Rule CV-7(h) with respect to this motion. Counter-Defendants oppose this motion. Counsel for both sides first conferred by phone on November 15, 2018, with David Almeling, Ramon Ramirez, Roger Sanders, and Michael Young participating on behalf of Semtech and Aaron Davidson and Brian King participating on behalf of Counter-Defendants. At that time, counsel for the parties discussed the details of Semtech's proposal, and Semtech's counsel asked that Counter-Defendants' counsel determine whether Counter-Defendants would agree to the proposal or some variation of it. Counsel for both sides conferred by phone again on November 16, with Mr. Almeling and Mr. Ramirez participating on behalf of Semtech and Mr. Davidson participating on behalf of Counter-Defendants. Both sides agreed that Semtech would file its answer and counterclaims that day but would give Counter-Defendants' counsel more time to confer with his clients before filing any motions. Mr. Ramirez again called Mr. Davidson on November 19 to inquire whether Counter-Defendants had any comments on Semtech's proposal but was told Mr. Davidson had no new information to share. After that call, Mr. Ramirez also sent Counter-Defendants' counsel a proposed stipulation, inviting Counter-Defendants to provide any proposed changes. On November 20, Mr. Davidson emailed counsel for Semtech, stating that Counter-Defendants agreed to the terms of Semtech's proposed protective order but

otherwise rejecting Semtech's proposal and declining to provide any counterproposal.

Discussions have therefore conclusively ended in an impasse, leaving an open issue for the court to resolve.

/s/ David S. Almeling

/s/ Roger D. Sanders