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WHITE PAPER

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Mid-Year Review of Key Trade Secret Decisions

A trade secret is any information used in one's business that derives independent economic value from not being generally known. Unlike patents, trade secrets are protected indefinitely for as long as they remain a secret. Due in part to the enactment of the Defend Trade Secrets Act in May 2016, trade secrets are becoming an increasingly attractive form of intellectual property for businesses hoping to protect their innovations.

This *White Paper* summarizes and explains recent noteworthy decisions in trade secret law. Each of these decisions has meaningful implications for trade secret owners, defendants and practitioners alike.

TABLE OF CONTENTS

THE ASSERTED TRADE SECRET MUST BE RELATED TO A PRODUCT OR SERVICE USED IN INTERSTATE COMMERCE	1
<i>DLMC, Inc. v. Flores et al.</i> , No. 18-00352 DKW-RT, 2019 WL 309754 (D. Haw. Jan. 23, 2019)	1
SCOTUS TO DEFINE “CONFIDENTIAL” UNDER FOIA	1
<i>Argus Leader Media v. U.S. Dept. of Agriculture</i> , 889 F.3d 914 (8th Cir. 2018) (Petition for a Writ of Certiorari granted Jan. 11, 2019 (2018 WL 5016257))	1
FOURTH CIRCUIT REINFORCES COMBINATION TRADE SECRETS	1
<i>AirFacts, Inc. v. de Amezaga</i> , 909 F.3d 84 (4th Cir. 2018).	1
COURTS CONTINUE TO REFINE MISAPPROPRIATION STANDARDS	2
<i>Camick v. Holladay et al.</i> , No. 18-3074, 758 F. App’x 640 (10th Cir. Dec. 18, 2018).	2
<i>Jazz Pharmaceuticals, Inc. v. Synchrony Group, LLC et al.</i> , 343 F. Supp. 3d 434 (E.D. Pa. 2018). . . .	2
DEFENSES: THIRD CIRCUIT AFFIRMS THAT IMPROPER ACTS FOR UNCLEAN HANDS DOCTRINE MUST BE RELATED TO MISAPPROPRIATION CLAIM, AND DISTRICT COURT USES DTSA WHISTLEBLOWER IMMUNITY FOR FIRST TIME.	3
<i>Scherer Design Group, LLC v. Ahead Engineering LLC, et al.</i> , No. 18-2835, 2019 WL 937176 (3d Cir. Feb. 25, 2019) (non-precedential).	3
<i>Christian v. Lannett Co., Inc.</i> , No. 16-963, 2018 WL 1532849 (E.D. Pa. March 29, 2018)	3
REMEDIES: EX PARTE SEIZURES, PRELIMINARY INJUNCTIONS AND ATTORNEYS’ FEES	4
No <i>Ex Parte</i> Seizure When Rule 65 Order Is Adequate.	4
District Court Issues Rare Preliminary Injunction for Autonomous Vehicle Company.	4
Dismissal Without Prejudice Does Not Create a “Prevailing Party” Under DTSA Attorneys’ Fees Provision	5
CONCLUSION	5
LAWYER CONTACTS	6
Authors	6
Additional Contacts	6
ENDNOTES	6

THE ASSERTED TRADE SECRET MUST BE RELATED TO A PRODUCT OR SERVICE USED IN INTERSTATE COMMERCE

DLMC, Inc. v. Flores et al., No. 18-00352 DKW-RT, 2019 WL 309754 (D. Haw. Jan. 23, 2019)

DLMC, Inc., a Hawaiian health care service provider, sued a former employee and her new company for stealing client lists.¹ Under the Defend Trade Secrets Act (“DTSA”),² the trade secret must be “related to a product or service used in, or intended for use in, *interstate or foreign commerce*.”³ To satisfy this requirement, DLMC argued that its clients “have federal patient identification numbers so as to allow for their receipt of federal funds for the services provided to them by [DLMC].”⁴ DLMC also argued that because its “very existence relies on and is conditioned upon federal application, certification and approval,” its services are subject to federal law.⁵

Neither argument persuaded the court. DLMC failed to show how a product or service related to the alleged *trade secrets* themselves—as opposed to DLMC’s business in general—was used in interstate commerce.⁶ The court granted the defendants’ motion to dismiss, with leave for DLMC to amend its complaint.⁷

SCOTUS TO DEFINE “CONFIDENTIAL” UNDER FOIA

Argus Leader Media v. U.S. Dept. of Agriculture, 889 F.3d 914 (8th Cir. 2018) (Petition for a Writ of Certiorari granted Jan. 11, 2019 (2018 WL 5016257))

The U.S. Supreme Court granted certiorari for *Food Marketing Institute v. Argus Leader Media* on January 11, 2019, to resolve split circuit tests concerning when the government may withhold information from a Freedom of Information Act (“FOIA”) request because the information is confidential or a trade secret.⁸ The outcome could have major ramifications for the protection given to sensitive information submitted to the government, e.g., in response to an administrative subpoena or as a part of reporting obligations. Government agencies commonly withhold information in response to FOIA requests on the basis that the requested information is allegedly confidential or a trade secret.

In *Food Marketing Institute*, the information at issue concerns food stamp purchases. The U.S. Department of Agriculture

(“USDA”) releases monthly compilations of Supplemental Nutrition Assistance Program (“SNAP”) redemption data.⁹ But the USDA does not disclose data regarding the amount of SNAP redemptions at *individual* stores, and retailers have participated in the program with the understanding that store-level data would be kept confidential.¹⁰ Argus Leader is a newspaper in Sioux Falls, South Dakota. In 2011, an Argus Leader reporter filed a FOIA request for detailed data.¹¹ The USDA released most of the requested information but withheld the store-level sales data. Argus Leader sued.¹²

At trial, the USDA asserted FOIA Exemption 4, which exempts “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”¹³ But the District of South Dakota ultimately found in favor of Argus Leader and compelled disclosure.¹⁴ Food Marketing Institute, a trade association whose members operate tens of thousands of retail food stores, intervened and appealed the judgment, and the Eighth Circuit affirmed.¹⁵

Circuit courts define “confidential” under Exemption 4 to apply only if disclosure is “likely to cause substantial harm to the competitive position of” the source of the information.¹⁶ However, what constitutes a likelihood of substantial competitive harm has produced at least five different circuit splits. As such, the Supreme Court granted certiorari to decide, in part, whether “‘confidential’ in FOIA Exemption 4 ... require[s] the Government to withhold all ‘commercial or financial information’ that is confidentially held and not publicly disseminated—regardless of whether a party establishes substantial competitive harm from disclosure.”¹⁷ Stay tuned for the decision.

FOURTH CIRCUIT REINFORCES COMBINATION TRADE SECRETS

AirFacts, Inc. v. de Amezaga, 909 F.3d 84 (4th Cir. 2018)

The Fourth Circuit held that trade secret protection extends to a combination of information that is itself in the public domain.¹⁸ Software company AirFacts Inc.—a developer and licensor of software on ticket price algorithms and audits—sued its former employee for breach of contract and trade secret misappropriation.¹⁹ The trade secrets involved flowcharts displaying ticket price rules derived from public information.²⁰ In a bench

trial, the Maryland district court ruled that the flowcharts were: (i) simply an “overview” of public information, and (ii) widely available to AirFacts’ employees, and thus not trade secrets under the Maryland Uniform Trade Secret Act.²¹

The Fourth Circuit disagreed, ruling that the flowcharts were protectable trade secrets and remanding the case for a determination on misappropriation. The Fourth Circuit noted that courts have long recognized that “a trade secret can exist in a combination of characteristics and components, each of which, by itself, is in the public domain, but the unified process, design and operation of which, in unique combination, affords a competitive advantage and is a protectable secret.”²² Although the underlying data were all publicly available, the court concluded that the “painstaking, expert arrangement” of the data made the flowcharts “inherently valuable separately and apart from the publicly available contents.”²³

COURTS CONTINUE TO REFINE MISAPPROPRIATION STANDARDS

After the enactment of the DTSA in 2016, questions arose regarding: (i) whether the DTSA applies to misappropriation that occurred before its enactment, and (ii) the viability of the inevitable disclosure doctrine. Two courts recently weighed in on these issues.

***Camick v. Holladay et al.*, No. 18-3074, 758 F. App’x 640 (10th Cir. Dec. 18, 2018)**

When the DTSA was enacted, Congress left open the issue of whether the act would apply to misappropriation that occurred before its adoption. Many courts have since held that the DTSA can apply to pre-enactment misappropriation if there is some continuing *misappropriation* post-enactment.²⁴ Recently, the Tenth Circuit held that continuing *possession* of trade secrets after enactment of the DTSA, without more, does not amount to continuing misappropriation.²⁵

In *Camick v. Holladay*, Camick alleged that the defendants unlawfully acquired his trade secret information in 2011.²⁶ The district court dismissed the complaint, ruling that Camick failed to plead misappropriation after the DTSA’s enactment.²⁷ Camick appealed, arguing that the defendants violated the DTSA by misappropriating his trade secrets in July 2011 and then

continuing to possess the trade secrets after the DTSA’s enactment.²⁸ The Tenth Circuit found that mere continued *possession* of a trade secret does not amount to “acquir[ing], disclos[ing], or us[ing] a trade secret,” as required for misappropriation under the DTSA.²⁹ Because Camick did not allege any acts of acquisition, disclosure, or use of trade secrets after May 2016, there was no continuing misappropriation under the DTSA.³⁰

***Jazz Pharmaceuticals, Inc. v. Synchrony Group, LLC et al.*, 343 F. Supp. 3d 434 (E.D. Pa. 2018)**

The DTSA prohibits a court from issuing an injunction that would “prevent a person from entering into an employment relationship” and requires that “conditions placed on such employment shall be based on evidence of threatened misappropriation and *not* merely on the *information the person knows*.”³¹ Based on this language, early DTSA commentators suggested that a plaintiff asserting a DTSA claim could not argue for an injunction on an inevitable disclosure theory—after all, the theory is premised only on information the employee knows. However, the Eastern District of Pennsylvania applied the inevitable disclosure doctrine when denying a motion to dismiss a DTSA claim in December 2018, finding that the plaintiff plausibly alleged threatened misappropriation of trade secrets.

Jazz Pharmaceuticals sued Synchrony Group, a marketing firm, alleging violations of the DTSA and the Pennsylvania Uniform Trade Secrets Act (“PUTSA”). The claims arose out of Synchrony’s access to, and alleged failure to protect from disclosure, Jazz’s trade secrets and confidential information regarding its narcolepsy drug. Namely, Synchrony began working for Jazz’s direct competitor and did not restrict its employees who worked on Jazz’s account from also working on the competitor’s account.

In denying Synchrony’s motion to dismiss, the court found that the DTSA and the PUTSA permit a court to enjoin both actual and threatened misappropriation of trade secrets. The court noted that the Third Circuit has held that where an employee’s work for a new employer substantially overlaps with work for a former employer (based on the same role, same industry, and same geographic region), a district court may conclude that those employees would likely use confidential information to the former employer’s detriment. The court found that

Synchrony's alleged access to Jazz's confidential information—and work for Jazz's direct competitor without any assurance that trade secrets would be protected—plausibly suggested the threatened misappropriation of Jazz's trade secrets. The court therefore held that Jazz sufficiently alleged threatened and actual misappropriation.

DEFENSES: THIRD CIRCUIT AFFIRMS THAT IMPROPER ACTS FOR UNCLEAN HANDS DOCTRINE MUST BE RELATED TO MISAPPROPRIATION CLAIM, AND DISTRICT COURT USES DTSA WHISTLEBLOWER IMMUNITY FOR FIRST TIME

***Scherer Design Group, LLC v. Ahead Engineering LLC, et al.*, No. 18-2835, 2019 WL 937176 (3d Cir. Feb. 25, 2019) (non-precedential)**

The unclean hands doctrine precludes a plaintiff from recovering in equity due to the plaintiff's wrongdoing or improper conduct.³² It is often difficult to prove because the defendant must prove a close connection between the plaintiff's improper acts and the transaction giving rise to the claim against the defendant.

Scherer Design Group ("SDG") is a telecommunications engineering firm. Schwartz resigned from SDG and started two competing engineering firms, defendants Ahead Engineering and Far Field Telecom.³³ Schwartz then recruited three SDG employees to join his new firms.³⁴ While still employed by SDG, the three employees discussed their new venture using Facebook on SDG's company computers and transmitted SDG's documents and information to Schwartz.³⁵ The three employees then resigned from SDG and joined Schwartz.³⁶ SDG also lost one of its largest clients to Schwartz.³⁷

After the mass resignation and loss of the client, SDG examined the former employees' SDG computers. SDG specifically reviewed one former employee's web browsing history, including activity that had been deleted by the employee, and the employee's Facebook activity by signing in via a password that had not been cleared from the computer.³⁸ SDG also used software that allowed it to monitor the employee's Facebook activity without detection.³⁹ SDG found messages that revealed the former employees' plans and what they did to secure SDG's client information and other intellectual property.

The New Jersey district court granted SDG a preliminary injunction, finding that the unclean hands doctrine did not bar injunctive relief because: (i) it "may be reasonable" for an employer such as SDG to access password-protected content on a company laptop; (ii) SDG's conduct "is arguably not related to the litigation" because the employees' alleged violations predate SDG's hacking of the Facebook account; and (iii) on balance, the court was not persuaded that "unclean hands" should bar SDG's right to pursue injunctive relief.⁴⁰

The defendants appealed, arguing that the unclean hands doctrine barred the injunction because SDG surreptitiously monitored the Facebook activity. The Third Circuit affirmed, holding that a court retains the discretion to grant equitable relief even if the elements of the unclean hands doctrine are met.⁴¹ In addition, the conduct was not "related" to the misappropriation claim because: (i) SDG's monitoring of Facebook messages was not related to whether the defendants stole trade secrets; (ii) SDG did not dirty its hands to obtain the trade secret rights it asserted in its complaint; and (iii) any alleged privacy violation is governed by a separate body of law that provides its own separate remedies for misconduct.⁴²

Therefore, because relatedness is a "critical element of the unclean hands doctrine," and SDG's allegedly unclean conduct was not directly related to the defendants' breach of the duty of loyalty, the district court did not abuse its discretion in declining to apply the unclean hands doctrine.⁴³

***Christian v. Lannett Co., Inc.*, No. 16-963, 2018 WL 1532849 (E.D. Pa. March 29, 2018)**

The DTSA exempts from liability any trade secret disclosure made in confidence to a federal, state, or local official, or to an attorney if the disclosure is made "solely for the purpose of reporting or investigating a suspected violation of law."⁴⁴ In 2018, a whistleblower was granted protection under this DTSA immunity provision for the first time.⁴⁵

In *Christian v. Lannett Co.*, a terminated manager sued her former employer for gender and disability discrimination.⁴⁶ The employer counter-claimed, alleging the terminated employee improperly disclosed trade secrets to her attorney.⁴⁷ The Eastern District of Pennsylvania dismissed the DTSA counterclaim, finding that the disclosure was immunized by the

DTSA because the plaintiff disclosed the information pursuant to a court discovery order and within the context of her discrimination lawsuit.⁴⁸

REMEDIES: EX PARTE SEIZURES, PRELIMINARY INJUNCTIONS AND ATTORNEYS' FEES

No Ex Parte Seizure When Rule 65 Order Is Adequate

ARB Labs Inc., et al. v. Woodward, No. 2:19-cv-00116, 2019 WL 332404 (D. Nev. Jan. 25, 2019). The DTSA created a new remedy that was not available under any state's UTSA—the *ex parte* civil seizure.⁴⁹ Upon entry of the order, U.S. marshals are dispatched without notice to the defendant to seize the evidence. The few cases addressing the DTSA's pre-trial seizure remedy suggest a reluctance to employ this remedy if a similar injunctive remedy under Rule 65 (with notice to the defendant) is equally effective.⁵⁰

ARB Labs created a 3D optical-recognition solution for casinos. Defendant Justin Woodard formerly served as ARB Labs' CEO. After he resigned, ARB Labs discovered that he had not returned his company laptop and had sent and received emails through his work account for a week after he resigned, even though ARB Labs had changed the password.⁵¹ ARB Labs sued Woodard for trade secret misappropriation.

ARB Labs moved *ex parte* for an order enjoining Woodard from using its trade secrets and directing U.S. marshals to seize the ARB laptop computer in his possession.⁵²

The district court denied the *ex parte* order, finding that although ARB Labs met the standard for an *ex parte* temporary restraining order, it failed to demonstrate "extraordinary circumstances."⁵³ The court observed that ARB Labs did not address whether Woodard would evade a Rule 65 order.⁵⁴ Although the alleged facts raised the *possibility* that Woodard would ignore a Rule 65 order, they did not clearly indicate that he "would," as required by the DTSA *ex parte* seizure provision.⁵⁵ Because the court was not persuaded an order under FRCP 65 would be "inadequate," it denied ARB's motion.⁵⁶

Days later, ARB filed an emergency motion, requesting reconsideration of its request for a civil seizure.⁵⁷ At the motion hearing, the parties reached an agreement regarding many of the terms

in the emergency motion, and the court therefore denied the request for reconsideration as moot in light of the agreement.⁵⁸

District Court Issues Rare Preliminary Injunction for Autonomous Vehicle Company

WeRide Corp. et al. v. Huang, et al., Case No. 5:18-cv-07233-EJD (N.D. Cal. Apr. 1, 2019). In a trade secret misappropriation case between two autonomous vehicle companies, the Northern District of California entered a rare preliminary injunction barring any use or disclosure of source code, schematics, and other trade secrets allegedly misappropriated from WeRide Corp.⁵⁹ The court's order also granted expedited discovery of the defendants.

In this case, WeRide sued Zhong Zhi Xing Technology Co. Ltd. ("ZZX"), AllRide.AI, Inc. ("AllRide"), WeRide's former CEO Jing Wang, and WeRide's former Director of Hardware Kun Huang for trade secret misappropriation under the DTSA and California's UTSA.⁶⁰ The alleged trade secrets include WeRide's: (i) "HD mapping" (special maps constructed by "test vehicles repeatedly driving through a certain area while collecting data with multiple sensors"); (ii) "sensor fusion-based localization" (combining and using data collected by various vehicle sensors to "pinpoint the vehicle's location"); and (iii) "state machines" ("decision models that determine how an autonomous vehicle will act or perform in different scenarios or 'states'").⁶¹ The court stated that autonomous vehicle technology "could well be the next disruptive technology" with the "potential to remake the industry and market for both vehicles and ride-hailing services."⁶²

WeRide alleges that while Huang was an employee, he copied 1,192 confidential files from a WeRide-issued laptop to a USB device and then deleted the files from the laptop and cleared the web-browsing history. WeRide further alleges that Huang erased the hard drive of a second company-issued laptop and reinstalled its operating system before returning the two laptops.⁶³

Huang then left WeRide and began working at ZZX as its Vice President of Technology. Ten weeks after his last day at WeRide, Huang appeared at a ZZX event in China where ZZX presented a video of its car performing "Advanced Capabilities," including operating without a driver; steering, accelerating, and braking smoothly; using an HD map; detecting and braking for pedestrians; and changing lanes to pass slower vehicles.⁶⁴ The court

noted that “[t]he implausibly fast development of technology can contribute to a finding of misappropriation.”⁶⁵

In addition, ZZX and Allride positioned its radar component on the front center of the vehicle roof—just like WeRide—instead of on the front bumper or rear view mirror like most competitors. WeRide’s expert opined that this placement was “consistent with the use of WeRide’s source code ... [which] would only be useful if the radar component was located in that same location.”⁶⁶ Taken together, the court concluded that this evidence was “sufficient to show that WeRide is likely to succeed on its trade secret misappropriation claims.”⁶⁷

Dismissal Without Prejudice Does Not Create a “Prevailing Party” Under DTSA Attorneys’ Fees Provision
Dunster Live, LLC v. Lonestar Logos Mgmt. Co., 908 F.3d 948 (5th Cir. 2018). The DTSA allows reasonable attorneys’ fees to the “prevailing party” if “[1] a claim of the misappropriation is made in bad faith..., [2] a motion to terminate an injunction is made or opposed in bad faith, or [3] the trade secret was willfully and maliciously misappropriated.”⁶⁸ But what constitutes a “prevailing party” is up for interpretation.

In November 2018, the Fifth Circuit affirmed the denial by the Western District of Texas of prevailing party attorneys’ fees in a matter of first impression under the DTSA.⁶⁹ In so holding, the appellate court found that a dismissal without prejudice does not create a “prevailing party” under the DTSA’s fee-shifting provision.⁷⁰

In *Dunster*, the plaintiff and defendant were originally members of the same company.⁷¹ Their company built and installed highway signs advertising food, lodging, and gas stations. In the months leading up to the expiration of their Texas state contract for highway signs, the defendant formed a new company, excluded the

plaintiff, and won a new contract.⁷² Dunster then sued Lonestar for stealing a database and proprietary software, and moved for a preliminary injunction to stop Lonestar from assuming the state contract and using the alleged trade secrets.⁷³

The district court denied the motion, and Dunster then sought leave to dismiss the case without prejudice. Lonestar opposed, arguing that Dunster was engaging in “bad faith” by seeking to avoid an adverse merits ruling and liability for substantial attorneys’ fees.⁷⁴ The district court nevertheless dismissed the case without prejudice.⁷⁵

After dismissal, Lonestar sought more than \$600,000 in attorneys’ fees, which the district court denied.⁷⁶ Affirming the denial, the Fifth Circuit held that a dismissal without prejudice does not support an award of attorneys’ fees.⁷⁷ The DTSA fee-shifting provision awards reasonable attorneys’ fees to the *prevailing party*, and the Fifth Circuit held that a dismissal that allows for refiling does not result in a material alteration of the legal relationship of the parties.⁷⁸ As such, a dismissal without prejudice does not create a “prevailing party.”⁷⁹

CONCLUSION

We have highlighted recent noteworthy trade secret cases. In these cases, courts have provided insight into several DTSA issues, including the standard for an *ex parte* civil seizure, the definition of a “prevailing party” under the DTSA’s fee-shifting provision, the whistleblower immunity, and the inevitable disclosure doctrine. Further, as noted above, there are several cases to watch in the coming months, including the upcoming *Argus Leader* Supreme Court case set to resolve multiple circuit splits on FOIA.

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ENDNOTES

1 *DLMC, Inc. v. Flores et al.*, No. 18-00352 DKW-RT, 2019 WL 309754, at *1 (D. Haw. Jan. 23, 2019).

2 Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, 130 Stat. 376 (codified at 18 U.S.C. § 1836, et seq.); see also Nix et al., “[New Federal Trade Secret Act Expands Trade Secret Rights](#)” (May 2016).

3 18 U.S.C. § 1836(b)(1).

4 *DLMC, Inc.*, 2019 WL 309754, at *2.

5 *Id.*

6 *Id.*

7 *Id.*

8 *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 915 (2019).

9 Formerly, the Food Stamp Program.

10 Petition for Writ of Certiorari, *Food Marketing Institute v. Argus Leader Media*, No. 18-481, 2018 WL 5016257, at *5 (Jan. 11, 2019).

11 *Id.*

12 *Id.*

13 5 U.S.C. § 552(a)(8)(A)(i)(I), (b)(4).

14 *Argus Leader Media v. U.S. Dept. of Agriculture*, 244 F. Supp. 3d 827 (D.S.D. 2016).

15 *Argus Leader Media v. U.S. Dept. of Agriculture*, 889 F.3d 914, 915 (8th Cir. 2018).

16 *Id.*

17 Petition for Writ of Certiorari, *Food Marketing Institute v. Argus Leader Media*, No. 18-481, 2018 WL 5016257 (Jan. 11, 2019).

18 *AirFacts, Inc. v. de Amezaga*, 909 F.3d 84 (4th Cir. 2018).

19 *Id.* at 88-90.

20 *Id.*

21 *Id.* at 90-91, 96.

22 *Id.* at 96 (quoting *Imperial Chem. Indus. v. Nat'l. Distillers & Chem. Corp.*, 342 F.2d 737, 742 (2d Cir. 1965)).

23 *Id.* at n.8.

24 See, e.g., *Teva Pharm. USA, Inc. v. Sandhu*, 291 F. Supp. 3d 659, 674-75 (E.D. Pa. 2018) (observing that “one who acquired and used a trade secret before enactment of the DTSA and continues to use it after enactment is liable” (emphasis added)); *Yeiser Research & Dev. LLC v. Teknor Apex Co.*, 281 F. Supp. 3d 1021, 1057 (S.D. Cal. 2017) (holding that the DTSA applies to the misappropriation of trade secrets before its enactment date “as long as the misappropriation continues to occur after the enactment date”).

25 *Camick v. Holladay et al.*, No. 18-3074, 758 F. App'x 640 (10th Cir. Dec. 18, 2018).

26 *Id.* at 642-44.

27 *Id.*

28 *Id.* at 644-45.

29 *Id.* at 645.

30 *Id.*

31 Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, 130 Stat. 376 (codified at 18 U.S.C. § 1836, et seq.) (emphasis added).

32 *Scherer Design Group, LLC v. Ahead Engineering LLC, et al.*, No. 18-2835, 2019 WL 937176, at *3 (3d Cir. Feb. 25, 2019) (non-precedential).

33 *Id.* at *1.

34 *Id.*

35 *Id.*

36 *Id.*

- 37 *Id.*
- 38 *Id.*
- 39 *Id.*
- 40 *Id.* at *2.
- 41 *Id.* at *3-4.
- 42 *Id.*
- 43 *Id.* at *4.
- 44 18 U.S.C. § 1833(b).
- 45 *Christian v. Lannett Co., Inc.*, No. 16-963, 2018 WL 1532849 (E.D. Pa. March 29, 2018).
- 46 *Id.* at *2.
- 47 *Id.*
- 48 *Id.* at *4-5.
- 49 18 U.S.C. § 1836(b)(2)(A)(i).
- 50 Holland & Knight LLP, "Examining Ex Parte Pre-Trial Seizures Under DTSA," Sept. 5, 2018.
- 51 *ARB Labs Inc., et al. v. Woodward*, No. 2:19-cv-00116, 2019 WL 332404, at *1 (D. Nev. Jan. 25, 2019).
- 52 *Id.*
- 53 *Id.* at *1.
- 54 *Id.* at *4.
- 55 *Id.*
- 56 *Id.*
- 57 *Plaintiff's Emergency Motion, ARB Labs Inc., et al. v. Woodward*, No. 2:19-cv-0116 (D. Nev. Feb. 1, 2019) (ECF No. 19).
- 58 Minutes of Proceedings for Motion Hearing, *ARB Labs Inc., et al. v. Woodward*, No. 2:19-cv-0116 (D. Nev. Feb. 6, 2019) (ECF No. 24)
- 59 Order Granting In Part and Denying In Part WeRide's Motion for Preliminary Injunction, *WeRide Corp. et al. v. Huang, et al.*, Case No. 5:18-cv-07233-EJD (N.D. Cal. Apr. 1, 2019).
- 60 *Id.* at 1.
- 61 *Id.* at 3.
- 62 *Id.* at 2.
- 63 *Id.* at 4-7.
- 64 *Id.* at 15.
- 65 *Id.*
- 66 *Id.* at 15-16.
- 67 *Id.* at 16.
- 68 18 U.S.C. § 1836(b)(3)(D).
- 69 *Dunster Live, LLC v. Lonestar Logos Mgmt. Co.*, 908 F.3d 948 (5th Cir. 2018)
- 70 *Id.*
- 71 *Id.* at 950.
- 72 *Id.*
- 73 *Id.*
- 74 *Id.*
- 75 *Id.*
- 76 *Id.* at 951.
- 77 *Id.* at 952-53.
- 78 *Id.*
- 79 *Id.*

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