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July 1, 2021

The Honorable Lisa R. Barton  
Secretary to the Commission  
U.S. International Trade Commission  
500 E Street S.W.  
Washington, DC 20436

**Via EDIS**

Re: *In the matter of Certain Optical Enclosures, Components Thereof, and Products  
Containing the Same*

Dear Secretary Barton:

Attached for filing on behalf of Complainant, Criterion Technology, Inc. (“Criterion”), are the following documents in support of Criterion’s request that the Commission commence an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. We have included a separate letter requesting confidential treatment of certain exhibits included with this filing.

Complainant makes this filing under USITC’s Temporary Change to Filing Procedures dated May 16, 2020.

Complainant submits the following:

1. One (1) electronic submission of the Complainant’s public Verified Complaint and a statement of Public Interest pursuant to 19 C.F.R. §§ 210.4(f)(2), 210.8(a)(1)(i), and 210.8(b);
2. One (1) electronic copy of Public Exhibits to the public Verified Complaint pursuant to 19 C.F.R. §§ 210.4(f)(2), 210.4(f)(7)(i), and 210.8(a)(1)(i);

July 1, 2021

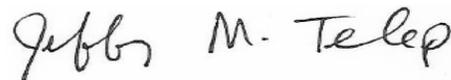
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3. One (1) electronic copy of Confidential Exhibits to the public Verified Complaint pursuant to 19 C.F.R. §§ 201.6(c), 210.4(f)(2), and 210.8(a)(1)(ii); and
4. A letter of certification pursuant to Commission Rules 201.6(b) and 210.5(d) requesting confidential treatment of information appearing in Confidential Exhibits 1-9, 11-18, 20-23 and 30 to the Verified Complaint.

Thank you for your attention to this filing. Please contact the undersigned if you have any questions.

Respectfully Submitted,

KING & SPALDING

A handwritten signature in black ink that reads "Jeffrey M. Telep". The signature is written in a cursive, slightly slanted style.

*Jeffrey M. Telep*  
*Counsel for Complainant Criterion*  
*Technology, Inc.*

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July 1, 2021

The Honorable Lisa R. Barton  
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U.S. International Trade Commission  
500 E Street S.W.  
Washington, DC 20436

**Via EDIS**

Re: In the matter of *Certain Optical Enclosures, Components Thereof, and Products Containing the Same*; Request for Confidential Treatment

Dear Secretary Barton:

In accordance with 19 C.F.R. §§ 201.6 and 210.5, Complainant, Criterion Technology, Inc. (“Criterion”), requests confidential treatment for the confidential business information contained in Confidential Exhibits 1-9, 11-18, 20-23 and 30 to Criterion’s Verified Complaint. The information for which confidential treatment is sought is proprietary commercial information and consists of the following:

- Business proprietary information regarding Criterion’s trade secrets on which its claim for relief under Section 337 is based (Confidential Exhibit 1, 11-18, 20-23);
- Communications and/or agreement with third parties, the terms of which are confidential (Confidential Exhibits 2-9); and
- Business proprietary information on Criterion’s domestic industry investments and injury allegations (Confidential Exhibits 1, 30).

The information described above qualifies as confidential business information pursuant to Commission Rule 201.6(a) because:

1. It is not currently publicly available;

2. Unauthorized disclosure of such information could cause substantial harm to the competitive position of Complainant and/or Respondents; and/or
3. The disclosure of such information could impair the Commission's ability to obtain information necessary to perform its statutory function.

Please contact the undersigned if you have any questions about this request, or if this request is not granted in full.

Respectfully Submitted,

KING & SPALDING

Handwritten signature of Jeffrey M. Telep in black ink.

*Jeffrey M. Telep*  
*Counsel for Complainant Criterion*  
*Technology, Inc.*

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.**

**In the Matter of**

**Certain Optical Enclosures,  
Components Thereof, and Products  
Containing the Same**

**Investigation No. 337-TA-\_\_\_\_\_**

**COMPLAINANT’S PUBLIC INTEREST STATEMENT**

Pursuant to 19 C.F.R. § 210.8(b), Complainant, Criterion Technology, Inc. (“Complainant” or “Criterion”), respectfully submits this Public Interest Statement concurrently with the above-captioned complaint. The issuance of a limited exclusion order and cease-and-desist orders covering the accused optical enclosures, components thereof, and products containing the same (hereinafter, “Accused Products”) will not adversely affect the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. *See, e.g., Certain Rotating 3-D LiDAR Devices, Components Thereof, and Sensing Systems Containing the Same*, Inv. No. 337-TA-1173, Notice of Institution of Investigation, EDIS Doc. ID 687935 (September 11, 2019) (declining to delegate public interest in an investigation involving substantially similar accused products). Thus, and for the reasons discussed below, this Investigation does not warrant delegating the development of a factual record on the statutory public interest factors to the ALJ.

**I. THE REQUESTED REMEDIAL ORDERS ARE IN ACCORD WITH THE PUBLIC INTEREST**

The allegations in this case involve unfair competition arising from the unlawful misappropriation of Criterion’s trade secrets. As described in the complaint, Proposed Respondent Velodyne Lidar USA, Inc. (“Velodyne”) engaged with Criterion, U.S. manufacturing company, in a years-long negotiation of a potential arrangement whereby

Criterion would have supplied Velodyne with the optical enclosures used in Velodyne's LiDAR products. In the process of that engagement, Velodyne gained access to Criterion's confidential trade secrets and know-how developed over multiple decades of operation in the United States, including methods of manufacture and product specifications resolving long-running issues faced by Velodyne's suppliers. Ultimately, rather than entering into the arrangement with Criterion, Velodyne instead transferred those trade secrets and know-how to a manufacturer in China, believed to be Proposed Respondent Fujian Fran Optics Co., Ltd., to manufacture optical enclosures incorporating Criterion's intellectual property at a lower cost to Velodyne.

The requested remedial orders, which would exclude from the United States optical enclosures manufactured by Fran Optics embodying Criterion's trade secrets, as well as Velodyne's LiDAR devices incorporating those optical enclosures, are plainly in the public interest. Indeed, the Commission has made clear that the protection of intellectual property rights is strongly in the public interest. *See, e.g., Certain Digital Television Prods. & Certain Prods. Containing Same & Methods of Using Same*, Inv. No. 337-TA-617, Comm'n Op. at 9 (Aug. 2, 2009); *see also Certain Baseband Processors Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets*, Inv. No. 337-TA-543, Comm'n Op. at 136-37 (June 19, 2007) ("We must take into account the strong public interest in enforcing intellectual property rights"). Any public interest concerns invoked by this investigation, to the extent there are any, are outweighed by the countervailing interest in protecting Criterion's intellectual property rights.

**A. Explanation of How The Articles Potentially Subject To The Orders Are Used In The United States**

The Accused Products are optical enclosures and LiDAR devices or “pucks” incorporating them. They include the Velodyne products being commercialized under the names Alpha Prime, Ultra Puck, Puck, Puck Lite, Puck Hi-Res, and Veladome.

The accused optical enclosures are used to encompass and protect sensitive optical equipment in a broad range of applications related to video security, subsea systems, mining and safety, LED lighting, and LiDAR (Light Detection and Ranging). The accused LiDAR devices are primarily used in the United States for real-time 3-D mapping and imaging. LiDAR devices emit pulsed light waves into a surrounding environment, and then can be used to create a 3-D map of that environment using the reflections received from the pulsed light waves. LiDAR devices are one of several types of sensors commonly used in autonomous and unmanned aerial vehicles. Other applications for the Accused Products include navigation and collision avoidance systems, robotics, and security systems.

**B. The Requested Remedial Orders Raise No Public Health, Safety, Or Welfare Concerns**

The issuance of a limited exclusion order and cease and desist order against the Proposed Respondents, and exclusion of the Accused Products, would have no adverse impact upon public health, safety, or welfare concerns in the United States. The Accused Products are optical enclosures embodying Criterion’s misappropriated trade secrets and LiDAR devices containing the same. These Accused Products are not the type of articles that the Commission has previously identified as warranting denial of relief. In fact, Proposed Respondent Velodyne agrees; it noted in a prior investigation involving LiDAR Devices that the Accused Products “are not medical or health devices, are not otherwise health-related, and are not essential for public safety or welfare.” *See Rotating 3-D LiDAR Devices and Products Containing the Same*, Inv.

No. 337-TA-1173, Public Interest Statement, EDIS Doc. ID 685468 at 3-4 (August 15, 2019).

No issues related to public health, safety, or welfare require fact finding by the ALJ.

**C. Like Or Directly Competitive Articles Are Available In The United States That Could Replace The Excluded Articles**

Criterion manufactures and sells optical enclosures that could readily replace the Accused Products in the event an exclusion order is entered. The confidential declaration of Mr. Chris Mulvey, CEO and President of Criterion, attached as Confidential Exhibit 1 to Criterion's Complaint, describes Criterion's substantial domestic operations and product offerings. In particular, Criterion was prepared to supply Velodyne with optical enclosures for the Accused Products prior to Velodyne's misappropriation of its trade secrets and remains able to do so.

Moreover, LiDAR Devices will continue to be available in the U.S. from other suppliers, including Sick AG, Ouster, and other third-party vendors, which would not be subject to the requested remedial orders. These suppliers and/or other manufacturers of competing devices can easily replace the Accused Products. Velodyne's own LiDAR devices that do not embody Criterion's trade secrets would also not be subject to the requested remedial orders, and therefore would be available to replace the unfairly developed Accused Products.

**D. Criterion Or Third-Party Suppliers Have The Capacity To Replace The Volume Of Excluded Articles In A Commercially Reasonable Time**

Criterion and other suppliers of the Accused Products could replace the volume of articles subject to the requested exclusion order in a commercially reasonable time. As further detailed in the confidential declaration of Mr. Chris Mulvey, attached as Confidential Exhibit 1 to Criterion's Complaint, Criterion has significant domestic production capability and could readily increase production to meet the need for high optical quality optical enclosures. Indeed, Criterion was prepared to do exactly that but for Velodyne's misappropriation of its trade secrets. The Accused Products also make up a minority of the U.S. market for optical enclosures and

LiDAR Devices containing the same, with the vast majority of the market belonging to Velodyne's competitors such as Trimble, Sick AG, Topcon, Faro, and others. Therefore, any gap felt by the remedial order could be easily made up by Criterion and third parties.

**E. The Requested Remedial Orders Would Not Adversely Impact Consumers**

The requested remedial orders would not adversely impact consumers because an adequate supply of legitimately developed optical enclosures and LiDAR Devices containing the same would continue to exist. As described above, Criterion produces and sells high optical quality enclosures that are ready to replace the unfairly developed products sold by the Proposed Respondents. Other manufacturers of LiDAR devices could similarly supply the U.S. market and meet consumer demand. U.S. consumers have many options for LiDAR devices and will not be adversely impacted by the exclusion of the Accused Products.

Further, even if the remedial orders were to result in an increase in the price of the Accused Products, such a price increase alone would be insufficient to warrant preclusion of a remedial order. *See Certain Lens-Fitted Film Packages*, Inv. No. 337-TA-406, Comm'n Op. (June 28, 1999) (finding that some price increase does not outweigh the public interest in protecting intellectual property rights). Any impact to consumers caused by the exclusion of products resulting from the Proposed Respondents' unfair trade practices would be minimal.

**II. CONCLUSION**

Protecting Complainants' intellectual property rights and associated domestic industry in the U.S. through the requested exclusion and cease and desist orders will serve the public interest without raising any concerns regarding public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. For these reasons, the Commission should not delegate fact finding on the statutory public interest factors to the ALJ.

/s/ Jeffrey M. Telep  
Jeffrey M. Telep

*Counsel for Criterion Technology, Inc.*

## CERTIFICATION

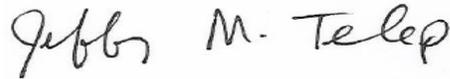
I, Jeffrey M. Telep, counsel for Complainant, Criterion Technology, Inc. ("Criterion"), declare:

1. I am duly authorized by Complainants to execute this certification.
2. I have reviewed the Complaint and Confidential Exhibits 1-9, 11-18, 20-23 and 30 for which confidential treatment has been requested.
3. To the best of my knowledge, information, and belief, founded after reasonable inquiry, substantially identical information is not currently available to the public.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that the statement made upon information and belief are believed by me to be true.

Dated: July 1, 2021

Respectfully submitted,



---

Jeffrey M. Telep

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.**

**In the Matter of**

**Certain Optical Enclosures,  
Components Thereof, and Products  
Containing the Same**

**Investigation No. 337-TA-\_\_\_\_\_**

**COMPLAINT UNDER SECTION 337 OF  
THE TARIFF ACT OF 1930, AS AMENDED**

**Complainant:**

Criterion Technology, Inc.  
101 McIntosh Parkway  
Thomaston, GA 30289  
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**Counsel for Complainant:**

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**Proposed Respondents:**

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2C	Velodyne NDA
3C	Dye Supplier NDA
4C	Colors NDA
5C	SDC NDA
6C	NACL NDA
7C	Dauntless NDA
8C	Coating Design Group NDA
9C	UAH NDA
10	2014-09-10 Velodyne Announces “Puck” LiDAR Sensor, <a href="https://www.spar3d.com/news/lidar/vol12no37-velodyne-announces-puck-lidar-sensor/">https://www.spar3d.com/news/lidar/vol12no37-velodyne-announces-puck-lidar-sensor/</a> (last accessed July 1, 2021)
11C	VLP-16 Part Drawing
12C	2016-11 Email Correspondence
13C	2016 Velodyne - Scope of Work
14C	2017-04 IR Transmission Test
15C	2017-09 Email Correspondence
16C	2018-08 Email Correspondence
17C	2018-09-25 Email Correspondence
18C	Updated VLP-16 Part Drawing
19	Fran Optics Ring Lens for LiDAR, <a href="http://en.franoptics.com/Ring-Lens-for-LiDAR-pd6252024.html">http://en.franoptics.com/Ring-Lens-for-LiDAR-pd6252024.html</a> (last accessed July 1, 2021)
20C	VLP-16 Preliminary Design with Tooling Notes
21C	2017-08 Email Correspondence
22C	2018-09-24 Email Correspondence
23C	Weathering Test Results
24	Velodyne Products, <a href="https://velodynelidar.com/products/">https://velodynelidar.com/products/</a> (last visited July 1, 2021)
25	Velodyne Authorized Distributors, <a href="https://velodynelidar.com/distributors/">https://velodynelidar.com/distributors/</a> (last accessed July 1, 2021)
26	Purchase of Velodyne Puck - Receipt
27	Purchase of Velodyne Puck - Picture

28	Datamyne Excerpt – Fran Optics
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## I. INTRODUCTION

1. Complainant Criterion Technology, Inc. (“Criterion” or “Complainant”) files this complaint pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“Section 337”), based on the unlawful importation of certain optical enclosures, components thereof, and products containing the same (“Accused Products”) into the United States, or sale of such articles by the owner, importer, or consignee that result or benefit from the knowing and unlawful misappropriation of Criterion’s trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States or to prevent the establishment of such an industry.

2. This case is brought under the Commission’s authority over “unfair acts” pursuant to 19 U.S.C. § 1337(a)(1)(A), and its well-established authority to investigate trade secret misappropriation tied to articles that are imported into the United States. The Proposed Respondents have engaged in unfair acts in violation of Section 337, through and in connection with the importation or sale of the Accused Products. As further detailed below, the Proposed Respondents’ unfair acts include, *inter alia*, the misappropriation of Criterion’s trade secrets, contrary to at least the principles set forth in the Uniform Trade Secrets Act (“UTSA,” as amended 1985), the California Trade Secrets Act, the Defend Trade Secrets Act, 18 U.S.C. § 1836 *et. seq.*, the Restatements of Unfair Competition, the Restatements of the Law of Torts, and federal common law.

3. Headquartered in Thomaston, Georgia, Complainant, Criterion Technology, Inc., is a leading manufacturer in the U.S. plastics industry, offering best-in-class windows, lenses, and enclosures. Criterion manufactures a variety of high-quality optical parts molded out of polycarbonate, acrylic, and optical grade nylon, with applications in video security, subsea

systems, LiDAR (autonomous vehicles, cloud point measuring), mining and safety, and LED lighting. As a result of its robust commitment to research and development, Criterion is the owner of a number of trade secrets regarding coatings, materials, design, knowhow, and custom designed tooling for the manufacture of high-quality optical enclosures.

4. The Proposed Respondents are Velodyne Lidar USA, Inc. (“Velodyne”) and Fujian Fran Optics Co., Ltd. (“Fran Optics”) (collectively, “Proposed Respondents”). The Proposed Respondents have engaged in unfair acts in violation of Section 337 through and in connection with the unauthorized importation of the Accused Products into the United States and the sale of such Accused Products that result and/or benefit from trade secrets misappropriated from Criterion. As described below, the Proposed Respondents misappropriated Criterion’s trade secrets while Criterion was developing a higher-quality optical-grade plastic enclosure for use in Velodyne’s LiDAR pucks. These trade secrets enabled increased transmissivity and the use of a durable optical hard coating on the exterior of the lenses.

5. To remedy the Proposed Respondents’ continuing violations of Section 337, Complainant seeks as relief a limited exclusion order, pursuant to Section 337(d) of the Tariff Act of 1930, as amended, excluding from entry into the United States all of Respondents’ Accused Products for a period of up to 10 years.

6. Complainant also requests cease and desist orders directed to each of the Proposed Respondents, pursuant to 19 U.S.C. § 1337(f), prohibiting the Proposed Respondents—and any of their principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, insofar as they are acting for, with, or otherwise on behalf of any Respondent—for a period of up to 10 years, from using or disclosing any subject matter of

Complainant's trade secrets at issue in this Investigation, and from importing; selling; offering for sale; using; marketing; advertising; distributing; transferring; repairing or servicing; assembling; testing; aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer, or distribution; and/or soliciting U.S. agents or distributors for importation, sale for importation, sale after importation, transfer, or distribution of certain optical enclosures, components thereof, or products containing the same.

7. Complainant also requests that the Commission require an appropriate bond for any activities otherwise covered by the limited exclusion orders and/or cease and desist orders during the Presidential review period.

## **II. COMPLAINANT**

### **A. Criterion Technology, Inc.**

8. Criterion is a Georgia corporation with its principal place of business at 101 McIntosh Parkway, Thomaston, GA, 30286.

9. Criterion was founded in 1990 with an initial focus on high quality optical enclosures and lenses for use in the closed-circuit-television market ("CCTV"). Criterion pioneered the use of injection molding engineered plastics and custom tooling and revolutionized the CCTV industry. In recent years, Criterion has applied this expertise into solutions for the LiDAR and subsea industries on a global scale.

10. An image of Criterion's headquarters and sole location at 101 McIntosh Parkway, Thomaston, GA is shown below:



11. Since its founding, Criterion has grown to as many as 30 employees devoted to the manufacturing, research and development, engineering, testing, and technical support of optical-quality polymer enclosures and lens products. As discussed more fully below, these U.S. activities are the target of the Proposed Respondents’ unfair acts in the importation of optical enclosures, components thereof, and products containing the same. Criterion’s U.S. operations are suffering from, and are threatened by, substantial injury by reason of these unfairly traded imports.

### **III. PROPOSED RESPONDENTS**

#### **A. Velodyne Lidar USA, Inc.**

12. On information and belief, Velodyne is a company organized and existing under the laws of Delaware, with a principal place of business located at 5521 Hellyer Avenue, San Jose, CA, 95138.

13. Velodyne is a California-based company that manufactures and sells LiDAR “pucks” for use in autonomous vehicles, among other things.

14. On information and belief, Velodyne imports into the United States and/or sells within the United States after importation the accused optical enclosures, components thereof, and products containing the same that incorporate one or more trade secrets misappropriated from Criterion.

**B. Fujian Fran Optics Co., Ltd.**

15. On information and belief, Fran Optics is a company organized and existing under the laws of China, with a principal place of business located at No. 25, Standard Workshop, Juyuanzhou, Jinshan Industrial District, Fuzhou, 350002, Fujian, China.

16. On information and belief, Fran Optics manufactures in China and sells for importation into the United States, and imports into the United States, the accused optical enclosures, components thereof, and products containing the same that incorporate one or more trade secrets misappropriated from Criterion.

**IV. THE TECHNOLOGY AND ACCUSED PRODUCTS AT ISSUE**

**A. Technology at Issue**

17. The technology at issue relates to high-quality optical enclosures made from polymers including polycarbonate, acrylic, and nylon. Optical enclosures are clear plastic domes, lenses, and windows used to encompass and protect sensitive optical equipment. The enclosures must facilitate the optical functionality of the enclosed equipment, including transmitting and receiving optical signals without altering their optical properties, while protecting the equipment from the weather, as well as vandalism and theft.

**B. Products at Issue**

18. Pursuant to 19 C.F.R. § 210.12(a)(12), the Accused Products are polycarbonate and nylon optical enclosures manufactured and sold by Fujian Fran Optics Co., Ltd.; and LiDAR

products being commercialized by Velodyne Lidar USA, Inc. under the names Alpha Prime, Ultra Puck, Puck, Puck Lite, Puck Hi-Res, and Veladome.

## **V. CRITERION'S MISAPPROPRIATED TRADE SECRETS**

19. The trade secrets at issue relate to Criterion's "know-how" in the manufacture of high-quality optical enclosures. Criterion has identified at least three categories of trade secrets misappropriated by the Proposed Respondents: (i) features of the tooling design used to manufacture optical enclosures with high transmissivity; (ii) product designs and specifications for optical enclosures with high transmissivity, including materials for use; and (iii) thermal cured hard coatings including methods for utilizing thermal cured hard coatings rather than less desirable anti-reflective surface coatings. These trade secrets are described in additional detail in the Confidential Declaration of Chris Mulvey. *See* Ex. 1 (Mulvey Decl.) at ¶ 8.

20. Each of these trade secrets is owned by Criterion and was developed as a result of Criterion's significant investment in engineering, research, and development. *See* Ex. 1 (Mulvey Decl.) at ¶¶ 4-10. For over 30 years, Criterion has been developing, improving, and optimizing technology and know-how relating to optical enclosures. *Id.* at 9. These trade secrets conferred a competitive advantage to Criterion in the manufacture and sale of optical enclosures because they permitted it to manufacture optical enclosures with higher transmissivity and durability than its competitors. *Id.* As a result, the misappropriated trade secrets derived economic value from being secret and generally not known to Criterion's competitors. *Id.* By avoiding the expense of research and development and instead misappropriating Criterion's trade secrets, the Proposed Respondents were able to unfairly compete in the domestic market for optical enclosures, components thereof, and products containing the same and cause substantial injury of threat of injury to Criterion.

21. Criterion has taken reasonable precautions to maintain the secrecy of its trade secrets. For instance, Criterion has developed written and oral policies, secured data access and storage, and has implemented other forms of data protection. Specific protection measures include the following:

- Restricting access to Criterion's offices and manufacturing facilities through physical security measures, including escorted entry into the building;
- Restricting access to Criterion's computer network and IT systems by requiring the use of passwords and other IT security measures;
- Requiring email signatures with explicit confidentiality notices, noting that the contents thereof may contain information that proprietary, privileged, confidential and/or exempt from disclosure under applicable law; and
- Requiring confidentiality and non-disclosure agreements that protect trade secrets, including agreements with suppliers and partners who have access to such information.

*See* Ex. 1 (Mulvey Decl.) at ¶ 10.

22. For instance, Criterion made extensive use of non-disclosure agreements ("NDAs"), including with Proposed Respondent Velodyne, prior to communicating any of its trade secrets. *See* Ex. 2 (Velodyne NDA). Criterion also had numerous existing NDAs with suppliers and partners, and several additional NDAs were signed shortly before Criterion began working with Velodyne. *See* Ex. 3 (Dye Supplier NDA); Ex. 4 (Colors NDA); Ex. 5 (SDC NDA); Ex. 6 (NACL NDA); Ex. 7 (Dauntless NDA); Ex. 8 (Criterion-Coating Design Group NDA); Ex. 9 (UAH NDA).

23. As a result of Criterion’s diligence in protecting its trade secrets, the trade secrets at issue were not readily ascertainable through proper means. Also, due to the nature of the trade secrets, it is also highly improbable that the trade secrets could have been determined through reverse engineering. The trade secrets at issue are not apparent from visual inspection and would have been difficult for the Proposed Respondents to determine independently. On information and belief, the trade secrets were discovered through unlawful misappropriation in violation of Section 337.

## **VI. UNLAWFUL AND UNFAIR ACTS COMMITTED BY RESPONDENTS**

### **A. History of Engagement Between Complainant and the Respondents**

24. On information and belief, Velodyne began manufacturing LiDAR sensors in or around 2007. Velodyne’s early sensors, such as the HDL-64E (shown below on the far left), operated such that the entire upper structure rotated about the base. By 2014, the laser/sensor combinations had been reduced in size such that they could fit entirely within a circular compartment—with only the interior components spinning. These devices, such as the Velodyne VLP-16 (shown below on the far right), are commonly referred to as “pucks.”



***Side by side: the HDL-64E, HDL-32E, and LiDAR Puck.***

Ex. 10 (2014-09-10 Velodyne Announces “Puck” LiDAR Sensor).

25. Velodyne’s “pucks” relied on optical enclosures with a delicate anti-reflective coating (as reflected by the yellowish tint in the image above) to increase the transmission of laser light and improve signal strength. Prior to Criterion’s involvement, the optical enclosures in Velodyne’s LiDAR pucks (*i.e.* the VLP-16 and VLP-32) were underperforming, and their delicate anti-reflective coating required special care and had poor longevity in the harsh environmental conditions—the exterior of automobiles—they were exposed to on a regular basis.

26. At the time Criterion became involved, the optical enclosures in Velodyne’s LiDAR pucks had the specifications shown in Confidential Exhibit 11. *See* Ex. 1 (Mulvey Decl.) at ¶ 11; *see also* Ex. 11 (VLP-16 Part Drawing). These specifications reflect the optical enclosures in Velodyne’s LiDAR pucks prior to incorporating Criterion’s trade secrets.

27. In 2015, Criterion was contacted by a third party, Precision Optics, regarding a potential arrangement whereby Criterion would develop a solution for Velodyne’s ongoing transmissivity and weathering problems with the optical enclosures in its VLP-16 and VLP-32 LiDAR pucks. *See* Ex. 1 (Mulvey Decl.) at ¶ 12; *see also* Ex. 12 (2016-11 Email Correspondence). Criterion and Velodyne began working directly with one another beginning in November 2016. *Id.* Criterion entered an NDA with Velodyne on November 16, 2016. *See* Ex. 1 (Mulvey Decl.) at ¶ 12; *see also* Ex. 2 (Velodyne NDA).

28. One week after entering the NDA agreement, on November 23, 2016, Criterion prepared and submitted a written statement of work to Velodyne to address Velodyne’s ongoing optical enclosure failures. Ex. 13 (2016 Velodyne - Scope of Work). Within the statement of work, Criterion disclosed and provided for the use of Criterion’s trade secrets to improve Velodyne’s optical enclosures and address problems associated with the delicate exterior anti-

reflective coating. Ex. 1 (Mulvey Decl.) at ¶ 13. In February 2017, Criterion engaged SDC Technologies, Inc. (“SDC”), a third-party California supplier of durable hard coating for nylon and polycarbonate surfaces to execute certain of Criterion’s ideas for improving on Velodyne’s optical enclosures. Criterion executed an NDA with SDC on February 1, 2017. Ex. 5 (SDC NDA).

29. Over the course of almost two years, Criterion and Velodyne exchanged molded pieces, test data, technical drawings, and other information as part of Criterion’s bid to be Velodyne’s supplier of optical enclosures. For example, Criterion developed and tested numerous iterations of optical enclosures, demonstrating how Criterion’s trade secrets resulted in higher-quality optical enclosures for Velodyne’s LiDAR applications. *See* Ex. 14 (2017-04 IR Transmission Test); *see also* Ex. 15 (2017-09 Email Correspondence) at 7, 11, 14, 17. In another example, Criterion provided a “root cause analysis” of Velodyne’s optical enclosure issues disclosing Criterion’s trade secret tooling for the manufacture of high-quality optical enclosures. *See* Ex. 15 (2017-09 Email Correspondence).

30. At an in-person meeting at Velodyne’s headquarters on August 8, 2018, a Velodyne employee informed Criterion’s President and CEO, Mr. Chris Mulvey, that Criterion was no longer under consideration as a potential supplier to Velodyne. Ex. 1 (Mulvey Decl.) at ¶ 15. On information and belief, this was because Velodyne had already established a supplier relationship with Fujian Fran Optics Co., Ltd.

31. On September 24, 2018, Velodyne confirmed that it would not be moving forward with Criterion as a supplier of its optical enclosures. *See* Ex. 1 (Mulvey Decl.) at ¶ 16; *see also* Ex. 16 (2018-08 Email Correspondence). On September 25, 2018, another employee of Velodyne confirmed that Velodyne would not be moving forward with Criterion as a supplier of its optical enclosures. *See* Ex. 1 (Mulvey Decl.) at ¶ 16; *see also* Ex. 17 (2018-09-25 Email Correspondence).

On information and belief, this was because Velodyne had already established a supplier relationship with Fujian Fran Optics Co., Ltd.

32. Following termination of the project, Criterion became aware that Velodyne and Fran Optics had misappropriated the trade secrets provided to Velodyne under NDA. *See* Ex. 1 (Mulvey Decl.) at ¶ 17. For instance, Velodyne updated the specification of its optical enclosures to precisely correspond to the use of the trade secrets disclosed by Criterion. *See* Ex. 1 (Mulvey Decl.) at ¶ 17; *see also* Ex. 18 (Updated VLP-16 Part Drawing). On information and belief, Fran Optics, Velodyne's Chinese supplier, also advertises an optical enclosure on its website evidencing the use of Criterion's trade secrets. *See* Ex. 1 (Mulvey Decl.) at ¶ 17; *see also* Ex. 19 (Fran Optics Ring Lens for LiDAR).

**B. The Proposed Respondents' Access to Criterion's Trade Secrets Under NDA**

33. Velodyne gained access to Criterion's trade secrets under NDA and, on information and belief, used that access to misappropriate Criterion's trade secrets and transfer them to Fran Optics, its Chinese-based supplier.

34. **Tooling Design Trade Secrets.** Criterion's first category of trade secrets relates to features of the tooling design used to manufacture optical enclosures with high transmissivity. Velodyne had access to this category of Criterion's trade secrets under NDA and, on information and belief, misappropriated these trade secrets for the benefit of the Proposed Respondents.

35. In a meeting at Velodyne's headquarters on April 10, 2017, Mr. Mulvey met with two Velodyne employees for approximately two hours to discuss the ongoing optical enclosure project. During that meeting, Mr. Mulvey showed the two Velodyne employees a preliminary design for the tool that would be used to make the Velodyne enclosure. *See* Ex. 1 (Mulvey Decl.) at ¶ 14; *see also* Ex. 20 (VLP-16 Preliminary Design with Tooling Notes). This design embodied

at least the first category of Criterion's trade secrets related to features of the tooling design used to manufacture optical enclosures with high transmissivity.

36. Subsequently, on August 18, 2017, Criterion presented a document titled "Root Cause Analysis" to Velodyne describing Criterion's analysis of recent testing failures. *See* Ex. 1 (Mulvey Decl.) at ¶ 14; *see also* Ex. 21 (2017-08 Email Correspondence). In that document, Criterion described an updated tool design reflecting Criterion's trade secrets. This Root Cause Analysis was communicated to Velodyne by email dated August 18, 2017. *Id.*

37. Criterion's trade secret tool design is also referenced in extensive email correspondence between Velodyne and Criterion. *See* Ex. 15 (2017-09 Email Correspondence); *see also* Ex. 22 (2018-09-24 Email Correspondence). These emails confirm that Criterion disclosed its trade secret tool design to Velodyne on numerous occasions after Criterion and Velodyne entered into a mutual NDA.

38. **Part Design Trade Secrets.** Criterion's second category of trade secrets relates to part design, including composition and target specifications for optical enclosures with high transmissivity. Velodyne had access to this category of Criterion's trade secrets under NDA and, on information and belief, misappropriated them for the benefit of the Proposed Respondents. For instance, Criterion's proposed design for the Velodyne optical enclosure including trade secret specifications for high optical transmissivity was disclosed on November 23, 2016 in Criterion's Statement of Work. *See* Ex. 1 (Mulvey Decl.) at ¶ 13; *see also* Ex. 13 (2016 Velodyne - Scope of Work). Accordingly, Velodyne had access to this category of Criterion's trade secrets.

39. **Thermal Hard Coating Trade Secrets.** Criterion's third category of trade secrets relates to thermal cured hard coatings and methods for utilizing thermal cured hard coatings rather than less desirable anti-reflective surface coatings. Velodyne had access to this category of

Criterion's trade secrets under NDA and, on information and belief, misappropriated these trade secrets for the benefit of the Proposed Respondents. Prior to engaging with Criterion, Velodyne utilized an anti-reflective coating on the exterior of its optical enclosures to increase optical transmissivity. *See* Ex. 1 (Mulvey Decl.) at ¶ 11; *see also* Ex. 11 (VLP-16 Part Drawing). Criterion devised and provided Velodyne with a design that allowed Velodyne to eliminate the anti-reflective coating and utilize a more durable scratch resistant thermal cured hard coating. For instance, Criterion's part design for the Velodyne optical enclosure including trade secrets for the use of thermal cured hard coatings was disclosed on November 23, 2016 in Criterion's Statement of Work. *See* Ex. 1 (Mulvey Decl.) at ¶ 13; *see also* Ex. 13 (2016 Velodyne - Scope of Work). Accordingly, Velodyne also had access to this category of Criterion's trade secrets

40. Criterion also developed a blue-tinted thermal cured hard coating through work with SDC, located in Irvine, California, specifically for the Velodyne project. On or around January 2018, Criterion disclosed the existence of the hard coating as well as its formulation to Velodyne. *See* Ex. 23 (Weathering Test Results). As a result, Criterion's misappropriated trade secrets allowed Velodyne to abandon the use of the less desirable anti-reflective coating and transition to the use of thermal cured hard coating, including the blue-tinted thermal cured hard coating co-developed by Criterion.

### **C. The Proposed Respondents' Unauthorized Use of Criterion's Trade Secrets**

41. In addition to having access to each category of Criterion's trade secrets under NDA, the Proposed Respondents misappropriated and incorporated those trade secrets into Velodyne's redesigned and updated LiDAR devices, including each of the Accused Products. On information and belief, Velodyne transferred Criterion's trade secrets to its current Chinese-based supplier Fran Optics, who then utilized these trade secrets in the manufacture of the Accused Products.

42. **Tooling Design Trade Secrets.** On information and belief, the updated specifications advertised for the Accused Products could not have been achieved in any economically feasible way without the incorporation of Criterion's tooling design trade secrets. *See* Ex. 1 (Mulvey Decl.) at ¶ 17; *see also* Ex. 18 (Updated VLP-16 Part Drawing).

43. **Part Design Trade Secrets.** On information and belief, the updated specifications advertised for the Accused Products show that the Proposed Respondents adopted and incorporated Criterion's trade secret design specification. For instance, a comparison between Velodyne's 2016 part design specifications and Velodyne's subsequent 2018 part design specifications clearly shows that Velodyne adopted Criterion's trade secret part design specifications as its own after engaging with Criterion. *Compare* Ex. 11 (VLP-16 Part Drawing) *with* Ex. 18 (Updated VLP-16 Part Drawing).

44. **Thermal Hard Coating Trade Secrets.** Prior to engaging with Criterion, Velodyne's optical enclosure utilized a yellow tinted anti-reflective coating that was susceptible to weathering and degradation. After engaging with Criterion, Velodyne's adopted a thermal cured hard coating having the same distinctive blue color as the hard coat co-developed by Criterion. On information and belief, Velodyne misappropriated Criterion's trade secrets for utilizing thermal cured hard coating along with the blue-tinted thermal cured hard coating co-developed by Criterion.

## **VII. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE**

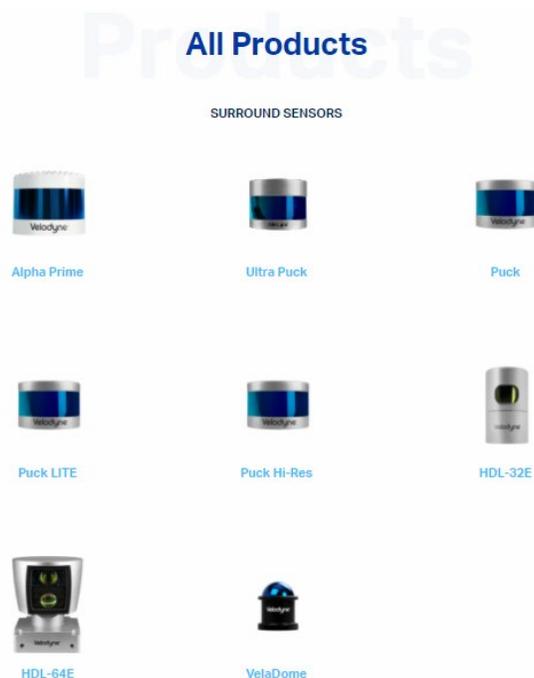
45. The Proposed Respondents manufacture and/or have manufactured outside of the United States, sell for importation into the United States, import into the United States, and/or sell within the United States after importation optical enclosures, components thereof, and products containing the same, including the Accused Products.

**A. Velodyne Lidar USA, Inc.**

46. On information and belief, the Accused Products are manufactured abroad, sold for importation into the United States, imported into the United States, and/or sold after importation into the United States by Velodyne and/or its authorized agents.

47. On information and belief, Velodyne sources the optical enclosures for the Accused Products from Fran Optics, located in Fuzhou, China. *See* Ex. 1 (Mulvey Decl.) at ¶¶ 15, 16; *see also* Ex. 17 (2018-09-25 Email Correspondence). On information and belief, the optical enclosures embodying Criterion’s trade secrets are incorporated into the Accused Products and then sold for importation into the United States, imported into the United States, and/or sold after importation into the United States by Velodyne and/or its authorized agents.

48. On information and belief, Velodyne sells the Accused Products that incorporate the imported optical enclosures on its website at <https://velodynelidar.com> and/or through authorized distributors to customers in the United States. For instance, Velodyne advertises for sale each of the Accused Products on its website:



See Ex. 24 (Velodyne Products).

49. Velodyne also identifies numerous distributors and/or resellers of Velodyne products in the United States, including: AutomouStuff, Clearpath Robotics, LiDAR USA, and Phoenix LiDAR Systems.

**United States**

			
AutomouStuff <a href="https://autonomoustuff.com/">https://autonomoustuff.com/</a>	Clearpath Robotics <a href="https://clearpathrobotics.com/">https://clearpathrobotics.com/</a>	Lidar USA <a href="https://www.lidarusa.com/">https://www.lidarusa.com/</a>	Phoenix LiDAR Systems <a href="https://www.phoenixlidar.com/">https://www.phoenixlidar.com/</a>

See Ex. 25 (Velodyne Authorized Distributors).

50. For example, Exhibit 26 contains a receipt showing the purchase of a Velodyne (VLP-16-A) LiDAR Puck 16 Element Sensor (Blue RingLens) for delivery to an address in the United States. Exhibit 27 contains photographs of the LiDAR puck having a blue-tinted optical enclosure that, on information and belief, was manufactured by Fran Optics in Fuzhou, China and then imported into the United States.

**B. Fujian Fran Optics Co., Ltd.**

51. On information and belief, Fran Optics manufactures optical enclosures for the Accused Products embodying Criterion's trade secrets in Fuzhou, China. The optical enclosures are sold for importation into the United States and/or imported into the United States by Fran Optics and/or its authorized agents.

52. For instance, on August 8, 2018, a Velodyne employee made a statement to Criterion's President and CEO Mr. Chris Mulvey suggesting a supplier relationship between Velodyne and Fran Optics. See Ex. 1 (Mulvey Decl.) at ¶ 15. A second Velodyne employee subsequently made a different statement to Mr. Mulvey also suggesting a supplier relationship

between Velodyne and Fran Optics. *See* Ex. 1 (Mulvey Decl.) at ¶ 16; *see also* Ex. 17 (2018-09-25 Email Correspondence). As such, on information and belief, Fran Optics manufactures optical enclosures in China and supplies them to Velodyne for further assembly into the Accused Products.

53. Fran Optics also advertises optical enclosures on its website matching the specifications of those in the Accused Products. For instance, Fran Optics advertises for sale the following blue-tinted optical enclosure on its website:



Ex. 19 (Fran Optics Ring Lens for LiDAR).

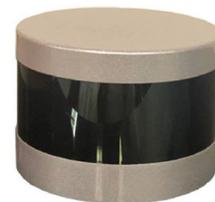
54. The trade secret specifications that Criterion provided to Velodyne - and that Velodyne incorporated in the Accused Products - are displayed on Fran Optics' website. *See* Ex. 18 (Updated VLP-16 Part Drawing).

55. Ship manifest data for ocean-born shipments also show that Fran Optics imported a significant quantity of optical enclosures into the United States since January 1, 2018. *See* Ex.

28 (Datamyne Excerpt – Fran Optics). This year alone, Fran Optics imported nearly 4000kg of optical enclosures into Savannah, Georgia and Newark, New Jersey from China. *Id.* Nearly 2400kg of such optical enclosures were received by Flextronics Logistics USA, Inc. (“Flextronics”) in Savannah, Georgia. *Id.* On information and belief, Flextronics is a global supply chain and manufacturing solutions provider that supplies optical enclosures from Fran Optics embodying the misappropriated trade secrets to Velodyne for incorporation into the Accused Products. For instance, Flextronics advertises on its website that Flextronics is enabling advanced technology sensors including LiDAR sensors around the globe.

### Sensors

Autonomous vehicles require multiple sensors that provide a critical sense of sight. Our expertise with advanced technology sensors reaches across all the necessary technologies - including vision, radar, lidar, sonar, mechanical moving and solid state. Stay at the forefront of the constantly changing autonomous environment with the 3D sensor technology we are enabling around the globe.



See Ex. 29 (Flextronics Autonomous Driving Technology) at 4. On information and belief, the LiDAR puck prominently displayed on Flextronics’ website is a Velodyne VLP-16.

## VIII. HARMONIZED TARIFF SCHEDULE NUMBERS

56. On information and belief, the Accused Products of which Complainant is currently aware may be classified and imported under at least the following Harmonized Tariff Schedule of the United States heading/subheading numbers: 8529.90.49. This number is exemplary, and Complainant will provide updated Harmonized Tariff Schedule numbers as they are discovered throughout the course of the investigation.

## **IX. RELATED LITIGATION**

57. Pursuant to 19 C.F.R. § 210.12(a)(5), Complainant states that the following litigation is currently pending relating to the issues described herein.

58. Simultaneous with the filing of this Complaint, Criterion is filing a complaint in the U.S. District Court for the Northern District of California against Velodyne alleging misappropriation of the trade secrets asserted herein.

59. Simultaneous with the filing of this Complaint, Criterion is filing a complaint in the U.S. District Court for the Northern District of California against Fran Optics alleging misappropriation of the trade secrets asserted herein.

60. Other than as described above, the alleged unfair acts, or subject matter thereof, are not and have not been the subject of any court or agency litigation.

## **X. DOMESTIC INDUSTRY**

61. The Proposed Respondents' unfair acts in the importation of articles that embody Criterion's misappropriated trade secrets have the threat or effect of destroying or substantially injuring an industry in the United States and preventing the establishment of such an industry. *See* 19 U.S.C. § 1337(a)(1)(A). Complainant's affected domestic industry includes its investments in U.S. facilities, equipment, labor, and capital expenditures directed to manufacturing, research and development, engineering, testing, and technical support of its optical enclosures, including optical enclosures embodying one or more of the misappropriated trade secrets.

62. A non-confidential summary of some of Criterion's significant and substantial domestic industry investments is provided below. A confidential narrative providing further detail is submitted herewith and is incorporated herein by reference. *See* Ex. 1 (Mulvey Decl.) at ¶¶ 23-31.

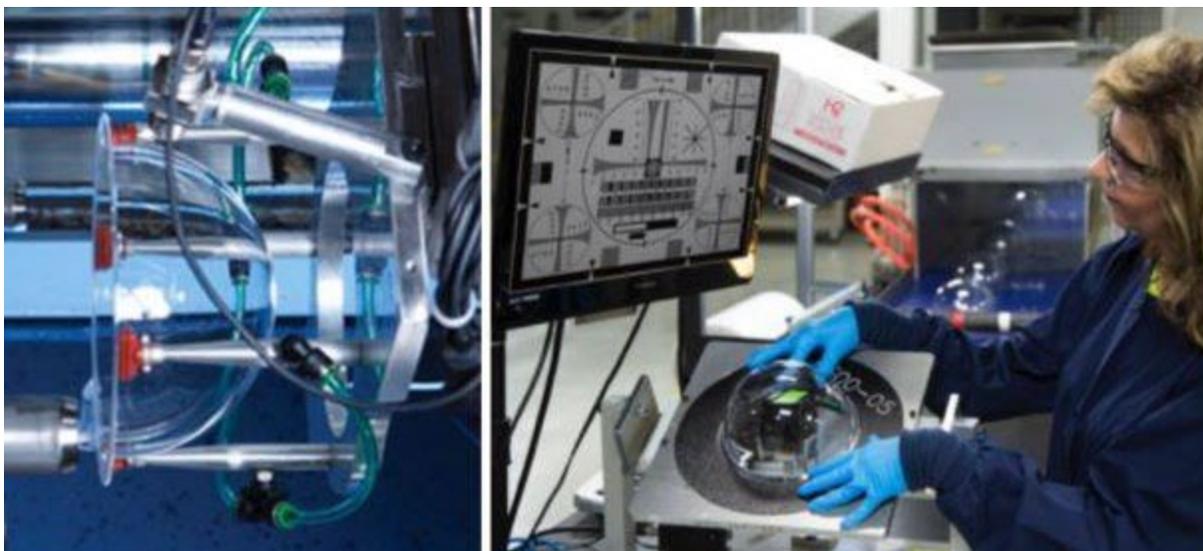
**A. Significant Investments in Plant and Equipment**

63. Criterion has made significant investments in plant and equipment in the United States relating to the manufacturing, research and development, engineering, testing, and technical support of its optical enclosures, including optical enclosures embodying one or more of the misappropriated trade secrets.

64. Criterion is one of the largest manufacturers of high-quality optical enclosures in the United States, with significant involvement in the security, LiDAR, and subsea industries. All of Criterion's manufacturing, research and development, engineering, testing, and technical support of its optical enclosures takes places in the United States at its facility located at 101 McIntosh Parkway, Thomaston, GA 30289.

65. The following pictures illustrate workers performing technical manufacturing work in Criterion's Thomaston facility relating to optical enclosures:





66. A true and accurate summary of the square footage at Criterion's Thomaston manufacturing facility is provided in Ex. 1 (Mulvey Decl.) at ¶ 23. The vast majority of Criterion's activities at its Thomaston facility directly relate to the manufacturing, research and development, engineering, testing, and technical support of optical enclosures, including optical enclosures embodying the misappropriated trade secrets.

**B. Significant Investments in Labor or Capital**

67. Criterion has also made significant investments in labor and capital in the United States relating to the manufacturing, research and development, engineering, testing, and technical

support of its optical enclosures, including optical enclosures embodying one or more of the misappropriated trade secrets.

68. Criterion employs a significant number of individuals in the United States at its Thomaston manufacturing facility. All of these employees are directly involved in the manufacturing, research and development, engineering, testing, and technical support of optical enclosures, including optical enclosures embodying the misappropriated trade secrets.

69. A true and accurate summary of headcount and investments in Criterion's employees directly involved in manufacturing, research and development, engineering, testing, and technical support of optical enclosures, including optical enclosures embodying the misappropriated trade secrets is provided in Ex. 1 (Mulvey Decl.) at ¶¶ 26-27.

70. Criterion has also employed a significant amount of capital in the United States relating to the manufacturing, research and development, engineering, testing, and technical support of optical enclosures, including optical enclosures embodying the misappropriated trade secrets. Such capital expenditures have included raw materials sourced from United States supplies, state-of-the-art machinery, and other costs. A true and accurate summary of capital expenditures incurred in manufacturing, research and development, engineering, testing, and technical support of optical enclosures, including optical enclosures embodying the misappropriated trade secrets is provided in Ex. 1 (Mulvey Decl.) at ¶ 28.

### **C. Substantial Investments in Engineering, Research and Development**

71. Criterion has also made substantial investments in engineering, research and development in the United States of its optical enclosures, including optical enclosures embodying one or more of the misappropriated trade secrets.

72. All of Criterion's research and development activities with respect to optical enclosures take place in the United States, including at its Thomaston facility. A true and accurate summary of the amount that Criterion has spent on engineering, research and development of optical enclosures, including optical enclosures embodying the misappropriated trade secrets is provided in Ex. 1 (Mulvey Decl.) at ¶ 29.

## **XI. SUBSTANTIAL INJURY AND THREAT OF SUBSTANTIAL INJURY**

73. The Proposed Respondents have engaged in unfair acts and unfair methods of competition, the threat or effect of which is to destroy or substantially injure Criterion's domestic industry and to prevent the establishment of such an industry in accordance with 19 U.S.C. § 1337(a)(1)(A). For instance, Criterion has suffered lost sales, lost market share, price underselling, and devaluation of the misappropriated trade secrets so as to substantially diminish the domestic industry connected to the manufacturing, research and development, engineering, testing, and technical support of Criterion's optical enclosures, including optical enclosures embodying the misappropriated trade secrets.

74. The Proposed Respondents' importation and sale of the Accused Products have resulted in lost sales and lost market share by Criterion. Criterion and Fran Optics are direct competitors in the market for optical enclosures and, but-for the Proposed Respondents' misappropriation, Fran Optics would have been unable to supply optical enclosures incorporating Criterion's trade secrets. Accordingly, each Accused Product incorporating an optical enclosure embodying Criterion's trade secrets represents a lost sale of a legitimately developed optical enclosure in the United States. As a result of the Proposed Respondents' misappropriation, Criterion has been unable to make investments in the United States related to manufacturing, research and development, engineering, testing, and technical support of optical enclosures that

Criterion otherwise would have made, including additional employees in the United States. *See* Ex. 1 (Mulvey Decl.) at ¶¶ 32-33.

75. Furthermore, the Accused Products are priced lower than Criterion's optical enclosures by a significant margin, resulting in further injury or threat of further injury to Criterion's domestic industry. The Proposed Respondents have been able to lower their cost to design and develop high optical quality enclosures as a result of their misappropriation, enabling them to compete directly against Criterion by selling the Accused Products at prices significantly lower than Criterion's prices. As such, the Proposed Respondents unfairly compete with and further injure Criterion's domestic industry by virtue of using such unfairly developed and priced optical enclosures within other LiDAR devices, whereby they directly displace the legitimate products of Criterion, which Criterion might otherwise provide. *See* Ex. 1 (Mulvey Decl.) at ¶ 33.

76. In addition, the Proposed Respondents have unfairly derived a substantial commercial advantage in the form of a rapid entry into the market for high optical quality enclosures, as well as into markets for LiDAR devices containing the same, through and because of their misappropriation of Criterion's trade secrets. The Proposed Respondents illegitimately obtained a head start and remarkably rapid entry into the market for optical enclosures and products containing the same based on their misappropriation of Criterion's trade secrets, which has already substantially injured and threatens to further injure the domestic industry.

77. Finally, Criterion's ownership, possession, and use of the trade secrets at issue has historically provided Criterion with significant and well-earned competitive advantages. These significant competitive advantages have now been eroded, and continue to be significantly threatened, by the Proposed Respondents' unlawful use of Criterion's trade secrets. The diminished secrecy and confidentiality of the trade secrets has forced and is forcing Criterion to

compete against unauthorized use of its own trade secrets and, consequently, has devalued and is devaluing those trade secrets.

78. But for their misappropriation, the Proposed Respondents would be incapable of manufacturing optical enclosures and products meeting the same performance standards as Criterion, marketing such products, and importing and selling a commercially significant inventory of the Accused Products.

79. Unless the Commission issues an appropriate exclusion orders, cease and desist orders, and other relief that it deems just and proper, the Proposed Respondents will continue to wrongfully disclose, rely on, and use Criterion's trade secrets to manufacture, import, and sell increasingly large commercial quantities of the Accused Products, thus substantially and irreparably injuring the domestic industry, threatening substantial and irreparable injury to, and creating a tendency to substantially and irreparably injure the domestic industry.

80. Pursuant to Commission Rule 210.12(a)(8), the volume and trend of production, sales, and inventories of the Domestic Industry Products are reflected in the confidential declaration of Mr. Mulvey. *See* Ex. 1 (Mulvey Decl.) at ¶¶ 21-22. As shown, the volume and trend of production and sales have been reduced following the misappropriation described herein. A description of the facilities and number and type of workers employed in the production of the Domestic Industry Products is provided in Mr. Mulvey's confidential declaration. *See* Ex. 1 (Mulvey Decl.) at ¶¶ 23-28. True and accurate copies of Criterion's annual profit and loss statements from 2015-2020 are attached as Exhibit 30C. A description of pricing information related to the Domestic Industry Products is also provided in Mr. Mulvey's confidential declaration. *See* Ex. 1 (Mulvey Decl.) at ¶ 22.

81. From the foregoing conditions and circumstances, probable future substantial and irreparable injury to the domestic industry reasonably can be inferred.

## **XII. REMEDY**

82. Criterion requests a limited exclusion order pursuant to 19 U.S.C. § 1337(d), excluding from entry into the United States all of the Proposed Respondents' Accused Products for a period of up to 10 years.

83. In addition to exclusion orders, Criterion also seeks cease and desist orders directed to each of the named Respondents, pursuant to 19 U.S.C. § 1337(f), prohibiting the Proposed Respondents—and any of their principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, insofar as they are acting for, with, or otherwise on behalf of any Proposed Respondent—for a period of up to 10 years, from using or disclosing any subject matter of Criterion's trade secrets at issue in this Investigation, and from importing; selling; offering for sale; using; marketing; advertising; distributing; transferring; repairing or servicing; assembling; testing; aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer, or distribution; and/or soliciting U.S. agents or distributors for the importation, sale for importation, sale after importation, transfer, or distribution of certain optical enclosures, components thereof, and products containing the same, or from domestically installing the Accused Products after importation into downstream devices assembled or manufactured by or for Proposed Respondents in the United States.

84. Criterion also requests that the Commission require an appropriate bond for any activities otherwise covered by the limited exclusion order and/or cease and desist orders during the Presidential review period

### **XIII. REQUEST FOR RELIEF**

85. In view of the Proposed Respondents' continued unfair import activities, Complainant requests that the U.S. International Trade Commission:

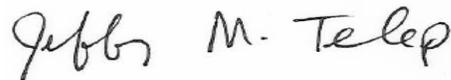
- a. Institute an immediate investigation, pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to violations of Section 337 based upon the sale for importation into the United States, the importation into the United States, and/or the sale within the United States after importation of certain optical enclosures, components thereof, and products containing the same that embody or otherwise benefit from the misappropriated trade secrets;
- b. Schedule and conduct a hearing pursuant to Section 337(c) for the purposes of receiving evidence and hearing argument concerning whether there has been a violation of Section 337, and, following the hearing, determine that there have been violations of Section 337 by each Proposed Respondent;
- c. Issue limited exclusion orders, pursuant to 19 U.S.C. § 1337(d), prohibiting entry into the United States of all of Proposed Respondents' Accused Products that embody or otherwise benefit from one or more of the misappropriated trade secrets for a period of up to 10 years;
- d. Issue cease and desist orders, pursuant to 19 U.S.C. § 1337(f), prohibiting the Proposed Respondents—and any of their principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, insofar as they are acting for, with, or

otherwise on behalf of any Proposed Respondent—for a period of up to 10 years, from using or disclosing any subject matter of Criterion’s trade secrets at issue in this Investigation, and from importing; selling; offering for sale; using; marketing; advertising; distributing; transferring; repairing or servicing; assembling; testing; aiding or abetting other entities in the importation, sale for importation, sale after importation, transfer, or distribution; and/or soliciting U.S. agents or distributors for the importation, sale for importation, sale after importation, transfer, or distribution of Accused Products, or from domestically installing any of the Proposed Respondents’ Accused Products that embody or otherwise benefit from one or more of the misappropriated trade secrets for a period of up to 10 years.

- e. Require appropriate bond be posted, pursuant to 19 U.S.C. § 1337(j), with U.S. Customs and Border Protection for entry of any Accused Product during the Presidential review period; and
- f. Grant such other and further relief as the Commission deems just and proper based on the facts determined by the investigation and the authority of the Commission.

Dated: July 1, 2021

Respectfully submitted,



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*Counsel for Complainant Criterion  
Technologies, Inc.*

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.**

**In the Matter of**

**Certain Optical Enclosures,  
Components Thereof, and Products  
Containing the Same**

**Investigation No. 337-TA-\_\_\_\_\_**

**VERIFICATION OF COMPLAINT**

I, Chris Mulvey, do hereby declare and state:

1. I am President and CEO of Criterion Technology, Inc. and I am duly authorized to verify this Complaint;
2. I submit this verification in accordance with 19 C.F.R. §§ 210.4 and 210.12(a);
3. I have read the Complaint and am aware of its contents;
4. The Complaint is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the investigation or related proceeding;
5. To the best of my knowledge, information, and belief founded upon reasonable inquiry, the claims and legal contentions of this Complaint are warranted by existing law or a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and
6. To the best of my knowledge, information, and belief founded upon reasonable inquiry, the allegations and other factual contentions in the Complaint have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Dated: July 1, 2021

Respectfully submitted,

*Chris Mulvey*  
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Chris Mulvey