

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
(Alexandria Division)**

**PERATON, INC. (formerly known as  
Harris IT Services Corporation),**

**Plaintiff,**

**v.**

**RAYTHEON COMPANY,**

**Defendant.**

**Case No. 1:17cv979-AJT/JFA  
(Circuit Court of Fairfax County, Virginia  
Case No. 2017-11089)**

**MEMORANDUM IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION**

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### Introduction

In this preliminary injunction proceeding, Peraton requests that the Court order Raytheon to re-establish a “firewall,” a common and well-known procedure that prevents certain Raytheon personnel who possess Peraton trade secrets from competing against Peraton. Raytheon previously imposed this firewall, and had it right the first time.

This case arises out of Harris IT Services Corporation (now known as Peraton) and Raytheon teaming together to compete for two contracts with a U.S. government agency (the “Agency”) valued at [REDACTED]. The contracts are called Grimlock and Broadside. Peraton disclosed trade secrets to Raytheon personnel, including strategies, engineering solutions, and other win differentiators throughout an intimate and highly-confidential teaming arrangement that spanned several *years*, with the purpose of the team [REDACTED]. [REDACTED]. In preparing to bid on such massive government programs, the parties (as is customary) did extensive planning and pre-positioning of resources in order to be ready to effectively present a team proposal (with Peraton leading the team as “prime” and Raytheon as “subcontractor”) to serve on a highly sensitive government program. Much of the parties’ planning sessions occurred in “SCIFs” (Sensitive Compartmented Information Facility) designed to ensure confidentiality and also necessary to protect top secret information.

Raytheon then purported to terminate the teaming arrangement for a series of shifting and inconsistent reasons. Raytheon stated that it would pursue the two contracts without Peraton.

After termination, Peraton instructed Raytheon to comply with Raytheon’s duties under Section 10 of the parties’ nondisclosure agreements (“NDAs”) to “protect the disclosed Proprietary Information by using the same degree of care, but no less than a reasonable degree of

care, that the Receiving Party uses to protect its own Proprietary Information.” Raytheon agreed that this required Raytheon to prevent employees with access to Peraton’s trade secrets from competing against Peraton. Raytheon acknowledged its obligations in writing and confirmed to Peraton that it had implemented individual firewalls to protect Peraton’s trade secrets:

[T]he Raytheon employees in receipt of or having access to [Peraton’s] sensitive strategic, financial, and technical Proprietary Information ***have been firewalled from supporting another team*** on a parallel Grimlock or Broadside activity.

Declaration of James Winner (“Winner Decl.”) Ex. 4 at 1 (May 2, 2017 letter) (emphasis added).

Then, in a stunning reversal 10 days later, Raytheon removed the firewall protections, stating that no firewall was necessary to protect Peraton’s trade secrets [REDACTED]

[REDACTED] Winner Decl. Ex. 5 at 2

(May 12, 2017 letter). Peraton refuted that argument. Raytheon then changed its story again—this time advancing the absurd argument (which Raytheon has since abandoned) that Peraton did not share proprietary information with Raytheon. Winner Decl. Ex. 9 at 3 (Aug. 9, 2017 letter). But even Raytheon’s outside counsel acknowledged—as he had to—that “***Raytheon would not allow its personnel who have access to sensitive and confidential information to serve on multiple capture teams.***” *Id.* (emphasis added). This admission is critical—Raytheon’s lawyer acknowledges what the agreements say (and what fairness, common sense and the Virginia and federal trade secrets acts require): that Raytheon personnel who have been given Peraton trade secrets cannot turn around and use those trade secrets to compete against Peraton. Such bizarre conduct would obviously destroy Peraton’s trade secrets. It would be like a football player in the offensive huddle learning what play would be called, and then running to the opposing team’s huddle with that information.

The Court should grant the preliminary injunction requiring Raytheon to firewall its employees with access to Peraton's trade secrets for the following reasons:

Peraton is likely to succeed on the merits. Section 10 of the NDAs requires Raytheon to protect Peraton's information by using the same degree of care Raytheon uses to protect its own information—but no less than reasonable care. Raytheon's care and reasonable care require firewalling. This is demonstrated by Raytheon's May 2 letter imposing a firewall, and by Raytheon's outside counsel's August 9 letter confirming Raytheon's legal obligation to impose firewalls. Raytheon's own admissions compel entry of the preliminary injunction requiring Raytheon to reinstate the firewall that it previously imposed, at least until the trial in this matter.

Second, even assuming arguendo that the NDAs did not exist, the Grimlock teaming agreement required "firewalled" support, and that provision survived Raytheon's purported termination of the teaming agreement. Firewalling is also independently required under the Defend Trade Secrets Act of 2016 (the new statute that was enacted to expand and strengthen protection of trade secrets) and the Virginia Uniform Trade Secrets Act due to the "threatened" misappropriation posed by the prospect of Raytheon personnel with access to Peraton trade secrets serving on a team competing against Peraton. The Court has the statutory authority to enjoin Raytheon under the Acts without any further showing of irreparable harm.

The irreparable harm facing Peraton is obvious given the non-public and competitively sensitive nature of the extensive information Peraton shared with Raytheon. The balance of equities favors Peraton because Raytheon, one of the world's largest companies with **63,000 employees**, can compete for the Grimlock and Broadside opportunities without the handful of employees Raytheon agreed to firewall (and who received Peraton's competitively sensitive and proprietary information). Finally, an injunction is in the public interest because the public has an

interest in enforcing valid contracts and in protecting trade secrets, a public policy recently strengthened with the enactment of the Defend Trade Secrets Act.

### **Background**

#### **I. Broadside**

Broadside is a [REDACTED] with the Agency. Declaration of Michael Williams (“Williams Decl.”) ¶ 6. This contract [REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.*

#### **A. Peraton teams with Raytheon**

Peraton (at the time known as Harris IT Services Corporation) knew of this opportunity far in advance and determined that Raytheon would make a good teaming partner. *See Williams Decl.* ¶¶ 10-11. The parties agreed that Peraton would be prime and Raytheon would serve as a subcontractor. *Id.* ¶ 12. The parties executed the Broadside NDA on June 23, 2015 with an effective date of March 31, 2014, and extended it. *See Williams Decl. Ex. 1.*

Under the NDA, Raytheon agreed to:

- Use Peraton’s proprietary information only for the specific purpose of “facilitat[ing] discussions regarding [Broadside]. These discussions will pertain to strategy, financial, technical, and proposal generation activities.” NDA, Williams Decl. Ex. 1 § 4.
- “[M]aintain the information in confidence in accordance with the terms of the Agreement for a period of three (3) years from the date the Agreement expires or otherwise terminates.” *Id.* § 7.
- “[N]ot disclose Proprietary Information to any third party individual, corporation, or other entity ... [and] further limit the circulation and disclosure of the Proprietary Information within its own organization to its

employees or agents ... having a 'need to know' the Proprietary Information for the purpose set forth in this Agreement." *Id.* § 9.

- “[P]rotect the disclosed Proprietary Information by using the same degree of care, but no less than a reasonable degree of care, that the Receiving Party uses to protect its own Proprietary Information.” *Id.* § 10.

The parties entered into the Broadside TA on October 21, 2014. *See* Williams Decl. Ex.

2. Section 10 of the Broadside TA incorporates the Broadside NDA. Section 26 provides that Section 10 survives termination. Although the Broadside TA is nonexclusive, Revision 3 (Section 7) provides that Raytheon must give Peraton written notice within five (5) calendar days of pursuing Broadside with another team. The purpose of this is to give Peraton the chance to issue specific firewall instructions. Williams Decl. ¶ 17.

**B. Peraton shares trade secrets with Raytheon**

Peraton and Raytheon worked together to develop winning strategies for Broadside from the time the parties signed the NDA until the beginning of 2017. [REDACTED]

[REDACTED] Williams Decl. ¶ 3; Declaration of Billy West (“West Decl.”) ¶ 3.

Williams and West hosted meetings, calls, communications, and other collaborative efforts designed to increase the parties’ chances of success. Williams Decl. ¶ 18; West Decl. ¶ 15. These meetings occurred at [REDACTED]

[REDACTED]. Williams Decl. ¶ 19; West Decl. ¶ 15.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. See Williams Decl. ¶¶ 19-31 & Exs. 3-6; West Decl. ¶¶ 15-27 & Exs. 1-5.

By way of example, the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The uniqueness of this strategy is critical to Peraton's success. *Id.*

This information is not publicly known. Peraton takes great effort to maintain its secrecy through various measures, [REDACTED]

[REDACTED]. Williams Decl. ¶ 32; West Decl. ¶ 28.

## **II. Grimlock**

Grimlock involves the provision of [REDACTED] to the Agency.

These services include, but are not limited to: (a) [REDACTED]

[REDACTED].

Declaration of Gary Kay ("Kay Decl.") ¶ 7. [REDACTED] *Id.* ¶ 10. The Agency is scheduled to solicit bids for [REDACTED] *Id.*

### **A. Peraton teams with Raytheon**

Peraton (at the time known as Harris IT Services Corporation) knew of this opportunity far in advance and determined that Raytheon would make a good teaming partner. See Kay Decl.

¶¶ 12-13. The parties agreed that Peraton would be prime and Raytheon would serve as a subcontractor. *Id.* ¶ 14. The parties executed the Grimlock NDA on December 15, 2014 and repeatedly extended it. *See* Kay Decl. Ex. 1. The Grimlock NDA contains the same provisions quoted above in the Broadside NDA, including Section 10’s requirement that Raytheon “protect the disclosed Proprietary Information by using the same degree of care, but no less than a reasonable degree of care, that the Receiving Party uses to protect its own Proprietary Information.” *Id.* § 10.

On September 18, 2015, the parties executed the Grimlock teaming agreement (“TA”). *See* Kay Decl. Ex. 2. Section 10 of the TA incorporates the NDA. Schedule A of the TA (page 8) requires Raytheon to “provide ‘firewalled’ support to Prime for the Grimlock opportunity.” It further acknowledges that “anyone providing support to Harris [Peraton] will be precluded from supporting any other prime.” *Id.* p. 8. Section 26 states that Sections 9 and 10 survive termination. Section 9 incorporates Exhibit A.

Firewalling personnel from other competition teams is standard practice in the industry because the [REDACTED]

Kay Decl. ¶ 16. [REDACTED]

[REDACTED] Firewalling came up expressly as the parties worked together on Grimlock. When the parties met to discuss and develop their proposal and technical solutions, Raytheon recognized—in writing—that all participants “will be appropriately firewalled.” *Id.* ¶¶ 19-20.

**B. Peraton shares trade secrets with Raytheon**

Peraton and Raytheon worked together to develop winning strategies for Grimlock from the time the parties signed the NDA until the beginning of 2017. [REDACTED]

[REDACTED] Kay Decl. ¶ 6. Kay hosted meetings, calls,

communications, and other collaborative efforts designed to increase the parties' chances of success. *Id.* ¶ 22. [REDACTED]

[REDACTED]

This information is not publicly known. *Id.* ¶ 32. Peraton takes great effort to maintain its secrecy through various measures, [REDACTED]

[REDACTED] *Id.*

**III. Raytheon purports to terminate, agrees to firewall, then reverses itself**

Raytheon notified Peraton that [REDACTED]  
[REDACTED]. Winner Decl. Ex. 1. Raytheon

asked for a notice to address Raytheon's concerns. *Id.* [REDACTED]

[REDACTED] Winner

Decl. Ex. 2.

On April 20, Peraton disputed Raytheon's basis for termination and instructed Raytheon to abide by its obligations under the TAs and NDAs. Winner Decl. Ex. 3. Peraton wrote:

Moreover, based on the extent to which Raytheon has received [Peraton]'s sensitive strategic, financial, and technical Proprietary Information, this restriction acts as a prohibition on any future Grimlock or Broadside activities for the approximately 20 Raytheon employees that have been involved with the pursuits to date.

*Id.* at 1.

Peraton identified 19 Raytheon employees for Broadside and 13 for Grimlock.<sup>1</sup> *Id.* at 3. Seven employees overlap leaving a total of 25 discrete employees to firewall.

Raytheon responded on May 2 and confirmed that it had implemented individual firewalls to protect Peraton's trade secrets, stating that:

***The Raytheon employees in receipt of or having access to HITS's [Peraton's] sensitive strategic, financial, and technical Proprietary Information have been firewalled*** from supporting another team on a parallel Grimlock or Broadside activity.

Winner Decl. Ex. 4 at 1 (emphasis added). Raytheon did not simply accept Peraton's assertion that all 25 employees had received information that required firewalling. Instead, Raytheon asserted "exceptions" for 12 individuals that had either retired or for whom Raytheon determined "there is no record or recollection of receiving HITS [Peraton] Proprietary Information or sensitive data."<sup>2</sup> *Id.* at 1-2. Raytheon invited Peraton to clarify what information the excepted individuals received so that it could re-evaluate its position on the exceptions. *Id.* at 2.

Raytheon reversed course ten days later and abruptly informed Peraton that it removed the protective firewalls. Raytheon did not contest the applicability of the NDAs or its obligations

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<sup>1</sup> Two employees were inadvertently included twice on the Grimlock list (at numbers 4 and 14 and numbers 6 and 10, respectively).

<sup>2</sup> One individual overlapped for Broadside and Grimlock. Thus Raytheon provided exceptions for 11 discrete individuals.

to firewall to protect Peraton’s trade secret information. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Raytheon’s last correspondence came the day before Peraton filed suit—August 9. In it, Raytheon’s outside counsel acknowledged Raytheon’s obligations under the NDA. He wrote: *“Raytheon would not allow its personnel who have access to sensitive and confidential information to serve on multiple capture teams.”* Winner Decl. Ex. 9 at 3 (emphasis added). Then he provided a new justification for Raytheon’s position. He asserted that “[t]he Peraton teaming relationship never reached a point where proprietary and trade secret information that would threaten the fairness and integrity of these procurements was disclosed.” *Id.*

The following chart reflects Raytheon’s shifting positions on the firewall:

Source	Raytheon’s shifting positions
Winner Decl., Ex. 2 at 1 (April 10, 2017 letter)	<p><b>Raytheon is free to pursue the same opportunities with no firewall.</b></p> <p>[REDACTED]</p>
Winner Decl., Ex. 4 at 1 (May 2, 2017 letter)	<p><b>Raytheon personnel received Proprietary Information and therefore firewalling is appropriate and has been implemented.</b></p> <p>“[T]he Raytheon employees in receipt of or having access to [Peraton’s] sensitive strategic, financial, and technical Proprietary Information <i>have been firewalled</i> from supporting another team on a parallel Grimlock or Broadside activity.” (Emphasis added.)</p>

<p>Winner Decl., Ex. 5 at 2 (May 12, 2017 letter)</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>Winner Decl., Ex. 9 at 3 (Aug. 9, 2017 letter)</p>	<p><b>Firewalling is not appropriate because Peraton did not provide sufficient proprietary information, but acknowledging that “Raytheon would not allow its personnel who have access to sensitive and confidential information to serve on multiple capture teams.”</b></p> <p>“The Peraton teaming relationship never reached a point where proprietary and trade secret information that would threaten the fairness and integrity of these procurements was disclosed.”</p>
<p>ECF 27, Sept. 7, 2017 motion to dismiss at 8-9.</p>	<p><b>Firewalling is not “reasonable” or required by Raytheon’s practices under Section 10 of the NDAs.</b></p> <p>“Those provisions require Raytheon’s employees to protect the information ... but none of them individually or collectively are tantamount to requiring Raytheon to firewall ....”</p>

**Legal standard**

To obtain a preliminary injunction, a plaintiff must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities favors the plaintiff; and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346-47 (4th Cir. 2009), *vacated on other grounds*, 559 U.S. 1089 (2010), *aff’d in relevant part*, 607 F.3d 355 (4th Cir. 2010).

Courts issue preliminary injunctions to avert misappropriation of trade secrets. *See Bowe Bell & Howell Co. v. Harris*, 145 F. App’x 401 (4th Cir. 2005) (affirming preliminary injunction); *Ciena Corp. v. Jarrard*, 203 F.3d 312 (4th Cir. 2000) (affirming preliminary injunction); *Physicians Interactive v. Lathian Sys., Inc.*, No. CA 03-1193-A, 2003 WL 23018270

(E.D. Va. Dec. 5, 2003); *cf. A.P. Moller-Maersk A/S v. Escrub Sys. Inc.*, No. 1:07cv1276 (JCC), 2007 WL 4562827 (E.D. Va. Dec. 21, 2007).

Courts have the ability to enjoin “threatened” misappropriation before actual misappropriation occurs. *See Allstate Ins. Co. v. Rote*, No. 3:16-cv-01432-HZ, 2016 WL 4191015 (D. Or. Aug. 7, 2016); *Dionne v. Se. Foam Converting & Packaging, Inc.*, 397 S.E.2d 110 (Va. 1990). Both the Virginia Trade Secrets Act and federal Defend Trade Secrets Act expressly authorize courts to enjoin the actual or threatened misappropriation of trade secrets. *See* 18 U.S.C. § 1836(b)(3)(A); Va. Code Ann. § 59.1-337(A).

### Argument

#### **I. Peraton is likely to succeed on the merits**

##### **A. Breach of Section 10 of the NDAs**

Peraton is likely to succeed on the merits of its claim that Raytheon’s refusal to firewall breaches Section 10 of the NDAs. Section 10 requires Raytheon to “protect the disclosed Proprietary Information by using the same degree of care, but no less than a reasonable degree of care, that the Receiving Party uses to protect its own Proprietary Information.” Williams Decl. Ex. 1; Kay Decl. Ex. 1. The Court need look no further than Raytheon’s response to Peraton’s first firewall instruction, where Raytheon admitted that (1) Raytheon personnel had access to Peraton’s “sensitive strategic, financial, and technical Proprietary Information” and (2) Raytheon had “firewalled” them “from supporting another team on a parallel Grimlock or Broadside activity.” Winner Decl. Ex. 4 at 1.

Raytheon’s response satisfies both prongs of Section 10. It demonstrates that Raytheon assessed Peraton’s firewall demand and concluded it was required under a reasonableness analysis and that Raytheon’s subjective practices independently required firewalling to protect Peraton’s information. Raytheon’s outside counsel reiterated this months later: “Raytheon would

not allow its personnel who have access to sensitive and confidential information to serve on multiple capture teams.” Winner Decl. Ex. 9 at 3. Raytheon cannot credibly claim in litigation that firewalling is not reasonable or required under Raytheon’s practices in light of these admissions. This is underscored by the staggering volume of competitively sensitive and proprietary trade secret information received by certain employees at Raytheon—as reflected in the Declarations of Gary Kay and Michael Williams.

Other evidence demonstrates that Raytheon knew that firewalling was expected and reasonable. For example, one of Raytheon’s employees informed Peraton that all participants for Grimlock capture meetings “will be appropriately firewalled.” Kay Decl. ¶ 20, Ex. 3 at 1. In another matter, Raytheon took the position that “reasonable care” under an NDA requires “a firewall” if the other party to the NDA is supporting two capture teams. ECF No. 14 (Sealed Declaration of James Winner at Exhibit 1). Raytheon gave up the right to change its position that something less than a firewall is necessary to protect Peraton’s information because Peraton bargained for at least the same degree of care that Raytheon uses to protect Raytheon’s information.

Raytheon is bound by its obligations in the NDAs it signed, where it promised to use Peraton’s information for specific purposes. Using Peraton’s information to compete against Peraton is not an authorized use. Raytheon is free to pursue Grimlock and Broadside, but it must do so with other employees. As Raytheon has recognized multiple times in writing, firewalling Raytheon personnel who had access to Peraton’s trade secrets is the only reasonable way to protect the information Peraton exchanged under the NDAs.

Firewalling is not unique to this case. Courts often order firewalls to guard against misappropriation of trade secrets, including in preliminary injunctions. For example, in a case

involving LiDAR technology, a court required the defendant to “remove [an employee] from any role or responsibility pertaining to LiDAR; [and] (b) take all steps in their power to prevent him from having any communication on the subject of LiDAR.” *Waymo LLC v. Uber Technologies, Inc.*, No. C 17-00939 WHA, 2017 WL 2123560, at \*13 (N.D. Cal. May 15, 2017). In that case, both the plaintiff and defendant were competitors in the self-driving automobile industry, including the development of technology that helps automobiles “see” their surroundings. *Id.* at \*1. The defendant’s employee resigned from his position with the plaintiff, took thousands of files, and began working for the defendant. *Id.* at \*2. The court entered an injunction under the Defend Trade Secrets Act to firewall the defendant from working on anything related to the LiDAR technology, noting that the “harm [plaintiff] is likely to suffer as a result of [the] misuse” of its trade secrets by defendant “cannot be unwound after the fact.” *Id.* at \*11.

The same is true here. Raytheon employees have received Peraton’s “playbook” for the Grimlock and Broadside proposals. If Raytheon uses that information in its own efforts to submit a winning bid, the harm to Peraton cannot be undone. Thus, a firewall—which Raytheon previously agreed to—is also appropriate here. *See also DP Solutions, Inc. v. Rollins, Inc.*, 34 F. App’x 150 (5th Cir. 2002) (unpublished table decision) (affirming entry of TRO prohibiting former employees of the plaintiff from performing work on project for the defendant because “DPS’s subcontractors could not work on the FOCUS project for [the defendant] without divulging trade secrets and confidential, proprietary information that belonged to DPS”); *Goken Am., LLC v. Bandepalya*, No. 2:14-CV-1445, 2014 WL 6673830, at \*8-9 (S.D. Ohio Nov. 24, 2014) (enjoining the defendant from “engaging in any work relating to Honda” since the plaintiff worked on projects for Honda while employed by the plaintiff).

Courts are particularly concerned with defendants who threaten to use trade secrets in violation of a nondisclosure agreement. *See Bowe Bell & Howell Co. v. Harris*, 145 F. App'x 401 (4th Cir. 2005). In *Harris*, the court concluded that injunctive relief was warranted where former employees likely violated their non-competition or non-disclosure agreements by associating themselves with a competitor immediately after leaving the plaintiff's employ. *Id.* at 403-04. The Fourth Circuit affirmed, finding that the district court did not abuse its discretion because "many of the individual Defendants' association with [the competitor] likely violated either their noncompetition or nondisclosure agreements with [the plaintiff]." *Id.* at 404.

**B. Breach of Exhibit A to the Grimlock TA**

Peraton is likely to succeed on the merits of its claim that Raytheon's refusal to firewall certain employees breaches the requirement in the Grimlock TA that Raytheon provide "firewalled support." This language expressly survives termination of the Grimlock TA (even assuming Raytheon could terminate despite Raytheon's shifting positions). Section 26 of the Grimlock TA provides that the restrictions on handling proprietary information in Sections 9 and 10 survive termination. *See Kay Decl. Ex. 2 § 26*. Section 9 does not expressly discuss proprietary information, but it does reference Exhibit A, which contains the firewall requirement. *Id.* § 9, p. 8.

Each agreement requires the application of Virginia law. *See Williams Decl. Ex. 2 § 21*; *Kay Decl. Ex. 2 § 21*; *Williams Decl. Ex. 1 § 20*; *Kay Decl. Ex. 1 § 21*. Under Virginia law, contracts "must be construed to give effect to the intention of the parties, if that intention can be fairly determined from the instrument when read as a whole." *Transit Cas. Co. v. Hartman's, Inc.*, 239 S.E.2d 894, 896 (Va. 1978); *see also Martin & Martin, Inc. v. Bradley Enters., Inc.*, 504 S.E.2d 849, 851 (Va. 1998) (looking "to the intention of the parties as expressed in the language of their contract").

In addition to the NDAs, Raytheon agreed to firewall personnel supporting the Grimlock effort in the Grimlock TA. The only way to give effect to the intentions of the parties expressed in Section 26 that the handling of proprietary information in Section 9 survive is to look to Exhibit A (page 8 of the TA). This is because Exhibit A is the only part of Section 9 that relates to handling proprietary information. Exhibit A requires “firewalled support.”

**C. Threatened misappropriation of Peraton’s trade secrets**

Peraton is also likely to succeed on the merits of its trade secrets claims. The Virginia Uniform Trade Secrets Act grants the authority to enjoin “[a]ctual or threatened” misappropriation of trade secrets. Va. Code. Ann. § 59.1-337. For example, the Supreme Court of Virginia affirmed a preliminary injunction designed to prevent actual or threatened misappropriation of trade secrets. *See Dionne v. Se. Foam Converting & Packaging, Inc.*, 397 S.E.2d 110 (Va. 1990). In that case, the plaintiff filed suit to enjoin a former owner and employee from launching a new manufacturing business based on the same research and development for the plaintiff’s product. *Id.* at 112. Although the defendant had access to the trade secrets, the Court held that “secrecy need not be absolute; the owner of a trade secret may, *without losing protection*, disclose it . . . if the disclosure is made in confidence.” *Id.* at 113 (emphasis added).

This Court similarly entered a preliminary injunction to prevent the disclosure of trade secrets in violation of an NDA. *See A.P. Moller-Maersk A/S*, 2007 WL 4562827. In *A.P. Moller*, the parties entered into a contract to develop technology for the plaintiff’s ships, where confidentiality provisions governed the disclosure of trade secrets. *Id.* at \*1. After a dispute arose, the defendant contacted “a third party regarding the desire to do business relating to the disputed technology, making disclosures in violation of the . . . Contract.” *Id.* The court entered a preliminary injunction because “the improper dissemination of Plaintiff’s intellectual property to

third parties could lead to irreparable harm.” *Id.* at \*3; *see also Fid. Global Brokerage Grp., Inc. v. Gray*, No. 1:10cv1255, 2010 WL 4646039 (E.D. Va. Nov. 9, 2010) (granting preliminary injunction to prevent former employee from using proprietary customer information).

A plaintiff need not wait until its trade secrets are lost; instead, injunctions can be entered to prevent future misappropriation. *See* Va. Code Ann. § 59.1-337 (“Actual or threatened misappropriation may be enjoined.”); *Datatel, Inc. v. Rose & Tuck, LLC*, No. Civ.A. 05-495, 2005 WL 1668020, at \*8 (E.D. Va. June 17, 2005) (holding that, “If Datatel’s trade secrets are disclosed, divulged, or disseminated to third parties, Datatel would face a continual loss of its intellectual property”); *Alan J. Zuccari, Inc. v. Adams*, 42 Va. Cir. 132, 1997 WL 1070565, at \*5 (Fairfax 1997) (ordering injunction without evidence that the defendant ever used the trade secret). Indeed, injunctions are often the “only remedy available to prevent future misappropriation of . . . trade secrets and loss of confidentiality.” *Datatel*, 2005 WL 1668020, at \*8.

Although the court need not reach the issue, the Court may also enjoin Raytheon under the inevitable disclosure doctrine. Virginia courts are split as to whether inevitable disclosure applies in Virginia. *Compare MeadWestvaco Corp. v. Bates*, 91 Va. Cir. 509, 2013 WL 12183821, at \*12 (Chesterfield Aug. 1, 2013) (recognizing inevitable disclosure), *with SanAir Techs. Lab., Inc. v. Burrington*, 91 Va. Cir. 206, 2015 WL 12588951, at \*3 (Chesterfield Sept. 25, 2015) (rejecting inevitable disclosure). In *Bates*, the court found that “Virginia would likely apply the doctrine of inevitable disclosure” in certain circumstances where parties previously entered into non-compete and confidentiality agreements. 2013 WL 12183821, at \*11-12. This is because “the central concern announced by courts rejecting the inevitable disclosure doctrine, namely the creation of an *ex post facto* covenant not to compete is not at issue, making it more

favorable to apply the inevitable disclosure doctrine.” *Id.* at \*11; *see Mickey’s Linen v. Fischer*, Case No. 17 C 2154, 2017 WL 3970593, at \*13 (N.D. Ill. Sept. 8, 2017) (entering injunction and holding: “Fischer will inevitably use or disclose Mickey’s trade secrets during his employment with AlSCO if he is not enjoined from doing so. Thus, in sum, Mickey’s has demonstrated a likelihood of success on its trade secrets claims under the ITSA and DTSA.”). The deep knowledge of Peraton’s trade secrets held by certain employees at Raytheon regarding the Grimlock and Broadside programs makes a strong case for inevitable disclosure. These employees operated with Peraton under NDAs in an industry where firewalling is reasonable and expected. If these employees are allowed to compete against Peraton then they will inevitably disclose Peraton’s trade secrets through copying or, at minimum, through designing their proposal with detailed and actual knowledge of what their competitor (Peraton) is doing.

Based on Raytheon’s actions, Peraton has significant concerns regarding the scope of Raytheon’s disclosure of its trade secrets both internally and externally. It is insufficient for Raytheon to simply restore its prior firewalls without conducting a thorough investigation of who accessed Peraton’s trade secrets. It is likely that Raytheon has disclosed Peraton’s proprietary and trade secret information to additional Raytheon employees or third parties that Peraton does not know about. This is supported by the recent reversal in Raytheon’s August 9 letter when it questioned whether Peraton had actually provided Raytheon with trade secret information. *See Winner Decl. Ex. 9 at 3.*

For similar reasons, Peraton is likely to succeed under the Defend Trade Secrets Act, which is intended to broaden and strengthen protections for trade secrets. *See* 18 U.S.C. § 1836(b)(3)(A) (authorizing a court to grant an injunction “to prevent any actual or threatened misappropriation”). In passing the DTSA, Congress recognized that “[t]he growing importance

of trade secrets as a form of intellectual property makes their theft a particularly economically damaging crime” and that “[p]rotecting trade secrets has become increasingly difficult given ever evolving technological advancements.” S. Rep. No. 114-220, at 1-2 (2016).

Courts have not hesitated to enjoin similar conduct in other cases under this statute. *See Fres-co Sys. USA, Inc. v. Hawkins*, No. 16-3591, 2017 WL 2376568, at \*3 (3d Cir. June 1, 2017) (affirming district court’s finding of irreparable harm regarding preliminary injunction to prevent threatened misappropriation of trade secrets where former employee would likely use former employer’s confidential information in new employment position; remanding for consideration of other factors); *Engility Corp. v. Daniels*, Civil Action No. 16-cv-2473-WJM-MEH, 2016 WL 7034976 (D. Colo. Dec. 2, 2016) (granting preliminary injunction for misappropriation of trade secrets under the DTSA where the defendant possessed the plaintiff’s trade secrets after leaving the plaintiff’s employment); *Allstate Ins. Co. v. Rote*, No. 3:16-cv-01432-HZ, 2016 WL 4191015 (D. Or. Aug. 7, 2016) (granting preliminary injunction for threatened misappropriation of trade secrets under the DTSA where the defendant kept the plaintiff’s trade secret information after her employment terminated and competed against the plaintiff); *see also N. Am. Deer Registry, Inc. v. DNA Solutions, Inc.*, Civil Action No. 4:17-CV-00062, 2017 WL 2402579 (E.D. Tex. June 2, 2017) (granting preliminary injunction for misappropriation of trade secrets under the DTSA where the defendant did not return the plaintiff’s trade secrets as required by the parties’ contract); *SMS Audio, LLC v. Belson*, Case No. 9:16-cv-81308-MIDDLEBROOKS, 2016 WL 8739764 (S.D. Fla. Aug. 16, 2016) (granting preliminary injunction for breach of a non-disclosure agreement and misappropriation of trade secrets under the DTSA).

Importantly, if the Court determines that Peraton is likely to establish a violation of the VUTSA, the Court need not reach the remaining elements otherwise necessary for a preliminary

injunction. *See E.I. Dupont de Nemours & Co. v. Kolon Indus., Inc.*, 894 F. Supp. 2d 691, 706 (E.D. Va. 2012). In *Kolon*, this Court recognized that the law in the Fourth Circuit is that “a complainant need not allege or prove irreparable harm when it involves a statute that authorizes injunctive relief. All that need be proved is a violation of the statute.” *Id.* at 704 (emphasis removed) (entering injunction); *see also Autopartsource, LLC v. Bruton*, Civil Action No. 3:13cv54-HEH, 2013 WL 3766524, at \*12 (E.D. Va. July 16, 2013) (“Because VUTSA explicitly provides for injunctive relief, Autopartsource is not required to demonstrate irreparable harm or the lack of an adequate remedy at law.”).

## **II. Peraton is suffering imminent and irreparable harm**

Peraton will suffer imminent and irreparable harm in the absence of injunctive relief. Raytheon’s announced plans to compete against Peraton with the same personnel Raytheon dedicated to Peraton’s team in pursuit of the identical Grimlock and Broadside opportunities will obliterate the purpose of the law protecting such information. It will harm Peraton’s chances to compete for [REDACTED], plus the past performance benefits and other benefits in addition to monetary benefits that attach to contract performance.

This threatens irreparable harm for which there is no remedy at law. “[G]enerally irreparable injury is suffered when monetary damages are difficult to ascertain or are inadequate.” *Handsome Brook Farm, LLC v. Humane Farm Animal Care, Inc.*, 193 F. Supp. 3d 556, 574 (E.D. Va. 2016) (alteration in original) (quoting *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551 (4th Cir. 1994)). “The disclosure of trade secrets establishes immediate irreparable harm because a trade secret, once lost is, of course, lost forever.” *Home Funding Grp., LLC v. Myers*, No. 1:06cv1400 (JCC), 2006 WL 6847953, at \*2 (E.D. Va. Dec. 14, 2006) (internal quotation marks omitted); *see also One Stop Deli, Inc. v. Franco’s, Inc.*, Civ. A. No. 93-090-H, 1993 WL 513298, at \*8 (W.D. Va. Dec. 7,

1993) (recognizing that the plaintiff faced the threat of harm from the “use, and potential use of information proprietary to [the plaintiff]”). Additionally, “[w]hen the failure to grant preliminary relief creates the possibility of permanent loss of customers to a competitor . . . the irreparable injury prong is satisfied.” *W. Industries-North, LLC v. Lessard*, No. 1:12cv177 (JCC/TRJ), 2012 WL 966028, at \*5 (E.D. Va. Mar. 21, 2012) (quoting *Multi-Channel*, 22 F.3d at 552); *Fred Hutchinson Cancer Research Ctr. v. BioPet Vet Lab, Inc.*, 768 F. Supp. 2d 872, 881 (E.D. Va. 2011).

Although Peraton is seeking monetary damages, monetary damages alone cannot adequately compensate Peraton for the irreparable harm that will result from the misappropriation, use, and disclosure of its trade secrets. *See Norbrook Labs. Ltd. v. G.C. Hanford Mfg. Co.*, 297 F. Supp. 2d 463, 482 (N.D.N.Y. 2003) (“[T]he ‘loss of trade secrets cannot be measured in money damages’ because ‘[a] trade secret once lost is, of course, lost forever.’” (quoting *N. Atlantic Instruments, Inc. v. Haber*, 188 F.3d 38, 49 (2d Cir. 1999))); *see also Minn. Mining & Mfg. Co. v. Pribyl*, 259 F.3d 587, 609 (7th Cir. 2001) (“[T]he greatest loss that results from a misappropriation is the loss of the right not to divulge a trade secret, *regardless of price.*” (emphasis added)). According to the Supreme Court:

The right to exclude others is generally one of the most essential sticks in the bundle of rights that are commonly characterized as property . . . [and] [w]ith respect to a trade secret . . . central to the very definition of the property interest. Once the data that constitute a trade secret are disclosed to others, or others are allowed to use those data, the holder of the trade secret has lost his property interest in the data.

*Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1011 (1984) (internal quotation marks and citation omitted). Peraton cannot easily quantify the value of its trade secrets, because if disclosed to its competitors, Peraton’s trade secrets will no longer afford it any competitive edge.

A preliminary injunction is necessary to preserve the status quo until such time as the Court can adjudicate the parties' rights on the merits. A preliminary injunction will insure that future proceedings in this case are meaningful and not rendered moot by loss of the trade secrets while the case is pending. In *Western Industries-North*, the court commented: "[A] preliminary injunction protect[s] the status quo . . . to prevent irreparable harm during the pendency of a lawsuit [and] ultimately to preserve the court's ability to render a meaningful judgment on the merits." 2012 WL 966028, at \* 1 (alterations except first in original) (internal quotation marks omitted).

### **III. The balance of equities favors a preliminary injunction**

Raytheon will not suffer substantial harm if the preliminary injunction were issued because Raytheon still can pursue the Grimlock and Broadside opportunities. Raytheon simply has to use other members of its 63,000 member work force, and not the limited number of employees trained on Peraton's trade secrets. Raytheon cannot claim harm from complying with its obligations in any event. *See Signature Flight Support Corp. v. Landow Aviation Ltd. P'ship*, 698 F. Supp. 2d 602, 624 (E.D. Va. 2010) ("Granting the injunction will not harm Defendant because it merely forces [Defendant] to abide by its own contractual obligations."); *Universal Furniture Int'l, Inc. v. Collezione Europa USA, Inc.*, No. 1:04CV00977, 2007 WL 4262725, at \*3 (M.D.N.C. Nov. 30, 2007) (holding that an injunction "does not constitute a hardship" if it prevents the defendant from doing "that which the law already prohibits").

For Peraton, however, as explained above, the harm it will suffer in the absence of an injunction is truly devastating.

### **IV. A preliminary injunction is in the public interest**

The final prong of the preliminary injunction analysis looks to the effect of the injunction on the public interest. The "[p]ublic interest is . . . served by enabling the protection of trade

secrets.” See *Henry Schein, Inc. v. Cook*, 191 F. Supp. 3d 1072, 1078 (N.D. Cal. 2016). The public interest is also served when a defendant is asked to do “no more than abide by trade laws” of the United States and the Commonwealth of Virginia, as well as comply with its contractual agreements. *Id.*; see also *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 551 (6th Cir. 2007) (“Enforcement of contractual duties is in the public interest); *Meissel v. Finley*, 95 S.E.2d 186, 191 (Va. 1956) (“It is ... a matter of public concern to see that valid engagements are observed....”).

Recognizing the potential harm that a trade secrets owner would suffer if its trade secrets are misappropriated, both the Virginia Uniform Trade Secrets Act and federal Defend Trade Secrets Act expressly authorize courts to enjoin the actual or threatened misappropriation of trade secrets. See Va. Code Ann. § 59.1-337; 18 U.S.C. § 1836(b)(3)(A)(i). The Defend Trade Secrets Act even permits the extraordinary measure of seizing property on an *ex parte* basis to “prevent the propagation or dissemination of the trade secret ....” 18 U.S.C. § 1836(b)(2)(A)(i).

Here, an injunction will enforce the contracts between the parties. Peraton bargained for “reasonable protections” for its trade secrets under Section 10 of the NDAs. Peraton further bargained for no less than Raytheon’s practices for protecting Raytheon’s information. Raytheon appropriately recognized—and later reiterated—that this required firewalling. Crediting Raytheon’s shifting post-hoc justifications to effectively use Peraton’s approach is not in the public interest. “[T]here is certainly a significant public interest in maintaining the confidentiality of trade secrets and preventing their misappropriation.” *MicroStrategy, Inc. v. Business Objects, S.A.*, 369 F. Supp. 2d 725, 736 (E.D. Va. 2005); see also *W. Industries-North*, 2012 WL 966028, at \*6 (“[T]he public interest favors the protection of confidential business information and the enforcement of valid contracts.”) (internal quotation marks omitted); *ISCO*

*Indus., LLC v. Erdle*, No. 5:11-CV-552-F, 2011 WL 5101599, at \*4 (E.D.N.C. Oct. 26, 2011) (noting that the public interest is served by ensuring that “valid contracts are enforced and . . . that businesses are able to share confidential and proprietary information with its employees without fear it will end up in the hands of a competitor”). A contrary result is against the public interest for the additional reason that it “could chill the willingness of parties to engage in contracts that involve the sharing of trade secrets with other parties, in fear that courts will not protect their information in the case of a breach.” *A.P. Moller-Maersk A/S*, 2007 WL 4562827, at \*4.

### **Conclusion**

Raytheon got it right the first time it instituted the firewall. Every changed position after that—including the arguments it raises for the first time in this litigation—are an attempt to shirk its responsibilities. Peraton requests that the Court issue the requested preliminary injunction.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on this 12th day of September, 2017, I caused a copy of the foregoing to be filed electronically with the Court's CM/ECF system, which will send a Notice of Such Filing to all counsel of record authorized to receive notice of such filing, including:

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