

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-02957-MSK-MEH

M.M.A. Design LLC, a Colorado limited liability company,

Plaintiff,

v.

Capella Space Corporation, a Delaware corporation; and
Thomas J. Harvey, a Colorado resident,

Defendants.

COMPLAINT WITH JURY DEMAND

Plaintiff M.M.A. Design LLC ("MMA" or "Plaintiff"), by way of its Complaint against the above-named Defendants Capella Space Corporation ("Capella") and Thomas J. Harvey ("Harvey") (collectively, "Defendants"), allege the following:

I. NATURE OF THE ACTION

1. This is an action for misappropriation of trade secrets under the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, and the Colorado Trade Secrets Act, Colo. Rev. Stat. § 7-74-101 *et seq.*, breach of contract under California common law, and unfair competition and unjust enrichment under Colorado common law.

II. THE PARTIES

2. Plaintiff MMA is a Colorado limited liability company with its principal place of business at 2000 Taylor Avenue, Suite 200, Louisville, Colorado 80027.

3. Defendant Capella is a corporation organized under the laws of Delaware with its principal place of business at 575 7th Street, San Francisco, California 94103. Capella may be served with this Complaint and Summons by hand service upon its registered agent, VCORP Services, LLC, 1013 Centre Road Suite 403-B, Wilmington, Delaware 19805.

4. Defendant Harvey is a Colorado resident and resides, upon information and belief, at 1634 County Road 103, Nederland, Colorado 80466.

III. JURISDICTION AND VENUE

5. This action arises under § 2 of the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, § 104 of the Colorado Uniform Trade Secrets Act, Colo. Rev. Stat. § 7-74-101 *et seq.*, and the common law of the States of California and Colorado.

6. The Court has subject matter jurisdiction over all asserted claims under 18 U.S.C. § 1836(c), 28 U.S.C. § 1331, and 28 U.S.C. § 1367.

7. The Court has specific jurisdiction over Defendants because the activities giving rise to Plaintiff's claims occurred, at least in part, within this judicial district, and caused damage to Plaintiff in this judicial district, when the Defendants should have reasonably expected their actions to have consequences in this judicial district. Moreover, Capella has had continuous contacts with Colorado that form the basis of the claims asserted herein.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because (1) two of the three parties reside in this judicial district, and (2) a substantial part of the events giving rise to Plaintiff's claims occurred in this judicial district.

IV. GENERAL ALLEGATIONS

A. Introduction

9. This action arises from Defendants' theft and misappropriation of MMA's trade secrets and confidential, proprietary information to wrongfully, unlawfully, and unfairly gain technological advantages in the field of deployable structures associated with satellites, including antennas and solar arrays.

10. MMA is an innovator in the field of small satellite deployable solutions, specializing in deployable solar arrays and antennas. MMA was founded in late 2007 by Defendant Harvey and Shane Stamm. Mitch Wiens joined a short time later. Harvey was MMA's chief designer, inventor and engineer until he left the company as an employee in late August 2016.

11. While at MMA, Harvey spearheaded the invention of a new type of deployable reflectarray antenna capable of being stowed in small spaces and deployed to a relatively large size. Essentially, the reflective background of these antennas is made of a thin, flexible membrane that can be folded and stowed in a small space and deployed to a large square, rectangular, or other shape depending on deployment scheme

12. Capella is a start-up founded in 2016 by Payam Banazadeh ("Banazadeh"), William Woods ("Woods"), and Uri Tintore ("Tintore"). Capella's business model is to launch a constellation of dozens of satellites to sell on-demand image data. Capella is not the only company vying for this market, and the first to establish itself will enjoy first-mover advantage that may be essential to the company's success.

13. Capella was determined to develop and launch its first satellite as soon as possible and certainly before its competitors. Moreover, it desired to own intellectual property to help lure an infusion of investor cash, as Banazadeh later wrote in November 2016 to a third party:

Jeff [Harvey] might have already told you about this but we are a startup trying to add value to Capella as quickly as we can. Part of that means we are hungry for owning IP and/or gaining some sort of unfair advantage to keep the competitors out of our domain.

14. Capella approached MMA in early 2016 seeking a vendor to fulfill its needs for a deployable antenna and solar array technology. MMA, with Harvey significantly involved in the effort, worked with Capella for most of 2016 to develop a solution and provide a design for Capella's specialized antenna and solar array needs.

15. Having worked with MMA, Capella realized Harvey could play a key role in Capella's success. From his years at MMA, Harvey had developed the expertise and knowledge to design solutions for Capella's needs. The problem was that Harvey worked for MMA and MMA owned the technology Capella desired. Moreover, Harvey is a member of MMA, and until only recently was a manager and agent of MMA owing fiduciary and trustee duties to the company.

16. Capella and Harvey turned out to be well suited for one another. Harvey wanted to leave MMA and pursue his own consulting company, and despite his duties owed as a manager of MMA, he was willing to take with him and use trade secrets developed at and owned by MMA. Capella was well aware of Harvey's position at MMA and was willing to overlook the duties Harvey owed to MMA and the risks arising from using MMA's technology.

17. Despite having signed a non-disclosure agreement with MMA and knowing the key knowledge Harvey possessed included MMA proprietary information, Banazadeh ended his company's relationship with MMA and within two days hired Harvey to spearhead Capella's

antenna and solar array projects. Rather than return MMA's proprietary information and company property, Harvey downloaded thousands of MMA files and took with him his MMA-owned computer, including hundreds of MMA proprietary spreadsheets, presentations, designs, and technical specifications.

18. Harvey subsequently designed or significantly assisted in the design of a complex tape deployed high gain flexible membrane reflectarray antenna and a deployable solar array for Capella using trade secrets of MMA.

19. According to press releases, Capella is now poised to launch its first satellite into orbit. Upon information and belief, Capella's satellite incorporates MMA's trade secrets and was designed faster and cheaper because Harvey used MMA's trade secrets to develop solutions for Capella.

20. This action seeks to hold Harvey and Capella responsible for their obvious and egregious theft of MMA's protected intellectual property.

B. MMA's History and Technology Development

21. Harvey and Wiens met each other in 2000 when Harvey joined Wiens at Starsys Research Corp in Boulder, Colorado. Starsys developed and supplied mechanical systems, structures, and mechanisms for spacecraft. After Harvey arrived, Starsys started a deployables group. Stamm later joined Harvey and Wiens at Starsys and worked under Harvey in the deployables group.

22. In 2007, Wiens, Harvey and Stamm began contemplating their own venture focusing on satellite deployables in the small satellite or CubeSat arena. CubeSats are a

miniaturized satellite with a standardized stowed dimension of 10cm x 10cm x 10cm. Together they created MMA in December 2007 as a manager-managed LLC.

23. From the beginning of MMA, as the chief engineer, inventor and designer, Harvey insisted all engineering and development work was proprietary and that it be maintained confidential. He discouraged the publication of papers or offering conference presentations for fear of divulging too much information. He also insisted that non-disclosure agreements be in place before discussing any designs or solutions with third parties, that any documents disseminated outside of MMA be labeled "Proprietary Information of MMA" or similar, and even then, that MMA would limit disclosure of information – communicating only what was necessary. Some proprietary information was never disclosed, for example, analysis tools and CAD models. Instead, results or simplified models were provided. Employment agreements containing appropriate provisions prohibiting disclosure of proprietary information and assigning IP rights to MMA were required, and MMA's offices were required to be secure. In addition, MMA would seek patent protection on some inventions while maintaining its analysis, processes, tools and know-how as trade secrets.

24. MMA initially focused on deployable solar arrays, with which the group had the most experience and expertise. At the time, solar arrays were an established and predictable business that could potentially provide a reliable source of revenue. MMA invented its first solar array design in the summer of 2008 called HaWK, or "high watts/kg," relating to its performance.

25. The same year, MMA began investigating and designing deployable structures made of thin, foldable, and light membranes. MMA recognized such structures could profitably satisfy a niche market in the small satellite area. Structures made of flexible membranes offered

the possibility of providing large usable surfaces deployed from small stowed spaces which would be ideal for small satellite applications without the weight and storage limitations of rigid structures used with traditional satellites. Once deployed in space, flexible membrane structures are not subject to gravity and wind and can be stable absent some intervening force.

26. MMA's first flexible membrane-based proposal was a deployable de-orbiter for Air Force Research Lab ("AFRL") in September 2008. The proposal was made under terms of non-disclosure pursuant to statute (e.g., 18 U.S.C. § 1905) and all materials from MMA were marked proprietary and confidential. MMA won the contract for the membrane de-orbiter in March 2009.

27. The de-orbiter was MMA's first developed product and was named "dragNET." Generally, a de-orbiter creates a drag on an Earth-orbiting object, such as a satellite, to passively move the object from an orbital path into a de-orbiting path, causing the object to disintegrate upon reentry into the Earth's atmosphere. MMA's de-orbiter accomplished this with a membrane structure deployed from a folded state in a stowed package to a much larger shape, using a mechanical frame to deploy and hold the membrane in its deployed position. In the deployed position, the large surface area of the membrane creates drag from small amounts of atmosphere in low Earth orbit, gradually causing the satellite to move fully into the Earth's atmosphere. Harvey and Stamm were the primary inventors of MMA's de-orbiter technology.

28. Throughout 2009 and 2010, MMA continued to develop and propose projects for its small satellite solar array technology. MMA received its first contract to develop a HaWK solar array for AFRL under a Phase 1 SBIR contract in March of 2010. As with all government design work, MMA's proposal was protected by non-disclosure terms and all materials provided by MMA were marked proprietary and confidential.

29. During the same period, Harvey and a team of dedicated MMA engineers continued to investigate, develop, and invent new membrane-based technologies based on their potential for high performance with reduced weight and stowage size. In late 2009, MMA submitted multiple proposals for new, but relatively primitive, membrane-based deployable antennas to both AFRL and the Defense Advanced Research Projects Agency ("DARPA"). These small satellite antennas were based on thin film membranes with novel deployment mechanisms for both concave reflector and planar reflector technologies. MMA's proposals were protected by non-disclosure terms and all materials provided by MMA were marked proprietary and confidential.

30. On September 30, 2010, the Air Force Academy awarded MMA a contract to develop a deployment system for a photo sieve imaging system (for a mission called the "FalconSat-7") which worked by diffracting light through holes in a membrane. MMA, through Harvey, Stamm and others at MMA, developed a system to deploy the membrane. To achieve optimum images, the surface of the membrane must be smooth. This was different from the dragNET de-orbiter which had no such requirement. Therefore, in order to remove wrinkles formed in the membrane from it being folded and stowed, a precise deployment and tensioning system was developed by Harvey, Stamm and others at MMA.

31. Upon information and belief, the FalconSat-7 project, among other things, inspired Harvey to educate himself further on radio frequency ("RF") technology, as RF is a method of communicating with a satellite and developing radar imagery that is well suited for MMA's maturing membrane-based technology. While employed at Starsys prior to starting MMA, Harvey and Wiens worked on large foldable mesh antennas that utilized RF, but these structures did not present the challenges faced with using folded membranes for RF in SmallSats. Through trial and

error, MMA concluded that a reflectarray antenna ("RAA") made with deployable flexible membranes would be a technically superior, cost effective and commercially viable business model for future revenues.

32. RAA technology has existed since the 1960s and is used in both terrestrial and space applications, e.g., telecommunications and radar applications. RAAs have either a flat or slightly concave reflective surface with either a deployed feed or a deployed secondary reflective surface and a stationary feed. The reflective surface has an array of radiating elements which are illuminated by the feed and which reradiate and scatter the signal in different phases to compensate for the different distance traveled between the elements and feed. The different phases allow the flat reflective surface to form an image without the need for a perfect parabolic reflective surface.

33. In comparison, existing state of the art large deployable RF antennas for space applications typically use either a mesh material or a rigid composite for the antenna. In each case, the deployed antenna is typically parabolic in shape. In the case of mesh antennas, the deployment structures are complex in order to achieve a parabolic shape when deployed and have a highly unfavorable volume and form factor when stowed on a launch vehicle. In the case of a composite antenna, the composite material is preformed into the final parabolic shape and does not unfold or unfurl following launch to deploy and also has an unfavorable volume and form factor when stowed. Neither can be efficiently stowed in a SmallSat and both require the use of a greater volume of cargo space on a launch vehicle. Neither of these types of antennas can be optimally scaled down to work with smaller satellites.

34. On information and belief, an X-band antenna developed by Jet Propulsion Laboratories ("JPL") and ILC Dover, Inc. in the late 1990s utilized a thin membrane RAA. It

consisted of two Kapton membrane layers, with the top phase shifting layer coated with copper and etched to produce the numerous elements, and the bottom layer serving as the ground plane. Tubes inflated with gas were used to deploy the antenna. These companies later developed a larger, but similar, K-band inflatable RAA. The effectiveness of these antennas was limited by the thick inflated structural components that blocked the signal. On information and belief, they were never launched, and in fact, inflatable structures have a low reliability in other space applications. No deployable thin-membrane RAA has ever been successfully launched into orbit.

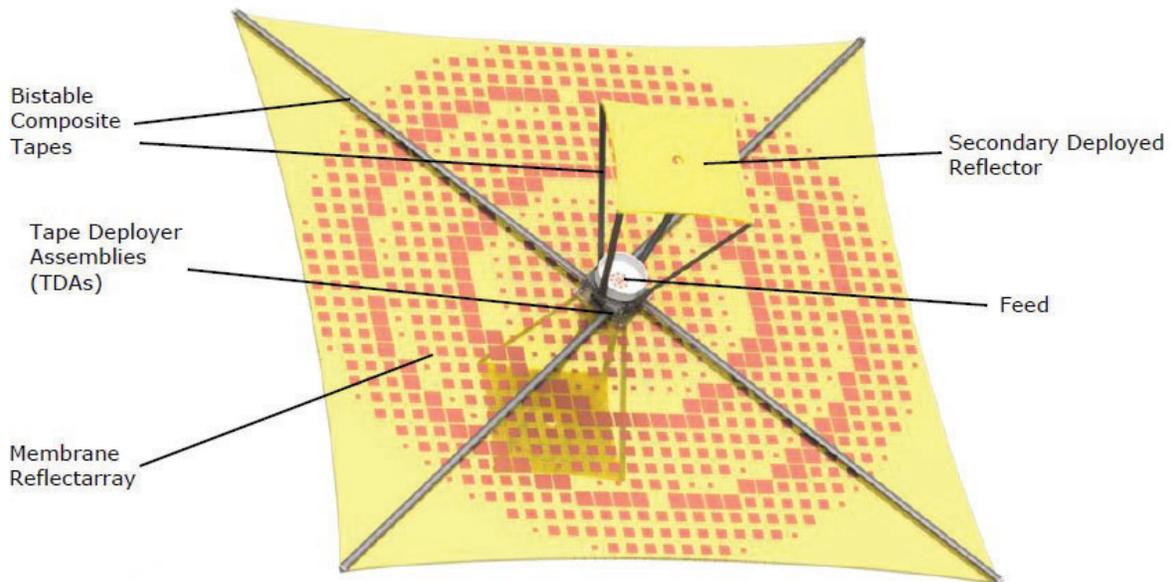
35. The dragNET and FalconSat-7 projects, along with expertise in solar arrays, gave MMA the base expertise in deployable membranes that MMA recognized could be leveraged to deployable antennas. MMA's recognition of the emergence of small satellites and that existing deployment technologies would not scale down to meet the requirements of small satellites required the development of new deployment and packaging technologies.

36. In or around December 2011, MMA's design team, led by Harvey, conceived and began creating a deployable, high gain reflectarray antenna. MMA termed the technology DaHGR, or "deployable, high gain reflectarray." MMA's high gain RAA was primarily designed for CubeSat and SmallSat applications. DaHGR antennas are capable of functioning as synthetic aperture radar ("SAR") and communication antennas. The main components of a DaHGR are: (1) two membranes made of thin copper-clad Kapton, one layer being the phase shifting membrane manufactured with etched copper elements, and the other layer being the ground plane; (2) these two membranes being separated by a uniform distance throughout and the membranes being tensioned to eliminate, or least limit, surface abnormalities; (3) a deployed feed that is connected

with a coaxial cable or a deployed secondary reflector with the feed located on the main body; and (4) deployment mechanisms to deploy and stabilize the antenna and feed or secondary antenna.

37. MMA's RAA did not use an inflatable deployment method. Instead, MMA's membrane antenna deployed with motor-driven bi-stable composite tapes. These tapes are similar in concept to a carpenter's tape measure in that they can be rolled up in a flattened coil and compactly stored. However, when the tape is extended, it adopts a curvature similar to a tube that provides stability and forms a rigid structure upon deployment. Bi-stable composite tapes were primarily developed by AFRL, which supplied its technology to MMA initially through the FalconSat-7 program. Even though AFRL developed much of the technology for the composite tapes, the motor-driven tape deployer assemblies ("TDAs") had to be developed. Harvey -- along with his son Toby who worked at MMA as an employee and designer -- designed, manufactured and tested TDAs for MMA.

38. MMA's bi-stable composite tape deployers were one deployment mechanism developed by MMA for MMA's DaHGR antennas. These designs became known as "T-DaHGR" (tape-deployed high gain reflectarray). TDAs have been a fundamental technology that MMA utilizes in its DaHGR structures, booms, and other deployable structures. Below is a diagram illustrating one embodiment of an MMA T-DaHGR design:



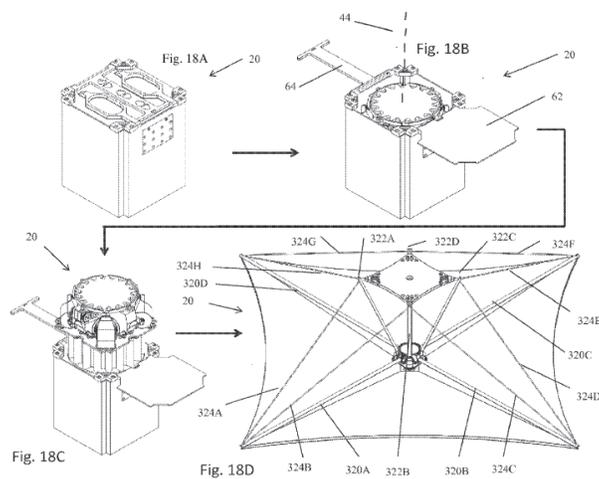
39. Stamm left MMA in October 2012, and Harvey and Wiens began a phased buy out of Stamm's interest.

40. In August 2013, MMA submitted its first tape driven, high gain reflectarray membrane antenna proposal to a large aerospace and defense technology company under a non-disclosure agreement. MMA continued to propose the design to large aerospace organizations throughout 2013 and through 2016. This technology is, to this day, MMA's primary business area.

41. Stamm was fully bought out of MMA by April 2014, leaving Harvey and Wiens as 50/50 owners of MMA, with both continuing to hold the position of member-manager.

42. MMA expended its own funds to develop the DaHGR technology and Harvey was instrumental in the development work. Harvey consistently held scheduled team meetings to not only direct and contribute to technology development, but also to learn and understand advancements made by other MMA employees.

43. MMA filed a patent application directed to the general T-DaHGR architecture on February 17, 2015 (U.S. Patent Application No. 14/624,549 ("the '549 Application")). Harvey and the other two listed inventors assigned their rights to MMA. The figure below, taken from the '549 Application, shows one embodiment of a T-DaHGR solution with a secondary deployed reflector from stowed to deployed positions:



44. MMA submitted numerous proposals for its DaHGR technology in 2015, each under terms of non-disclosure, including in July 2015 when it issued a proposal to develop a micro-SAR antenna with a deployed feed to a potential customer. It started as a 12U spacecraft SAR mission. Harvey performed significant development work to reduce the size and fit of MMA's T-DaGHR antenna into a 6U volume to capture this opportunity. It was also MMA's first deployable antenna with a deployed feed rather than a secondary deployed reflector. MMA has never publicly disclosed a deployed feed architecture.

45. In August 2015 MMA submitted a proposal for a pantograph-based DaHGR to DARPA (the "P-DaHGR"). The P-DaHGR uses similar tape deployed membrane technology as the T-DaHGR, but the membrane is generally a polygon, rather than rectangle or square. The perimeter of the antenna is surrounded and cantilevered to a pantograph perimeter structure which assists in deploying and tensioning the membrane. MMA filed a patent application over this technology in September 2016 (U.S. Patent Application No. 15/276,725).

46. DARPA awarded MMA the P-DaHGR contract in January 2016. At Harvey's request, Stamm returned to MMA as an independent contractor in February 2016 to assist with antenna work. Stamm, through his company, FixT Products, LLC ("FixT"), signed a Non-Disclosure Agreement. Up until this time, the research and development costs for MMA's antenna technology was almost exclusively borne by MMA.

47. Although there are the clear benefits of light weight and small size, deployed membrane antennas present specific and unique challenges that do not exist with other solutions. For example, proper methods to fold the membrane antenna material so that it packs tightly but can also be successfully deployed must be developed.

48. Tape drives must be designed and developed to deploy the membranes at a proper synchronistic rate to avoid tangling or skewed deployment and with enough force to eliminate wrinkles and warps in the membrane material, but at the same time not so much force that the structural integrity of the tapes or membranes is compromised. Simultaneously, weight and cost constraints compel the tape deployer not be over engineered or overdesigned. Tape deployers must be designed that can provide the correct amount of force at the correct rate and are compact and lightweight.

49. Testing protocols and a testing apparatus to establish that after packing and subsequent deployment, the antenna could provide the acceptable "gain" or performance, must be created. A system to ensure the spacing between the membranes is uniform upon deployment and at the same time does not significantly add to the packing space is also critical.

50. Membrane material had to be selected. Qualifying material is not readily available in large sheets; thus, a method for aligning and seaming material strips together to minimize warps and other discontinuities had to be developed. Identifying and proper use of adhesive for seaming the material had to be created. Methods and material for protecting the copper coated onto the material from harsh temperature extremes in space, both cold and hot, had to be developed, as well as methods for resisting and discharging static build up.

51. To withstand the extreme vibration and loads experienced by MMA's solar arrays and reflectarray antennas, lightweight but robust launch restraint systems were designed and developed to protect the solar arrays and RAAs from damage during launch while utilizing minimal space and weight. These solutions were complex engineering feats that MMA spent countless hours perfecting through the efforts of Harvey and other MMA engineers and technicians.

52. Vendors and suppliers of materials and components had to be identified and vetted.

53. Through the course of creating its technology, MMA developed solutions to these problems and challenges, among others. These solutions are MMA's trade secrets about which Harvey has detailed knowledge.

54. Additionally, Harvey and other MMA engineers created tools to calculate specific variables for designing DaHGRs. Some of these took the form of proprietary spreadsheets with

calculations for determining variables such as mass and load forces, among others. MMA filed patent applications directed to the T-DaHGR and P-DaHGR structures, which disclose the overall structure of the tape deployed, high gain reflectarrays. However, significant details for the methods, tools and know how around designing, testing and building these antennas, some of which are listed above, are not disclosed in MMA's patents and patent applications and remain MMA trade secrets.

55. On May 5, 2016, MMA conducted its first RF field test of the DaHGR antenna at the Berriehill testing center in Lafayette, Colorado. The test used a scaled-down version of the DaHGR membrane antenna that had been through conditions like those that a stowed and deployed antenna would have before and after deployment in space. The specific testing protocol and conditions were developed by MMA and are MMA's proprietary trade secrets.

56. MMA's P-DaHGR for DARPA has been successfully developed and is scheduled to launch in early 2019. Moreover, the trade secrets embodied in MMA's customized P- and T-DaHGR solutions have significant value today and are still used by MMA in its business.

57. MMA is and always has been diligent in protecting its proprietary information and maintaining its trade secrets. All exchanges of proprietary information with third parties must be done under non-disclosure agreements wherein the receiving party is legally obligated to keep any MMA information secret. Documents provided to third parties which contain proprietary information are marked as such. Contractors and employees, other than member/managers who owe more comprehensive fiduciary and trustee duties to MMA, must execute confidentiality agreements wherein they agree to keep MMA information secret. All employees who leave MMA go through an exit interview wherein they are reminded of their confidentiality obligations and the

importance of adhering to them. Visitors to MMA must sign in and must be accompanied into the building by an MMA employee. MMA uses electronic data protection tools to keep outsiders from accessing its networks. And because its products are deployed in space, there is no public access.

58. MMA's trade secrets, including those surrounding its DaHGR solutions, as well as those in the area of solar arrays, have great value. Not only did MMA spend large amounts of resources developing them, MMA is able to offer a unique solution that other companies cannot because of them.

C. Capella Engages MMA to Build Its Satellites

59. Capella is a start-up founded by Banazadeh and Woods and was incorporated on March 9, 2016. As stated above, Capella's business model is to design, build, and launch a constellation of at least 38 SAR imaging satellites capable of selling on-demand image data, such as images of landscapes or ocean surfaces. SAR technology has an advantage over conventional imaging in that the produced images provide depth of vision and can be acquired during night or cloudy conditions. There are a number of companies vying to establish themselves and be "first to market" within the field of SAR imaging. Being first, as in any market, could be the difference between a hugely successful company and a failure.

60. By February 2016, MMA and Banazadeh were discussing a partnership between the companies. Under the partnership, MMA was to be a strategic partner that would provide Capella with the satellite deployables (e.g., the solar panels and the antennas) Capella was planning to launch. Pursuant to the proposed partnership, MMA would receive a significant ownership stake in Capella in exchange for MMA's design services, expertise and know-how. However, in addition, Banazadeh wanted MMA to agree to a non-compete clause, e.g., not to design solar

panels and antennas for others, as well as agree that all technology developed by MMA for the SAR satellite would be owned by Capella.

61. When MMA expressed concern over these terms, Banazadeh proposed that the exclusivity clause be narrowed such that it would only be triggered based on both the total area of the antenna and the application of the antenna, i.e., that MMA would agree not to sell a SAR antenna larger than a certain size to an entity that wanted to compete with Capella. MMA was unwilling to agree to these terms, as MMA's whole business is designing and selling antenna and solar array systems for others. The partnership talks fell through.

62. After the partnership talks fell apart, MMA and Capella pivoted and initiated a vendor-client relationship, as Capella was still keenly interested in the capabilities and characteristics of MMA's existing technology.

63. Eventually, Capella and MMA began considering a relationship that would require each party to share confidential and proprietary information with the other. Accordingly, the parties signed a Confidentiality Agreement (the "Confidentiality Agreement"). A copy of the Confidentiality Agreement is attached as Exhibit A.

C.1. The Confidentiality Agreement

64. The Confidentiality Agreement is dated March 23, 2016. Ex. A at Preamble.

65. Under the Confidentiality Agreement, "Proprietary Information" includes all trade secrets or confidential or proprietary information designated as such in writing by the Disclosing Party and any information disclosed under circumstances in which "it would be apparent to a reasonable person, familiar with the Disclosing Party's business and the industry in which it

operates, that such information is of a confidential or proprietary nature the maintenance of which is important to the Disclosing Party." Ex. A at § 2.

66. Under the Confidentiality Agreement, Capella agreed that it would use "Proprietary Information" disclosed to it by MMA "only for the Purposes." Ex. A at § 4.

67. The "Purposes" are defined in the Confidentiality Agreement as "evaluat[ing] the feasibility of [a business relationship with MMA] and [performing] its obligations and [exercising] its rights under any such business relationship that is agreed to between the parties." Ex. A at § 1.

68. The Confidentiality Agreement further stated that it "shall be construed and interpreted in accordance with the internal laws of the State of California, without giving effect to the principles of conflicts of law thereof." Ex. A at § 9(c).

69. In the Confidentiality Agreement, Capella further agreed that "[t]he provisions of this Agreement are necessary for the protection of the business and goodwill of the parties and are considered by the parties to be reasonable for such purpose." Ex. A at § 9(d). Capella further agreed that "any breach of [the Confidentiality Agreement by Capella] will cause [MMA] substantial and irreparable injury and therefore, in the event of any such breach [by Capella], in addition to other remedies which may be available, [MMA] shall have the right to specific performance and other injunctive and equitable relief." Ex. A at § 9(d).

C.2. Relationship between MMA and Capella

70. The discussions between MMA and Capella focused on two related antenna projects. The first project was a prototype (non-deployable) test antenna that Capella could use for a planned proof of concept test in the summer of 2016 (the "Summer Test"). The second project was a custom deployable antenna to be used for satellites sent to orbit.

71. For the Summer Test, Capella was looking for "the cheapest option available." MMA provided a proposal for an antenna for the Summer Test on May 17, 2016 that would utilize a non-deployable antenna suspended from a helicopter in association with Capella's radar payload.

72. Being interested in supporting a potential new customer, and because Capella had limited resources, MMA agreed to work with Capella to reach a deal that worked for both parties. MMA initially agreed in principle to accept 40% of the quoted price in cash, with the remaining 60% covered by shares in Capella granted to MMA for its role as an advisor to Capella. Subsequently, Capella attempted to reduce the number of shares during negotiations but reverted to the original number of shares when MMA objected. Capella also required the shares be provided to Harvey and Wiens, individually, rather than to MMA. MMA remained committed to the deal, as MMA was attempting to nurture a long-term relationship to which it believed both MMA and Capella had committed.

73. During discussions related to the Summer Test, MMA made it clear that all information about MMA's antenna designs was Proprietary Information under the Confidentiality Agreement. For example, on June 29, 2016, MMA stated: "Proprietary information – since all of the information we will be providing as advisors is based on our DaHGR and RF antenna IP, we shall retain all rights exclusively."

74. After working out the terms of payment, Capella submitted to MMA a purchase order for an antenna for the Summer Test (in the form of an email) on May 26, 2016. MMA completed the antenna and sent it to Capella by the end of June 2016.

75. Harvey refused to take advisory shares because he felt that created a conflict of interest, apparently with his side consulting business. MMA had been providing work for Capella

in hopes of securing a long-term relationship, so Wiens said that he would accept the shares until Capella obtained outside funding. However, the parties could not agree on the terms as Capella insisted on owning intellectual property developed by MMA, a term MMA was not willing to accept. MMA never received shares of Capella in exchange for its work.

76. MMA was performing work on the second project, the first space deployed antenna, in parallel with the work being performed for the first project, the terrestrial based test antenna. On April 11, 2016, Woods, a Capella co-founder, sent minimum generic design categories to MMA for the space deployed antenna (the "First Requirements Email"). A copy of the First Requirements Email is attached as Exhibit B at 3-4. The minimum design requirements categories included: [REDACTED]

[REDACTED]

77. Over the next few months, MMA worked to provide Capella with information about its antennas and what attributes the final antenna should have. Essentially, MMA created Capella's radar mission and RF/antenna design requirements, or at least major portions thereof.

78. For example, Keith Kelly ("Kelly"), a subcontractor to MMA and RF specialist included on the Capella project, responded to Woods by discussing how these requirements would relate to MMA's DaHGR deployment technology.

79. MMA and Capella had additional discussions, primarily over the phone, throughout April and May of 2016. At one point, Capella requested weekly calls to discuss the requirements that would correspond to the contemplated RAA/DaHGR antenna.

80. As a result of MMA's efforts, Capella arrived at a set of requirements for two potential DaHGR antennas. Banazadeh circulated these requirements to MMA in an email dated

June 22, 2016 ("the Updated Requirements Email"). A copy of the Updated Requirement Email is attached as Exhibit C. In the Updated Requirements Email, Banazadeh stated that one of the antennas "is your AFRL DaHGR that is being developed with your other customer in the driver seat." (emphasis added). Banazadeh continued: "The other one is a more custom version of that antenna [i.e., MMA's DaHGR antenna] at a different dimension." *Id.*

81. A document attached to the Updated Requirements Email included the requirements ("the Updated Requirements Document"). A copy of the Updated Requirements Document is attached as Exhibit D. The Updated Requirements Document sets forth requirements for the two potential MMA antennas.

82. The Updated Requirements Document includes actual requirements (as opposed to generic categories contained in the First Requirement Document) related to, among other things,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] MMA developed these requirements.

83. The information provided to Capella by MMA was clearly proprietary information. MMA had previously informed Capella that all information provided to Capella about its antennas constituted proprietary information that was owned by MMA. Moreover, the information was clearly proprietary under the non-disclosure agreement because a reasonable person in the industry would have known that this type of information is proprietary and confidential, and the maintenance of this information as confidential and proprietary was important to MMA. A

company that specializes in antenna design could not and would not simply give away its antenna designs so that it could be underbid by competitors.

84. Capella recognized that these requirements were covered by its non-disclosure agreement with MMA. Banazadeh told MMA: "We have an NDA signed and we will make sure we keep the antenna requirements separate from the rest of our operations." Over the next month, MMA continued to work with Capella on refining the requirements and preparing a proposed design. Although MMA was not compensated for these efforts, MMA continued to believe in the partnership between MMA and Capella.

85. However, on July 7, 2016, MMA was blindsided when it learned Capella was sending third party competitors of MMA a request for proposal ("RFP") seeking proposals for antennas with nearly the exact requirements MMA had confidentially developed and delineated for Capella. A copy of the RFP is attached as Exhibit E. The RFP is nearly identical to Capella's Updated Requirements Document which, as discussed above, included proprietary and confidential information developed by MMA for use in an MMA-designed antenna.

86. MMA objected to Capella's use of the system requirements MMA had defined for Capella in potentially seeking solutions from MMA's competitors.

87. Notwithstanding Capella's gross misuse of MMA's confidential and proprietary information, MMA continued to try to make the partnership work. Having worked with Capella over the last few months to develop the system requirements, MMA believed it was well positioned to be awarded the contract and submitted a proposal on July 25, 2016 ("the Proposal"). A copy of the Proposal is attached as Exhibit F. The Proposal states on each page that the information provided therein is proprietary information.

88. The Proposal lays out in detail the services MMA was offering Capella with respect to the space deployed antenna project. The Proposal detailed a T-DaHGR solution [REDACTED] [REDACTED] Ex. F at 4. The design of the T-DaHGR proposed to Capella was similar to what MMA had proposed for the potential customer the previous year referenced in paragraph 44, with the main distinguishing feature being a deployed feed rather than a deployed secondary reflector. MMA's design for Capella uses [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* The Proposal further states:

[REDACTED]

[REDACTED]

Id.

89. The Proposal also states:

[REDACTED]

[REDACTED]

[REDACTED]

Id. at 7-8 (emphasis in original).

90. The Proposal then lists four main components of the T-DaHGR: [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 9.

91. Importantly, the Proposal includes a section dedicated to MMA's reflectarray membrane approach, issues and experience:

[REDACTED]

[REDACTED]

[REDACTED]

█ [REDACTED]

Id. at 9-10 (emphasis added).

92. The specifics associated to the listed attributes were and are, among others, MMA's proprietary trade secrets. Harvey not only had intimate knowledge of these trade secrets, he was personally involved in the development of them. Moreover, Capella was aware of Harvey's ownership and chief engineering role at MMA and knew this information was MMA's trade secrets. MMA's Proposal states that Harvey was to act as the chief technical lead as MMA's Chief Technology Officer and design the structure and deployable systems, while Kelly was to design and coordinate the RF systems.

93. Over the next few months, MMA responded to intermittent questions from Capella regarding its proposal, but communications generally slowed. Nonetheless, MMA believed it had pitched an attractive product and that Capella was still considering partnering with MMA for this project.

D. Harvey Breaches His Fiduciary Duties Owed MMA

94. At the same time Capella was taking advantage of MMA's unpaid work and misappropriating MMA's confidential and proprietary information, MMA was also experiencing internal turmoil at the hands of Harvey.

95. MMA is a manager-managed LLC. At all relevant times, both Harvey and Wiens were managers of MMA under the relevant operating agreements and, as such, owed fiduciary duties to MMA.

96. While Wiens handled the day-to-day management of MMA, Harvey focused on technology development as MMA's chief technology officer/lead engineer. Initially from 2007,

Harvey effectively helped MMA grow its business and technology. However, despite having unlimited creative freedom and a good salary, Harvey began, on information and belief, to be dissatisfied with MMA and Wiens as early as sometime in 2009. This influenced Harvey to repeatedly and progressively take actions that benefitted himself to the detriment of MMA.

97. For example, Harvey pushed for the freedom to consult for companies by himself rather than through MMA in 2009 but was told by Wiens that "it doesn't work for you to be competing with MMA or consulting to our competitors/customers." Nonetheless, Harvey created an email account ostensibly associated with his own consulting company, TJ Harvey Engineering ("TJHE"), in 2013 for the purpose of competing with MMA. Upon discovery, Wiens immediately expressed his disapproval of even the perception that Harvey might be providing independent consulting services while employed by and as a co-owner and manager of MMA.

98. Furthermore, when MMA experienced business difficulties in 2015, Harvey refused to increase his hours to help save the company and the jobs of its employees. To the contrary, when the co-owners, Wiens and Harvey, had their pay reduced in half for a period of time, Harvey reduced his hours to half time.

99. Harvey was in many ways a burden to MMA both financially and managerially. Nonetheless, as long as Harvey was willing to work productively at an acceptable wage and not be disruptive or counterproductive, Wiens was willing to avoid conflict with MMA's co-owner.

100. In April 2016, a competitor to Capella in the space radar imaging industry called Iceye contacted Harvey about potential consulting work. Harvey asked Wiens how much MMA would charge for Harvey's consulting services to Iceye. Wiens told Harvey that MMA would charge Iceye \$250 an hour for Harvey's consulting work. Without MMA's knowledge and in

violation of his fiduciary duties to MMA, Harvey underbid MMA to Iceye and told Iceye that if it hired him through TJHE instead of MMA, he would only charge \$175 an hour. Iceye, of course, hired Harvey through TJHE. Harvey has admitted that the work he performed for Iceye could have been performed through MMA. Equally galling, Harvey requested and was paid for vacation days by MMA when he was performing work for Iceye, as when he traveled to Finland for a week in May 2016.

101. In mid-May 2016, Harvey, along with his son Toby, officially formed TJHE through the Colorado Secretary of State to provide independent contracting services in the same field as MMA. Harvey did not inform Wiens that he did this.

102. Harvey had hired his son Toby, a college student and aspiring engineer. Toby was a minor at the time of his hiring, and Harvey signed Toby's employment agreement with MMA on Toby's behalf. Toby's employment agreement has a non-competition clause.

103. Also in May 2016, Harvey demanded a pay increase without increasing his work demands, which Wiens rejected. At the end of that month, Harvey began independently working for yet another company, River Front Services, Inc. ("RFS"), as its Chief Technology Officer, through TJHE and unbeknownst to MMA. Toby left MMA the same month, where he had primarily been developing the company's TDA technology, and Harvey brought his son over to work at RFS and to develop its TDA technology.

104. The Harveys worked at RFS where the two of them developed TDA technology. The TDA technology that Harveys designed at RFS is the same type of technology they developed at MMA and which they could have designed at MMA. Instead, the Harveys worked for RFS developing TDA technology as a competitor to MMA, thereby breaching Harvey's fiduciary duties

as a manager of MMA and very likely Toby's non-competition clause in his MMA employment agreement.

105. On or about June 7, 2016, MMA had a significant upcoming customer review meeting with DARPA regarding the pending P-DaHGR project. Harvey had been working part-time at 32 hours per week but wanted to reduce his time commitment. Before the customer review, Harvey threatened to quit and forced MMA to accept one-sided terms demanded by Harvey. These terms included a reduction to 24 hours per week. While MMA was able to negotiate a commensurate decrease in Harvey's compensation, this new arrangement put considerable stress on MMA's productivity and finances.

106. As discussed above, July 2016 was an important month in the relationship between MMA and Capella. Yet Harvey was unable to assist MMA in any meaningful way during that time because he had chosen to go on sabbatical for all of July 2016. Harvey did not discuss the sabbatical with anyone at MMA before announcing it, and apparently did not care how his absence would adversely impact MMA's business.

107. After he returned from his sabbatical, Harvey's behavior became even more problematic. Harvey had been named a co-inventor on a patent for work performed for MMA but refused to assign his inventorship rights in the patent application to MMA consistent with his legal obligation and as he had always done in the past.

108. Shortly thereafter in early August, Harvey again threatened to quit MMA unless MMA agreed to more one-sided terms.

109. Days before his threat, on July 30, 2016, Harvey copied over 10,000 files from his MMA-supplied laptop computer into two folders called "MMA Documents" and "MMA Coputer

[sic] July 30 2016" on an external hard drive. He also erased several thousand files from the hard drive on the same day. He did not provide notice to or receive authorization from MMA for either of these extraordinary acts.

110. Even though it was unaware of the extent and depth of Harvey's competitive acts, based upon what it did know, MMA could no longer accept Harvey's selfish behavior, which was endangering the long-term viability of MMA and the jobs of its employees, and accepted his resignation on August 30, 2016.

111. Harvey thereafter redoubled his efforts to compete with MMA. Meanwhile, MMA learned of the existence of TJHE and reminded Harvey that although he had resigned his employment with MMA, he was still a member and manager of MMA and therefore owed fiduciary duties to MMA. Harvey responded by suing MMA.

112. Harvey sued MMA and Wiens in Boulder District Court on September 8, 2016, alleging that Wiens breached MMA's operating agreement and breached his fiduciary duties to MMA. Wiens and MMA counterclaimed, alleging it was Harvey who breached his duties to MMA.

113. After being referred to arbitration, a hearing was held on June 14-16, 2017. During the hearing, Harvey admitted that he was still a member and manager of MMA and admitted to working for RFS and Iceye while still employed at MMA. The arbitrator issued an Interim Award with his findings on August 15, 2017. The arbitrator found Wiens did not breach the operating agreement or breach any duties to MMA.

114. On the other hand, with respect to Harvey, the arbitrator found as follows:

Harvey knew that Wiens did not believe it was appropriate for Harvey to provide consulting services other than through MMA. In August of 2013, when Harvey

obtained his TJ Harvey Engineering, LLC email address, Wiens immediately emailed Harvey and expressed his disapproval of even the perception that Harvey might be providing independent consulting services. Exhibit 229. In a presentation Wiens emailed to Harvey on January 9, 2015, Wiens states that Harvey pushed to consult for himself in 2009 and that "it doesn't work for you to be competing with MMA or consulting to our competitors/customers". Exhibit 258, p. 8 of presentation. Wiens repeatedly told Harvey that if he was doing consulting, doing what MMA was doing, that it was unacceptable. T-p. 804. Wiens did not have actual knowledge that Harvey provided consulting services, other than through MMA, prior to 2016.

Colorado Revised Statutes § 7-80-404(1)(c) clearly imposes upon Wiens and Harvey, the managers of MMA, a duty to refrain from competing with MMA. Harvey competed with MMA both before and after he quit working as an employee of MMA. ...

To ensure he was hired directly rather than through MMA, Harvey sent to Iceye's CEO an email in which he proposed that he could do the work to be performed for Iceye either through MMA for \$250 per hour, which hourly rate would be charged for 40-48 hours for a five- or six-day trip, or through TJHE for \$175 per hour, which hourly rate would be charged for only 16 hours.

115. The arbitrator also found that Harvey improperly withheld documents, and therefore the arbitrator could not:

[D]etermine the full extent of damages caused by Harvey's breaches of fiduciary duty as a result of Harvey's failure to produce documents that he was specifically ordered to produce.

116. The arbitration is continuing to, among other things, decide the full extent of injuries to MMA for which Harvey is responsible.

E. Capella Breaks Off Relationship with MMA and Immediately Hires Harvey

117. On September 20, 2016, Banazadeh contacted MMA to discuss MMA's Proposal to Capella. Banazadeh asked MMA to create the antenna described in the Proposal for 1/10th of the proposed unit cost and on a much quicker schedule (6 months rather than 12-18 months). These requests were patently unreasonable and, given Capella's previous knowledge of the price and time

requirements for MMA, suggested that Capella was merely looking for an excuse to discontinue its relationship with MMA. At that time, MMA did not understand why Capella would suddenly become so unreasonable.

118. Indeed, MMA had informed Capella about its price and schedule estimates via email all the way back in May 2016. MMA provided the exact same cost and time estimates in its July 2016 Proposal. Capella never expressed concern about these estimates at either time. To the contrary, Banazadeh wrote in an email to MMA that that Capella "will be able to support the full cost of MMA's antenna in September."

119. At the SmallSat conference in August 2016, Capella first discussed needing major reductions in MMA's pricing as well as accelerated delivery to meet its desired launch date, and represented that it was receiving competitive proposals for lower costs. Certainly, Harvey was planning his departure from MMA, and upon information and belief, had already discussed with Capella a plan to join that company's antenna design team upon leaving MMA.

120. On September 22, 2016, two days after Capella demanded significant and unreasonable concessions in MMA's Proposal, Banazadeh received an email from Harvey advising Capella that he was available to work with Capella. More specifically, in his email, which is a continuation of an email string from June about technical discussions between MMA and Capella, Harvey informs Banazadeh that he left MMA and was free to work for Capella on its antenna. Harvey expressly instructs Banazadeh to use Harvey's TJHE email because if his MMA email were used, Wiens would learn of the arrangement.

121. Banazadeh responded immediately. In a reply email that same day, Banazadeh stated: "Sorry about your departure from MMA and congrats on the TJ Harvey Engineering!"

While this statement is apparently intended to indicate that Banazadeh is surprised by this change, Banazadeh was in fact aware of the existence of TJ Harvey Engineering.

122. Indeed, Harvey had contacted Banazadeh by email to turn down the offer to join the Capella Space advisory board that was part of the compensation for the antenna for the Summer Test. In the email, Harvey told Banazadeh that he "consult[s] and advise[s] other aerospace companies through both MMA and TJ Harvey Engineering LLC." Significantly, neither Wiens nor anyone else at MMA was copied on this email. In fact, Harvey removed Wiens and Kelly from the previous email in the email chain to hide this information from them.

123. Banazadeh also asked Harvey to sign a non-disclosure agreement. That non-disclosure agreement was in place shortly thereafter and Capella and TJHE entered a consulting agreement on September 23, 2018 for Harvey to design Capella's tape-deployed high gain reflectarray antenna.

124. Not content with hiring only one person from MMA, Capella and Harvey continued to try to hire MMA employees and contractors who had worked on Capella-related projects.

125. Harvey approached Kelly on September 20, 2016 (two days before the email to Banazadeh supposedly informing him of his departure from MMA), saying that he was working on a new "antenna program and we will need an RF guy." Harvey and Capella thereafter attempted to lure Kelly to work on the Capella project. However, unlike Harvey, Kelly appreciated the conflicts of interests created by such an arrangement after having worked on the Capella project through MMA and declined because of these conflicts.

126. Stamm had rejoined MMA in February 2016 as an independent contractor through his company, FixT, and had been working intimately on MMA's [REDACTED].

Stamm mostly worked on [REDACTED] [REDACTED] as well as MMA's solar arrays. However, he was involved in team meetings and reviews where all aspects of the antenna's development were presented in detail, including TDAs and membrane development, so was familiar with those MMA developments. Thus, Stamm had regained detailed knowledge of MMA's technology after rejoining as a contractor in February 2016.

127. Harvey introduced Stamm to Capella by mid-October at the latest while Stamm was still under contract with MMA. Harvey sent Stamm a non-disclosure agreement with Capella on October 17, 2016 in anticipation of a meeting that had been set up with Stamm, Harvey, Banazadeh, and Woods for October 20, 2016 at Stamm's office in Broomfield, Colorado. Stamm cancelled his contract with MMA on October 31, 2016. That same day, Banazadeh sent an email to Capella employees introducing Harvey and Stamm, saying that "Jeff and Shane are leading the antenna development in Colorado." Based on an agreement entered between Harvey and Stamm, and on information and belief, Harvey received and continues to receive compensation from FixT because of this referral. It is unclear whether Harvey told Capella about this conflict of interest between Harvey and Capella.

128. Harvey also recruited his son Toby, who had left MMA in May 2016 and joined TJHE, to work with him on the Capella antenna.

129. As discussed, Harvey was working with RFS as its Chief Technology Officer along with his son Toby and, among other things, developing TDAs for RFS. Capella was of course in need of TDAs for its antenna. In early November 2016, Harvey introduced Capella to RFS to provide Capella its needed TDAs. RFS and Capella, both of which Harvey worked for, came to

an agreement for RFS to provide Capella's TDAs -- the very same TDAs Harvey and his son developed for RFS and had previously developed at MMA. Capella, TJHE, RFS, and FixT entered a four-way NDA effective November 8, 2016.

130. Once again, Harvey was seeking his own best interests without consideration of conflicts of interest due to the fiduciary duties he owed to MMA and the potential fallout. Throughout this entire period, Harvey remained a manager, member and 50% co-owner of MMA.

131. Harvey and Stamm continue to reside in Colorado and performed most of their work for Capella in Colorado. Capella employees traveled frequently to Colorado to meet with Harvey and Stamm. Upon information and belief, Capella's antenna development was conducted at Stamm's FixT location, which was commonly referred to by Banazadeh and Woods as "Capella Colorado," while other aspects of development occurred in Palo Alto, California. Upon information and belief, Capella still has employees located in Colorado and maintains a Colorado office or lab.

132. On October 3, 2016, Harvey sent a telling email to Banazadeh (the "Roadmap Email") stating: "I will start a development plan. We will need to recreate the IP that I did at MMA in the last few years. The good thing is I know the map now and was exploring before to get to the objective."

133. Banazadeh knew that Harvey was planning to use IP from MMA to create the Capella development plan and encouraged him to do so. In response to the Roadmap Email, Banazadeh wrote: "for the development plan, if you could take a stab at it, we can iterate and come visit you in Colorado in the next few weeks." Banazadeh expressed particular interest in "Schedule and timeline."

134. In fact, the very next day Banazadeh and Harvey discussed consulting a patent attorney to "find a way around the MMA patent," suggesting that they were doing everything they could to avoid patent infringement while ignoring any concerns for use of MMA's proprietary information and trade secrets and ignoring Harvey's fiduciary duties owed to MMA.

135. Shortly thereafter, Harvey proposed that Capella buy Harvey's interest in MMA. Among the reasons he gave Capella was that "IP with the Capella concept would stop being an issue."

136. Banazadeh also offered Harvey assistance in connection with his lawsuit against MMA. Banazadeh told Harvey that Capella's attorneys wanted to review "whatever document [sic] you might have from your time at MMA." Banazadeh specifically asked Harvey to send "your employment agreement, any IP assignments, non-compete agreements, etc." The detailed request and level of assistance offered by Banazadeh show he was keenly aware of the on-going litigation, Harvey's exposure to MMA's claims of breach of fiduciary duties and Capella's risk of using Harvey's services separate from MMA. Notably, even though Harvey had been consulting for Capella for at most two weeks, Banazadeh described Harvey as "very dear to us." Banazadeh's kind-hearted statement goes beyond Capella's two-week contractual relationship with Harvey and captures Capella's appraisal of Harvey's skill set and knowledge base developed over years of working for MMA.

137. Harvey then sent Banazadeh and Capella's attorney the MMA Operating Agreement. Harvey also stated:

The Capella connection, and why you [Capella's attorney] are involved, is that MMA bid a DaHGR antenna to Capella and did not get selected. I worked on that proposal while I was working at MMA. After quitting MMA I contacted many people, Payam and Will included and told them I had left MMA and was available

as a consultant working for TJ Harvey Engineering a company I incorporated in May of this year ...

F. Capella Misappropriates MMA's Trade Secrets

138. Harvey designed an antenna for Capella that is, for all intents and purposes, a feed-deployed T-DaHGR. [REDACTED]

[REDACTED]

139. Most of MMA's trade secrets related to DaHGR's do not lie within their architectural design since this information is mostly disclosed and claimed in patent applications filed by MMA. Rather, MMA's trade secrets lie in the details of how to design, create and manufacture a T-DaHGR and customize it for specific applications. Non-limiting examples of these trade secrets include:

[REDACTED]

[REDACTED]

140. MMA developed these trade secrets based on years of research and development and by spending significant resources on their development. Critical knowledge was gained by failures and dead ends, as well as through MMA's successes.

141. These trade secrets derive independent value from not being generally known because, in order to compete with MMA, others would need to spend time and money developing this information. Because MMA has already spent time and money developing this information, MMA has a competitive advantage in that it can design and build a flexible membrane reflectarray antenna more quickly, with a higher efficiency, at a lower cost, and with greater certainty about the resulting properties of the antenna. If these trade secrets were generally known, MMA would not have those advantages.

142. MMA has not disclosed these trade secrets to others and would not do so except under an obligation of confidentiality.

143. Other than those subject to non-disclosure agreements, no one outside of MMA is aware of the details of these trade secrets except to the extent that they have been improperly used and/or provided by Harvey, and potentially Toby Harvey and Stamm.

144. Upon information and belief, Harvey and Capella stole these trade secrets.

145. Certainly, Harvey and Capella stole and used numerous design tools that calculate essential T-DaHGR elements (such as catenary loads, packing factors, and total masses) that either Harvey created while at MMA or other MMA employees created for purposes of designing DaHGRs. Moreover, the tools and know-how Harvey took from MMA and used for designing Capella's antenna included default DaHGR variables for specific measurements or calculations that were discovered by MMA through time, exhaustive research, and development. Harvey's use of these DaHGR tools and calculations created by MMA gave Capella an unfair advantage by eliminating the need for Capella to conduct its own research and development, to the detriment of MMA.

146. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Upon information and belief, the testing protocol used by Harvey is nearly identical to the one developed by MMA. Moreover, Harvey used a calculation he arrived at for tensioning the test membranes by using a proprietary tool he stole from MMA.

147. Harvey has been named as an inventor on at least two provisional patent applications filed by Capella. It is possible that he is named on others that are not publicly available. Of course, Harvey's primary duties at MMA were to develop and invent novel technologies around deployable satellite structures. Harvey was thus inventing for Capella in the exact same field in which he was supposed to be inventing for MMA. Under Colorado law, any inventions Harvey created for Capella belong to MMA. Therefore, any rights Harvey has over

inventions he created while a member-manager of MMA he holds in trust for the benefit of MMA. So far as Harvey has improperly transferred any rights to Capella over his inventions, Capella holds those rights in trust for the benefit of MMA. Moreover, Harvey was using MMA resources—at the very least, his MMA computer—while performing work for Capella and as a manager of MMA, thus giving MMA a "shop right" over those intellectual property rights.

148. As far as MMA is aware, Harvey stopped directly working for Capella in late May 2017. Harvey continued to work for RFS who was actively designing tape deployer assemblies for Capella and, on information and belief, was continuing to assist Capella through Stamm.

149. Upon information and belief, Capella knew, or at the very least, should have known, that Harvey was using trade secrets stolen from MMA to develop Capella's antenna. Certainly, Capella did not take any reasonable measures to prevent Harvey from stealing and using MMA's trade secrets in developing its antenna, and in fact created circumstances that encouraged it.

150. This is evidenced in a February 2017 PowerPoint presentation created by Harvey and Capella for purposes of obtaining third party funding for Capella. The slide deck boasts of the amazing speed and cost savings achieved by Capella's in-house antenna design team compared to existing "leading" design companies.

151. The slide deck references "5 months of extensive research through RFI & RFP to 7 leading deployable structure experts/manufactures." Of course, one of these deployable structures experts was MMA, which helped Capella determine its project requirements prior to the RFP process. The deck highlighted the downside of that arrangement in that it would be expensive and there would be "No IP ownership."

152. The next slides tell that this inspired Capella to build the antenna itself and characterized its "Progress [as] Unreal." Capella boasted that it "started building the antenna only 4 months ago. Typical program timelines at a nimble aerospace company would be 3X the time and 5X the cost. – It would take any other company 1 year to be where we are today."

153. However, Capella's results are less "unreal" if the misappropriation of MMA's trade secrets and proprietary information are factored in. As Harvey explained, he already had MMA's map and Capella was more than willing to knowingly accept the unfair advantage and head start Harvey brought.

154. Influenced by the mounting losses Harvey was experiencing in the on-going arbitration, Harvey appears to have stopped working with Capella (or decreased his involvement) after the antenna demonstration. He told Banazadeh that "[b]reaking from Capella removes the MMA bullet pointed at my fore head [sic]." The "bullet," it is to be presumed, was the result of Harvey's and Capella's actions in leveraging MMA's trade secrets and proprietary information for their own gain.

155. Due to its use of MMA's trade secrets and proprietary information, Capella was able to develop a technically complex high gain deployable thin membrane reflectarray antenna far faster than it otherwise would have, and to secure funding from external sources it otherwise would not have obtained.

156. For example only, and upon information and belief, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Harvey identified challenges and solutions to challenges in building a T-DaHGR that he only knew through trial and error while working for and being paid by MMA. Without misappropriation of these trade secrets by Capella and Harvey, Capella would not have been able to develop its technology. At the very least, it would have taken much longer and at a much higher cost.

157. In March 2017, Capella won an \$11 million contract from the Pentagon's Defense Innovation Unit. Harvey was leading the Capella antenna development at this time and upon information and belief, assisted in the proposal that secured the funding.

158. In May 2017, Capella obtained a Series A funding from Spark Capital for \$14.9 million. Harvey was leading the Capella antenna development up until this time.

159. In September 2018, Capella obtained Series B funding from Data Collective and Spark Capital, among others, for \$19 million.

160. But for Harvey's and Capella's misappropriation of MMA's trade secrets and proprietary information, Capella would not have been able to secure these external sources of funds.

161. According to press releases, Capella is scheduled to launch its first satellite with a SAR antenna in November 2018. Upon information and belief, this antenna was designed and built using MMA trade secrets and contains MMA owned trade secrets stolen by Capella and Harvey.

V. FIRST CLAIM FOR RELIEF
(Breach of Contract – Confidentiality Agreement Against Capella)

162. The allegations set forth in the foregoing paragraphs 1 through 161 are hereby realleged and incorporated herein by reference.

163. The Confidentiality Agreement is a valid contract between MMA and Capella.

164. MMA substantially performed its obligations under the Confidentiality Agreement.

165. Capella has failed to perform its obligations under the contract at least by using Proprietary Information disclosed by MMA for purposes other than evaluating the feasibility of a business relationship between MMA and Capella as required under § 4 of the Confidentiality Agreement by, for example, (1) using such Proprietary Information in the RFP; and (2) using such Proprietary Information to design and manufacture its own antenna(s).

166. Because of Capella's breach of the Confidentiality Agreement, MMA has suffered and will continue to suffer harm in this judicial district.

VI. SECOND CLAIM FOR RELIEF
(Trade Secret Misappropriation Under 18 U.S.C. § 1836 Against Harvey and Capella)

167. The allegations set forth in the foregoing paragraphs 1 through 166 are hereby realleged and incorporated herein by reference.

168. MMA owns trade secrets including, but not limited to, those identified in paragraph 139 above.

169. Harvey and Capella misappropriated MMA's trade secrets by stealing those trade secrets and using them in the development of an antenna based upon MMA's proprietary technology.

170. MMA's trade secrets implicate interstate commerce because MMA offers to sell and sells its products containing its trade secrets across the United States.

171. MMA has been damaged and Capella and Harvey have been unjustly enriched by their misappropriation of MMA's trade secrets.

172. Harvey's and Capella's misappropriation of MMA's trade secrets was willful and malicious.

173. Because of Capella's and Harvey's misappropriation of MMA's trade secrets, MMA has suffered and will continue to suffer harm in this judicial district.

VII. THIRD CLAIM FOR RELIEF
(Trade Secret Misappropriation under C.R.S. § 7-74-104 Against Capella and Harvey)

174. The allegations set forth in the foregoing paragraphs 1 through 173 are hereby realleged and incorporated herein by reference.

175. MMA owns trade secrets including, but not limited to, those identified above in paragraph 139.

176. Harvey and Capella misappropriated MMA's trade secrets by stealing those trade secrets and using them in the development of an antenna base upon MMA's proprietary technology.

177. Because of Capella's and Harvey's misappropriation of MMA's trade secrets, MMA has suffered and will continue to suffer harm in this judicial district.

178. MMA has been damaged and Capella and Harvey have been unjustly enriched by their misappropriation of MMA's trade secrets.

179. Harvey's and Capella's misappropriation of MMA's trade secrets was attended by circumstances of fraud, malice, or willful and wanton disregard of MMA's rights and feelings.

VIII. FOURTH CLAIM FOR RELIEF
(Common Law Unfair Competition Against Capella and/or Harvey)

180. The allegations set forth in paragraphs 1 through 179 are hereby realleged and incorporated herein by reference.

181. MMA's design specifications (e.g., designs, materials, and size/thickness specifications), methods, tools (e.g., spreadsheets), and other proprietary information owned by MMA related to the development of satellites are the product of MMA's labor, skill, and/or money.

182. Capella and/or Harvey have engaged in a misappropriation of business value by misappropriating MMA's design specifications, methods, tools, and other proprietary information owned by MMA related to the development of satellites.

183. MMA's design specifications, methods, tools, and other proprietary information owned by MMA related to the development of satellites are novel.

184. Capella and/or Harvey have misappropriated MMA's design specifications, methods, tools, and other proprietary information owned by MMA related to the development of satellites are novel.

185. Because of Capella's and/or Harvey's misappropriation of MMA's business values and ideas, MMA has suffered and will continue to suffer harm in this judicial district.

IX. FIFTH CLAIM FOR RELIEF
(Common Law Unjust Enrichment Against Harvey)

186. The allegations set forth in paragraphs 1 through 185 are hereby realleged and incorporated herein by reference.

187. Harvey received a number of benefits from Capella for his work on Capella's satellites, including but not limited to consulting fees.

188. Those benefits were received at the expense of MMA, at least because Harvey received those benefits in exchange for disclosing and/or using MMA's proprietary information.

189. It would be unfair to allow Harvey to retain the benefits without compensation to MMA at least because MMA received no compensation for the use of its proprietary information, which it developed using significant time and monetary resources, especially when Harvey was still a managing member of MMA at the time he misappropriated MMA's proprietary information and thus still owed fiduciary duties to MMA.

**X. SIXTH CLAIM FOR RELIEF
(Common Law Unjust Enrichment Against Capella)**

190. The allegations set forth in paragraphs 1 through 189 are hereby realleged and incorporated herein by reference.

191. Capella has received a number of benefits based on its relationship with MMA and/or Harvey, including: (1) the design specifications that were included in the Request for Proposal sent to other third parties and used by Capella in designing its satellite, and (2) Harvey's use of MMA's proprietary information, which significantly sped up the design process and reduced Capella's costs.

192. Those benefits were received at the expense of MMA, because: (1) the design specifications were developed by MMA in connection with the antenna it was designing for Capella and for which it received no compensation, and (2) the proprietary information, which Capella knew or should have known that Harvey was disclosing and/or using, was developed by MMA using significant time and monetary resources.

193. It would be unfair to allow Capella and/or Harvey to retain the benefits without compensation to MMA at least because MMA invested significant resources into the design

specifications and proprietary information, and has received no compensation for Capella's use of that information.

XI. PRAYER FOR RELIEF

WHEREFORE, MMA prays for judgment in its favor and against Capella and Harvey as follows:

- a. That Capella has breached its obligations under the Confidentiality Agreement;
- b. That Capella and Harvey have misappropriated MMA's trade secrets;
- c. That Capella and Harvey have engaged in unfair competition under Colorado common law;
- d. That Capella has been unjustly enriched by its dealings with MMA;
- e. That Harvey and Capella, its officers, directors, agents, servants, employees, privies, representatives, attorneys, parent and subsidiary corporations or other related entities, successors, assigns, licensees, retail distributors, and all persons in active concert or participation with any of them, be preliminarily and permanently enjoined from further acts of misappropriation of MMA's trade secrets, further acts of unfair competition, and further acts of false advertising;
- f. That an equitable trust be created and Capella and Harvey be ordered to hold any rights to intellectual property created by Harvey as trustees for the benefit of MMA, and they be ordered to transfer title of that property to MMA;
- g. That MMA be awarded damages in an amount to be determined at trial for Capella's and Harvey's tortious conduct, including at least actual damages and damages for unjust enrichment;

h. That MMA be awarded exemplary damages and attorney's fees by reason of Harvey's and Capella's willful and malicious misappropriation of MMA's trade secrets pursuant to 18 U.S.C. § 1836;

i. That MMA be awarded exemplary damages by reason of Capella's and Harvey's misappropriation of MMA's trade secrets which were attended by circumstances of fraud, malice, or willful and wanton disregard of the injured party's right and feelings pursuant to Colo. Rev. Stat. § 7-74-104;

j. That MMA be awarded its pre-judgment and post-judgment interest;

k. That MMA be awarded costs and expenses of suit, including expert witness fees;

l. That Capella and Harvey be ordered to deliver to MMA, for destruction at MMA's option, all materials that relate to MMA's trade secrets;

m. That Capella and Harvey be required to account for all gains, profits, advantages, and unjust enrichment derived from their violations of law; and

n. That MMA be awarded other and further relief as the Court deems appropriate and just.

XII. JURY DEMAND

MMA demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: November 16, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record in the above-referenced matter.

s/ Tricia M. Hoy

Tricia M. Hoy

Paralegal

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