

## **Checklist: Pleading a Defend Trade Secrets Act Claim**

### **1. Existence of "Trade Secret"**

- Plaintiff is "the owner" of the information.
- Plaintiff "has taken reasonable measures to keep such information secret," such as:
  - Requiring employees to sign confidentiality agreements
  - Company policy requiring confidentiality
  - Limits on access to the confidential information
  - Password protection and other security measures for computer system
  - Requiring third parties to sign non-disclosure agreements
  - [Any other facts showing reasonable measures]
- The information has "independent economic value, actual or potential."
- The information is not generally known to competitors, OR
- The information is not "readily ascertainable by proper means" by competitors.

### **2. "Misappropriation" of Trade Secret**

- Defendant (a) acquired the trade secret by breaching, or inducing a breach of, a duty to maintain secrecy, and (b) has disclosed or used the trade secret.

OR

- Defendant has committed "misappropriation" in another way defined by the statute. See 18 U.S.C. § 1839(5).

### **3. Plead for Applicable Remedies**

- Ex parte seizure remedy (in rare cases)
- Injunction “to prevent any actual or threatened misappropriation”
- Actual damages measured by:
  - “actual loss caused by the misappropriation,” and
  - “any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss,” or
  - “a reasonable royalty for the misappropriator’s unauthorized disclosure or use”
- Exemplary damages for willful and malicious misappropriation
- Reasonable attorney’s fees for willful and malicious misappropriation

### **4. “Interstate or Foreign Commerce”**

- The trade secret is “related to a product or service used in, or intended for use in, interstate or foreign commerce.”
- Specific facts establishing such relation