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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 v.)
 JERRY JINDONG XU,)
)
 Defendant.)

Criminal Action No. 17-63
(Sealed)

FILED
SEP 05 2017
U.S. DISTRICT COURT
DISTRICT OF DELAWARE

INDICTMENT

The Grand Jury for the District of Delaware charges that:

I. GENERAL ALLEGATIONS COMMON TO ALL COUNTS

A. Chemours and its Sodium Cyanide Business Line

1. On or about July 1, 2015, The Chemours Company (“Chemours”) was formed after the DuPont Corporation (“DuPont”), a Delaware-based corporation, separated its performance chemicals business line from its other business. Following its formation, Chemours was a publicly traded corporation with its corporate headquarters located in Wilmington, Delaware. (The regional offices relevant to this Indictment—DuPont and, later, Chemours—are collectively referred to herein as, respectively, DuPont and Chemours.)

2. At all times material to this Indictment, Chemours was the world’s largest producer of solid sodium cyanide. Sodium cyanide is a white, water-soluble solid that has a high reactivity towards metals. It is primarily used in gold and silver mining to extract precious metals from ore by converting the metals into a water soluble complex. This is the most commonly used practice for precious metal extraction from mined ore. Sodium cyanide is typically supplied in one of two forms: a briquette / dry-form (“solid”) or a liquid solution form. The sodium cyanide products

produced by Chemours are primarily used in industrial mining operations for gold, diamonds, and other precious metals, and are a highly lucrative part of Chemours' overall business, generating hundreds of millions of dollars in yearly sales revenue.

3. Chemours conducted the research and development for their cyanide-based products, including sodium cyanide, at a research and development facility in Wilmington, Delaware. Chemours manufactured four cyanide-based products at its primary facility in Memphis, Tennessee. Chemours also operated distribution and transloading facilities in Nevada and Mexico. Accordingly, Chemours sold and shipped, and intended to sell and ship its cyanide-based products in interstate and foreign commerce.

4. DuPont, and later Chemours, conducted several confidential business projects designed to increase the profitability of its cyanide-based products in [redacted]. For example, from [redacted] in or around February 2011, through [redacted] in or around July of 2011, DuPont conducted **PROJECT 1**. The purpose of **PROJECT 1** was to analyze the factors necessary to create a profitable sodium-cyanide plant in [redacted]. The work performed on **PROJECT 1** created, among other items, numerous reports, slide shows, diagrams, spreadsheets, charts, and other documents, which represented the financial and operational blueprint for developing a sodium-cyanide plant in [redacted]. DuPont considered, and Chemours considers, **PROJECT 1**, including the information that supported the business project, to be trade secret and confidential and proprietary information.

5. Between [redacted] in or around March 2013, through [redacted] in or around January 2017, DuPont, and later Chemours, conducted **PROJECT 2**. The purpose of **PROJECT 2** was to improve the supply chain design for delivering sodium cyanide to [redacted] and included a planned facility to store and handle sodium cyanide products in a safe manner. **PROJECT 2** analyzed, among other factors, the current and future supply demands of DuPont's and, later, Chemours' customers; new

supply chain designs for transporting cyanide-based products to _____ and the identification of facility sites. The work performed on **PROJECT 2** created, among other items, numerous reports, slide shows, diagrams, spreadsheets, charts, and other documents. DuPont considered, and Chemours considers, **PROJECT 2** including the information that supported the business project, to be trade secret and confidential and proprietary information.

6. Between in or around March 2009, and continuing through at least September 2017, DuPont, now Chemours, conducted **PROJECT 3**. The purpose of **PROJECT 3** was to design and build a next generation technology sodium-cyanide plant. The work performed on **PROJECT 3** created, among other items, diagrams and schematics for operating the plant, and other documents. DuPont considered, and Chemours considers, **PROJECT 3** including the information that supported the business project, to be trade secrets and confidential and proprietary information.

7. DuPont and Chemours took reasonable steps to keep the above trade secret and confidential and proprietary information secret. For example, they required employees to sign confidentiality agreements when they were initially hired and termination statements at the conclusion of their employment, which certified that the employee had returned all business confidential information. DuPont and Chemours conducted periodic training for employees on trade secret issues, including, but not limited to, defining trade secrets, proper dissemination of trade secrets, and reporting obligations for trade secret disclosure violations. Chemours also restricted access to its facilities in the United States, Mexico, and Canada by requiring its employees to use access badges. At some facilities, such as its sodium cyanide production plant in Memphis, Tennessee, Chemours prohibited visitors, including its own employees, from possessing a camera or a cell phone that was capable of recording information without a permit,

and required individuals to receive express permission before removing any property.

B. The Defendant and Co-Conspirator #1

8. Jerry Jindong XU is a citizen of [redacted]. Between on or about June 7, 2004, through [redacted] in or around February 2011, XU worked for DuPont in China. XU was employed in DuPont's Chemical Solutions Division. XU's duties and responsibilities included marketing various DuPont cyanide-based products to the Chinese cyanide and mining markets.

9. Between on or about March 21, 2011, through on or about June 20, 2016, XU worked for DuPont, and subsequently Chemours, in [redacted]. While employed in [redacted], XU's duties and responsibilities included marketing DuPont/Chemours' cyanide-based products to the [redacted] cyanide and mining markets. As a condition of XU's employment at DuPont/Chemours' regional office in [redacted] XU signed a Confidentiality Agreement that indicated he would "not disclose or use at any time either during or subsequent to employment with DuPont any Confidential Information except as required in Employee's duties to DuPont or with DuPont's prior written consent."

10. On or about June 13, 2016, Chemours notified XU that his employment was terminated. Chemours provided XU approximately seven days to transition his work responsibilities to other employees.

11. On or about June 20, 2016, in connection with his termination from Chemours, XU signed an Employee Termination Statement, in which he certified that he had returned all "drawings, blueprints, manuals, letters, notes, notebooks, reports and all other material of a secret or confidential nature relating to [Chemours'] business, which were in his/her possession or under his/her control." XU further certified that he was prohibited from "us[ing] or divulge[ing] at any

time secret or confidential information of [Chemours] without its written consent.”

12. Unindicted Co-Conspirator #1 (CC-#1) is a citizen of _____ and resides in _____
From in or around July 1976, through in or around December 2014, CC-#1 worked for
DuPont in _____ CC-#1 worked in DuPont’s Chemical Solutions
Division. CC-#1’s duties and responsibilities included marketing and selling cyanide-based
products for the Canadian cyanide market.

13. Following CC-#1’s employment at DuPont, through at least the date of this
Indictment, CC- #1 operated a consulting business, which performed work in _____ cyanide
and mining markets. CC-#1’s consulting business was also located in _____

COUNT 1
(Conspiracy to Steal Trade Secrets)
18 U.S.C. § 1832(a)(5)

14. The allegations set forth in Paragraphs 1-13 of this Indictment are re-alleged and
incorporated herein.

15. From on or about June 23, 2015, through on or about August 22, ²⁰¹⁷~~2107~~, in in the
District of Delaware and elsewhere, the defendant,

JERRY JINDONG XU,

knowingly conspired with CC-#1, a person known to the grand jury, and with others, to convert
trade secrets, that is, to without authorization copy, duplicate, sketch, draw, photograph, download,
upload, alter, destroy, photocopy, replicate, transmit, deliver, send, mail, communicate and convey
trade secrets related to **PROJECT 1 PROJECT 2 PROJECT 3** which trade secrets relate to and are
included in a product that is produced for and placed in interstate and foreign commerce, to the
economic benefit of anyone other than Chemours, the owner of the trade secrets, and, intending

and knowing that the conspiracy would injure Chemours.

All in violation of Title 18, United States Code, Section 1832(a)(2) and (a)(5).

OBJECT OF THE CONSPIRACY

16. It was an object of the conspiracy to steal and convert Chemours' trade secrets and confidential and proprietary information relating to **PROJECT 1 PROJECT 2 PROJECT 3** to use those trade secrets and confidential and proprietary information to facilitate exports of Chinese manufactured sodium cyanide products into the mining market and to obtain investors from China to build a sodium cyanide plant in

MANNER AND MEANS OF THE CONSPIRACY

17. The manner and means used to effect the conspiracy included the following:

a. It was part of the conspiracy that XU used his position with Chemours to obtain access to DuPont's and Chemours' trade secrets and confidential and proprietary information, including reports, slide shows, diagrams, spreadsheets, charts, and other materials related to **PROJECT 1 PROJECT 2 PROJECT 3**

b. It was a further part of the conspiracy that XU, after obtaining DuPont's and Chemours' trade secrets and confidential and proprietary information related to **PROJECT 1 PROJECT 2 PROJECT 3** transmitted these trade secrets and confidential and proprietary information outside Chemours using various means, including emailing this information to XU's personal email accounts and downloading it to XU's external storage devices, all in violation of XU's Confidentiality Agreement with DuPont and Chemours.

c. It was a further part of the conspiracy that XU created Xtrachemical Company Ltd. ("Xtrachemical"), assigning his wife to be Xtrachemical's managing director, to further conceal his unlawful activities from Chemours and to facilitate business

discussions between himself, CC-#1, and individuals based in China regarding exporting sodium cyanide from China into [redacted] and building a sodium cyanide plant in [redacted]

d. It was a further part of the conspiracy that XU, CC-#1, and individuals based in China communicated with each other using various means, including email messages both in English and in Chinese and an internet chat service based in China.

e. It was a further part of the conspiracy that, upon his termination from Chemours, XU falsely represented to Chemours that he had returned all of Chemours' confidential information to Chemours, and had not disseminated any of Chemours' confidential information outside of Chemours.

OVERT ACTS

18. In furtherance of the conspiracy and to effect its unlawful objects, XU, CC-#1, and others committed and caused to be committed the following overt acts, in the District of Delaware and elsewhere:

A. Xu's Actions While a DuPont/Chemours Employee

19. On or about June 23, 2015, XU sent an email to a Chemours employee, which falsely stated, in part, "As you might have known, one of the mandates [a Chemours employee] gives me for [redacted] is to review **PROJECT 1**"

20. On or about June 27, 2015, XU sent an email in Chinese to an individual based in China, which stated, in sum and substance, "[DuPont] ha[s] always been talking about doing [redacted] ... and I have done all of the preliminary exploratory work." XU then explained, in sum and substance, the need for XU to raise funds in order to build a sodium cyanide plant in [redacted]

21. On or about July 15, 2015, XU sent an email to an individual based in China, which

stated, "Great talking to you again about the proposed sodium cyanide operations. I have received the technical files you forwarded, thank you very much." XU also discussed packaging and trading/exporting.

22. On or about July 19, 2015, XU sent an email in Chinese to an individual based in China, which requested to know, in sum and substance, whether that individual's China-based chemical company could handle procedures related to obtaining an export permit for sodium cyanide.

23. On or about July 20, 2015, XU sent an email in Chinese to an individual based in China, which stated, in sum and substance, the individual based in China "should not bring up the idea of establishing a plant outside of [China] to any factory owners."

24. On or about September 2, 2015, XU sent an email in Chinese to an individual based in China, which requested, in sum and substance, a list of China's sodium cyanide producers be sent to XU's personal email account. XU further discussed visiting China and meeting with individuals who are known to be involved in sodium cyanide production.

25. On or about October 15, 2015, XU created a Yahoo! email address "xtrachemical@yahoo.com."

26. On or about October 26, 2015, XU sent an email in Chinese to an individual based in China, which stated, in sum and substance, XU had an interest in diligently pushing to build a factory in to produce sodium cyanide, and that XU wanted to do this long-term investment for himself and not to slave away at this only to benefit someone else. XU also indicated that if the trade goes nowhere, then he will not spend any more effort on it and instead focus his efforts on advancing the factory matter.

27. On or about December 4, 2015, CC-#1 sent an email to XU which attached two

confidential business documents regarding **PROJECT 1**, including a spreadsheet entitled “**PROJECT 1_FinancialModel_2011Jun01.xls**,” and stated, “[u]nfortunately I cannot remember the security code to open the excel spreadsheet.” This attachment contained trade secret and confidential and proprietary information.

28. On or about December 4, 2015, XU sent an email to an individual employed at DuPont, which caused this individual to provide the password to XU for “**PROJECT 1_FinancialModel_2011Jun01.xls**.”

29. On or about December 7, 2015, XU sent an email to a Chemours employee who was based in Wilmington, Delaware, which caused this employee to provide confidential and proprietary information related to the costs incurred by Chemours for raw materials necessary for the production of sodium cyanide. Some of this included trade secret information.

30. On or about December 8, 2015, XU sent two emails from his Chemours’ work email to his personal email account, which attached six business confidential documents related to **PROJECT 1** including “**PROJECT 1 _FinancialModel_2011Jun01.xls**.” Some of these documents included trade secret and confidential and proprietary information.

31. On or about January 9, 2016, XU traveled from _____ to China.

32. On or about February 5, 2016, XU, while staying in China, sent an email to CC-#1, which stated, “I’ve got out-of-the-big [sic] ideas cooking. Can’t wait to talk to you about them when I get back.”

33. On or about February 11, 2016, XU, while staying in China, accessed an excel spreadsheet entitled “Project XC_FinancialModel_working copy Jan 2016.xls.” on his Chemours-issued laptop computer.

34. On or about February 11, 2016, XU, while staying in China, sent an email to CC-

#1, which stated, "If someone from outside the industry wants to come in and do a similar project to **PROJECT 1** and wants to hire a consultant to do a project evaluation, how much do you think it may cost and how long it may take to complete the study?"

35. On or about February 12, 2016, CC-#1 sent an email to XU, while staying in China, which listed the eleven "steps" previously conducted by DuPont to evaluate **PROJECT 1**

36. On or about February 12, 2016, XU, while still traveling in China, sent an email to CC-#1, which stated, "If we were to do all these, plus the idea for the project, and execution of launching the project, how much would it [be] worth? Would you say in the millions? Just throw a number at me please. Thanks, Jerry."

37. On or about February 17, 2016, XU returned from China to

38. On or about February 17, 2016, XU sent an email to CC-#1, which listed the subject of the email as **PROJECT 1** XU requested to meet CC-#1 on February 19, 2016, at a location in

39. On or about February 25, 2016, XU sent an email in a mix of English and Chinese from his personal email account to his xtrachemical@yahoo.com account, which set forth, in sum and substance, a "To-do list" of action items necessary to build a sodium cyanide plant in Several of these "To-do" items included: (1) "[CC-#1] and his company's participation"; (2) "Confidentiality agreement"; (3) "Memphis Trip"; and (4) "Found a company."

40. On or about February 27, 2016, XU sent an email to CC-#1, which requested to meet CC-#1 on March 1 or 3, 2016, at a location in and stated, "I'd like to get your advice on some follow up action items from our last meeting."

41. On or about March 1, 2016, XU sent an email to CC-#1, which stated, "Following up on our discussion this morning, I will be checking with the investors in China and obtaining

their consent to disclose confidential details of the project. Would you review the attached [Non-Disclosure Agreement (“NDA”)] and sign it back to me please. The NDA is between your company and [XU’s wife’s] consulting firm that’s being retained by the Chinese Investor Group for the Project . . . The file is back dated to Feb 19, 2016 to cover our recent two rounds of discussions.” The email attached a document entitled “MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT” between Xtrachemical Company Ltd. and CC-#1’s company.

42. On or about March 1, 2016, XU sent an email to CC-#1, which stated, “For future communications please use this Yahoo! Mail account for our discussions on non-Chemours topics.”

43. On or about March 1, 2016, XU sent an email to his xtrachemical@yahoo.com account, which attached a confidential and proprietary document entitled, “Sodium Cyanide Location Opt.xlsx.”

44. On or about March 1, 2016, XU copied a confidential and proprietary document entitled “Sodium Cyanide Location Opt.xlsx” from his Chemours-issued laptop computer to a removable drive.

45. On or about March 1, 2016, XU then deleted the confidential and proprietary document entitled “Sodium Cyanide Location Opt.xlsx” from his Chemours-issued laptop computer.

46. On or about March 22, 2016, XU copied approximately six confidential and proprietary documents related to **PROJECT 1** to a removable drive, which documents were previously provided to him by a Chemours employee.

47. On or about March 23, 2016, XU sent an email from his personal email account to an individual based in _____ which stated, “My name is Jerry, I am working with a group of

investors on an export oriented industrial chemical production project. The production site will likely be in _____ with a substantial portion of its output targeting export market in Asia Pacific While we are very confident about the promising market potential, decent cost position and novel production technology, financing remains to be our No. 1 priority . . . Sincerely, Jerry Xu, Xtrachemical.”

48. On or about April 8, 2016, XU sent an email in Chinese to an individual based in China, which stated, in sum and substance, that it been “several weeks” since they had communicated via an internet chat service based in China, but that XU possessed a “separate complete sales plans for _____ gold mining, the U.S. market, and Mexican gold mining,” and that XU “has a path to developing the South American market and a logistics plan for serving each of the provinces/all of the major mines in _____.” XU concluded the email by listing his salary and business cost requirements.

49. On or about April 15, 2016, XU sent an email to CC-#1, which stated that XU had “not able to get through to the leadership of [Company A]. I was able to talk to their new plant manager briefly but when I ask them to sign an NDA, I’ve never heard anything back . . . What should I do next? . . . If [Company A] is a dead end, I’d need to focus on setting the plant up in either [_____ city A] or in [_____ city B] where the potential [Company C] site is.”

50. On or about April 18, 2016, CC-#1 sent an email to XU, which stated XU “may have rushed the NDA process a little and that is why you have not heard back from them. They likely did a search on Extra Chemical [sic] and found nothing so felt it was a scam.”

51. On or about April 18, 2016, CC-#1 sent an email to XU at his xtrachemical@yahoo.com account, which stated, “Jerry – Attached are some files with information for you. Liquid cyanide is at [] solids and the files tell you how much weight per tanker

and how many gallons at [a third party company] I could not find the invoice from [a third party company] to us. It will be in a hard copy in the files I gave to you under [a third party company] 2011 or under [a third party company] file.”

52. On or about April 21, 2016, XU sent an email from his xtrachemical@yahoo.com account to CC-#1, which stated, “Thanks so much for your email [CC-#1], you are like a bonanza of information as always! I checked with [a Chemours employee] today, you were right, his benchmark for trucking freight is []. Most Chemours base contract freight is []. If ship in [] trailers it would be as high as [] from Memphis. If we do [] truckload for [] miles round that would be [] for the load, or [] per round trip. We should stand substantial freight advantage as compared with Chemours . . . Take Care, Jerry.”

53. On or about April 22, 2016, XU sent an email from his xtrachemical@yahoo.com account to CC-#1, which discussed location and capacity for a liquid cyanide plant.

54. On or about May 2, 2016, XU sent an email to a Chemours’ employee, which requested a personal tour of Chemours’ sodium cyanide plant in Memphis, Tennessee.

55. On or about May 4, 2016, XU sent an email to a Chemours’ employee, which stated, “Thanks for getting back to me . . . If time allows, I’d like to go through the flow chart first then take a tour so that I can match the diagrams with the real thing, I’d say in-door reviewing the chart would be primary. See you and [a Chemours employee] soon! Jerry.”

56. On or about May 16, 2016, XU attended training in Memphis, Tennessee and received a personal tour of the Chemours sodium cyanide plant. Prior to his tour, XU received safety and security training that prohibited him from possessing a camera or a cell phone that was capable of recording information from the Memphis plant without a permit; and required him to receive express permission before removing any property from the plant. At no time did XU

receive authorization to take photographs or remove property from the plant.

57. On or about May 16, 2016, without Chemours' permission and knowledge, XU secretly took five photographs of **PROJECT 3** confidential and proprietary system diagrams. These system diagrams were located inside Chemours' sodium cyanide plant in Memphis, Tennessee.

58. On or about May 19, 2016, XU sent an email from his personal email account to his xtrachemical@yahoo.com account, which attached the five secretly taken photographs of **PROJECT 3** confidential and proprietary system diagrams as .jpg images.

59. On or about May 19, 2016, XU sent an email to CC-#1, which stated, "I just got back from Memphis this evening, just wondering if you'd be available to meet for coffee tomorrow . . . Some updates from my Memphis trip to share. Take care, Jerry."

60. On or about June 13, 2016, XU copied numerous confidential and proprietary documents, some of which contained trade secret information, which belonged to Chemours, onto removable drives.

61. On or about June 17, 2016, XU sent an email to his personal email account that copied confidential and proprietary information related to cyanide prices, which belonged to Chemours.

62. On or about June 19, 2016, XU sent an email to his personal email account, which attached multiple confidential and proprietary documents, including a confidential and proprietary document entitled "New Supply Chain Design RFP a.docx" that belonged to Chemours.

63. On or about June 20, 2016, in connection with Chemours' termination of XU's employment, XU signed a Termination Statement in which he certified that he had returned "all drawings, blueprints, manuals, letters, notes notebooks, reports and all other material of a secret

or confidential nature relating to said Company's business, which were in his/her possession or under his/her control.”

64. On or about June 23, 2016, Chemours sent XU a letter demanding that he return all business confidential and trade secret information, including the electronic files that he transferred to himself during the time-period June 13, 2016 to June 20, 2016.

65. On June 29, 2016, XU met with Chemours employees at Chemours' offices in
During the meeting, XU stated to these employees that he did not email or share DuPont or Chemours' trade secret and confidential and proprietary information to or with any parties outside of Chemours, and that he only emailed personal documents to his personal email account. XU also provided Chemours with two removable drives for inspection.

66. On or about August 2, 2016, XU sent an email to an individual based in which stated the “liquid cyanide project is still moving forward.”

67. On or about August 4, 2016, XU sent an email in Chinese to an individual based in China, which provided, in sum and substance, an overview of the sodium cyanide plant project and referenced other discussions about that plant project.

All in violation of Title 18, United States Code, Section 1832(a)(2) and (a)(5).

NOTICE OF FORFEITURE

Upon conviction of Count One, the defendant shall forfeit to the United States of America any property used, or intended to be used, in any manner or part to commit or facilitate the commission of the offenses, any property that constitutes, or is derived from, proceeds obtained directly or indirectly as a result of the commission of the offenses.

If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

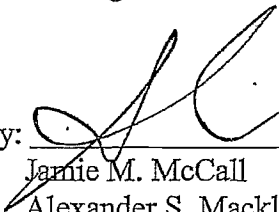
- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 28, United States Code, Section 2323(b), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the property subject to forfeiture.

All pursuant to Title 18, United States Code, Sections 1834 and 2323.

DAVID C. WEISS
Acting United States Attorney

By: _____


Jamie M. McCall
Alexander S. Mackler
Assistant U.S. Attorneys

Dated: September 5, 2017

No. 17cr63

UNITED STATES DISTRICT COURT

District of Delaware

THE UNITED STATES OF AMERICA

vs.

JERRY JINDONG XU

INDICTMENT

A true bill.



Foreman

Filed in open court this 5th day,

of September A.D. 2017 at Newark

Clerk

Bail, \$ _____
