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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

CARL ZEISS MEDITEC, INC.,

Plaintiff,

vs.

TOPCON MEDICAL SYSTEMS, INC.,  
TOPCON HEALTHCARE SOLUTIONS,  
INC., TOBIAS KURKZE, GREG  
HOFFMEYER, GENEVIEVE FAY,  
KATALIN SPENCER, KEITH BROCK,  
CHARLES GUIBORD, JR., JOSEPH  
CICCANESI, AND MICHAEL CHEN,

Defendants.

Case No: 19-4162 SBA

**ORDER GRANTING PLAINTIFF’S  
RENEWED MOTION FOR  
PRELIMINARY INJUNCTION**

REDACTED

Dkt. 131, 277, 286

Plaintiff Carl Zeiss Meditech, Inc. (“CZMI”) accuses Defendants Topcon Medical Systems, Inc. (“TMS”), and Topcon Healthcare Solutions, Inc. (“THS”) (collectively “Topcon,” unless otherwise noted), along with Tobias Kurzke (“Kurzke”) and seven other former CZMI employees (collectively “Former Employees”)<sup>1</sup> of misappropriating its trade secrets. The Third Amended Complaint (“TAC”), the operative pleading, alleges violations of the Federal Defend Trade Secrets Act (“DTSA”), 18 U.S.C. § 1836, et seq., and the California Uniform Trade Secrets Act (“CUTSA”), Cal. Civ. Code § 3426, et seq., and related claims.

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<sup>1</sup> The other Former Employees are: Greg Hoffmeyer (“Hoffmeyer”); Genevieve Fay (“Fay”); Katalin Spencer (“Spencer”); Keith Brock (“Brock”); Charles Guibord, Jr. (“Guibord”); Joseph Ciccanesi (“Ciccanesi”); and Dr. Michael Chen (“Chen”).

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1 The parties are presently before the Court on CZMI’s Renewed Motion for  
2 Preliminary Injunction. Dkt. 131, 130-4. CZMI seeks, inter alia, to enjoin Topcon from  
3 releasing a product called Glaucoma Module and to prevent Defendants from disclosing  
4 CZMI’s trade secrets to Topcon or any other entity. Having read and considered the papers  
5 filed in connection with this matter and being fully informed, the Court hereby GRANTS  
6 CZMI’s motion. The Court, in its discretion, finds this matter suitable for resolution  
7 without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

8 **I. BACKGROUND**

9 **A. FACTUAL SUMMARY**

10 **1. CZMI**

11 The parties are familiar with the facts of this case, which are summarized briefly  
12 herein to the extent they bear upon the instant motion. CZMI, a subsidiary of non-party  
13 Carl Zeiss Meditec AG (“Zeiss”), is a market leader in the ophthalmic diagnostics (“ODx”)  
14 industry. See TAC ¶ 33, Dkt. 127, 126-3; Supp. Elman Decl. Exs. 14, 28-29, 33, 37, Dkt.  
15 267-6, 271. Among CZMI’s ODx software products is FORUM, a sophisticated data  
16 management system designed for ophthalmology practices. See id. ¶ 41; Elman Decl. Ex.  
17 7, Dkt. 127-9. Forum has been on the market since 2009. Id.

18 Four years after launching FORUM, CZMI released a companion software product  
19 called Glaucoma Workplace, which operates on the FORUM platform. See Elman Decl.  
20 Ex. 9, 10, Dkt. 127-11, 127-12. Glaucoma Workplace is designed to diagnose and manage  
21 eye diseases, such as glaucoma, and works with ophthalmic devices, such as CZMI’s  
22 Humphrey Field Analyzer (“HFA”) and Cirrus OCT (Optical Coherence Tomography).  
23 See id.; Supp. Elman Decl. Ex. 33 (Patella Depo. at 73:24-76:5), Dkt. 271-7. An HFA is a  
24 device that performs a visual field analysis on a patient (i.e., peripheral vision) to diagnose  
25 potential eye conditions, such as glaucoma. Supp. Kurzke Decl. ¶ 8, Dkt. 279-3; TAC ¶ 73.  
26 The Cirrus OCT also is used to diagnose eye conditions by performing sophisticated OCT  
27 scans of the retina. See Elman Decl. Ex. 3 (Kurzke Depo. at 54:8-14), Dkt. 126-9.  
28 Glaucoma Workplace offers a unique software solution in that it combines OCT data and

1 visual field data from the HFA and presents the information in a visual way that helps  
2 practitioners formulate a glaucoma diagnosis. See id. (Kurzke Depo. 54:2-21.277:10-14);  
3 Supp. Elman Decl. Ex. 33 (Patella Depo. at 75:11-76:5).

4 Defendant Kurzke worked at CZMI and Zeiss over the course of approximately  
5 thirteen years. He started with Zeiss in January 2006, and later joined CZMI in 2015. See  
6 Supp. Kurzke Decl. ¶ 3. At CZMI, he served as a Senior Product Manager from August  
7 2015 until April 2018. See id. In that capacity, Kurzke oversaw Glaucoma Workplace and  
8 another product, Retina Workplace. See Geller Decl. Ex. A (Kurzke Depo. at 62:2-26),  
9 Dkt. 142-5. He also worked with the product teams in charge of Cirrus OCT and the HFA.  
10 See Elman Decl. Ex. 3 (Kurzke Depo. at 46:13-23). In January 2016, Kurzke transferred  
11 his responsibilities for Glaucoma Workplace to Claudia Wasch. See id.

12 Kurzke’s employment with CZMI was governed by a Trade Secret and Confidential  
13 Protection Information Agreement (“Trade Secret Agreement”). See id. Ex. 12 ¶ 4 (copy of  
14 Trade Secret Agreement executed by Kurzke on March 19, 2015), Dkt. 126-13. This  
15 agreement forbade him from using or disclosing any company confidential information  
16 belonging to CZMI while employed and after his separation. See id. In addition, Kurzke  
17 agreed “that immediately upon termination of employment ... [he] shall return to Company  
18 all Company property ... in all formats ... including all Confidential Information [and] ...  
19 external storage devices....” Id. ¶ 7. Finally, he acknowledged in the agreement that CZMI  
20 has “the right to injunctive relief to restrain and enjoin any actual or threatened breach of  
21 the provisions of [the Trade Secret Agreement].” Id. ¶ 9.<sup>2</sup>

## 22 2. Topcon

23 In or about 2017, Topcon Corporation incorporated a new subsidiary, THS, to create  
24 software solutions “for the eye-care industry and as the software and tele-ophthalmology  
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28 <sup>2</sup> The Trade Secret Agreement expressly applies to employment with Zeiss and any  
of its subsidiaries or affiliates, including CZMI. Id.

1 arm of Topcon Corporation.”<sup>3</sup> See Nelson Decl. ¶ 5, Dkt. 5. According to CZMI, in 2018,  
2 Topcon, with assistance from two former CZMI employees now at Topcon, began  
3 recruiting CZMI employees to help Topcon develop ODx products to compete with CZMI.  
4 See TAC ¶ 63. Topcon allegedly focused on recruiting CZMI’s employees with diverse  
5 work experience and who had knowledge of the company’s trade secrets and confidential  
6 information pertaining to CZMI’s ODx products. See *id.* Topcon denies having engaged in  
7 any such targeted recruitment effort. See Topcon Opp’n at 9, Dkt. 142-8.

8 Kurzke was the first of the Former Employees to leave CZMI for THS. He resigned  
9 from CZMI on April 27, 2018, and began working for THS on April 30, 2018. TAC ¶ 139;  
10 Elman Decl. Ex. 3 (Kurzke Depo. at 181:1-5, 90:14-16). After Kurzke joined Topcon, the  
11 other Former Employees (Hoffmeyer, Fay, Spencer, Ciccanesi, Guibord, Brock and Chen)  
12 followed suit. See TAC ¶¶ 114, 139, 140, 152.

13 In the beginning of 2019, THS launched a software platform called Harmony, which  
14 was intended to compete with FORUM. See Elman Decl. Ex. 3 (Kurzke Depo. at 202:21-  
15 203:1). Since 2017, Topcon has been developing Glaucoma Module (as an add-on to  
16 Harmony) to compete directly with Glaucoma Workplace. See Geller Decl. Ex. A (Kurzke  
17 Depo. at 214:5-16; 215:4-10); Trefethen Decl. ¶ 8, Dkt. 143-8. Topcon has already  
18 launched Glaucoma Module in Latin America and currently is seeking preliminary  
19 approval to sell Glaucoma Module in the United States. See Supp. Elman Decl. Ex. 12  
20 (Schmid Depo at 105:19-108:5); Ex. 13; Ex. 14; Ex. 15. Ex. 16 (Ferro Depo. at 126:3-9),  
21 Dkt. 271-2–271-5.

22 CZMI alleges it has spent over a decade and millions of dollars in developing its  
23 ODx products, including FORUM and Glaucoma Workplace. See Pl.’s Revised Reply at  
24 13 (citing TAC ¶¶ 33-40 & Elman Decl. Exs. 5, 6), Dkt. 270. According to CZMI, Topcon  
25 has been able to develop Glaucoma Module in a much shorter window of time due to the  
26 unfair advantage it gained by exploiting CZMI’s trade secrets provided by Kurzke and  
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28 <sup>3</sup> Topcon Corporation was previously named as a party in this action but was  
dismissed upon stipulation by the parties. Dkt. 183.

1 other Former Employees. See id. The centerpiece of CZMI’s claims, and the foundation of  
2 the instant motion for preliminary injunction, is Kurzke’s admitted retention of an external  
3 hard drive (“Hard Drive”) containing over 35,000 confidential, proprietary and trade secret  
4 information files belonging to CZMI. See Pl.’s Renewed Mot. at 1, Dkt. 130-4. CZMI  
5 further alleges that other of the Former Employees downloaded CZMI confidential  
6 business, marketing and pricing information relating to Glaucoma Workplace before  
7 onboarding with Topcon. See id. at 6.

### 8 **3. Alleged Misappropriation of Trade Secrets**

9 On April 14, 2018, after accepting Topcon’s job offer but before resigning from  
10 CZMI, Kurzke copied a number of files on the Hard Drive that he used to back-up his  
11 company laptop. See Elman Decl. Ex. 2 (listing of files stored on the Hard Drive),  
12 Dkt. 127-4; Kurzke Decl. ¶ 13, Dkt. 143-4; TAC ¶ 7. The Hard Drive contains over 35,000  
13 files that CZMI considers confidential, along with a cloned copy of Kurzke’s CZMI  
14 workstation. See Elman Decl. Ex. 2 Upon leaving CZMI, Kurzke relinquished his laptop  
15 to CZMI; however, he did not turn in the Hard Drive or notify CZMI of its existence. See  
16 Elman Decl. Ex. 3 (Kurzke Depo. at 93:7-14, 97:2-13); Burton Decl. ¶ 9, Dkt. 148-6.

17 CZMI contends that after joining Topcon, Kurzke accessed numerous files stored on  
18 the Hard Drive containing CZMI trade secrets, including DICOM files containing HFA  
19 data and sensitive financial data, business plans and customer information. See Pl.’s  
20 Revised Reply at 7-12; Elman Decl. Ex. 2; see also Supp. Elman Decl. Ex. 2 (D’Souza  
21 Depo. at 113:13-14). DICOM is a “vendor neutral standard” to exchange medical images  
22 and information across vendors and systems. See Elman Decl. Ex. 3 (Kurzke Depo. at  
23 41:14-16). CZMI contends that, while working for Topcon, Kurzke accessed DICOM files  
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1 from his Hard Drive, including a collection of data files and reports generated by the HFA.<sup>4</sup>  
2 See id. Exs. 21, 22. CZMI claims that the specific set of HFA reports stored on the Hard  
3 Drive is confidential and used specifically to test CZMI products. See Pl.’s Revised Reply  
4 at 7-9. While employed by Topcon, Kurzke, in his capacity as Topcon’s Director of  
5 Product Management, shared those data files with others at Topcon and with third party  
6 software developer Calcey Technologies LLC (“Calcey”). See Supp. Elman Decl. Exs. 21-  
7 22 (HFA data files sent to Calcey). On behalf of Topcon, Calcey used those files to  
8 develop and test SuperNorm, a “crucial” feature of Glaucoma Module. See id. Ex. 23.

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<sup>4</sup> As noted, an HFA is a diagnostic device sold by CZMI that evaluates a patient’s peripheral vision. After a patient completes a session with an HFA, the device creates and transmits a data set of information to FORUM. See Supp. Elman Decl. Ex. 29 (D’Souza Depo. at 205:10-23), Dkt. 268-7. When FORUM receives the data, the software begins a background process to create a report that can then be accessed through CZMI’s Glaucoma Workplace. See id. at 205:7-208:20. The clinician can use Glaucoma Workplace to generate a report containing the results of the patient’s visual field examination in a number of formats, including a PDF file which can be printed. See id.; Isola Decl. Ex. C (Wasch Depo. at 123:18-124:15). Dkt. 277-10.

1 Module. See id. Exs. 18 (Response to Interrog. No. 2), 19 (Resp. to RFA No. 12, Supp.  
2 Responses to RFA Nos. 5, 6, 7, 22).<sup>5</sup>

3 **B. PROCEDURAL HISTORY**

4 On July 19, 2019, CZMI filed suit in this Court against Topcon and the Former  
5 Employees for trade secret misappropriation under federal and state law and related claims.  
6 CZMI filed a motion for preliminary injunction and Defendants filed motions to dismiss  
7 pursuant to Federal Rule of Civil Procedure 12(b)(6). See Dkt. 9, 37, 49. The Court  
8 granted the motion to dismiss with leave to amend and denied the motion for preliminary  
9 injunction as moot, in light of said ruling. See Dkt. 75.

10 CZMI filed a TAC on January 31, 2020. The causes of action alleged therein consist  
11 of: (1) misappropriation under DTSA; (2) aiding and abetting misappropriation under  
12 DTSA; (3) misappropriation under the CUTSA; (4) breach of contract; (5) patent  
13 infringement (as to Topcon only); and (6) tortious interference. See Dkt. 195, 193-4. On  
14 motion of Topcon, the Court dismissed the patent infringement claim. See Dkt. 285.

15 CZMI has now renewed its request for an injunction against Topcon and Kurzke,  
16 individually. See Pl.’s Renewed Mot., Dkt 130-4 at 2. As relief, the motion seeks an order:  
17 (1) directing all Defendants to immediately cease and desist disclosure of CZMI Trade  
18 Secrets to Topcon or any other third party; (2) enjoining all Defendants from using any  
19 CZMI Trade Secrets and CZMI confidential information that is uncovered through an  
20 ongoing forensic examination; and (3) enjoining Topcon from releasing Glaucoma Module  
21 and any other ODx product using CZMI trade secrets in the United States. See id.<sup>6</sup>

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24 <sup>5</sup> Defendants do not dispute the foregoing, but, citing Kurzke’s supplemental  
25 declaration filed in support of their surreply, contend that Brock, Guibord and Ciccanesi do  
26 not work on Glaucoma Module. See Defs.’ Surreply at 6-7 (citing Suppl. Kurzke Decl.  
27 ¶ 9). However, Kurzke merely stated that he was informed and believes that these  
individuals “do not work, and have not worked, on Glaucoma Module,” but does not state  
the basis for such information and belief. See Suppl. Kurzke Decl. ¶ 9.

28 <sup>6</sup> In its Revised Reply, CZMI now limits the proposed injunction to Glaucoma  
Module specifically.

1 Topcon and Former Employees filed oppositions to CZMI's renewed motion, which  
2 argue, inter alia, that CZMI had failed to adequately identify the trade secrets that had  
3 allegedly been misappropriated. CZMI filed a single reply, which provides more specific  
4 detail regarding the trade secrets underlying the renewed motion. In response, Defendants  
5 complained that CZMI's reply presented new arguments and new matter, and therefore,  
6 they should be permitted to file a surreply. The Court thus directed CZMI to file a revised,  
7 superseding reply (including supporting exhibits), focusing on the actual issues in dispute.  
8 Dkt. 266. The Court also permitted Defendants to file a joint surreply in response to the  
9 revised reply.<sup>7</sup> Dkt. 266, 270, 279. The parties have timely filed the briefs, as directed by  
10 the Court. Defendants have also filed objections to certain of the exhibits presented by  
11 CZMI with its revised reply. Dkt. 278.<sup>8</sup>

## 12 **II. LEGAL STANDARD**

13 "A plaintiff seeking a preliminary injunction must establish that he is likely to  
14 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
15 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in  
16 the public interest." Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th  
17 Cir. 2011) (quoting Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)). "The  
18 first factor under Winter is the most important -- likely success on the merits." Garcia v.  
19 Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015).

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22 <sup>7</sup> In its revised reply, CZMI purportedly seeks an injunction against other Former  
23 Employees, despite only providing notice to Topcon and Defendant Kurzke in its Notice of  
24 its renewed motion. Compare Pl.'s Revised Reply at 1, Dkt. 267-4 with Pl.'s Renewed  
25 Mot. at 1, Dkt. 131. Since CZMI has failed to provide proper notice to other Former  
26 Employees as required, the Court does not consider the requested injunction to be directed  
against any of the Former Employees other than Kurzke. See United States v. Microsoft  
Corp., 147 F.3d 935, 944 (D.C. Cir. 1998) ("The purpose of Rule 65(a)(1)'s notice  
requirement is to allow the opposing party a fair opportunity to oppose the preliminary  
injunction and compliance is mandatory.")

27 <sup>8</sup> Though this should be obvious, the Court reminds the parties, and CZMI in  
28 particular, that citations to the record should be as specific as possible. The failure to  
provide the requisite pinpoint citations delays resolution of the matter presented to the  
Court.



1           Alternatively, a preliminary injunction may issue where “serious questions going to  
2 the merits were raised and the balance of hardships tips sharply in plaintiff’s favor,” if the  
3 plaintiff “also shows that there is a likelihood of irreparable injury and that the injunction is  
4 in the public interest.” Cottrell, 632 F.3d at 1135. This reflects the Ninth Circuit’s  
5 “sliding scale” approach, in which “the elements of the preliminary injunction test are  
6 balanced, so that a stronger showing of one element may offset a weaker showing of  
7 another.” Id. at 1131. In all cases, at an “irreducible minimum,” the party seeking an  
8 injunction “must demonstrate a fair chance of success on the merits, or questions serious  
9 enough to require litigation.” Pimentel v. Dreyfus, 670 F.3d 1096, 1105-106 (9th Cir. 2012)  
10 (internal quotation and citation omitted).

### 11 **III. DISCUSSION**

#### 12 **A. EVIDENTIARY MATTERS**

13           Defendants object to certain of the exhibits attached to the Supplemental Declaration  
14 of Jeremy Elman filed by CZMI in support of its renewed reply. See Defs.’ Jt. Objections  
15 at 1, Dkt. 278. Specifically, Defendants object to Exhibits 3, 4, 5, 6, 7, 8, 10, 13, 14, 17,  
16 21, 22, 25 and 26 for lack of foundation, see Fed. R. Evid. 602, and hearsay, see id. 802.  
17 These objections are both procedurally and substantively flawed.

18           Defendants’ objections do not comply with the local rules. As a general matter, any  
19 evidentiary objections must be set forth “within the reply brief or memorandum.” Civ. L.R.  
20 7-3(c).<sup>9</sup> Here, Defendants improperly accompanied their surreply with a separate brief  
21 setting forth numerous evidentiary objections. In view of Defendants’ failure to comply  
22 with the Local Rules, the Court overrules the objections. Tri-Valley CARES v. U.S. Dept.  
23 of Energy, 671 F.3d 1113, 1131 (9th Cir. 2012) (“Denial of a motion as the result of a  
24 failure to comply with local rules is well within a district court’s discretion.”); Christian v.  
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26           <sup>9</sup> Pursuant to Rule 7-3(d)(1), a party may file a separate Objection to Reply  
27 Evidence, but that filing is not to exceed five pages. However, the rule permitting a  
28 separate objection does apply where, as here, the Court has permitted a party to file a brief  
in response to the reply. In any event, Defendants’ objection is seven pages, exceeding the  
aforementioned five-page limit.

1 Mattel, Inc., 286 F.3d 1118, 1129 (9th Cir. 2002) (“The district court has considerable  
2 latitude in managing the parties’ motion practice and enforcing local rules that place  
3 parameters on briefing.”).

4 The above notwithstanding, Defendants’ objections are not well taken. As this  
5 Court has previously explained, “the Federal Rules of Evidence do not strictly apply to  
6 preliminary injunction proceedings.” Stardock Sys., Inc. v. Reiche, No. C 17-07025 SBA,  
7 2018 WL 7348858, at \*6 (N.D. Cal. Dec. 27, 2018) (internal quotations and citations  
8 omitted). The reason for the relaxed evidentiary rules is that the procedures relevant to  
9 seeking a preliminary injunction “are less formal” and the evidence is “less complete than  
10 in a trial on the merits.” Univ. of Texas v. Camenish, 451 U.S. 390, 395 (1981). As a  
11 result, the Court has the discretion to consider otherwise inadmissible or hearsay evidence  
12 in connection with a motion for preliminary injunction. See Flynt Distrib. Co. v. Harvey,  
13 734 F.2d 1389, 1394 (9th Cir. 1984) (holding that district courts “may give even  
14 inadmissible evidence some weight” when deciding whether to issue a preliminary  
15 injunction); Republic of the Philippines v. Marcos, 862 F.2d 1355, 1363 (9th Cir. 1988) (en  
16 banc) (“It was within the discretion of the district court to accept this hearsay for purposes  
17 of deciding whether to issue the preliminary injunction.”). To the extent there are any  
18 evidentiary flaws in the challenged exhibits, such issues “properly go to weight rather than  
19 admissibility.” Stardock Sys., 2018 WL 7348858, at \*6. Defendants’ objections are  
20 therefore overruled.

## 21 **B. LIKELIHOOD OF SUCCESS ON THE MERITS**

### 22 **1. Misappropriation of Trade Secrets**

23 The elements of a claim for misappropriation of trade secrets under DTSA and  
24 CUTSA are: (1) the plaintiff owned a trade secret; (2) the defendant acquired, disclosed, or  
25 used the plaintiff’s trade secret through improper means; and (3) the defendant’s actions  
26 damaged the plaintiff. Sargent Fletcher, Inc. v. Able Corp., 110 Cal. App. 4th 1658, 1665  
27 (2003) (setting forth the elements under CUTSA); Alta Devices, Inc. v. LG Elecs., Inc., 343  
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1 F. Supp. 3d 868, 877 (N.D. Cal. 2018) (stating that the elements under DTSA and CUTSA  
2 are essentially the same).

3 A “trade secret” is defined as “information, including a formula, pattern,  
4 compilation, program, device, method, technique or process,” that (a) “[d]erives  
5 independent economic value, actual or potential, from not being generally known to the  
6 public or to other persons who can obtain economic value from its disclosure or use” and  
7 (b) “[i]s the subject of efforts that are reasonable under the circumstances to maintain its  
8 secrecy.” Cal. Civ. Code § 3426.1(d); see also 18 U.S.C. § 1839(3) (defining “trade secret”  
9 as “financial, business, scientific, technical, economic, or engineering information,  
10 including patterns, plans, compilations, program devices, formulas, designs, prototypes,  
11 methods, techniques, processes, procedures, programs, or codes....”).

12 Under DTSA and CUTSA, “misappropriation” is defined as either (1) the  
13 “[a]cquisition of a trade secret by another person who knows or has reason to know that the  
14 trade secret was acquired by improper means,” or (2) the “[d]isclosure or use of a trade  
15 secret of another without express or implied consent.” 18 U.S.C. § 1839(5) (emphasis  
16 added); Cal. Civ. Code § 3426.1(b). E.g., Robillard v. Opal Labs, Inc., 428 F. Supp. 3d  
17 412, 451-52 (D. Or. 2019) (“The DTSA ‘contemplates three theories of liability:  
18 (1) acquisition, (2) disclosure, or (3) use.’”) (citations omitted).

19 “Because direct evidence of misappropriation and misuse is not always available,  
20 plaintiffs can rely on circumstantial evidence to prove their case.” M.A. Mobile Ltd. v.  
21 Indian Inst. of Tech. Kharagpur, 400 F. Supp. 3d 867, 893 (N.D. Cal. 2019). “In most  
22 cases plaintiffs must construct a web of perhaps ambiguous circumstantial evidence from  
23 which the trier of fact may draw inferences which convince him that it is more probable  
24 than not that what plaintiffs allege happened did in fact take place.” UniRAM Tech., Inc.  
25 v. Taiwan Semiconductor Mfg. Co., 617 F. Supp. 2d 938, 944 (N.D. Cal. 2007).

26 As will be explained below, CZMI has shown a likelihood of success on, or  
27 alternatively, serious questions going to the merits of its DTSA and CUTSA claims based  
28 on either “acquisition” or “disclosure or use” theories of misappropriation.



1 upcoming departure from CZMI.” See Kurzke Decl. ¶ 13. These explanations strain  
2 credulity.

3 As an initial matter, the Hard Drive was issued to Kurzke by the Information  
4 Technology Department at CZMI, not Zeiss. See Elman Decl. Ex. 3 (Kurzke Depo. at  
5 95:2-5). To the extent that Kurzke, in fact, believed that the Hard Drive belonged to Zeiss  
6 as opposed CZMI, he should have, at a minimum, attempted to return the hard drive to  
7 Zeiss or at least notify Zeiss that it was in his possession. He did neither. See Burton Decl.  
8 ¶ 12. Indeed, in view of the clear obligations imposed upon him under the Trade Secret  
9 Agreement, Kurzke should have alerted CZMI about the Hard Drive during his exit  
10 interview. See Comet Techs. United States of Am. Inc. v. Beuerman, No. 18-CV-01441-  
11 LHK, 2018 WL 1990226, at \*4 (N.D. Cal. Mar. 15, 2018) (“[I]f Defendant was at all  
12 unclear about whether taking information was a breach of Defendant’s duty to maintain  
13 secrecy, the exit interview would have dispelled any doubts.”). Instead, Kurzke chose to  
14 stay silent about the Hard Drive and his concomitant possession of 35,000 CZMI computer  
15 files. Burton Decl. ¶ 10.<sup>10</sup>

16 As for his purported concerns related to his personal files, it is axiomatic that Kurzke  
17 could have quickly and easily transferred or deleted his personal files from the Hard Drive.  
18 That aside, the personal files on the Hard Drive also were on his laptop. Yet, Kurzke  
19 relinquished his laptop to CZMI but not the Hard Drive. See Geller Decl. Ex. A (Kurzke  
20 Depo. at 110:8-21). Finally, if Kurzke’s actual motivation to retain the Hard Drive was to  
21 protect the privacy of his personal information, there would be absolutely no reason for him  
22 to have accessed any of the files belonging to CZMI, let alone transmit some of those files

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23  
24 <sup>10</sup> Defendants fault CZMI staff for not asking Kurzke about the Hard Drive during  
25 his exit interview. However, staff did not ask about the Hard Drive because they did not  
26 know it existed. See Burton Decl. ¶ 9. Had they been aware of the Hard Drive, CZMI  
27 would have listed the device on the checklist of equipment to be returned. See id. Nor  
28 would CZMI have reason to ask about the Hard Drive, since Kurzke completed and signed  
a company Termination Checklist indicating that he had returned all company equipment  
and that he had “returned all Zeiss property and confidential proprietary documents.” Id.  
Ex. B. As noted above, under the terms of his Trade Secret Agreement, Kurzke had no  
right to possess any of CZMI’s confidential or proprietary files after his separation of  
employment. See Elman Decl. Ex. 12 ¶ 4.

1 to others at Topcon and a third-party vendor assisting Topcon in the development of  
2 Glaucoma Module.

3 Equally untenable is Defendants' explanation for Kurzke's decision to copy CZMI  
4 files onto the Hard Drive shortly before starting with Topcon. Kurzke alleges that he was  
5 simply backing up his laptop as part of his normal practice and to facilitate the transfer of  
6 files to his successor. See Kurzke Decl. ¶ 13. However, neither Zeiss nor CZMI  
7 authorized Kurzke to make backups of confidential information (as defined in the Trade  
8 Secret Agreement) on external hard drives. See Burton Decl. ¶¶ 8, 14. Additionally,  
9 Kurzke's claim that he was preparing the files for his successor makes no logical sense,  
10 since Kurzke retained the Hard Drive after he left CZMI.

11 Finally, Defendants contend that there was no misappropriation because none of the  
12 files Kurzke accessed was used to develop any competing ODx products. As will be  
13 discussed in more detail below, that simply is untrue. In any event, misappropriation based  
14 on "acquisition" is not dependent on the defendant's use of trade secrets. AUA Private  
15 Equity Partners, LLC v. Soto, No. 1:17-CV-8035-GHW, 2018 WL 1684339, at \*6  
16 (S.D.N.Y. Apr. 5, 2018) ("Courts evaluating claims for misappropriation of trade secrets  
17 under the various state UTSA's that define 'misappropriation' in terms nearly identical to  
18 the DTSA have found that liability attaches to employees who ... abscond with their  
19 employers' trade secrets, even in the absence of any subsequent use or disclosure of the  
20 information.").

21 In sum, the Court finds that CZMI has demonstrated a likelihood of success on its  
22 claims for misappropriation of trade secrets based on acquisition through improper means.  
23 E.g., Cutera, Inc. v. Lutronic Aesthetics, Inc., 444 F. Supp. 3d 1198, 1207-208 (E.D. Cal.  
24 2020) (concluding that the plaintiff had demonstrated a likelihood that the defendants  
25 misappropriated confidential information where forensic evidence showed information was  
26 downloaded from work devices to personal computers); WeRide Corp. v. Kun Huang, 379  
27 F. Supp. 3d 834, 848 (N.D. Cal. 2019), modified in part, No. 5:18-CV-07233 EJD, 2019  
28 WL 5722620 (N.D. Cal. Nov. 5, 2019) (finding that a former employee's misappropriation

1 was evidenced by his copying and retaining his former employer’s confidential files) (citing  
2 cases); Comet Techs. United States of Am. Inc., 2018 WL 1990226, at \*4 (finding a  
3 likelihood of success based on acquisition of trade secrets by improper means where the  
4 defendant, who was subject to confidentiality agreement, denied possessing external  
5 memory devices containing the plaintiff’s confidential information property during his exit  
6 interview but later conceded that he took such devices before going to work for the  
7 plaintiff’s competitor); see also HighMark Digital, Inc. v. Casablanca Design Centers, Inc.,  
8 No. CV1806105SJOJPR, 2020 WL 2114940, at \*21 (C.D. Cal. Mar. 26, 2020) (“A jury  
9 could conclude that Winter misappropriated HighMark’s trade secrets when he retained the  
10 company’s laptop and external hard drive seven to ten business days after he resigned and  
11 returned the laptop wiped of its data.”); Henry Schein, Inc. v. Cook, 191 F. Supp. 3d 1072,  
12 1077 (N.D. Cal. 2016) (finding the plaintiff was likely to succeed on its DTSA and CUTSA  
13 claims where the defendant, though subject to a confidentiality agreement, “e-mailed and  
14 downloaded, to her personal devices, confidential information from HSI before leaving her  
15 employment to work at a competitor”).

16 ***b) Disclosure or Use***

17 As an alternative matter, CZMI has made a compelling showing of “[d]isclosure or  
18 use of a trade secret of another without express or implied consent.” 18 U.S.C. § 1839(5).  
19 As noted, Kurzke copied confidential files from his laptop to the Hard Drive after accepting  
20 Topcon’s offer of employment but before giving notice to CZMI. Other Former Employees  
21 also copied confidential information to external memory devices before leaving CZMI for  
22 Topcon. The timing of their actions “strongly suggests they intended to use the information  
23 in their employment with [Topcon].” Cutera, 444 F. Supp. 3d at 1207 (finding that the  
24 confidential information obtained by former employees shortly before joining their former  
25 employer’s competitor indicated their intention to use the information for the benefit of  
26 their new employer); see also Redapt Inc. v. Parker, No. 2:20-CV-00862-JRC, 2020 WL  
27 3128859, at \*4 (W.D. Wash. June 11, 2020) (“The timing of [defendant]’s actions,  
28 including setting up meetings with [plaintiff]’s competitor, is strong circumstantial

1 evidence that [defendant] copied the CRM database with the intent to offer confidential  
2 information to [plaintiff]’s competitors.”); Montana Silversmiths, Inc. v. Taylor Brands,  
3 LLC, 850 F. Supp. 2d 1172, 1184 (D. Mont. 2012) (finding that the timing of the individual  
4 defendants’ employment with the entity defendant’s launch of a competing design  
5 presented “sufficient circumstantial evidence from which a reasonable jury could conclude  
6 that Defendants misappropriated [the plaintiff’s] trade secrets”).

7 Defendants’ use and/or disclosure of CZMI’s trade secrets is further shown by  
8 Kurzke’s admitted downloading of tens of thousands of confidential files from his laptop  
9 and sharing some of that information with Topcon and at least one third party vendor. In  
10 particular, CZMI points to evidence that, while employed by Topcon, Kurzke emailed 145  
11 HFA reports to Calcey, a third-party vendor assisting Topcon in testing Glaucoma Module.  
12 See Supp. Elman Decl. Ex. 27.<sup>11</sup> Defendants do not dispute that Kurzke transmitted those  
13 and other HFA and OCT files to persons at Topcon and to Calcey. See id. Ex. 34. Nor do  
14 they dispute that he was acting in the course and scope of his employment with Topcon,  
15 thereby inculcating Topcon. See Brain Injury Ass’n of California v. Yari, No. 19-CV-  
16 5912, 2020 WL 3643482, at \*5-\*6 (C.D. Cal. Apr. 30, 2020) (finding that misappropriation  
17 is “within the scope of employment when it is performed, at least in part, to benefit the  
18 employer, though the employer may forbid it”). Rather, Defendants argue that HFA reports  
19 are intended for disclosure to third parties and therefore cannot be considered confidential.  
20 See Defs.’ Surreply at 4. Citing the deposition testimony of several CZMI employees,  
21 Defendants allege that HFA reports are PDF documents that are publicly viewable by the  
22 end user and are considered the property of the doctor using the HFA. See id. Defendants  
23 add that CZMI uses HFA reports for public marketing purposes (such as in brochures and  
24 public product demonstrations) and that the file itself is readable by any number of DICOM  
25 viewers freely available to the public. See id. at 5.

26  
27  
28 <sup>11</sup> Kurzke sent at least 145 HFA reports to Calcey, 117 of them were in his possession at CZMI, and 28 that he created after he left CZMI from documents on the Kurzke Hard Drive. See id. Ex. 24-25.



1 Defendants' arguments regarding the HFA reports miss the mark. CZMI is not  
2 claiming that *any* HFA report, standing alone, is a confidential trade secret. Rather, CZMI  
3 asserts—and Defendants do not dispute—that it is *the particular set of HFA test reports*  
4 that Kurzke copied to and accessed from the Hard Drive that is confidential. See Pl.'s Rev.  
5 Reply at 7-9. Nor do Defendants challenge CZMI's contention that it expended time and  
6 resources assembling reports representing various test results for their usefulness in product  
7 testing. See id. Indeed, Kurzke himself confirmed the important value of the set of reports,  
8 explaining in an email to Calcey that the 145 reports were especially useful because their  
9 data patterns reflect "[a] good mix of what we will find in environments where this  
10 [Topcon] product will eventually be used." Supp. Elman Decl. Ex. 27. These reports  
11 facilitated Calcey's ability to test a "crucial" feature of Glaucoma Module, based on criteria  
12 provided to Calcey by Kurzke. See id. Ex. 23, 26. Indeed, Kurzke informed Calcey that  
13 "[w]e will need zero deviations or data extraction issues with these 145 reports to call  
14 [Calcey's work for Topcon] a success." Id. Ex. 27. Thus, the record persuades the Court  
15 that, even if an individual HFA report may not itself be confidential, the particular set of  
16 reports assembled by CZMI and copied by Kurzke, which contain a broad spectrum of  
17 examination scenarios, has independent economic value from not being generally known to  
18 the public.<sup>12</sup>

19 Defendants also overlooks the distinction between HFA *data* and an HFA *report*.  
20 The raw data generated by an HFA (following a patient examination) is in a DICOM  
21 format but is not automatically readable by a DICOM viewer because the data is  
22 "scrambled" in a manner proprietary to CZMI. See Supp. Elman Decl. Ex. 4, Dkt. 279-3.  
23 Kurzke acknowledged that for Topcon's Harmony software to replace FORUM, Topcon  
24 engineers needed a solution so that Harmony could translate raw DICOM data. See id.  
25 Kurzke admitted that it was "possible" that he accessed files from the Hard Drive to assist  
26

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27 <sup>12</sup> If Defendants are correct that HFA Reports are readily and publicly available, they  
28 fail to explain why they did not obtain the reports through such channels and supply them  
to Calcey.

1 the engineers in finding such a solution. See Elman Decl. Ex. 3 (Kurzke Depo. at 312:5-  
2 11). Notably, after the engineers communicated with Kurzke, they found a solution so that  
3 Harmony could read HFA data files in their native format. See id. at 237:12-21. While the  
4 Court has not been presented with any direct evidence that Kurzke supplied Topcon with  
5 CZMI’s proprietary raw data, the record circumstantially supports the inference that he did,  
6 or at least that he used CZMI’s proprietary information to assist them in doing so.

7 In sum, Defendants’ use and disclosure of CZMI’s HFA data files and reports show  
8 that CZMI will likely succeed in showing misappropriation of these secrets or at least has  
9 raised serious questions going to the merits of such claims.

## 10 2. Breach of Contract

11 CZMI’s fourth cause of action alleges that Kurzke, along with other Former  
12 Employees, breached his Trade Secret Agreement. To state a claim for breach of contract,  
13 express or implied, under California law, a plaintiff must allege: “(1) the contract, (2) the  
14 plaintiff’s performance of the contract or excuse for nonperformance, (3) the defendant’s  
15 breach, and (4) the resulting damage to the plaintiff.” CDF Firefighters v. Maldonado, 158  
16 Cal. App. 4th 1226, 1239 (2008).

17 Under the terms of his Trade Secret Agreement, Kurzke agreed that he would not:  
18 (1) directly or indirectly, utilize or disclose to anyone outside of Zeiss (or its subsidiaries),  
19 or permit access by unauthorized persons or entities to, any confidential information; and  
20 (2) “[u]nder no circumstances ... utilize any, or disclose to any third parties, Company  
21 Confidential Information after [his] termination with Company.” Elman Decl. Ex. 12 ¶ 4.  
22 He also agreed to return all CZMI confidential information and “external storage devices.”  
23 See id. ¶ 9.

24 Kurzke breached the above provisions of his Trade Secret Agreement, inter alia, by  
25 copying files onto and retaining the Hard Drive (which contained CZMI’s confidential  
26 information), and by accessing CZMI’s proprietary set of test HFA reports and sending  
27 them to a third-party vendor assisting Topcon with the development of Glaucoma Module.  
28 Although Defendants maintain that such reports are not confidential, the Court rejects that

1 contention for the reasons previously discussed. Kurzke’s disclosure to a third party of  
2 confidential information belonging to CZMI violates the plain terms of his Trade Secret  
3 Agreement. The Court therefore finds that CZMI has demonstrated a likelihood of success  
4 on its breach of contract claim as to Kurzke.

5 **C. IRREPARABLE HARM**

6 The second requirement for obtaining a preliminary injunction is that the plaintiff is  
7 likely to suffer irreparable harm absent the relief requested. Winter, 555 U.S. at 21. CZMI  
8 contends that there is a presumption of irreparable harm in trade secret cases. Defendants  
9 counter that no such presumption exists. The Ninth Circuit has not reached the question of  
10 whether a court may presume irreparable harm in trade secret cases. Nonetheless, courts  
11 within this District have consistently reached the conclusion that a plaintiff “will suffer  
12 irreparable harm if its proprietary information is misappropriated.” Comet Techs. United  
13 States of Am. Inc., 2018 WL 1990226, at \*5 (citing cases). Thus, the Court’s finding that  
14 CZMI is likely to succeed on its misappropriation claims is sufficient to support a finding  
15 of irreparable harm. See id.

16 In the alternative, even without the benefit the aforementioned presumption, the  
17 Court is persuaded by CZMI’s showing of irreparable harm. CZMI leads the market in  
18 ODx products, including its HFA and FORUM and Glaucoma Workplace software  
19 solutions. E.g., Supp. Elman Decl. Ex. 28 (Wasch Depo. at 321:23-322:2) (statement by  
20 CZMI’s Product Manager for Glaucoma Workplace that, as of December 2019, there were  
21 “essentially no other true competitors to Glaucoma Workplace”). Topcon is a direct  
22 competitor of CZMI and seeks to compete with Harmony and Glaucoma Module. As  
23 discussed above, the record suggests that Topcon, through Kurzke and Former Employees,  
24 have acquired, and in some instances used, confidential information belonging to CZMI to  
25 assist Topcon in developing Glaucoma Module. Courts concur that a defendant’s ability to  
26 gain a competitive advantage through the use of confidential information to develop a  
27 competing product is sufficient to constitute irreparable harm. E.g., Waymo LLC v. Uber  
28 Techs., Inc., No. C 17-00939 WHA, 2017 WL 2123560, at \*10 (N.D. Cal. May 15, 2017)

1 (defendant’s use of plaintiff’s trade secrets afforded it a “competitive edge” in the self-  
2 driving car industry, which constituted irreparable harm); see also Comet Techs. United  
3 States of Am. Inc., 2018 WL 1990226, at \*5 (“Plaintiff’s expenditure of considerable time  
4 and resources on the Da Vinci Project further supports a finding of irreparable harm  
5 because disclosure of the Da Vinci Project information will jeopardize Plaintiff’s  
6 competitive position.”); Saini v. Int’l Game Tech., 434 F. Supp. 2d 913, 919 (D. Nev. 2006)  
7 (“Public disclosure of a trade secret destroys the information’s status as a trade secret. This  
8 harms the trade secret owner by both depriving him of a property interest, and by allowing  
9 his competitors to reproduce his work without an equivalent investment of time and  
10 money.”).

11 Topcon argues that money damages should suffice to remedy any harm to CZMI.  
12 Defs.’ Surreply at 7. However, the “loss of trade secrets cannot be measured in money  
13 damages ... [because] a trade secret once lost ... is lost forever.” FMC Corp. v. Taiwan  
14 Tainan Giant Indus. Co., 730 F.2d 61, 63 (2d Cir. 1984). Moreover, CZMI’s potential loss  
15 of at least some market share due, in part, to Topcon’s ability to accelerate the development  
16 and launch of Glaucoma Module as a result of Defendants’ conduct would be extremely  
17 difficult to quantify. See Waymo LLC, 2017 WL 2123560, at \*11 (finding that it would  
18 “likely be futile to attempt, after the fact, to estimate the monetary value of injury suffered  
19 from either the loss of [plaintiff]’s competitive position in this nascent industry or the  
20 destruction of its trade secrets pertaining to the same”).

21 Lastly, Defendants argue that there is no “immediate threatened harm” because  
22 Glaucoma Module has been undergoing development for at least two years and that Topcon  
23 has not yet sought federal regulatory approval to sell the product. Defs.’ Surreply at 7.  
24 However, Topcon has already sold Glaucoma Module in Latin America and obtained  
25 preliminary FDA approval for Glaucoma Module for sale in the United States. See Supp.  
26 Elman Decl., Ex. 12 (Schmid Depo at 105:19-108:5); Ex. 13; Ex. 14; Ex. 15. Ex. 16 (Ferro  
27 Depo. at 126:3-9). Thus, the Court is satisfied that the likely irreparable harm discussed  
28 above is sufficiently imminent for purposes of a preliminary injunction.

1           **D. PUBLIC INTEREST**

2           The public interest is served by the protection of trade secrets and the enforcement  
3 of contractual commitments made by an employee to his or her employer. See Henry  
4 Schein, 191 F. Supp. 3d at 1078. Defendants do not contend otherwise but instead counter  
5 that CZMI’s claims are speculative and that the proposed injunction would stifle  
6 competition. See Topcon Opp’n at 19-20; Defs.’ Surreply at 7.

7           As discussed above, CZMI’s claims are far from speculative. To the contrary, the  
8 evidence shows that Kurzke copied and stored confidential and proprietary information  
9 belonging to CZMI on the Hard Drive and lacked candor regarding his possession of the  
10 Hard Drive at the time of his departure. After he started working for Topcon, Kurzke  
11 accessed files from the Hard Drive and disclosed them to a third-party assisting Topcon in  
12 the development of Glaucoma Module. As for stifling competition, Topcon’s acquisition  
13 and use of at least some of the trade secrets stored on the Hard Drive to develop a  
14 competing product is not “legitimate” competition. Waymo, 2017 WL 2123560, at \*12. In  
15 addition, “[w]hile California has a strong public policy in favor of competition, this interest  
16 yields to California’s interest in protecting a company’s trade secrets.” Bank of Am., N.A.  
17 v. Lee, No. CV 08-5546 CAS(JWJX), 2008 WL 4351348, at \*7 (C.D. Cal. Sept. 22, 2008).  
18 The Court finds that the public interest factor favors CZMI.

19           **E. BALANCE OF HARDSHIPS**

20           “To determine which way the balance of the hardships tips, a court must identify the  
21 possible harm caused by the preliminary injunction against the possibility of the harm  
22 caused by not issuing it.” University of Haw. Prof’l Assembly v. Cayetano, 183 F.3d 1096,  
23 1108 (9th Cir. 1999). As discussed above, CZMI has persuasively shown that it faces  
24 both serious and immediate harm absent an injunction. See, e.g., WeRide Corp., 379 F.  
25 Supp. 3d at 854. Defendants respond that “[it] will lose its investment and suffer a  
26 significant hardship, if it is precluded from releasing Glaucoma Module and competing  
27 with CZMI.” Defs.’ Surreply at 7. However, that assertion is conclusory and unsupported.  
28 That aside, whatever hardship Topcon may experience is attributable to its own conduct in

1 using CZMI's confidential and proprietary information in the course of preparing  
2 Glaucoma Module for market. The Court concludes that the balance of hardships tips  
3 sharply in favor of CZMI and support the imposition of a preliminary injunction.

#### 4 **F. BOND**

5 When granting a preliminary injunction, Federal Rule of Civil Procedure 65(c)  
6 requires a court to set a security bond "in an amount that the court considers proper to pay  
7 the costs and damages sustained by any party found to have been wrongfully enjoined or  
8 restrained." Fed. R. Civ. Proc. 65(c). However, Rule 65 "invests the district court with  
9 discretion as to the amount of security required, if any." Jorgensen v. Cassidy, 320 F.3d  
10 906, 919 (9th Cir. 2003). A court may dispense with the filing of a bond if "there is no  
11 realistic likelihood of harm to the defendant from enjoining his or her conduct." Id.

12 CZMI requests that the Court impose the requested preliminary injunction without a  
13 bond. See Pl.'s Renewed Mot. at 11-12. Defendants do not address this request for the  
14 bond requirement. Their silence on this issue waives any objection to CZMI's request for  
15 no bond. See Shakur v. Schriro, 514 F.3d 878, 892 (9th Cir. 2008) (opposing party waives  
16 arguments by not raising them in an opposition). Waiver aside, the Court finds that there is  
17 no realistic likelihood of harm to Defendants because they were never entitled to disclose or  
18 use the information taken from CZMI. See Comet Techs. United States of Am. Inc., 2018  
19 WL 1990226, at \*6 ("Put otherwise, there is no likelihood of harm because the TRO would  
20 simply enjoin Defendant from doing something Defendant never had a right to do in the  
21 first place."). Moreover, in his Trade Secret Agreement, Kurzke expressly "agrees and  
22 consents that [CZMI] shall be entitled to injunctive relief, both preliminary and permanent,  
23 without bond." Elman Decl. Ex. 12 ¶ 9. In view of the circumstances, the Court finds that  
24 no bond is necessary.

#### 25 **IV. CONCLUSION**

26 For the reasons stated above,

27 IT IS HEREBY ORDERED THAT Plaintiff CZMI's Renewed Motion for  
28 Preliminary Injunction is GRANTED.

1           1.       THS and TMS are enjoined from releasing and selling Glaucoma Module to  
2 the public, pending further order of the Court.

3           2.       THS, TMS and Kurzke are enjoined from, directly or indirectly, obtaining,  
4 retaining, using, transmitting, disseminating, or disclosing, or attempting to obtain, retain,  
5 use, transmit, disseminate, or disclose, any CZMI confidential, proprietary, or trade secret  
6 information, including any files obtained from the Hard Drive or during the course of  
7 Former Defendants' employment with CZMI.

8           3.       Because this Order may contain information within the scope of the parties'  
9 protective order, this Order shall remain under seal pending further Order of the Court.  
10 Within 14 days of the date this Order is filed, the parties shall jointly advise the Court  
11 which facts, if any, they contend should be redacted from the public version of this ruling.  
12 To the extent any party seeks redaction of any portion of the Court's ruling, such party shall  
13 provide the Court with a proposed redacted order for public disclosure.

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IT IS SO ORDERED.

Dated: 03/01/2021

  
SAUNDRA BROWN ARMSTRONG  
Senior United States District Judge