IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

C3.AI INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N23C-11-106 EMD CCLD
	)	
CUMMINS, INC.,	)	
	)	
Defendant.	)	
	)	

Submitted: May 10, 2024
Decided: August 16, 2024
Redacted and Reissued on September 3, 2024[1]

Upon Defendant's Motion to Dismiss Plaintiff's Complaint
DENIED

John A. Sensing, Esquire, Andrew M. Moshos, Esquire, Maame N. Boateng, Esquire, Potter Anderson & Corroon LLP, Wilmington, Delaware, Mark Klapow, Esquire, Crowell & Moring LLP, Washington, DC, Joachim B. Steinberg, Esquire, Anna Z. Saber, Esquire, Jacob Canter, Esquire, Crowell & Moring LLP, San Francisco, California. *Attorneys for Plaintiff C3.ai, Inc.*

Stephen J. Kraftschik, Esquire, Polsinelli, PC, Wilmington, Delaware, Jonathan R. Spivey, Esquire, LaTasha M. Snipes, Esquire, Polsinelli, PC, Houston, Texas. *Attorneys for Defendant Cummins, Inc.*

DAVIS, J.

I. INTRODUCTION

This is a civil action assigned to the Complex Commercial Litigation Division of the Court. Plaintiff C3.ai, Inc. ("C3") claims that Defendant Cummins, Inc. ("Cummins") misappropriated C3's trade secrets and, in doing so, breached the Trial Agreement and Master

[1] The Court has agreed to certain redactions. The parties should not assume that the Court will continue to issue redacted versions of decisions. C3 filed this action in this Court. The Court is a public forum and, absent certain findings by the Court, matters (*e.g.*, hearings, decisions, etc.) cannot remain sealed.

Subscription and Services Agreement ("MSSA").[2] Cummins moved to dismiss (the "Motion"), substantially all of C3's claims.[3] C3 opposed the Motion. The Court held a hearing on the Motion on May 10, 2024. At the conclusion of the hearing, the Court took the Motion under advisement.

For the reasons stated below, the Motion is **DENIED**.

II. RELEVANT FACTS[4]

A. THE PARTIES

C3 is a Delaware corporation with its principal place of business in Redwood City, California.[5] C3 provides artificial intelligence ("AI") services.[6]

Cummins is an Indiana corporation with its principal place of business in Columbus, Indiana.[7] Cummins manufactures diesel truck engines which are designed to have "hundreds of thousands of individual settings that can impact fuel economy and emissions."[8] In 2019, Cummins approached C3 about developing an AI-enabled solution for engine optimization which Cummins had previously attempted to develop on its own.[9]

B. C3'S SERVICES

C3's business model relies on C3 developing and delivering its AI services through its "C3.ai Platform."[10] Using the C3.ai Platform, C3 creates "a customized and proprietary AI

[2] *See* Complaint (hereinafter "Compl.") (D.I. No. 1).
[3] Defendant's Motion to Dismiss (hereinafter "Mot.") (D.I. No. 21).
[4] The following facts are drawn from the well-pled allegations in C3's Complaint and are presumed to be true solely for purposes of this Motion.
[5] Compl. ¶ 8.
[6] *Id.* ¶¶ 15, 18.
[7] *Id.* ¶ 9.
[8] *Id.* ¶¶ 28, 31.
[9] *Id.* ¶¶ 33, 35. Cummins relied primarily on internal experimentation and observation to help determine engine settings prior to approaching C3 for its services. *Id.* ¶ 34.
[10] *Id.* ¶ 16.

solution," usually in the form of an application, to help meet a client's business needs.[11] C3 provides a 12-week trial period to its customers to demonstrate the abilities of the C3.ai Platform.[12] Following the trial period, C3 offers a longer-term subscription agreement, which consists of C3 licensing the C3.ai Platform and application to its customers.[13] Under the longer-term subscription agreement, C3 retains all associated intellectual property rights.[14] The application that C3 developed for Cummins is at the core of this civil action.

C. C3 AND CUMMINS ENTER INTO BUSINESS WITH ONE ANOTHER

On January 30, 2020, C3 and Cummins entered into a Mutual Nondisclosure Agreement ("MNDA") **[REDACTED]**.[15] The MNDA required the exchange of confidential information and protected that confidential information from unauthorized use.[16] Confidential information is defined in the MNDA as:

[REDACTED][17]

[REDACTED].[18] Following the execution of the MNDA, C3 visited Cummins' headquarters to assess Cummins' business needs and provide a workshop to demonstrate C3's capabilities.[19]

1. The Trial Agreement

On December 17, 2020, the parties' executed the Trial Agreement.[20] Pursuant to the Trial Agreement, C3 was tasked with developing a "customized AI-driven fuel economy

[11] *Id*. ¶ 21.
[12] *Id*.
[13] *Id*. ¶ 22.
[14] *Id*.
[15] *Id*. ¶¶ 36-37. Compl., Ex. C (hereinafter "MNDA").
[16] Compl. ¶ 37; *see* MNDA § 2.
[17] MNDA § 1.
[18] Compl. ¶ 39; *see* MNDA § 9 ("**[REDACTED]**").
[19] Compl. ¶ 40.
[20] *See* Compl., Ex. B (hereinafter "Trial Agreement").

optimization application for Cummins to use with its X15 engines."[21] **[REDACTED]**.[22] **[REDACTED]**.[23]

During the trial period, C3 successfully developed a "Fuel Economy Optimization Application" ("FEOA" or "Application").[24] Cummins believed that the FEOA would save its customers "hundreds of millions of dollars."[25] The FEOA provided for "**[REDACTED]**."[26]

2. The Master Subscription and Services Agreement

Following the trial period, in June 2021, C3 and Cummins executed the MSSA and "Order Form."[27] Pursuant to the MSSA, Cummins was granted a limited license to the C3.ai Platform and "**[REDACTED]**,"[28] and **[REDACTED]**.[29] The MSSA required Cummins to "**[REDACTED]**."[30] The MSSA further restricted Cummins use of **[REDACTED]**, stating:

[REDACTED][31]

The MSSA also contained a provision regarding C3's audit rights **[REDACTED]**.[32] The MSSA and Order Form established a multi-year term that required Cummins to pay C3 over $3 million annually.[33] On June 3, 2022, a second Order Form was executed which renewed the terms of the first Order Form.[34]

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[21] Compl. ¶ 42.
[22] Compl. ¶ 43. *See* Trial Agreement § IV(a) ("**[REDACTED]**").
[23] Compl. ¶ 43
[24] *Id.* ¶ 44.
[25] *Id.* ¶ 48.
[26] *Id.* ¶ 46.
[27] *Id.* ¶ 50.
[28] *Id.* **[REDACTED]**." *Id.* ¶ 53; *see* Compl., Ex. A (hereinafter "MSSA") at 15, § 7.1.
[29] Compl. ¶ 53.
[30] *Id.* ¶ 52.
[31] MSSA at 7, § 3.3.
[32] Compl. ¶ 55.
[33] *Id.* ¶ 56.
[34] *Id.*

In order to perform its work, C3 uploaded the C3.ai Platform and the FEOA onto Cummins' cloud system and shared confidential information with Cummins.[35] C3 employees were issued Cummins' accounts, laptops, and login credentials.[36] C3 and Cummins worked together for two years before Cummins hired Jim Jacob as the Executive Director of Cummins' Analytics team.[37] C3 alleges that Mr. Jacob and his team focused on learning about the FEOA, its code, and as much as it could from C3's team.[38]

D. THE ALLEGED MISAPPROPRIATION BY CUMMINS

After hiring Mr. Jacob, Cummins started asking C3 for frequent working sessions.[39] C3 noticed that Cummins employees were interested in learning about the data science behind the FEOA.[40] In January 2023, Mr. Jacob sent an email (the "January Email") to C3 requesting a working session.[41] C3 discovered that the January Email contained notes from an internal Cummins meeting.[42] The notes revealed that Cummins had employed an AI team in India to try and replicate the work C3 was doing for Cummins.[43] The January Email also contained a request by Cummins to have C3 "demo and show" the user interface ("UI") working and backend.[44] C3 noted that a customer would not typically need the "backend" information to operate the Application.[45] C3 proceeded to confront Cummins about its request and contends that, in response, Cummins admitted to trying to replicate the C3.ai Platform and Application.[46]

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[35] *Id.* ¶¶ 57, 60.
[36] *Id.* ¶ 58.
[37] *Id.* ¶ 61.
[38] *Id.* ¶ 62.
[39] *Id.* ¶ 63.
[40] *Id.*
[41] *Id.* ¶ 64.
[42] *Id.* C3 did not attach this email to the Complaint.
[43] Compl. ¶ 65.
[44] *Id.*
[45] *Id.*
[46] *Id.* ¶¶ 66-67.

Then, in April 2023, Cummins decided not to renew the MSSA for another one-year term.[47] C3's legal team subsequently contacted Cummins' general counsel to discuss the January Email.[48] Cummins did not respond.[49] Thereafter, in May 2023, C3's legal team invoked C3's audit rights as set forth in the MSSA.[50] Cummins responded to C3's communications by accusing C3 of failing to satisfy deliverable requirements under the MSSA.[51] Cummins also informed C3 that it should preserve its documents in anticipation of litigation.[52] C3 replied to this communication and noted that this was Cummins first complaint regarding C3's work and it came in response to C3's concern over the January Email.[53] In that same communication, C3 requested to meet with Cummins to try and resolve any disputes and re-asserted its audit rights.[54]

In June 2023, Cummins announced its own AI-driven fuel optimization and prognostic tool ("Cummins Solution") that provided similar functions as the FEOA C3 offered.[55] Following the release of Cummins Solution, C3 and Cummins engaged in further discussions but in September 2023, C3 received a final letter from Cummins indicating it would not meet with C3 to resolve any outstanding disputes and demanded that C3 return Cummins' computers.[56]

E. CURRENT LITIGATION

C3 filed suit alleging that Cummins misappropriated C3's trade secrets by "acquiring, disclosing, and using them beyond the scope of any agreement."[57] On November 16, 2023, C3 filed its Complaint asserting three causes of action: (i) Count I, Trade Secret Misappropriation

[47] *Id.* ¶ 69.
[48] *Id.* ¶ 73.
[49] *Id.*
[50] *Id.* ¶ 74.
[51] *Id.* ¶ 75.
[52] *Id.*
[53] *Id.* ¶ 76.
[54] *Id.*
[55] *Id.* ¶ 71.
[56] *Id.* ¶¶ 77, 79.
[57] *Id.* ¶ 81.

under the Defend Trade Secrets Act ("DTSA"); (ii) Count II, Trade Secret Misappropriation under the Delaware Uniform Trade Secrets Act ("DUTSA"); and (iii) Count III, Breach of Contract.[58]

Cummins filed its Motion on January 20, 2024, seeking to dismiss Counts I and II in full and part of Count III.[59] C3 filed its brief in opposition to the Motion on March 1, 2024.[60] Cummins filed its reply on March 22, 2024.[61] The Court heard argument on May 10, 2024, and took the matter under advisement.[62]

III. PARTIES' CONTENTIONS

A. CUMMINS' MOTION TO DISMISS

Cummins moves to dismiss substantially all of C3's Complaint.[63] Cummins argues that C3 failed to state a claim upon which relief can be granted because: (i) C3 has failed to identify what trade secrets Cummins has misappropriated; (ii) C3 has failed to plead factual allegations regarding improper use or disclosure of any purported trade secrets; and (iii) C3's claims for breach of the Trial Agreement and breach of the Implied Covenant of Good Faith and Fair Dealing (the "Implied Covenant") have not been adequately pled.[64]

Cummins argues that C3's trade secret claims should be dismissed because C3 has only alleged "unspecified and nondescript categories" of AI technology[65] and that in using "catchall language" Cummins is not sufficiently on notice of any alleged misappropriation.[66] Cummins

[58] *See generally* Compl. C3's Breach of Contract claim includes breach of the Trial Agreement, MSSA, and breach of the Implied Covenant of Good Faith and Fair Dealing. *See id.* ¶¶ 99-106.
[59] *See* Mot.
[60] Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss (hereinafter "Pl.'s Opp'n") (D.I. No. 28).
[61] Reply Brief in Support of Defendant's Motion to Dismiss (hereinafter "Def.'s Reply") (D.I. No. 36).
[62] D.I. No. 42.
[63] *See* Mot. at 1 n.1. Cummins is not moving to dismiss C3's claim for breach of the MSSA. *Id.*
[64] *See generally* Mot.
[65] *Id.* at 3.
[66] *Id.* at 8-9.

contends that because C3 has failed to adequately allege that Cummins improperly used or disclosed any purported trade secrets the claims should be dismissed.[67] Cummins also asserts that the FEOA is Cummins' IP and therefore any alleged misappropriation is negated.[68]

In addition, Cummins moves to dismiss C3's claims for breach of the Trial Agreement and breach of the Implied Covenant.[69] Cummins argues that C3 has not adequately pled breach of the Trial Agreement because the Complaint: (i) does not identify any language in the Trial Agreement that prohibits Cummins' alleged activities; (ii) is devoid of any allegations that Cummins committed any breaches during the "life" of the Trial Agreement;[70] and (iii) fails to identify what "Confidential Information" Cummins misused.[71] Cummins further asserts that because the breach of the Implied Covenant claim alleges Cummins used "confidential information" in an unauthorized manner it is duplicative of C3's claim for breach of the MSSA and should be dismissed.[72]

B. C3'S OPPOSITION

In opposition, C3 argues the Motion should be denied because: (i) Delaware law only requires the Complaint to put the opposing party on notice "of the boundaries within which the trade secret lies;" (ii) the Complaint specifically alleges misappropriation; (iii) Delaware courts prohibit "the splicing of claims;" (iv) the Trial Agreement covers matters that are distinct from the MSSA; and (v) C3 has properly pled breach of the Implied Covenant.[73]

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[67] *Id.* at 12-13.
[68] *Id.* at 12.
[69] *Id.* at 3.
[70] Cummins asserts that the terms of the Trial Agreement ended on June 3, 2021, when the MSSA was executed. *Id.* at 15.
[71] *Id.*
[72] *Id.* at 3, 15-16.
[73] *See* Pl.'s Opp'n at 1-3.

C3 asserts that by alleging Cummins misappropriated "**[REDACTED]**, it has adequately identified the trade secrets at issue.[74] C3 further relies on the "Sedona Conference guidelines on trade secret identification" which advises plaintiffs to provide a separate document detailing the trade secrets after a protective order is issued to avoid public disclosure of a trade secret within a complaint.[75] Since the filing of Cummins' Motion, C3 has provided Cummins with a 60-page document that provides, in detail, the relevant trade secrets at issue.[76] C3 posits that the filing of this 60-page document moots Cummins' argument on the issue of disclosure.[77] As to misappropriation, C3 asserts it has adequately alleged that Cummins schemed to steal C3's trade secrets and did, in fact, acquire and use those trade secrets under false pretenses.[78]

C3 further argues that moving to dismiss only a portion of C3's Breach of Contract claim is procedurally improper, and thus, the Motion should be denied on that basis alone.[79] In the alternative, C3 maintains that the Trial Agreement is not superseded in its entirety by the MSSA because the MSSA contained a limited integration clause.[80] C3 also asserts that it alleged Cummins breached the Trial Agreement in six ways[81] and specifically stated the confidential information it alleges Cummins misused.[82] Last, C3 states that by alleging Cummins used the parties' knowledge transfer session to obtain information for its own misuse, C3 has adequately pled an independent breach of the Implied Covenant.[83]

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[74] *Id.* at 9.
[75] *Id.* at 13-14.
[76] *Id.* at 14.
[77] *Id.* at 14 n.3.
[78] *Id.* at 17-18.
[79] *Id.* at 21.
[80] *Id.* at 23.
[81] *Id.* at 24. *See* Compl. ¶101(a)-(e), (h).
[82] Pl.'s Opp'n at 25.
[83] *Id.* at 26.

IV. STANDARD OF REVIEW

Upon a motion to dismiss, the Court (i) accepts all well-pled factual allegations as true, (ii) accepts even vague allegations as well-pled if they give the opposing party notice of the claim, (iii) draws all reasonable inferences in favor of the non-moving party, and (iv) only dismisses a case where the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.[84] However, the court must "ignore conclusory allegations that lack specific supporting factual allegations."[85]

V. DISCUSSION

A. COUNT I AND COUNT II: MISAPPROPRIATION OF TRADE SECRETS

While DTSA is a federal cause of action, Delaware's pleading standard does not change.[86] The Delaware Supreme Court has noted that "Delaware's 'conceivability' standard is more akin to possibility, while the federal 'plausibility' standard falls somewhere beyond possibility, but short of probability."[87]

To allege a violation of DTSA a "plaintiff must identify a trade secret with sufficient particularity so as to provide notice to a defendant of what he is accused of misappropriating and for a court to determine whether misappropriation has or is threatened to occur."[88] Courts

[84] *See Central Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 535 (Del. 2011); *Doe v. Cedars Academy, LLC*, 2010 WL 5825343, at *3 (Del. Super. Oct. 27, 2010).
[85] *Ramunno v. Crawley*, 705 A.2d 1029, 1034 (Del. 1998).
[86] *Dollard v. Callery*, 185 A.3d 694, 703 (Del. Super. 2018) ("Although the United States Supreme Court in the *Twombly-Iqbal* decisions enunciated a 'plausibility' standard for pleadings in federal court, the lower 'reasonable conceivability' threshold continues to apply in Delaware state courts.").
[87] *See Elenza, Inc. v. Alcon Lab'ys Holding Corp.*, 2015 WL 1417292, at *5 (Del. Super. Mar. 23, 2015).
[88] *Lithero, LLC v. AstraZeneca Pharmaceuticals LP*, 2020 WL 4699041, at *1 (D. Del. Aug. 13, 2020) (quoting *Progressive Sterilization, LLC v. Turbett Surgical LLC*, 2020 WL 1849709, at *6 (D. Del. Apr. 13, 2020)).

recognize that trade secrets do not need to be disclosed in detail in a complaint because doing so would result in public disclosure of the trade secret.[89]

Next, to allege a claim under the DUTSA a plaintiff must present "allegations sufficient to show: (1) the existence of a trade secret (i.e., information with commercial utility arising from its secrecy and reasonable steps to maintain this secrecy); (2) which the plaintiff communicated to the defendant; (3) under an express or implied understanding that the defendant would respect the secrecy of the matter; and that (4) the defendant used or disclosed the secret information in breach of that understanding to the injury of the plaintiff."[90]

Trade secrets are defined as, information that derives "independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and that the information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."[91] The Court of Chancery in *AlixPartners, LLP v. Benichou* noted that "[t]rade secrets should be given [] expansive meaning and interpretation."[92]

1. C3 SUFFICIENTLY IDENTIFIED THE TRADE SECRETS AT ISSUE IN THE COMPLAINT.

Cummins argues that both the claims for DTSA and DUTSA should be dismissed because C3 has failed to sufficiently identify the trade secrets at issue.[93] Cummins relies on

[89] *Id*.; *see Leaucadia, Inc. v. Applied Extrusion Techs.*, Inc., 755 F.Supp. 635, 636 (D. Del. 1991) ("Courts are in general agreement that trade secrets need not be disclosed in detail in a complaint alleging misappropriation for the simple reason that such a requirement would result in public disclosure of the purported trade secrets.").
[90] *AlixPartners, LLP v. Benichou*, 250 A.3d 775, 782 (Del. Ch. 2019).
[91] *Id*. (internal quotation marks omitted).
[92] *Id*.
[93] *See* Mot. at 7-12. As part of its argument that C3 failed to identify its trade secrets, Cummins asserts, in a sentence, that the FEOA is Cummins' IP pursuant to the MSSA, and therefore, any trade secret claim is negated. *Id*. at 12. In the Complaint, C3 states that under the Trial Agreement C3 retained the IP rights to any C3 Application and that once an MSSA is executed C3 licenses the platform and application to its clients. *See* Compl. ¶ 22. On a motion to dismiss, the Court accepts plaintiffs well pled allegations as true, and so, for the purpose of this Motion, the FEOA is C3's IP.

Lithero, LLC v. AstraZeneca Pharmaceuticals LP[94] to support its position.[95] In *Lithero*, the District Court found the following trade secret allegations to be insufficient:

> The complaint alleges that the process by which LARA [Lithero's Automated Regulatory Assistant] learns from the content is proprietary and highly confidential . . . that insight into the materials and methods used to train LARA was disclosed to Defendant in an email. Plaintiff alleges that confidential and proprietary information regarding how LARA is trained and what parameters affect learning was also disclosed to Defendant in a teleconference . . . Plaintiff shared [] highly confidential and proprietary information regarding years of past research and development, the current capabilities of LARA coming as a result of that research and development, and detailed plans for future areas of growth . . . proprietary and confidential information regarding LARA's capabilities, the training process, data processing approach, LARA's comment response system, and other design and development aspects of LARA.[96]

The court in *Lithero* held that such statements do nothing but point to "large, general areas of information" but do not identify what the trade secrets are within those general areas.[97] Cummins asserts that like *Lithero*, C3 has pled nothing more than unspecified and nondescript categories of AI/machine learning technology.[98]

In contrast, C3 relies on *Deloitte Consulting LLP v. Sagitec Solutions LLC*.[99] In *Deloitte*, the plaintiff identified three categories of information that it contended were trade secrets and the court found that, "those categories are broad, but they are not ambiguous."[100] In *Deloitte*, the three categories alleged to be trade secrets were: the uFACTS Application, uFACTS Design, and

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[94] 2020 WL 4699041 (D. Del. Aug. 13, 2020).
[95] *See* Mot. at 10-12.
[96] *Lithero, LLC*, 2020 WL 4699041, at *2 (internal citations and quotation marks omitted).
[97] *Id*.
[98] Mot. at 10-11.
[99] 2023 WL 6039069, at *2 (D. Del. Sept. 15, 2023). C3 also relies on the Sedona Conference, Commentary on the Proper Identification of Asserted Trade Secrets in Misappropriation Cases, 22 SEDONA CONF. J. 223, 235 (2021), as support for its assertion that providing a 60-page trade secret disclosure to Cummins, after the Court entered a protective order and after the Complaint was filed, moots Cummins argument regarding disclosure. *See* Pl.'s Opp'n at 13-14. The 60-page disclosure was not attached as an exhibit to the Complaint nor incorporated by reference, therefore the Court will not include the document in its analysis. *See Windsor I, LLC v. CWCapital Asset Management LLC*, 238 A.3d 863, 873 (Del. 2020) ("In most cases, when the Superior Court considers a 12(b)(6) motion, it limits analysis to the 'universe of facts' within the complaint and any attached documents.").
[100] *Deloitte*, 2023 WL 6039069, at *2.

uFACTS Framework.[101] The complaint defined the uFACTS Application as a "proprietary application software that Deloitte develops for its clients."[102] The trade secrets for the uFACTS Application in *Deloitte* were, "the source code, libraries, configurations, settings, logic, routines, scripts, and database schemas that enable uFACTS to operate."[103] Notably, the complaint in *Deloitte* did not state or list what the code itself was, what configurations were at issue, what the settings were, or provide any other detail about the items that enable uFACTS to run.[104] Further, the *Deloitte* court noted that by listing one of the applications (uFACTS), it "would readily be understood to encompass the source code, settings, and other implementation details" of the software.[105]

The *Deloitte* defendants, as in here, attempted to argue that identifying an entire software was not specific enough, but the *Deloitte* court found that a "plaintiff need not spell out the details of the trade secret to avoid dismissal."[106] Instead, the court held, a plaintiff need only describe the trade secret "with sufficient particularity to separate it from matters of general knowledge in the trade or of special knowledge of those persons who are skilled in the trade, and to permit the defendant to ascertain at least the boundaries within which the secret lies."[107]

The Court also notes that in *AlixPartners, LLP v. Benichou*, the Court of Chancery held the following allegations to be sufficient:

> Plaintiffs 'have developed numerous methods, techniques, and processes for conducting and marketing its consulting business that derive independent economic value from not being generally known to others who might use or disclose them for

[101] *Id*. at *1.
[102] *Id*.
[103] *Id*.
[104] *Id*.
[105] *Id*. at *2.
[106] *Id*. (internal quotation marks omitted). The court in *Deloitte* looked to the third circuit for guidance, where courts have held that alleging confidential information including, "notes, analyses, compilations, studies, or other documents" was enough to identify a trade secret. *Id*. at *3 (quoting *OWAL, Inc. v. Caregility Corp*., 2022 WL 890182 (D. N.J. Mar. 25, 2022)).
[107] *Id*. at *2 (quoting *Oakwood Laboratories LLC v. Thanoo*, 999 F.3d 892 (3d Cir. 2021)).

> economic gain.' That information includes documents like 'revenue assessments, studies prepared by [plaintiffs], notes from meetings, pricing analyses, and other strategic documents.'[108]

In *AlixPartners*, the court determined that the categories of documents listed in the complaint were not so overly vague or broad to render them meaningless.[109]

The Court finds that the instant allegations made in the Complaint are more akin to those found in *AlixPartners* and *Deloitte* and distinguishable from the allegations made in *Lithero*. In *Lithero*, the plaintiff merely alleged the process of its application as "proprietary and highly confidential,"[110] but in the instant case, C3 points to specific aspects of its Application that it asserts to be trade secrets.[111] C3 states the "**[REDACTED]**" of its Application are trade secrets, similar to the allegations made in *AlixPartners*.[112] In addition, C3 lists out the following in the Complaint: **[REDACTED]**."[113] C3 explicitly asserts what aspects of its Application are trade secrets thus putting Cummins on notice of what it is accused of misappropriating.[114] C3 adds sufficient detail in the Complaint to survive a motion to dismiss.

2. C3 SUFFICIENTLY ALLEGED IMPROPER USE OF ITS TRADE SECRETS.

Cummins also argues that C3's trade secret claims should be dismissed for failing "to adequately plead factual allegations to support that Cummins improperly used or disclosed" C3's trade secrets.[115] Cummins asserts that the only support C3 references for misuse is: (i) the January Email sent by Cummins that is not attached to the Complaint; and (ii) how quickly

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[108] *AlixPartners, LLP v. Benichou*, 250 A.3d 775, 783 (Del. Ch. 2019).
[109] *Id*.
[110] *Lithero*, 2020 WL 4699041, at *2.
[111] *See* Compl. ¶¶ 81-85.
[112] *Id.* ¶ 83.
[113] *Id.*
[114] C3's full allegations regarding its trade secrets are as follows:
> **[REDACTED]**

Id.
[115] Mot. at 12.

Cummins was able to develop "Cummins Solution."[116] Cummins maintains that neither assertion properly demonstrates or alleges misappropriation.[117]

Misappropriation is defined as the "[a]quisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or [d]isclosure or use of a trade secret of another without express or implied consent . . . "[118]

In *Elenza, Inc. v. Alcon Laboratories Holding Corp*., the Court determined that the question to ask is "whether it is reasonably conceivable that [Defendant] misappropriated [Plaintiff's] trade secrets based on [Defendant's] development and publication of the [] Application."[119] The *Elenza* Court found the following as demonstrative of "misuse:" (i) the defendant commenced its own internal development effort to develop and exploit the technologies invented by plaintiff; (ii) the defendant was actively involved in the exploitation of plaintiff's trade secrets; and (iii) the defendant, without plaintiff's consent, continued to use all or a portion of the trade secrets it acquired.[120] Further, the *Elenza* Court noted that around the same time the plaintiff in *Elenza* was concluding its trials for its application, the defendant decided not to invest in another round of financing and, three months later, filed a patent for its own application without informing plaintiff.[121] The Court found in *Elenza*, that the timing of defendant's application permitted a reasonable inference that it had "used" plaintiff's trade secrets.[122]

Applying *Elenza* to the instant matter, the Court must determine whether it is reasonably conceivable that Cummins misappropriated C3's trade secrets based on Cummins development

[116] *Id.* at 12-13.
[117] *Id.*
[118] 6 *Del. C.* § 2001(2).
[119] 2015 WL 141729, at *5 (Del. Super. Mar. 23, 2015).
[120] *See id*. at *6.
[121] *Id*.
[122] *See id*.

and publication of Cummins Solution. C3 specifically alleges that Cummins plotted to steal C3's trade secrets because Cummins lacked its own AI expertise.[123] C3 further alleges that Cummins used its training sessions to "acquire and harvest information from C3.ai necessary to replicate the FEO Application."[124] C3 asserts that Cummins gathered this information for the express purpose of providing the information to its own development team in India so that it could replicate C3's software.[125] Last, C3 alleges that not only did Cummins choose not to renew the parties contract, but it was only two months after the expiration of the MSSA that Cummins released its own AI technology, Cummins Solution.[126] Following the line of reasoning in *Elenza*, the timing of Cummins Solution lends itself to a reasonable inference that Cummins misappropriated C3's trade secrets.

Cummins relies on *Accenture Global Services GmbH v. Guidewire Software Inc*., for its argument that a quick product turnaround time is not a sufficient basis for a possible trade secret misappropriation claim.[127] But, this case is distinguishable because in *Accenture*, there were no allegations that the defendant disclosed or used the plaintiff's secrets in developing its own software. The only allegation of misappropriation in *Accenture* was that defendants "somehow gained access" to plaintiff's trade secrets.[128] That is not the instant case. C3 specifically alleged how Cummins obtained its purported trade secrets and how Cummins used the information it gained from C3 to improperly replicate the FEOA to create its own AI-driven application.[129] Therefore, C3 has adequately pled misuse regarding its trade secrets.

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[123] *See* Compl. ¶¶ 34, 62-63.
[124] *See id*. ¶¶ 4, 60, 65.
[125] *Id*. ¶ 65.
[126] *See id*. ¶¶ 69, 71.
[127] Mot. at 13; 581 F. Supp.2d 654, 663-64 (D. Del. 2008).
[128] *Accenture Global Services*, 581 F. Supp.2d at 663.
[129] *See* Compl. ¶¶ 4-5, 60-65, 81.

B. COUNT III: BREACH OF CONTRACT

Last, Cummins argues that the Court should dismiss C3's claims for breach of the Trial Agreement and breach of the Implied Covenant found in Count III of the Complaint.[130] Notably, Cummins is not moving to dismiss C3's allegation of breach of the MSSA also found in Count III of the Complaint. C3 presents both procedural and substantive arguments for why the motion should be denied.[131]

As a matter of procedure, Delaware courts do not permit the splicing of claims.[132] A Rule 12(b)(6) motion must seek "dismissal of an entire claim for its motion to be deemed procedurally valid."[133] As such, on a motion to dismiss the Court considers a claim or counterclaim in its entirety.[134] In *ET Aggregator, LLC v. PFJE AssetCo Holdings LLC*, the defendant was seeking to dismiss three theories of the plaintiff's single breach of contract claim, and the Court held that defendants were improperly moving for a "partial dismissal by plucking out individual allegations from a single claim."[135]

In the instant Complaint, under Count III, C3 alleges that Cummins breached the Trial Agreement and the MSSA in at least eight ways.[136] By moving to dismiss only the part of the count concerning breach of the Trial Agreement, Cummins is attempting to engage in piecemealing which the Court declines to do.[137]

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[130] *See* Mot. at 14-17.
[131] *See* Pl.'s Opp'n at 21-28.
[132] *See ET Aggregator, LLC v. PFJE AssetCo Holdings LLC*, 2023 WL 8535181, at *6 (Del. Super. Dec. 8, 2023).
[133] *Blue Cube Spinco LLC v. Dow Chemical Company*, 2021 WL 4453460, at *12 (Del. Super. Sept. 29, 2021).
[134] *See ET Aggregator, LLC*, 2023 WL 8535181, at *6.
[135] *Id*. at *7.
[136] Compl. ¶ 101.
[137] *See e.g., ET Aggregator*, 2023 WL 8535181, at *7; *inVentiv Health Clinical, LLC v. Odonate Therapeutics, Inc.*, 2021 WL 252823, at * (Del. Super. Jan. 26, 2021) ("[A]t the pleading stage of a case, a trial judge is not a robed gardener employing Rule 12(b)(6) as a judicial shear to prune individual theories from an otherwise healthily pled

Cummins also asks the Court to dismiss C3's breach of the Implied Covenant claim found in Count III of the Complaint.[138] As stated above, the Court will not piecemeal theories under a single count. The Court takes note of the reasoning laid out in *ET Aggregator,*

> The Court is cognizant of the problem of 'artful' pleading. The Court is also aware of the liberal use of Rule 12(b) motion practice. If the Court allows parties to seek piecemeal dismissals this could create a situation where parties prematurely test legal issues and parts of claims best dealt with after the filing of an answer and some discovery.[139]

As such, the Court will not split up the claims made in Count III.

VI. CONCLUSION

For the reasons stated above, Defendant's Motion is **DENIED**.

IT IS SO ORDERED.

August 16, 2024
Wilmington, Delaware

/s/ Eric M. Davis
Eric M. Davis, Judge

cc: File&ServeXpress

claim or counterclaim."); *Blue Cube Spinco LLC v. Dow Chemical Co*., 2021 WL 4453460, at *12 (Del. Super. Sept. 29, 2021) ("[A] movant must seek dismissal of an entire claim for its motion to be deemed procedurally valid.").
[138] *See* Compl. ¶¶ 102-106.
[139] *ET Aggregator, LLC*, 2023 WL 8535181, at *8.