REPLY TO COUNTERCLAIMS

I. Reply to Counterclaims

1. ZHAW admits that Atomo is a company that has worked to develop a coffee-like product made without coffee beans. ZHAW admits that it entered into a research
agreement with Atomo ("the Agreement"). The terms of the Agreement speak for themselves. ZHAW admits that Sara Marquardt has worked on the development of a chocolate-like product. All other allegations in this paragraph are denied.

2. ZHAW admits that Marquardt had access to some information regarding ZHAW’s work with Atomo. ZHAW admits that it is seeking payment required by the Agreement from Atomo and has sued to recover those fees in this lawsuit. All other allegations in this paragraph are denied.

3. On information and belief, admitted.

4. Admitted.

5. Admitted.

6. Denied.

7. Denied.

8. Denied.


10. Denied.

11. Denied.

12. ZHAW admits that Atomo is marketing what it calls a beanless coffee product. In all other respects this paragraph is denied.

13. ZHAW admits that the Agreement was signed on or around August 22, 2019. The Agreement speaks for itself.

14. The Agreement speaks for itself. In all other respects, denied.

15. The Agreement speaks for itself. This paragraph accurately reproduces some content from the Agreement. In all other respects, denied.
16. The Agreement speaks for itself. This paragraph accurately reproduces some content from the Agreement. In all other respects, denied.

17. The Agreement speaks for itself. This paragraph accurately reproduces some content from the Agreement. In all other respects, denied.

18. The Agreement speaks for itself. This paragraph accurately reproduces some content from the Agreement. In all other respects, denied.

19. ZHAW admits that the parties discussed who would work at ZHAW with Atomo. In all other respects, denied as vague.

20. Denied in part. Atomo identified Sara Marquardt as a candidate. ZHAW did hire Marquardt. In all other respects, denied.

21. ZHAW admits that when Marquardt started working at ZHAW she was working on the Atomo project. In all other respects, denied.

22. ZHAW admits that Marquardt performed work for Atomo under the Agreement. In all other respects, denied.

23. ZHAW admits that Marquardt created or acquired information related to beanless coffee in the course of her work under the Agreement. In all other respects, denied.

24. ZHAW admits that Marquardt’s work involved aromas. In other respects, denied.

25. Denied.

26. ZHAW admits that Marquardt had information about the Atomo project. In other respects, denied.

27. The Agreement speaks for itself and contains confidentiality provisions applicable to both parties.

28. On information and belief, ZHAW admits that some information Marquardt had access to related to the Agreement was confidential. In all other respects, denied.
29. The Agreement speaks for itself. In all other respects, denied.

30. The Agreement speaks for itself. ZHAW does not have information necessary to admit or deny Atomo’s subjective expectations and therefore denies this paragraph in all other respects.

31. ZHAW admits that Marquardt stopped performing work under the Agreement less than two years after it was signed. In all other respects, denied.

32. ZHAW admits that Marquardt works for and helped launch NxFoods and that NxFoods is developing a chocolate alternative. In all other respects, denied.

33. Upon information and belief, ZHAW admits that Marquardt founded NxFoods in our around April 2021, while an employee of ZHAW. In all other respects, denied.

34. Admitted.

35. Denied.

36. Admitted.

37. On information and belief, the first sentence is admitted. ZHAW admits that Atomo has a coffee-like product and NxFoods has a chocolate-like product. In all other respects, denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. ZHAW admits that Dr. Yeretzian provided some support to the Atomo project and the work for NxFoods. In all other respects, denied.

44. Denied.
45. Denied.

46. Denied.

47. ZHAW admits that its employees were free of conflicts. ZHAW denies that it failed to provide Atomo with appropriate assurances. In all other respects, denied.

48. Denied.

49. Admitted.

50. All prior responses are incorporated here.

51. ZHAW admits that Atomo owns information, but denies that it possesses trade secrets.

52. Denied.

53. Denied.

54. Denied.

55. ZHAW admits that it entered into the Agreement, but denies that it gained access to trade secrets.

56. The Agreement speaks for itself.

57. The Agreement speaks for itself.

58. ZHAW admits that Marquardt performed work under the Agreement. In all other respects, denied.

59. Admitted.

60. Denied.

61. Denied.

62. ZHAW admits that Marquardt works for and helped launch NxFoods and that NxFoods is developing a chocolate alternative. In all other respects, denied.

63. Denied.
64. Denied.
65. Denied.
66. Denied.
67. Denied.
68. Denied.
69. Denied.
70. All prior responses are incorporated here.
71. ZHAW admits that the Agreement was signed on or around August 22, 2019. The Agreement speaks for itself.
72. The Agreement speaks for itself. This paragraph accurately reproduces some content from the Agreement. In all other respects, denied.
73. The Agreement speaks for itself. This paragraph accurately reproduces some content from the Agreement. In all other respects, denied.
74. The Agreement speaks for itself. In all other respects, denied.
75. The Agreement speaks for itself. In all other respects, denied.
76. Denied.
77. Denied.
78. Denied.
79. Denied.

II. Response to Prayer for Relief

ZHAW denies that Atomo is entitled to any relief.

III. Defenses

Without waiving or limiting other defenses, admitting any allegation by Atomo, or accepting any burden of proof it would not otherwise bear, ZHAW states the following
defenses:

1. Failure to state a claim upon which relief can be granted;
2. Atomo consented to the conduct of Marquardt and ZHAW of which it now complains;
3. ZHAW’s conduct was justified;
4. Failure to mitigate;
5. Waiver;
6. Estoppel;
7. Laches;
8. Unclean hands; and
9. Atomo’s breach of contract and failure to performed has excused ZHAW’s duties.

IV. ZHAW’s Prayer for Relief

ZHAW repeats its request for all relief prayed for in the Complaint and further requests that the Court:

1. Dismiss Atomo’s counterclaims without prejudice and without any award to Atomo;
2. Award ZHAW its fees, costs, and expenses for defending against the counterclaims; and
3. Enter such other relief as is just and equitable.

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DATED: October 13, 2023

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CERTIFICATE OF SERVICE

The undersigned certifies as follows:

1. I am employed at Corr Cronin LLP, attorneys for Plaintiff herein.

2. On October 13, 2023, I caused a true and correct copy of the foregoing document to be served on the following parties in the manner indicated below:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.


/s/Wen Cruz
Wen Cruz

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