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*Counsel for Plaintiff/Counterclaim
Defendant Total Quality Systems, Inc.*

**IN THE UNITED STATES OF DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

TOTAL QUALITY SYSTEMS, INC.,

Plaintiff/Counterclaim Defendant,

vs

**UNIVERSAL SYNAPTICS
CORPORATION,**

Defendant/Counterclaim Plaintiff.

**TOTAL QUALITY SYSTEM, INC'S
FIRST AMENDED COMPLAINT**

Case No.: 1:22-cv-00167

Chief Judge Robert J. Shelby

Magistrate Judge Daphne A. Oberg

COMES NOW, Plaintiff Total Quality Systems, Inc. (“TQS” or “Plaintiff”), through undersigned counsel, and hereby files its first amended complaint against Defendant Universal Synaptics Corporation (“Universal” or “Defendant”) and alleges in support as follows:

NATURE OF THE ACTION

1. Founded in 1994, TQS developed a solution that more accurately tested for electronic faults on military fighter jets, saving the Department of Defense (DoD) hundreds of millions of dollars. TQS's solution, called the Intermittent Fault Detection and Isolation System ("IFDIS"), utilizes a combination of its own proprietary knowledge and technology, as well as commercial off-the-shelf products developed by third-parties, including Universal.

2. Universal used its position as a supplier to TQS to obtain TQS's proprietary information, develop a similar copycat solution, and unlawfully sell the same solution to the U.S. Government, all while unburdened by extensive research and development costs.

3. When confronted with this reality, Universal has, on multiple occasions, falsely stated that it was the inventor of the solution developed by TQS and made further false statements regarding the relationship between TQS and Universal in an effort to drive lucrative U.S. Government contracts in Universal's direction. Because of that, TQS has been damaged through the loss of business opportunities with the U.S. Government and has had its reputation damaged within the close-knit military aircraft repair community and across the U.S. Government as a whole.

PARTIES

4. Plaintiff Total Quality Systems, Inc. is a corporation registered in Utah with its principal place of business at 4066 S. 1900 West, Suite A, Roy, Utah 84067.

5. Defendant Universal Synaptics Corporation is a corporation registered in Utah with its principal place of business at 4066 S. 1900 West, Suite B, Roy, Utah 84067. Universal is a direct competitor of TQS.

JURISDICTION AND VENUE

6. Federal subject matter jurisdiction exists by virtue of a federal question under 28 U.S.C. § 1331, as one of the causes of action in this case arises under federal law.

7. This Court also has original subject matter jurisdiction over this action under 18 U.S.C. § 1836(c), which expressly states that “the district courts of the United States shall have original jurisdiction of civil actions brought under [18 U.S.C. § 1836].” TQS’s claims against Universal are appropriately brought under Section 1836 because, as more fully detailed below, Universal improperly obtained and misappropriated TQS’s confidential and proprietary trade secrets.

8. This Court has supplemental jurisdiction over TQS’s remaining state law claims pursuant to 28 U.S.C. § 1367(a) because the federal and state law claims derive from a common nucleus of operative facts.

9. This Court has personal jurisdiction over Universal because Universal is incorporated in Utah, its principal place of business is located in Utah, and Universal’s alleged wrongful conduct occurred in Utah.

10. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(1) because Universal resides and maintains its principal place of business in this district. Venue is further proper in this district under 28 U.S.C. § 1391(b)(2) because the conduct complained of herein occurred within this judicial district.

FACTUAL ALLEGATIONS

11. TQS was founded in 1994, and has been located in the Ogden, Utah area since its inception. TQS’s founder, Anthony X. Pombo, is an Air Force veteran. Mr. Pombo used his

training and experience while serving the United States to develop innovative processes and product improvement solutions for the aircraft repair industry and the U.S. military.

12. One such solution was a part of the F-16 Program Office's implementation of the Department of Defense's ("DoD") Flexible Sustainment strategy (known as "Falcon Flex") that began in 1996 as an effort to save time and money on sustainment of the F-16 fighter jet.¹

13. Based on Mr. Pombo's knowledge, TQS began to develop a more efficient way to test and repair electrical boxes ("avionics") in F-16 aircraft. Previously, when severely recurring faults occurred within an avionics box family, the entire box was usually replaced with a new design at great expense. To remedy this, TQS began to develop and invest in a solution to find the individual "root cause" failures to support an engineering solution at the lowest cost repair level within the box by only making the repairs necessary for the individual physical failure(s). Between 50-80% of the time, the repairs were as simple as replacing a wire or pin, or re-soldering a circuit junction.

14. From this, the Small Business Innovation Research ("SBIR") program awarded TQS with its first Phase I contract known as "ATE Insight" under Air Force SBIR Topic No. AF98-262.

15. The SBIR Program is a highly competitive program that encourages innovative and domestic small businesses to engage in research and development ("R&D") for the U.S. Government by providing an incentive to profit from the commercialization of the technology.²

16. Currently, contracts under the SBIR program are awarded in three phases:

¹ The fact that fighter jets need repairs is not a reflection on the design or manufacturing of the jets themselves, but simply a necessity based on their complexity, their intensive operational use, rapidly updating technology, and the amount of time they remain in service.

² See sbir.gov.

- a. Phase I seeks to establish the technical merit, feasibility, and commercial potential of the proposed R&D efforts and to determine the quality of performance of the small business awardee organization prior to providing further federal funding in Phase II. Phase I awards are generally \$50,000-\$250,000 for six months.
- b. Phase II seeks to continue the R&D efforts initiated in Phase I. Funding for Phase II is based on the results achieved in Phase I and the scientific and technical merit, as well as the commercial potential of the project, proposed in Phase II. Phase II awards are generally \$750,000 for two years.
- c. Phase III seeks to commercialize the R&D developed by the small businesses during Phases I and II. Phase III status is particularly valuable because it affords the small business contractor the right to sole sourced government contracts for work under the technology developed by the contractor during Phase I and Phase II.³

17. With respect to TQS's research in one of its first Falcon Flex Task Orders with the Air Force, for example, TQS identified a complex diode circuit where the cause of the fault was thermal runaway. Through expert engineering analysis, TQS determined that when the circuit was redesigned by removing two diodes and making direct connections, the root cause of the failure was eliminated.

18. The success of this program eventually led to the broader Weapon System Flexible Sustainment ("Weapon Flex") strategy, which expanded research to the A-10, F-4, T-38, and other aircraft managed by the Ogden Air Logistics Complex at Hill Air Force Base. The Air Force

³ See, e.g., <https://www.sbir.gov/tutorials/data-rights/tutorial-4>.

ultimately named the Weapon Flex processes as a “best practice” for supply chain management, which is a notable recognition.

19. For its part, the F-16 was initially fielded in the late 1970s and, typical of avionics-laden systems, it almost immediately contained old and obsolete computer equipment. Through its research, for example, TQS determined that the installation of additional memory in the RADAR subsystem would also reduce faults, and TQS engineered innovative ways to detect and reduce those functional faults.

20. The success of these and other Weapon Flex efforts helped lead to a new Phase I SBIR contract award to TQS, titled “Current Flow through a [Unit Under Test].” TQS’s proposal engineered and merged a number of potential solutions identified by TQS to develop an IFDIS (Innovative Intermittent Fault Detection and Isolation System) that included many custom and commercial off-the-shelf⁴ components. One of the commercial components—the Intermittent Fault Detector (“IFD”)—that TQS selected and expertly integrated into its larger solution came from Universal.

21. On May 10, 2001, TQS was competitively awarded Contract No. F42650-01-C-0169 (Phase I), and on May 8, 2002, TQS was competitively awarded a direct follow-on Phase II contract (No. F42650-02-C-0081), for which a final report was completed in 2005. The below is a summary of the work in the Phase II contract (from the contract itself):

Prototype Development

CPFF - Develop prototype using electrical current data and information to support fault diagnostic procedures Proposal number F2-0971 topic number AF01-296 Phase II IAW workplan page 7 paragraph 3 of attachment 1 for a two year period. To be funded for one year

NSN J099-03-088-J099

MILSTRIP F6TIEH20385300

PURCHASE REQUEST NUMBER F6TIEH20385300

SIGNAL CODE A

⁴ See FAR § 2.101 (defining a commercially available off-the-shelf item).

22. The Phase II Report offered the Air Force a number of potential solutions, engineered by TQS, to issues related to operationally recurring fault detection and isolation in the avionics boxes. One potential solution included a newly developed commercial fault detection subsystem developed by Universal (the IFD). Much like the peanut butter in a peanut butter-and-jelly sandwich, Universal's piece was an important part of the system, but TQS put the entire system together using its own proprietary knowledge, software, and system design (the slices of bread), and TQS modified the commercial off-the-shelf and other non-commercial items (the jelly) to make the entire sandwich.

23. In fact, TQS worked with Universal to improve its IFD. For instance, Universal's patented IFD had immature software functionality and did not include any controlled vibration inducement ("shaking") or any controlled thermal inducement ("baking"), which are needed to provide accurate environmental tests to simulate the environmental forces the boxes undergo when they are thousands of feet in the air and subject to extreme temperature fluctuations and G-forces. Environmental testing is important, for example, because solder joints expand and contract at different rates during temperature transitions due to different coefficients of expansion of materials which cause intermittent failures during operational use not produced when not subject to environmental stresses.

24. Further, Universal was unwilling and not able to sell the IFD directly to the U.S. Government. For example, Universal did not have a Defense Contract Audit Agency approved accounting system, nor did they comply with many Federal Acquisition Regulations.

25. The U.S. Government approved the solution proposed by TQS and awarded it a number of direct follow-on Phase III contracts to develop and deliver the IFDIS over the next number of years. For one of the first Phase III contracts, TQS issued a report on February 27, 2009, which contained the following:

This project was initiated as a Reduced Total Ownership Cost (RTOC) initiative to reduce the frequency of No Fault Found (NFF) conditions in Modular Low Power Radio Frequency (MLPRF) Line Replaceable Units (LRUs). This objective is accomplished by detecting, isolating and fixing intermittent electrical paths in the MLPRF chassis wiring. Traditional test equipment cannot detect these intermittent faults because the equipment is not designed to do so. Traditional test equipment is designed to verify that an LRU is properly performing the functions that it should perform. Hence, traditional Automatic Test Equipment (ATE) LRU testers only detect faulty Shop Replaceable Units (SRUs) that need to be replaced and hard failures in the LRU chassis. Also, traditional testing is typically done at room temperature on a quiescent test bench. This project augments traditional test equipment and test methods by providing an engineering test tool capable of detecting intermittent faults as short as 100 nanoseconds in MLPRF chassis wiring. This is done by continuously and concurrently monitoring all chassis circuit paths while subjecting the chassis to thermal and vibration stress similar to what is experienced in an operational environment, where the intermittent activity typically occurs.

The project has successfully developed, produced and tested two IFDIS test stands. These have been delivered to building 5 at Hill Air Force base and to TQS building 5 in Roy, Utah. The Roy, Utah, unit will be delivered under separate contract to building 1515 at a date to be determined by the Government when building 1515 is prepared and ready.

26. As the report demonstrates, TQS developed (at U.S. Government facilities and TQS's own facility) the IFDIS beginning more than 16 years ago.

27. As stated in the report, TQS completed six tasks associated with developing the IFDIS: (1) SRU Interface Test Adapter ("ITA") Assemblies; (2) Intermittent Fault Detector ("IFD"); (3) Modular Low Power Radio Frequency ("MLPRF") Unit Testing; (4) Electro-dynamic shaker; (5) environmental simulation chamber; and (6) the IFDIS Test Procedure Manual.

- a. With respect to the avionics boxes' ITA Assemblies, TQS solely designed, manufactured, and delivered them. The first ITA developed under an SBIR contract interfaced the MLPRF chassis with the IFD subsystem.
- b. The IFD subsystem contains a few main parts, three of which were provided by Universal. The IFD subsystem cabinet contained: the IFD itself; an IFD Control

commercial computer supplied by Universal, of which only the IFD and associated software was proprietary to Universal; and a Digital Multimeter by Agilent (a third-party company). TQS supplied and engineered the integration of all other components in the IFD cabinet: a Vibration Research controller, the power management subsystem, the cabinet cooling system, the IFDIS Control Computer (of which the IFDIS Control software is proprietary to TQS), and the cabinet itself. TQS integrated the IDF subsystem, with Universal's assistance under a supplier agreement.

- c. TQS deliverables of this first Phase I SBIR contract also consisted of MLPRF unit testing service of 59 MLPRFs utilizing TQS's proprietary testing process that included allowances for the box's circuit design, and critical environmental and use factors specific to the MLPRF. TQS provided the necessary engineering expertise and effort for this testing, with limited assistance from Universal.
- d. The rest of the deliverables (primarily technical documents) contained TQS's proprietary and detailed knowledge of the design, integration, production, and test procedures for the IFDIS.

28. This effort was only successful by utilizing TQS's proprietary know-how from years of R&D for the U.S. Government related to this intermittent failure mode. The IFDIS did not physically exist before TQS designed, built, and delivered the IFDIS to the U.S. Air Force.⁵

⁵ To be clear, some of the subsystems and components of the delivered IFDIS system were manufactured by TQS while other parts of the solution were manufactured by numerous suppliers, including: Russells Technical Products, LDS Test and Measurement, Vibration Research Corp., Dytran Instruments Inc., Dell Computer, and Universal.

Universal provided key proprietary IFD integration support to TQS in integrating IFD “blades” (*i.e.*, circuit card assemblies) into the larger IFDIS system under a supplier purchase order.

29. Further, the software to run the integrated system was developed by TQS from its inception. Universal wrote and delivered to TQS the software to operate the IFD under a User License Agreement. Other vendors provided their unique software to operate their associated items with similar agreements.

30. Since that time, TQS, not Universal, obtained twelve more IFDIS Phase III contracts that derived from and extended the Phase I and II efforts. These contracts were to further develop the IFDIS to (1) expand IFDIS test capabilities to other avionics boxes, (2) create new and/or additional IFDIS Interface Test Adapters (“ITA”) to support the expanded test capabilities, (3) expand the IFDIS control software, and (4) update technical documentation (including IFDIS test procedures and training materials).

31. During this era, TQS entered into a teaming agreement with Universal on June 25, 2012 (“2012 Teaming Agreement”). Among other things, the 2012 Teaming Agreement contemplated that Universal would sell and provide support for the IFD unit (and software), while TQS would sell and provide support for everything else, including: the shaker, environmental chamber, controller, computer, ITAs, and “other needed hardware and software” required to manufacture an IFDIS (including the essential engineering and integration effort).

32. The 2012 Teaming Agreement also contained an exclusivity clause in which “[t]he Parties together shall decide the form and content of all IFDIS related proposals submitted to the customer whether commercial or government” and that “each [P]arty will keep the other informed regarding contract discussion, negotiations, award, and contract performance,” including by providing copies of documents such as contracts.

33. In 2015, the U.S. Government recognized TQS's key role in developing IFDIS and named it an SBIR "Success Story."⁶ Among other things, the U.S. Government touted that:

When an avionics issue arises mid-flight that is observed by the pilot and/or crewmember of an aircraft, the flight debrief results in a maintenance write-up. Later, while accomplishing maintenance, many times there is found to be "no fault" – and issues that were experienced during the flight cannot be verified or remedied.

Utah-based Total Quality Systems (TQS) has been developing a solution to this issue since the early 2000s, and its Navy and Air Force customers are reaping the benefits. To date, TQS has helped its government clientele implement product and process improvements that have cut their operating costs by over \$300 million.

TQS was recently awarded a \$3.4 million contract from the Navy to deliver an Intermittent Fault Detection and Isolation System (IFDIS) for use by the fleet on its F/A-18 Generator Converter Unit. This project involves unique electronics and avionics chassis evaluation capacity that provides the ability to detect and precisely isolate intermittent failures found in high value electronic aviation systems. Elusive intermittent faults result in increased maintenance actions for the warfighter, as well as increased costs.

TQS's IFDIS specifically seeks out and isolates the exact location of physical failures of a variety of components – connectors, solder joints, wires, etc. within the computers' communication paths, making the technology applicable to any electronic systems across various industries. The IFDIS technology began more than ten years ago as an Air Force Small Business Innovation Research (SBIR) Phase I, and later a Phase II project, and culminated in the award of multiple Phase III awards with the Department of Defense.

The next five years for TQS will prove to be a busy period, as the company expands outward into the commercial sector. Both IFDIS and cASM are currently being prepped for their commercial debut, and the company is in talks with several large corporations across the country. With potential for its product line expanding nearly as fast as the company's growth, TQS is poised to make a name for itself in the complex realm of advanced systems development and enterprise software systems.

⁶ See <https://www.sbir.gov/node/828785>.

(Emphasis added.)

34. The SBIR success story, along with the history of multiple TQS-U.S. Government IFDIS contracts demonstrates the U.S. Government's view that the IFDIS is valuable and needed, and that TQS has been the sole SBIR authorized IFDIS provider for the DoD and other U.S. Government clients. The U.S. Government has since highlighted TQS's IFDIS innovation, on many occasions, as evidence to Congress that the SBIR program was "paying off" to justify its reauthorization.

35. TQS developed the IFDIS over many years, investing and spending millions of its own funds in research, development, and time to do so. TQS not only conceptualized the IFDIS ecosystem (the disparate functions and the parts from numerous commercial companies), but also developed its own proprietary software and interfaces for the IFDIS. The expert engineering and integration of this complex test system, and some of the custom components and commercial off-the-shelf modifications, constitute TQS's valuable Trade Secrets.

36. To be clear, Universal did not have a U.S. Government contract to provide an IFDIS system to the U.S. Government because it did not know how to do so. It only learned this valuable knowledge through teaming with TQS.

37. The Parties entered into another teaming agreement on July 1, 2017 to reflect the evolving nature of the U.S. Government's needs, and TQS's technical leadership, in the SBIR program ("2017 Teaming Agreement," attached hereto as **Exhibit 1**). In it, the Parties "agreed and acknowledged that, in most cases, TQS will be the Prime when contracting with the [U.S. Government]." Like in the 2012 Teaming Agreement, Universal would sell and provide support for the IFD unit (including an interface card and software) to TQS, while TQS would develop or acquire and provide support for everything else, including: the shaker, environmental chamber,

Vibration Research controller, IFDIS Control Computer, ITA(s), “other needed hardware and software,” and the required engineering, integration, and technical documentation. The 2017 Teaming Agreement also provided that TQS would handle the integration of the disparate pieces that made up the IFDIS system. Each party was to participate in IFDIS system integration, to the intended extent, but each party would maintain configuration control of their equipment and intellectual property.

38. Recognizing that TQS possessed and owned most of the hardware and software for non-Government (*i.e.*, commercial) IFDIS testing to be conducted at TQS as an exclusive service, the 2017 Teaming Agreement also provided that “TQS will conduct the majority of the diagnostic and repair work and will pay Universal 30% of the gross billings received for testing and repair services...” In the end, TQS provided 100% of this service to its customers, and still paid Universal a 30% share, per the 2017 Teaming Agreement.

39. Importantly, the 2017 Teaming Agreement also contained an exclusivity requirement in which “[t]he Parties together shall decide the form and content of all IFDIS related proposals submitted to the customer whether commercial or government.”

40. As part of its SBIR contract awards, TQS was granted SBIR rights by the U.S. Government, which are now provided for 20 years. These intellectual property protections extend to all deliverables to the U.S. Government, including: (i) drawings of the IFDIS and their ITAs; (ii) IFDIS technical manuals that include test procedures and system maintenance; (iii) technical data, reports, and software; and (iv) training materials which fully describe the system.

41. *In addition, the SBIR program provides other rights such as the “first right of refusal,” and the “right to all follow-on IFDIS work.”* The Small Business Administration’s SBIR/SBIR Policy Directive, dated October 2020, states: “Agencies or their Government-owned,

contractor-operated (GOCO) facilities, Federally-funded research and development centers (FFRDCs), or Government prime contractors that pursue R/R&D or production of technology developed under the SBIR/STTR program shall issue Phase III awards relating to the technology under an SBIR/STTR award, to the greatest extent practicable, consistent with an Agency's mission and optimal small business participation." As a result, such entities must "make a good faith effort to negotiate with such Awardees regarding their performance of the new, related, work and to issue Phase III awards for the work." (Emphasis added.)

42. Until 2020 (when Universal breached the 2017 Teaming Agreement, as discussed below), all SBIR Phase I, II, II.5, and III IFDIS contracts from the U.S. Government were awarded to TQS, not Universal.

43. TQS successfully designed, fabricated, integrated, tested, and delivered each and every IFDIS system to the U.S. Government during the duration of the TQS-Universal Teaming Agreement(s). TQS also successfully delivered IFDIS maintenance support to the U.S. Government during the duration of the TQS-Universal Teaming Agreement(s), and thereafter.

44. Universal commercially supplied IFDs and support through multiple TQS commercial purchase orders issued to them. As such, Universal is aware that TQS purchased IFDs from Universal for integration into the TQS developed and delivered IFDIS for the DoD.

45. When Universal supplied their IFDs and associated integration support to TQS under TQS's SBIR contracts, they never claimed SBIR rights for their IFD or the IFDIS (even when given the official opportunity to do so).

46. Unsatisfied with being merely a part of the solution, in 2020, Universal decided they would cut TQS out and directly offer a Universal IFDIS solution to the U.S. Government. They did this with a two-pronged approach: (1) by utilizing TQS's proprietary information gleaned

from working with TQS; and (2) lodging a public campaign to discredit and defame TQS's reputation, credibility, and capability.

47. On several occasions, Universal unlawfully breached the terms of the 2017 Teaming Agreement.

48. For instance, Universal unilaterally developed agreements with other companies to sell TQS's hijacked IFDIS system to companies such as Lockheed Martin, Barfield, and/or Star Aviation, while still operating under the Parties' 2017 Teaming Agreement. In addition, Universal deliberately left any mention of TQS out of briefings to customers at conferences implying that TQS was not involved in developing or delivering the IFDISs. Universal also refused to provide copies of IFDIS and/or IFD-related contracts to the companies who were supposed to be working together on future opportunities to sell the technology to the U.S. Government. TQS provided copies of all their IFDIS-related contracts to Universal, whereas Universal did not provide a copy of their related contracts to TQS (even when requested under the 2017 Teaming Agreement).

49. Universal also purposefully accessed TQS's IFDIS Control Computer, and SBIR software and documents therein, at Hill Air Force Base on or about March 2021, without TQS's approval or knowledge. TQS was not made aware at the time of Universal's access to TQS's SBIR-protected information and software.

50. Universal knew that TQS was the original equipment manufacturer ("OEM") and market leader for the development of IFDIS, so it engaged in the second part of the strategy: to defame TQS and drive TQS's partners and customers away.

51. For example, Universal influenced a U.S. Government civilian employee to contact a TQS U.S. Navy customer to state in an email that TQS "was not capable" or equipped to perform

on an on-going IFDIS development contract stating TQS would “fail.” Contrary to these derogatory statements, TQS successfully delivered on every aspect of that contract.

52. Universal also provided false and/or misleading (via omission) statements to U.S. Government contracting officials when arguing that a Task Order should be sole-sourced to Universal/Lockheed Martin, by deliberately neglecting to properly inform the U.S. Government and Lockheed Martin that IFDIS was developed and delivered by TQS under SBIR contracts.

53. Universal also provided false and/or misleading statements to the National Center for Manufacturing Sciences and U.S. Government contracting officials by deliberately neglecting to properly inform the U.S. Government contracting officials that IFDIS was developed and delivered by TQS under SBIR contracts.

54. Universal also intentionally mislead U.S. Government contracting officials by claiming they could build and maintain an IFDIS, even though Universal had not done so in the past.

55. Universal deliberately peddled false information to defame and/or interfere with TQS’s potential contracts with the U.S. Government.

56. Universal’s CEO, Ken Anderson, sent a letter to TQS’s counsel dated January 22, 2019. This letter was later provided to TQS’s largest customer, the U.S. Government, in order to disparage TQS. The letter contains the following statements:

a. **TQS “[deceived] the Government about [TQS’s IFDIS] SBIR Data Rights.”**

TQS held a meeting with the U.S. Government to discuss this topic in detail at TQS’s IFDIS in its facility. This meeting was documented and coordinated with the U.S. Government and no feedback with respect to any “concern” was voiced.

- b. **TQS made a “misrepresentation [to] the Government that there is an overarching ‘IFDIS Control Computer’ that operates the entire system.”** This is demonstrably false as the U.S. Government has dozens of accepted documents and technical drawings with TQS’s IFDIS Control Computer clearly labeled and denoted. TQS’s IFDIS Control Computer does not “control the IFD,” but it does initiate its start-up and sends essential TQS developed Test Program Set files to the IFD so that it can perform its operation correctly for each unique Unit Under Test.
 - c. **TQS has provided “misinformation ... to the Government about the scope of TQS SBIR Data Rights.”** These rights are clearly established by U.S. law (under the Small Business Act), not TQS, and the information provided by TQS was consistent with the law. TQS has never been informed by the U.S. Government of any related misinformation (excepting Mr. McClenny’s statements about the existence of TQS’s IFDIS Control Computer, discussed below).
 - d. **TQS has a lack of “creditworthiness and financial instability.”** This statement is false because Universal has no insight to TQS’s financial records, and because TQS has been assessed by a third-party accounting firm as having a “high” credit worthiness since before 2016.
57. Universal’s campaign was working. One government employee, D. McClenny sent an e-mail to one of TQS’s customers, the U.S. Navy, on October 27, 2020, wherein he stated:
- a. **He was provided Mr. Williams’s (U.S. Navy) email “by Ken Anderson, CEO, [of Universal].”**
 - b. **He is “99% sure TQS cannot deliver on that contract.”** This mistaken belief could only have come from conversations between Mr. McClenny and Mr.

Anderson. In fact, TQS was fully successful on every aspect of contract delivery. The IFDIS went through an extensive Acceptance Test and the U.S. Navy technical expert signed off on the success of all TQS IFDIS deliverables.

- c. **He “knows” that “TQS does not have an in-house capability to produce an IFDIS TPS [Test Program Set]” because Universal’s Automap® “has to be used to create and IFDIS [Test Program Set].”** This statement is false as TQS developed and delivered many IFDIS Test Program Sets without any Universal software or assistance. TQS has their own proprietary process to create an IFDIS Test Program Set circuit map.
- d. **He “knows” that “TQS doesn’t have a Universal IFD with Automap®” and then implied that TQS inappropriately used a U.S. Navy resource for non-U.S. Navy work.** This is false as TQS had/still has a Universal IFD in-house that TQS purchased from Universal in the past.

58. On September 1, 2022, Universal sent a letter addressed to TQS’s Board of Directors and all 80 TQS Shareholders, many of whom work for other companies. This letter contained false statements of fact including:

- a. **“The IFDIS is ... identified in Universal’s 1998 patent.”** This statement is false because a review of the claims in Universal’s U.S. Patent No. 5,744,967 (by B. Sorenson), dated April 28, 1998, has no mention of environmental stimulus. Universal uses this falsehood to misinform the U.S. Government, degrade TQS’s efforts and reputation, and improperly take business away from TQS by misinforming the marketplace. Regardless, Universal’s 1998 patent has expired.

- b. **“No Test Program [Set]⁷ is required,” and “no external software outside of Universal’s proprietary software [is required for IFDIS].”** This is false because TQS develops software files for each Test Program Set that is necessary for each unique Unit Under Test for the IFD to operate as part of the IFDIS system. Universal uses this falsehood to misinform TQS’s most important customer (the U.S. Government), degrade TQS’s efforts and reputation, and improperly take business away from TQS by misinforming the marketplace.
 - c. **TQS “has no role in future ... IFDIS ... sales, support, training, maintenance, repair, or sustainment of [any IFDIS].”** This is false because TQS was delivering IFDIS capability under a DoD SBIR Phase III contract at the time, and currently holds the only IFDIS sustainment contract for the DoD. Universal uses this falsehood to misinform TQS’s largest customer, the U.S. Government, degrade TQS’s efforts and reputation, and improperly take business away from TQS by misinforming the marketplace.
 - d. **Universal “terminated its teaming agreement with TQS for cause.”** Universal’s termination letter did not contain any language stating the agreement was terminated for cause, nor was there any “cause” for terminating the 2017 Teaming Agreement. Universal’s *post hoc* justification was done to poison the well with TQS’s largest customer, the U.S. Government.
59. Universal also made numerous social media posts for the purpose of defaming TQS.
60. For example, in a September 23, 2022 LinkedIn posting, Mr. Anderson falsely stated that:

⁷ A Test Program Set is a type of software development for IFDIS ITAs.

- a. When Universal and TQS first teamed in 2007, TQS had “no experience in intermittent fault detection, environmental testing, or No Fault Found remediation.”
- b. “All information and training to [TQS] were provided by Universal . . . [and is contained in] Universal Synaptics 1998 patent from the [United States Patent and Trademark Office]—not SBIR development.”
- c. “Universal terminated its working agreement with [TQS] for cause four years ago.”
- d. “Today, [TQS] claims ‘ownership’ of [Universal] IP and continues to spread misinformation to the [U.S. Government] that their limited SBIR data rights supersede [Universal’s] patents, IP, technical know-how, and trade secrets.”
- e. Companies like TQS are “predatory in nature” and that they “work[] to steal your ideas, IP, and trade secrets and pass them off as their own.”
- f. The 2017 Teaming Agreement was terminated “for cause,” this time adding that Universal did so recognizing that TQS was acting in a predatory fashion.

61. Further, in September 2022, Universal stated that it had saved the equivalent of “278,000 non-available days [of non-functioning equipment] attributed to undetected and hence unrepaired intermittent faults,” even though those statistics represent TQS’s accomplishments with IFDIS under its prime contracts when Universal was merely a supplier.

62. In another September 2022 LinkedIn posting, Universal falsely stated that it is the “exclusive provider of the IFDIS,” that it terminated its agreement with TQS “for cause,” and that TQS does not have the capability of supplying IFDIS anymore.

63. During 2022, Universal has repeatedly made these false claims on LinkedIn.

64. Universal has also deliberately interfered with TQS’s business base at Hill Air Force Base (and other DoD locations and offices) by falsely convincing them to reverse course

and compete a TQS already justified sole-source Maintenance & Support contract (as required under the SBIR program) for IFDIS, while Universal had never maintained a DoD IFDIS before.

65. In a briefing, Universal falsely implied that Universal was solely awarded two DoD Maintenance Symposium awards for IFDIS, and TQS's SBA Tibbett's Award. They have also reposted these claims to social media several times since.

66. In a Lockheed Martin press release on December 17, 2019, Universal claimed that they would "identify solutions for the DoD with the [IFDIS]" and implied that Universal holds trademark rights for that term. TQS has a registered trademark (No. 5,954,149) for IFDIS, not Universal.

67. In addition, while the 2017 Teaming Agreement was ongoing, Universal unilaterally contracted with the National Center for Manufacturing Sciences for DoD IFDIS, IFDIS ITA, and IFD-related work for the Naval Surface Warfare Center Crane Division. In a report released in July 2020, the National Center for Manufacturing Studies stated that:

The purpose of this CTMA collaboration was to build upon the experiences of Fleet Readiness Center Southwest and Hill Air Force Base, in utilizing the Intermittent Fault Detection and Isolation System (IFDIS) and Voyager Intermittent Fault Detector (VIFD). Electrical wiring faults of commercial electronics and DOD weapons systems requires the best strategy to implement this game-changing electronic maintenance capability into the Naval Surface Warfare Center (NSWC) Crane Division.

Collaboration between Universal Synaptics Corporation (Universal) and NSWC Crane for technical support has produced improvements to both organizations...

68. This action was in complete contravention to the parties' oral and written agreements for collaboration and cooperation, including the 2017 Teaming Agreement. Under the

2017 Teaming Agreement, Universal was legally compelled to provide a copy of that contract, but Universal's CEO (Mr. Anderson) refused.

69. Seeking to falsely solidify itself as the inventor and market leader of IFDIS, Universal continued its all-out and defamatory campaign against TQS, taking bolder steps at each turn without the regard for the truth or consequences of their actions.

70. For instance, on July 8, 2020, Universal claimed on social media that they had "success" with the F/A-18 generator control unit IFDIS operations. In reality, it was the U.S. Navy, with TQS's assistance, who successfully performed these diagnostics and repair actions, not Universal.

71. On August 19, 2022, Universal claimed on social media to be the OEM and "exclusive provider" of the IFDIS. As TQS is the OEM for all fielded IFDISs to the DoD, as demonstrated by TQS's contracts with the DoD, this statement is false.

72. On August 20, 2022, Universal posted the following on LinkedIn: "Universal Synaptics terminated its IFDIS supply agreement with TQS four years ago for cause – TQS has no access, is not authorized, or permitted to contract, and cannot supply Universal Synaptics patented IFDIS to anyone under any circumstances." This statement is false because Universal does not have a patent for IFDIS, and TQS was executing an IFDIS contract at that time (and still is). Further, the assertion that TQS "is not authorized . . . to contract [anything IFDIS] . . . to anyone under any circumstances" is false. TQS has been awarded 13 SBIR contracts for IFDIS with the U.S. Government, and TQS is currently under contract to maintain and support all U.S. Navy IFDISs. No other contractor has been awarded a contract from the DoD to deliver or maintain an IFDIS to the DoD.

73. Universal also tried to destroy TQS from within, writing letters to TQS's Board of Directors and all 80 of its Shareholders (many of whom work for other companies), questioning the CEO's leadership.

74. Throughout 2019 to present, Universal continues to use TQS IFDIS pictures on their corporate website and publicly presented briefings, claiming that the pictures are of their IFDIS and implying rights to those pictures. Because Universal did not possess an IFDIS that they developed on their own, Universal had to improperly use TQS's IFDIS images.

75. The above paints a picture of a company that operates without regard to the law, for which TQS now seeks to hold them accountable.

COUNT I
(Intentional Interference With Contracts; Potential Contracts; or Potential Economic Relations)

76. TQS repeats and reasserts each preceding allegation as if it is set forth herein.

77. TQS has had, and continues to have, numerous contracts with various U.S. Government agencies including agencies within the DoD.

78. Universal improperly interfered, and continues to interfere, with TQS's contracts and prospective contracts by, among other things, providing false and/or inaccurate information about TQS to TQS's customers and potential customers.

79. Because of the improper actions of Universal, described above, TQS has lost the opportunity to obtain additional contracts from the U.S. government, costing TQS millions of dollars in revenue which it would have otherwise received.

WHEREFORE, TQS requests that the Court enter judgment in its favor and against Universal as to Count I for general and consequential damages in an amount to be proven at trial,

prejudgment and post judgment interest, costs, and any other relief deemed just and proper by the Court.

COUNT II
(Breach of Contract – 2017 Teaming Agreement)

80. TQS repeats and reasserts each preceding allegation as if it is set forth herein.

81. The 2017 Teaming Agreements is a valid and binding contract.

82. TQS fully performed all of its obligations under the 2017 Teaming Agreement.

83. On December 16, 2018, Universal breached the 2017 Teaming Agreement by surreptitiously: (1) violating the non-disparagement clause; (2) unilaterally entering into the National Center for Manufacturing Sciences IFD/IFDIS ITA/IFDIS contract for the Naval Surface Center Crane Division, and not sharing the marketing or contract information with TQS per the 2017 Teaming Agreement's requirements; and (3) violating the exclusivity clause within the 2017 Teaming Agreement by unilaterally entering into an agreement with Lockheed Martin (another contractor) for IFDIS as the DoD prime contractor.

84. Universal's breach of the 2017 Teaming Agreement was material and without justification.

85. As a direct and proximate result of Universal's breach, TQS has suffered, and will continue to suffer, general and consequential damages in an amount to be proven at trial.

WHEREFORE, TQS requests that the Court enter judgment in its favor and against Universal as to Count II for general and consequential damages in an amount to be proven at trial, prejudgment and post judgment interest, costs, and any other relief deemed just and proper by the Court.

COUNT III
(Defamation)

86. TQS repeats and reasserts each preceding allegation as if it is set forth herein.

87. In 2022, as outlined above, Defendant negligently and/or maliciously published numerous false statements concerning TQS on social media accounts, including LinkedIn, which are accessible to the general public. Universal published these false statements parading as statements of fact about TQS.

88. On September 1, 2022, as outlined above, Universal sent a letter addressed to TQS's Board of Directors and all 80 Shareholders, many of whom work for other companies. This letter contained false statements parading as statements of fact about TQS.

89. Universal's statements are not protected by any applicable legal privilege (absolute or qualified).

90. Neither Universal, nor any of its corporate officers, agents, or employees, are public figures.

91. TQS has incurred actual and irreparable damages as a result of Universal's false statements.

WHEREFORE, TQS requests that the Court enter judgment in its favor and against Universal as to Count III for general and consequential damages in an amount to be proven at trial; prejudgment and post judgment interest; costs; and any other relief deemed just and proper by the Court.

COUNT IV
**(Misappropriation of Trade Secrets Under Defend Trade Secrets Act,
18 U.S.C. § 1836(b))**

92. TQS repeats and reasserts each preceding allegation as if it is set forth herein.

93. TQS is the owner of its Trade Secrets because it is the entity in which rightful legal and equitable title to the Trade Secrets is reposed.

94. The Trade Secrets are “trade secrets” within the meaning of Section 1836 because they constitute scientific and technical information related to IFDIS, a product or service used in, or intended for use in, interstate commerce. The Trade Secrets derive independent economic value, actual or potential, from not being generally known or ascertainable to TQS’s competitors who can obtain economic value from the Trade Secrets’ disclosure. TQS has taken multiple reasonable steps, both externally and internally, to ensure the security of the Trade Secrets, including: password protecting software programs, providing information only on a need-to-know basis, and keeping certain items in locked spaces within its workplace.

95. TQS’s proprietary information, by virtue of the U.S. government’s use of IFDIS, is related to services and products used in, or intended for use in, interstate or foreign commerce.

96. As discussed herein, Universal used its relationship with TQS to steal TQS’s Trade Secrets. Universal misappropriated the Trade Secrets by obtaining the Trade Secrets and wrongfully using them to obtain a competitive advantage. Specifically, Universal used TQS’s ITA design baseline to develop and build new IFDIS ITAs which it delivered to the U.S. Air Force without TQS’s knowledge. Universal had not delivered an IFDIS system (or created one) prior to teaming with TQS (or during the teaming relationship).

97. This ITA knowledge included proprietary knowledge, know-how, and lessons learned from previous TQS ITA developments. Universal had access to much if not all of this knowledge during the IFD integration at TQS for previous IFDIS work.

98. TQS discovered these non-TQS delivered IFDIS ITAs during IFDIS integration testing at Building 100 at Hill Air Force Base for a separate IFDIS ITA TQS contract with the U.S. Government.

99. Universal further misappropriated the Trade Secrets because it and its employees knew or had reason to know that the knowledge obtained constituted TQS's Trade Secrets. Universal knew or had reason to know that the Trade Secrets were acquired by improper means, mistake, or accident.

100. Universal stole and used TQS's Trade Secrets without the express or implied consent of TQS.

101. Universal, illegally armed with TQS's Trade Secrets, was able to perform on improperly awarded IFDIS-related contracts to build and provide IFDIS ITAs that Universal presented themselves as qualified to provide, even though they had not built or delivered IFDIS ITAs before. Since they presented themselves as qualified, and purposely ignored TQS's SBIR rights, they convinced the U.S. Government to award the IFDIS ITA contracts to them even though their only basis of knowledge to perform the required Statement of Work was stolen from TQS.

102. Further, TQS believes that its Trade Secrets were and are being used on other projects and proposals on which TQS and Universal bid to Universal's competitive advantage. Universal will unfairly benefit from having TQS's Trade Secrets.

103. As a direct result of Universal's and its employee's willful and malicious misappropriation and use of the Trade Secrets without TQS's consent, TQS has suffered, and continues to suffer, significant damages. TQS has suffered and continues to suffer damages for actual loss including, but not limited to: (1) interference with TQS's business relationships with the U.S. government; (2) reduced value of its Trade Secrets; (3) reduced value of its R&D; and (4)

the loss of a competitive position against TQS's competitors. TQS has suffered further damages in amounts to be determined for loss of business opportunities and future contracts with potential customers.

104. Moreover, Universal has been and continues to be unjustly enriched by its misappropriation of TQS's Trade Secrets.

105. Alternatively, TQS is entitled to a reasonable royalty for Universal's unauthorized disclosure or use of TQS's Trade Secrets.

106. TQS is entitled to attorney's fees against Universal under Section 1836(b)(3)(D) because Universal's misappropriation was willful and malicious.

WHEREFORE, TQS requests the Court to enter judgment in its favor and against Universal as to Count IV for compensatory damages for actual loss and unjust enrichment caused by the misappropriation or, in the alternative, a reasonable royalty for Universal's unauthorized disclosure and/or use of TQS's Trade Secrets; prejudgment and post judgment interest; costs; exemplary damages under Section 1836(b)(3)(C); attorneys' fees under Section 1836(b)(3)(D), and any other relief deemed just and proper by the Court.

COUNT V

(Misappropriation of Trade Secrets Under Utah Uniform Trade Secrets Act, Utah Code Ann. § 13-24-1, *et seq.*)

107. TQS repeats and reasserts each preceding allegation as if it is set forth herein.

108. TQS's Trade Secrets are "trade secrets" within the meaning of Utah's Uniform Trade Secrets Act because they are the type of type of scientific and technical information that derives independent economic value, actual or potential, from not being generally known to, and not readily ascertainable to TQS's competitors who can obtain economic value from the Trade Secrets' disclosure. TQS has taken multiple reasonable steps, both externally and internally, to

ensure the security of the Trade Secrets, including: password protecting software programs, providing information only on a need-to-know basis, and keeping certain items in locked spaces within its workplace.

109. As discussed herein, Universal used its relationship with TQS to steal TQS's Trade Secrets. Universal misappropriated the Trade Secrets by obtaining the Trade Secrets and wrongfully using them to obtain a competitive advantage. Specifically, Universal used TQS's ITA design baseline to develop and build new IFDIS ITAs which it delivered to the U.S. Air Force without TQS's knowledge. Universal had not delivered an IFDIS system (or created one) prior to teaming with TQS (or during the teaming relationship).

110. This ITA knowledge included proprietary knowledge, know-how, and lessons learned from previous TQS ITA developments. Universal had access to much if not all of this knowledge during the IFD integration at TQS for previous IFDIS work.

111. TQS discovered these non-TQS delivered IFDIS ITAs during IFDIS integration testing at Building 100 at Hill Air Force Base for a separate IFDIS ITA TQS contract with the U.S. Government.

112. Universal further misappropriated the Trade Secrets because it and its employees knew or had reason to know that the knowledge obtained constituted TQS's Trade Secrets. Universal knew or had reason to know that the Trade Secrets were acquired by improper means, mistake, or accident.

113. Universal stole and used TQS's Trade Secrets without the express or implied consent of TQS.

114. Universal, illegally armed with TQS's Trade Secrets, was able to perform on improperly awarded IFDIS-related contracts to build and provide IFDIS ITAs that Universal

presented themselves as qualified to provide, even though they had not built or delivered IFDIS ITAs before. Since they presented themselves as qualified, and purposely ignored TQS's SBIR rights, they convinced the U.S. Government to award the IFDIS ITA contracts to them even though their only basis of knowledge to perform the required Statement of Work was stolen from TQS.

115. Further, TQS believes that the Trade Secrets were and are being used on other projects and proposals on which TQS and Universal bid to Universal's competitive advantage. Universal will unfairly benefit from having TQS's Trade Secrets.

116. As a direct result of Universal's and its employee's willful and malicious misappropriation and use of the Trade Secrets without TQS's consent, TQS has suffered, and continues to suffer, significant damages. TQS has suffered and continues to suffer damages for actual loss including, but not limited to: (1) interference with TQS's business relationships with the U.S. government; (2) reduced value of its Trade Secrets; (3) reduced value of its R&D; and (4) the loss of a competitive position against TQS's competitors. TQS has suffered further damages in amounts to be determined for loss of business opportunities and future contracts with potential customers.

117. Moreover, Universal has been and continues to be unjustly enriched by its misappropriation of TQS's Trade Secrets.

118. Alternatively, TQS is entitled to a reasonable royalty for Universal's unauthorized disclosure or use of TQS's Trade Secrets.

119. Due to Universal's willful and malicious misappropriation, TQS is entitled to recover attorney's fees against Universal pursuant to Utah Code Ann. § 13-24-5.

WHEREFORE, TQS requests the Court to enter judgment in its favor and against Universal as to Count V for compensatory damages for actual loss and unjust enrichment caused

by the misappropriation or, in the alternative, a reasonable royalty for Universal's unauthorized disclosure and/or use of TQS's Trade Secrets; prejudgment and post judgment interest; costs; exemplary damages under Utah Code Ann. § 13-24-4(2); attorney's fees pursuant to Utah Code Ann. § 13-24-5; and any other relief deemed just and proper by the Court.

COUNT VI

(Violation of the Utah Deceptive Trade Practices Act, Utah Code Ann. § 13-11a-3)

120. TQS repeats and reasserts each preceding allegation as if it is set forth herein.

121. Universal has passed off TQS's IFDIS product as its own, and has otherwise imitated TQS by falsely claiming that it developed, and is the "exclusive provider" of, the IFDIS product.

122. Universal's actions, including by falsely claiming that it developed, and is the "exclusive provider" of, the IFDIS product, has caused a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or ownership of the IFDIS product.

123. Universal's actions, including by falsely claiming that it developed, and is the "exclusive provider" of, the IFDIS product, has caused a likelihood of confusion or of misunderstanding as to TQS's affiliation, connection, association with, or certification of the IFDIS product.

124. By falsely claiming that it developed, and is the "exclusive provider" of, the IFDIS product, Universal used deceptive representations in connection with the IFDIS product.

125. By falsely claiming that it developed, and is the "exclusive provider" of, the IFDIS product, Universal made false or misleading representations that disparaged TQS's business.

126. Universal's actions are misleading, thereby confusing and deceiving, or likely confusing and deceiving, TQS's customers.

127. Universal's misleading and deceptive trade practices constitute violations of the Utah Deceptive Trade Practices Act, Utah Code Ann. § 13-11a-3.

128. TQS has suffered, and will continue to suffer, actual harm from Universal's misleading and deceptive trade practices.

129. As a result of Universal's violations of the Utah Deceptive Trade Practices Act, TQS is entitled to recover actual damages sustained or \$2,000, whichever is greater.

130. As a result of Universal's violations of the Utah Deceptive Trade Practices Act, TQS is entitled to an order from the Court enjoining Universal from continuing to make misrepresentations relating to the IFDIS product.

131. As a result of Universal's violations of the Utah Deceptive Trade Practices Act, TQS is entitled to recover its costs and attorney fees.

WHEREFORE, TQS requests the Court to enter judgment in its favor and against Universal as to Count VI for compensatory damages for the actual loss it has incurred due to Universal's unfair and deceptive business practices in violation of the Utah Deceptive Trade Practices Act in an amount to be determined at trial; prejudgment and post judgment interest; costs; and any other relief deemed just and proper by the Court.

COUNT VII
(Violation of the Utah Unfair Competition Act, Utah Code Ann. § 13-5a-101, *et seq.*)

132. TQS repeats and reasserts each preceding allegation as if it is set forth herein.

133. Universal violated Utah's Unfair Competition Act, Utah Code Ann. § 13-5a-101, *et seq.*, by, among other things, accessing or exceeding its authorized access to the IFDIS Control Computer, TQS's proprietary software, and TQS's other proprietary files and manipulating the IFDIS Control Computer and TQS's proprietary software and files, as described above.

134. Universal manipulated the IFDIS Control Computer, TQS's proprietary software, and TQS's other proprietary files to materially cause damage to or disrupt TQS's business and the IFDIS computing resources.

135. Universal's actions were unfairly competitive, unlawful, or fraudulent.

136. Universal's actions constitute malicious cyber activity pursuant to Utah Code Ann. § 13-5a-102(3).

137. TQS was injured by each of Universal's acts of unfair competition.

138. As a result of Universal's violations of Utah's Unfair Competition Act, TQS is entitled to recover actual damages, costs and attorney fees, and punitive damages.

WHEREFORE, TQS requests the Court to enter judgment in its favor and against Universal as to Count VII for compensatory damages for the actual loss it has incurred due to Universal's unlawful actions in violation of the Utah Unfair Competition Act in an amount to be determined at trial; prejudgment and post judgment interest; costs; and any other relief deemed just and proper by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Total Quality Systems, Inc. prays for judgment as follows:

1. Damages in an amount to be determined at trial;
2. A full accounting of Universal's revenue from IFDIS-related prime contracts and/or subcontracts received directly or indirectly from the U.S. Government to determine proper royalties owed to TQS due to Universal's use of TQS's intellectual property and Trade Secrets;

3. Injunctive relief including: (a) prohibiting Universal from utilizing TQS's Trade Secrets and (b) prohibiting Universal from providing false statements regarding the IFDIS;
4. Attorneys' fees; and
5. Any and further relief that this Court deems just and equitable.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all issues so triable.

DATED: January 23, 2024

/s/ Robert L. Neeley

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