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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
11 **SAN DIEGO DIVISION**

12 APPLIED BIOLOGICAL
13 LABORATORIES, INC.,

14 Plaintiff,

15 v.

16 DIOMICS CORPORATION, a Delaware
corporation; ANTHONY ZOLEZZI, an
17 individual, and DOES 1-50, inclusive,

18 Defendants.
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CASE NO. '20CV2500 AJB LL

COMPLAINT

**1. VIOLATION OF DEFEND
TRADE SECRETS ACT**

**2. VIOLATION OF CALIFORNIA
UNIFORM TRADE SECRET ACT**

**3. VIOLATION OF CAL. BUS. &
PROF. CODE SECTION 17200**

JURY TRIAL DEMANDED

1 Plaintiff Applied Biological Laboratories, Inc. (“Applied Bio”), by and through its
2 attorneys, and for its Complaint against Diomics Corporation (“Diomics”) and Anthony
3 Zolezzi (“Zolezzi”) (collectively, “Defendants”), hereby alleges as follows:

4 **I. INTRODUCTION**

5 1. This is an action for trade secret misappropriation and unfair competition
6 relating to Applied Bio’s groundbreaking nasal spray technology that prevents the
7 contraction and infection of viruses. Applied Bio strongly believes in the benefits of fair
8 competition, particularly in the field of healthcare. Antiviral products like that developed
9 by Applied Bio have the potential to transform traditional cold and flu relief for millions
10 of people, and to prevent infection from novel pathogens like COVID-19, as part of a
11 multi-billion-dollar industry. Fair competition spurs new technical innovation, but what
12 has happened here is not fair competition. Instead, Defendants Diomics and Zolezzi have
13 taken Applied Bio’s intellectual property so they could avoid incurring the risk, time, and
14 expense of independently developing their own technology. Ultimately, this calculated
15 theft allowed Diomics to announce a competing product based on Applied Bio’s
16 intellectual property, all at Applied Bio’s expense.

17 2. Applied Bio developed its groundbreaking antiviral nasal spray technology to
18 address a significant unmet public health opportunity. Applied Bio’s product (the
19 “Product”) is a powerful and natural solution designed to serve the unmet challenges of
20 preventing and curing common respiratory diseases. A single application to the mouth and
21 nostrils guards selectively against, and remedies ailments caused by, the most common
22 strands of rhinovirus and influenza virus, while also inactivating other respiratory
23 pathogens such as coronavirus. The Product inactivates, traps, and promotes the natural
24 flushing of pathogens and foreign particles to the digestive tract where they are degraded
25 and rendered inactive. Since the Product serves to augment natural molecules in the
26 mucus, it leaves intact the health of the microbiome of the mouth and nose. The Product is
27 poised to become the only commercially-available product to effectively target rhinovirus
28 and influenza virus.

1 3. With a goal of bringing nasal antigen sprays to the mass market, Applied Bio
2 has invested hundreds of thousands of dollars and thousands of hours of research and
3 development time to develop the first nasal spray that selectively, effectively, and
4 naturally prevents the contraction of rhinovirus and influenza. Based on years of scientific
5 research on the mechanism behind respiratory infections and allergies, Applied Bio
6 determined the pathogens' main points of entry into a host and developed the means to
7 prevent hosts from contracting the pathogens. Applied Bio's patented formulations are
8 manufactured through proprietary biotechnological processes to locally augment the
9 body's own natural defense mechanisms and provide a barrier to guard against or
10 substantially interfere with infections. Traditional cold and flu relief medications, while
11 effective at temporarily addressing individual symptoms are ineffective at addressing the
12 source of the disease. There are no cold remedies on the market, and the antiviral flu
13 remedies that are available can have serious side-effects and are not routinely prescribed
14 as a result. Similarly, influenza vaccines are not always effective against every strain of
15 influenza and are not recommended for all populations. In contrast, studies show that
16 Applied Bio's antiviral nasal spray technology is superior both in efficacy and safety to
17 any product on the market and even those that failed to enter the market because of the
18 safety concerns of the Food and Drug Administration ("FDA").

19 4. Applied Bio recently learned that Diomics is developing an antiviral nasal
20 spray that bears a striking resemblance to Applied Bio's own highly confidential and
21 proprietary technology and reflects Applied Bio's trade secrets. Diomics issued a press
22 release in September of 2020 claiming that its product, Dioguard™, is intended to "create
23 a durable barrier of antibodies in the nasal cavity to capture, bind to and neutralize the
24 SARS-CoV-2 virus before it can reach and enter the cells that cause infection." The
25 Diomics press release further states, "Creating a protective shield that blocks the virus at
26 its crucial first point of entry into the body—the nasal passages—fills a huge void in the
27 race to develop an effective vaccine for COVID-19." The press release continues, "A
28 preventative nasal spray that effectively neutralizes SARS-CoV-2 before it can cause

1 infection we believe holds the key to allowing many aspects of life to resume until the day
2 comes when there's an effective vaccine in widespread use,' Diomics CEO Anthony
3 Zolezzi said." Diomics plans to seek fast track authorization from the FDA to accelerate
4 human trials of its Dioguard™ product.

5 5. Applied Bio believes that Zolezzi misappropriated more than 90 highly
6 confidential and proprietary files belonging to Applied Bio that Zolezzi obtained while
7 working at his former firm, Pegasus Capital Advisors L.P. ("Pegasus"), which had
8 considered a strategic partnership with Applied Bio in 2017 and 2018. The files include a
9 wide range of highly confidential files, including Applied Bio's detailed 50-page business
10 plan and documents disclosing Applied Bio's scientific testing results, experimental
11 designs, patent applications, formulations, manufacturing processes, and marketing
12 strategies. Zolezzi then improperly disclosed to Diomics the results of Applied Bio's
13 resource-intensive research.

14 6. Instead of developing their own technology in this new space, Defendants
15 stole Applied Bio's long-term investments and property. While Applied Bio developed its
16 antiviral nasal spray technology with sustained effort over many years, Defendants
17 leveraged stolen information to shortcut the process and purportedly build a comparable
18 and/or competing product in just months.

19 7. In light of Defendants' misappropriation of Applied Bio's antiviral nasal
20 spray technology, Applied Bio brings this Complaint to prevent any further misuse of its
21 proprietary information, to prevent Defendants from harming Applied Bio's reputation by
22 misusing its technology, to protect the public's confidence in the safety and reliability of
23 antiviral nasal spray technology that Applied Bio has long sought to nurture, and to obtain
24 compensation for its damages and for Defendants' unjust enrichment resulting from their
25 unlawful conduct.

26 **II. PARTIES**

27 8. Plaintiff Applied Biological Laboratories, Inc. is a corporation organized and
28 existing under the laws of the State of New York with its principle place of business

1 located in New York, NY 11226. Applied Bio is a biotechnology company committed to
2 the research, development, manufacturing, and distribution of healthcare products.
3 Applied Bio owns all the trade secrets and confidential information misappropriated or
4 disclosed in breach of confidentiality agreements by Defendants.

5 9. Defendant Diomics Corporation is a Delaware corporation with its principal
6 place of business located at 10581 Roselle Street, Ste 120, San Diego, CA, 92121-1521.
7 At times relevant to this dispute, Zolezzi was acting both in his individual capacity and in
8 his capacity as an executive and employee of Defendant Diomics.

9 10. Applied Bio is informed and believes that Defendant Anthony Zolezzi is an
10 individual domiciled in Palm Beach County, Florida and is a citizen of Florida.

11 11. Applied Bio is currently unaware of the true names and capacities, whether
12 individual, corporate, associate, or otherwise, of defendants sued herein as Does 1 through
13 50, inclusive, and Applied Bio therefore sues these Doe defendants by fictitious names.
14 Applied Bio will amend its Complaint by asserting their true names and capacities
15 following determination of such names and capacities. Applied Bio is informed and
16 believes, and on that basis alleges, that fictitiously named defendants are each responsible
17 in some manner for the harms and conduct alleged in this Complaint, and that Applied Bio
18 suffered harm, as alleged herein by such defendants.

19 12. Applied Bio is informed and believes that each Defendant acted in all
20 respects pertinent to this action as the agent of the other Defendant, carried out a joint
21 scheme, business plan or policy in all respects pertinent hereto, and that the acts of each
22 Defendant are legally attributable to each of the other Defendants.

23 **III. JURISDICTION AND VENUE**

24 13. This Court has subject matter jurisdiction over Applied Bio's claims under
25 the Defend Trade Secrets Act pursuant to 18 U.S.C. § 1836-39 *et seq.* and 28 U.S.C. §§
26 1331. The Court has supplemental jurisdiction over the state law claims alleged in this
27 Complaint pursuant to 28 U.S.C. § 1367.
28

14. As set forth above, at least one Defendant resides in this judicial district. In addition, a substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in this judicial district. Venue therefore lies in the United States District Court for the Southern District of California pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2).

15. A substantial part of the events giving rise to the claims alleged in this Complaint occurred in the County of San Diego.

IV. FACTUAL ALLEGATIONS

A. Applied Bio Develops the First Anti-Viral Nasal Spray

16. The current approach to managing upper respiratory infections primarily involves agents to reduce symptoms alone. Different treatments are recommended for different symptoms, such as decongestants for mucus production, acetaminophen for fever and headache, and syrups for coughs. Though these approaches provide mild symptomatic relief, they have not been shown to effectively reduce the severity and duration of the diseases. These treatments can also damage the epithelial barrier in the respiratory tract and thereby increase susceptibility to secondary infections. For example, seemingly-innocuous nasal saline sprays can damage nasal membrane's epithelial barrier, resulting in increased permeability to other pathogens. The lack of effective treatments that target viral respiratory infections has also contributed to the widespread use of antibiotics and the alarming emergence of antibiotic resistance.

17. An effective cure against these upper-respiratory infections will address the pathogens that cause infection and the inflammatory response that causes many of the undesirable side-effects and is factored into the clinical outcome score. There are no antiviral agents approved for the prevention or treatment of rhinovirus infection (*i.e.*, the common cold), and most rhinovirus remedies are single ingredients targeting the virus, but not the inflammatory response, so they do little to lower the clinical symptom score. The only three antiviral medications approved for the treatment of influenza (*i.e.* the flu) have significant systemic side effects that preclude their widespread use.

1 18. Applied Bio’s valuable and confidential research has determined that
2 respiratory infections typically occur when airborne pathogens come into contact with
3 mucous membranes (*e.g.*, nasal membranes, nasal hairs, esophageal membranes, and the
4 like) via inhaled aerosol droplets. Inhalation of airborne pathogens through the nose is a
5 primary cause of respiratory disease. The nasal passages are not as effective in preventing
6 disease as the mouth, which is better at trapping and killing microorganisms. Airborne
7 pathogens may enter the lungs after nasal inhalation, or bind to receptors found on nasal
8 and other membranes throughout the upper and lower respiratory tracts, which serve as an
9 entry points by which pathogens, allergens, or irritants may enter the bloodstream and
10 cause infection or allergic reaction. Unfortunately, there is no convenient, effective way to
11 minimize or prevent infection or allergy by inhaled airborne microorganisms.

12 19. Applied Bio’s valuable and confidential research has also addressed the
13 inflammatory cascade that underlies upper respiratory diseases after viruses gain entry to
14 respiratory epithelia. In healthy people, molecules in the nasal mucosa protect against
15 pathogens and modulate the immune response to infection. Some do double duty as anti-
16 inflammatory agents. Many symptoms associated with respiratory diseases are the result
17 of the inflammatory process, rather than the pathogens themselves.

18 20. Applied Bio discovered that certain naturally-occurring (*i.e.*, non-synthetic)
19 protein molecules could create a barrier to prevent viruses from attaching to the receptors
20 on the exterior of cells in the respiratory tract when the proteins are introduced at certain
21 concentrations and are protected against denaturing. The proteins mimic the most
22 common binding sites along the oral and nasal respiratory tract, specifically preventing
23 rhinovirus and influenza from binding to their target receptors, while also serving as a
24 “catch-all” barrier for other respiratory microbials. Applied Bio made this discovery using
25 novel *ex vivo technology* that allows Applied Bio to expose live nasal cells in a laboratory
26 environment to a proprietary formulation developed by Applied Bio. Using this process,
27 Applied Bio has proven for the first time that the intranasal administration of naturally-
28

1 occurring human proteins provides an effective barrier against virus contraction and
2 infection.

3 21. Applied Bio has developed its antiviral nasal spray technology, including the
4 Product, based on its valuable confidential scientific testing and results. Applied Bio also
5 applied for a patent on certain aspects of its antiviral nasal spray technology in 2017:
6 United States Patent Application Ser. No. 15/442,604, entitled “Compositions and
7 Methods for Protecting Against Airborne Pathogens and Irritants.”

8 22. Unlike previous upper respiratory therapies and products, the antiviral nasal
9 spray technology, including the Product, targets both pathogen and inflammation to meet
10 the requirement of any successful remedy to produce anti-viral effects, decrease the
11 clinical symptom score, and cause minimal side-effects. The Product contains ingredients
12 that interfere with viruses binding to their receptor sites on respiratory epithelia, as well as
13 general antimicrobial and anti-inflammatory ingredients. These ingredients help control
14 the inflammatory response and strengthen the epithelial barrier which will further protect
15 against viral and secondary bacterial infection. The ingredients also help to manage the
16 clinical symptoms of respiratory disease, the most pronounced of which are lower
17 mucociliary clearance (one component of congestion), lower cilia beat frequency (another
18 component of congestion), mucin secretion (runny nose), and transepithelial electrical
19 resistance (or TEER, which is a measure of epithelial barrier integrity).

20 23. While making these fundamental advances in antiviral nasal spray
21 technology, Applied Bio also accumulated confidential and proprietary intellectual
22 property that it uses in the implementation and manufacture of the Product to optimize
23 performance, maximize safety, and minimize cost. Applied Bio also created a vast amount
24 of confidential and proprietary intellectual property through its exploration of concepts
25 that ultimately proved ineffective, unsafe, too expensive, or otherwise unworkable for the
26 mass market. Applied Bio’s extensive experience with “dead-end” concepts continues to
27 inform the ongoing development of Applied Bio’s antiviral nasal spray technology. The
28 details actually used in Applied Bio’s antiviral nasal spray technology, as well as the

1 lessons learned from Applied Bio’s years of research and development, constitute trade
 2 secrets that are highly valuable to Applied Bio and would be highly valuable to any
 3 competitor in the antiviral nasal spray space.

4 24. Applied Bio’s substantial and sustained investment in antiviral nasal spray
 5 technology over many years—and the intellectual property that resulted—have made
 6 Applied Bio’s current antiviral nasal spray technology the most advanced in the industry.
 7 It is unparalleled in performance and safety in preventing contraction and infection of
 8 rhinovirus and influenza. For these reasons and others, Applied Bio’s antiviral nasal spray
 9 technology and the intellectual property associated with it are some of Applied Bio’s most
 10 valuable assets.

11 **B. Unbeknownst to Applied Bio, Zolezzi Lays the Foundation for Defendants**
 12 **to Steal Applied Bio’s Intellectual Property Rather than Compete Fairly**
 13 **in the Antiviral Nasal Spray Space**

14 25. Applied Bio began communicating with Pegasus and Pegasus’ affiliate,
 15 PanTheryx, Inc. (“PanTheryx”), in 2017 to explore business opportunities related to
 16 Applied Bio’s development of antiviral nasal spray technology. Pegasus is a private equity
 17 fund manager. PanTheryx is a nutrition and biotechnology company focused on health
 18 conditions related to the gastro-intestinal microbiome. As the Operating Partner of
 19 Pegasus, Zolezzi was extensively involved in the ten-month process during which Pegasus
 20 and PanTheryx explored business opportunities with Applied Bio.

21 26. Applied Bio took steps to protect its confidential, proprietary, and trade
 22 secret information as it explored business with Pegasus, PanTheryx, and Zolezzi. Applied
 23 Bio required Pegasus and PanTheryx to execute non-disclosure agreements (the “Pegasus
 24 NDA” and “PanTheryx NDA,” respectively, and together, the “Non-Disclosure
 25 Agreements”) pursuant to which Pegasus and PanTheryx agreed, on behalf of themselves
 26 and their representatives (including Zolezzi), not to use Applied Bio’s confidential,
 27 proprietary, and trade secret information for any purpose other than to evaluate and
 28 engage in discussions concerning the parties’ potential business opportunity together. The
 Non-Disclosure Agreements applied to all of Applied Bio’s confidential, proprietary, and

1 trade secret information, including but not limited to (i) the formulations of its products
2 and proposed products, including the identification of each ingredient in a formulation and
3 the quantity of each ingredient; (ii) Applied Bio's methods of manufacturing, developing,
4 and producing products, proposed products, and the ingredients within them; (iii) the
5 mechanism of action and description of the mechanism of action of Applied Bio's
6 products, proposed products, and formulations; (iv) the non-public patent applications
7 filed by Applied Bio or its principles and all communications with government personnel
8 about the applications; (v) information about every scientific test or study that Applied
9 Bio has carried out, intended to carry out, or may yet carry out, including contracts with
10 contract research organizations, study protocols, informed consent forms, raw data
11 acquired during the study, investigational new drug applications filed with the FDA, and
12 study reports, except to the extent it is published or with the consent of Applied Bio; and
13 the names of each supplier used in connection with Applied Bio's products.

14 27. Applied Bio implemented a document control system that limits only
15 authorized persons with company-issued user names and current passwords to access
16 Applied Bio's computer systems and electronic document repositories. Applied Bio
17 created a password-protected electronic document repository (*i.e.*, the "Dataroom")
18 containing Applied Bio's confidential, proprietary, and trade secret information
19 concerning its scientific research, finances, and corporate organization. The Dataroom
20 contained more than 90 confidential and protected files with Applied Bio's trade secret
21 information, including:

- 22 a. Applied Bio's detailed, 50-page business plan concerning the
23 development, production, marketing, and regulatory pathway of
24 Applied Bio's antiviral nasal spray technology.
- 25 b. The product development plan for Applied Bio's anti-viral nasal spray
26 technology.
- 27 c. The results of clinical trials Applied Bio had performed on its anti-viral
28 nasal spray technology, including the results of the first set of blind

1 randomized studies and the results of the repeat blind randomized
2 studies.

- 3 d. Applied Bio's report and supporting materials detailing the mechanism
4 of action of the active molecules in its anti-viral nasal spray
5 technology.
- 6 e. Applied Bio's manufacturing plans for its anti-viral nasal spray
7 technology, including the dimensions of certain products, its list of
8 major suppliers, its list of all suppliers and vendors, and the Material
9 Safety Data Sheets for ingredients within its products.
- 10 f. Applied Bio's costing, pricing, and labelling information for its anti-
11 viral nasal spray technology, including a cost analysis, a presentation
12 of the pricing of its products, and the detailed labelling plans for its
13 products.
- 14 g. Applied Bio's sales and marketing plan and target retail accounts for
15 its anti-viral nasal spray technology.
- 16 h. Applied Bio's agreements with the three contract manufacturing
17 organizations that then provided Applied Bio with pharmaceutical
18 development services from drug development through drug
19 manufacturing.
- 20 i. Applied Bio's corporate organizational documents, including its
21 organization chart, bylaws, board consents, stockholder's consents,
22 board meeting minutes, stockholders' agreements, and stock purchase
23 agreements.
- 24 j. Applied Bio's financial documents, including its capitalization table
25 and documents related to its "Series A" financing round.

26 28. In November 2017, subject to the Non-Disclosure Agreements, Applied Bio
27 first provided access to the Dataroom to Zolezzi, Pegasus Founder and Co-Managing
28 Partner Craig Cogut, and Pegasus' team of scientists. Pegasus specifically placed Zolezzi

1 in charge of managing the due diligence of Applied Bio that was conducted by Pegasus’
2 scientists. Cogut advised Applied Bio that Zolezzi would “take the lead with the doctors
3 on the science.” Applied Bio coordinated directly with Zolezzi during the due diligence
4 process subject to the Non-Disclosure Agreements, including by sending Zolezzi emails
5 containing confidential and protected documents, holding telephone conversations with
6 Zolezzi, and holding in-person meetings with Zolezzi.

7 29. Over the course of ten months, Applied Bio held many meetings with
8 Pegasus’ and PanTherxy’s representatives, including Zolezzi, at which Applied Bio
9 discussed its confidential and proprietary antiviral nasal spray technology subject to the
10 Non-Disclosure Agreements. These meetings were intended to demonstrate that Applied
11 Bio’s antiviral nasal spray technology was not only a great idea but also a safe and
12 effective means of preventing illness. Zolezzi frequently asked questions at these meeting
13 about the proteins and ingredients that Applied Bio was using in its research, including
14 Lactoferrin and Lysozyme. Applied Bio also discussed with Pegasus, PanTheryx, and
15 Zolezzi the use in antiviral nasal spray technology of immunoglobulin G (“IgG”), which is
16 now the antigen being used by Diomics in its Dioguard product. The information acquired
17 at these meetings represented a substantial leap forward for Pegasus, PanTheryx, and
18 Zolezzi because Applied Bio’s antiviral nasal spray technology took extensive time,
19 money, and scientific expertise to develop, on which Pegasus, PanTheryx, and Zolezzi
20 would not need to expend resources because of Applied Bio’s work.

21 30. In August of 2018, Applied Bio provided Pegasus and Zolezzi with detailed
22 answers and supporting documents (subject to the Non-Disclosure Agreements) in
23 response to a list of questions Pegasus asked as part of its due diligence of Applied Bio. In
24 these responses, Applied Bio included the following confidential and protected
25 information with Applied Bio’s trade secret information, including:

- 26 a. Product research and development information, including unit
27 economic data for Applied Bio’s anti-viral nasal spray products, results
28 of Applied Bio’s pre-clinical and clinical trials, the design of pre-

clinical and clinical studies on ingredients in Applied Bio's anti-viral nasal spray products, and the names of third-party organizations that would conduct clinical studies of Applied Bio's anti-viral nasal spray products, and the scope and approximate cost of clinical studies of Applied Bio's anti-viral nasal spray products.

- b. Supply chain information, including a list of suppliers, prices, and key contract terms; a list of the contract manufacturing organizations and contract research organizations retained by Applied Bio for product development and packaging development; and detailed pricing and customer information for Applied Bio's anti-viral nasal spray products.
- c. Strategic relationship information, including the names of fifteen companies with whom Applied Bio was discussing developing business relationships to exploit its anti-viral nasal spray technology.
- d. Corporate information about its organizational structure, capitalization table, and previous financing rounds.
- e. Employment information, including a list of all existing employees; the employees' salaries, hiring dates, and roles; the accounts associated with each member of Applied Bio's sales team; the individuals earmarked for future positions post funding; the open positions to be filled; and the budgets and salaries for future employees.

31. Ultimately, Applied Bio decided not to enter into a business relationship with Pegasus, PanTheryx, or Zolezzi and the parties ceased discussing business opportunities in 2018.

C. Defendants Misappropriate Applied Bio's Intellectual Property and Diomics Publicly Launches "DioGuard" with Zolezzi at the Helm

32. Whereas Applied Bio began developing antiviral nasal spray technology many years ago, Diomics' first serious foray into the field was not until March of 2020, when Diomics hired Zolezzi as its Chief Executive Officer. Before then, Diomics'

1 business was focused on producing products to collect and analyze biological samples.
2 And Zolezzi's only experience with antiviral nasal spray technology came from his
3 confidential discussions with Applied Bio. However, unbeknownst to Applied Bio at the
4 time, Diomics and Zolezzi were secretly preparing to launch a competing antiviral nasal
5 spray product using Applied Bio's confidential, proprietary, and trade secret information.
6 Diomics' product would be called "DioGuard™."

7 33. Diomics issued a press release on September 8, 2020 announcing its
8 DioGuard™ product with the headline, "Diomics Aims to Nose Out Coronavirus Ahead
9 of Vaccines With Nasal Spray That Delivers Monoclonal Antibody Protection." The press
10 release provided, "The Dioguard™ prophylactic spray, which is now undergoing in vitro
11 testing, pairs Diomics' proprietary synthetic biopolymer material with human IgG
12 monoclonal antibodies licensed from another San Diego-area company, Active Motif,
13 Inc., a leader in epigenetic research. The goal is to create a durable barrier of antibodies in
14 the nasal cavity to capture, bind to and neutralize the SARS-CoV-2 virus before it can
15 reach and enter the cells that cause infection." The press release attributed the following
16 quote to Zolezzi: "A preventative nasal spray that effectively neutralizes SARS-CoV-2
17 before it can cause infection we believe holds the key to allowing many aspects of life to
18 resume until the day comes when there's an effective vaccine in widespread use."

19 34. By September of 2020, Diomics revamped its website (<https://diomics.com/>)
20 to claim a new market focus. Diomics' website claimed, as recently as August of 2020,
21 that Diomics focused only on two products—a proprietary bio-polymer that captures
22 biological material and delivers compounds to improve hearing, and a suite of
23 rejuvenating biological compounds that deliver growth factors and healing cytokines.
24 Diomics overhauled its website in September of 2020 to announce a new market focus—
25 "an intra-nasal system that couples IgG antibodies with Diomat™ nanobeads to enable a
26 passive prophylactic therapy."

27 35. Diomics sudden development and quick public launch of DioGuard™, as
28 well as its transition into an entirely new product market, within a matter of months of

1 hiring Zolezzi all caused Applied Bio grave concern regarding the possible misuse of its
 2 intellectual property. Accordingly, in September, October, and November of 2020,
 3 Applied Bio investigated the events surrounding Zolezzi's acquisition of Applied Bio's
 4 intellectual property, Diomics' hiring of Zolezzi, and Diomics' development of
 5 DioGuard™.

6 **D. Applied Bio Has Been, and Will Be, Severely Harmed by Defendants**
 7 **Misappropriation of Applied Bio's Confidential and Proprietary Trade**
 8 **Secret Information**

9 36. Applied Bio developed its patented inventions and trade secrets at great
 10 expense, and through years of painstaking research, experimentation, and trial and error. If
 11 Defendants are not enjoined from their misappropriation and further breach of their non-
 12 disclosure obligations, they will cause severe and irreparable harm to Applied Bio.

13 37. The markets for antiviral nasal spray technology are nascent and on the cusp
 14 of rapid development. The impending period of drastic market growth, as antiviral nasal
 15 spray technology is increasingly commercialized, will set the competitive landscape for
 16 the industry going forward. The growth, profitability, and even survival of individual
 17 firms will likely be determined by what happens in the next few years. Defendants'
 18 exploitation of stolen intellectual property greatly harms Applied Bio during this
 19 embryonic market formation process and deforms the creation of a fair and competitive
 20 industry.

21 38. With respect to Applied Bio's trade secrets, there is also the threat that
 22 Applied Bio's confidential and proprietary information will be disclosed by Defendants,
 23 which will destroy the trade secret value of the technology. This may occur either
 24 voluntarily by Defendants for their own publicity purposes or because a regulatory agency
 25 requires disclosure for permitting purposes.

26 39. With this action, Applied Bio seeks to vindicate its rights, prevent any further
 27 misuse of its confidential, proprietary, and trade secret information, and obtain
 28 compensation for its damages and for Defendants' unjust enrichment resulting from their
 unlawful conduct.

V. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Misappropriation of Trade Secrets in Violation of the Defend Trade Secrets Act

(18 U.S.C. § 1836, *et seq.*)

Against All Defendants

40. Applied Bio incorporates all of the above paragraphs as though fully set forth herein.

41. Applied Bio owns and possesses certain confidential, proprietary, and trade secret information, as alleged above. One example of the trade secret information is reflected in Applied Bio's detailed business plan contained in certain files that Zolezzi obtained from Applied Bio. Various aspects of the business plan are Applied Bio's trade secrets, including but not limited to the formulations of its products and proposed products; its methods of manufacturing, developing, and producing products, proposed products, and the ingredients within them; the mechanism of action of Applied Bio's products, proposed products, and formulations; the non-public patent applications filed by Applied Bio or its principles; information about every scientific test or study that Applied Bio has carried out; and the names of each supplier of ingredients for inclusion by Applied Bio in its products. Applied Bio's trade secret information is also contained in the confidential and protected documents Defendants obtained as described in paragraphs 26 and 29 above.

42. Applied Bio's asserted trade secrets are different than Applied Bio's patent rights to its antiviral nasal spray technology. By way of example: The 2017 Applied Bio patent application is directed to pharmaceutical compositions, such as nasal sprays, for prophylaxis or treatment of respiratory infections. The claimed compositions generally contain soluble ICAM-1 (or an ICAM-1 inhibitor), sialic acid, lysozyme, and lactoferrin. The pre-clinical data contained in the 2017 patent application concerns the effects of these ingredients on the viral replication rate of human rhinovirus A16 and influenza A H1N1 as well as the integrity of the infected mucosa. The 2017 patent application also describes

1 a novel vehicle for delivering these and other active agents to the nasal mucosa. In
2 contrast, Applied Bio's trade secrets include specific parameters, measurements,
3 formulations, and plans for Applied Bio's antiviral nasal spray technology that are *not*
4 disclosed in any Applied Bio patents. Examples of Applied Bio's trade secret information
5 that are not covered or disclosed by any Applied Bio patents include (i) Applied Bio's
6 business plan for the development, production, marketing, and regulatory pathway of
7 Applied Bio's antiviral nasal spray technology; (ii) the results of clinical trials Applied
8 Bio performed on its anti-viral nasal spray technology; (iii) the product development plan
9 for Applied Bio's anti-viral nasal spray technology; (iv) Applied Bio's manufacturing
10 plans for its anti-viral nasal spray technology; (v) Applied Bio's costing, pricing, and
11 labelling information for its anti-viral nasal spray technology; (vi) Applied Bio's sales and
12 marketing plan and target retail accounts for its anti-viral nasal spray technology;
13 (vii) Applied Bio's agreements with the contract manufacturing organizations that then
14 provided Applied Bio with pharmaceutical development services from drug development
15 through drug manufacturing; (viii) Applied Bio's supply chain information, including a
16 list of suppliers, prices, and key contract terms; (ix) Applied Bio's strategic relationship
17 information, including the names of the companies with whom Applied Bio was
18 developing business relationships to exploit its anti-viral nasal spray technology;
19 (x) employment information, including a list of all existing employees; the employees'
20 salaries, hiring dates, and roles; the accounts associated with each member of Applied
21 Bio's sales team; the individuals earmarked for future positions post funding; the open
22 positions to be filled; and the budgets and salaries for future employees; and (xi) Applied
23 Bio's research and exploration of "dead-end" concepts that ultimately proved ineffective,
24 unsafe, too expensive, or otherwise unworkable for the mass market.

25 43. Applied Bio's confidential, proprietary, and trade secret information relates
26 to products and services used, sold, shipped, and/or ordered in, or intended to be used,
27 sold, shipped, and/or ordered in, interstate or foreign commerce.
28

1 44. Applied Bio has taken reasonable measures to keep such information secret
2 and confidential.

3 45. Applied Bio has at all times maintained stringent security measures to
4 preserve the secrecy of its antiviral nasal spray technology. For example, Applied Bio
5 restricts access to confidential and proprietary trade secret information to only those who
6 “need to know.” That is, employees, contractors, consultants, vendors, manufacturers, and
7 existing or potential business partners working, advising, or consulting on projects
8 unrelated to antiviral nasal spray technology have not had, and do not have, access to
9 Applied Bio’s confidential and proprietary information on the subject. All networks
10 hosting Applied Bio’s confidential and proprietary information have been and continue to
11 be encrypted and have at all times required passwords and dual-authentication for access.
12 Computers, tablets, and cell phones provided to Applied Bio employees are encrypted,
13 password protected, and subject to other security measures. And Applied Bio secures its
14 physical facilities by restricting access and then monitoring actual access with security
15 cameras and guards.

16 46. Applied Bio also requires all employees, contractors, consultants, vendors,
17 manufacturers, and existing or potential business partners to sign confidentiality
18 agreements before any confidential or proprietary trade secret information is disclosed to
19 them. Every outside vendor or manufacturer that has received confidential and proprietary
20 trade secret information related to Applied Bio’s antiviral nasal spray technology has
21 executed at least one written non-disclosure agreement to protect that information.

22 47. Due these security measures, Applied Bio’s confidential and proprietary trade
23 secret information is not available for others in the industry to use through any legitimate
24 means.

25 48. Applied Bio’s confidential, proprietary, and trade secret information derives
26 independent economic value from not being generally known to, and not being readily
27 ascertainable through proper means by, another person who could obtain economic value
28 from the disclosure or use of the information.

49. In violation of Applied Bio's rights, Defendants misappropriated Applied Bio's confidential, proprietary, and trade secret information in the improper and unlawful manner alleged herein. Defendants' misappropriation of Applied Bio's confidential, proprietary, and trade secret information was intentional, knowing, willful, malicious, fraudulent, and oppressive. Defendants have attempted and continue to attempt to conceal their misappropriation.

50. On information and belief, if Defendants are not stopped, Defendants will continue to misappropriate and use Applied Bio's trade secret information for their own benefit and to Applied Bio's detriment.

51. As the direct and proximate result of Defendants' conduct, Applied Bio has suffered and, if Defendants' conduct is not stopped, will continue to suffer, severe competitive harm, irreparable injury, and significant damages, in an amount to be proven at trial. Because Applied Bio's remedy at law is inadequate, Applied Bio seeks, in addition to damages, permanent injunctive relief to recover and protect its confidential, proprietary, and trade secret information and to protect other legitimate business interests. Applied Bio's business operates in a competitive market and will continue suffering irreparable harm absent injunctive relief.

52. Applied Bio has been damaged by all of the foregoing and is entitled to an award of exemplary damages and attorney's fees.

SECOND CAUSE OF ACTION

Misappropriation of Trade Secrets in Violation of

California Uniform Trade Secrets Act

(Cal. Civ. Code, § 3426 *et seq.*)

Against All Defendants

53. Applied Bio incorporates all of the above paragraphs as though fully set forth herein.

54. Applied Bio's technical information, designs, and other "know how" related to its antiviral nasal spray technology constitute trade secrets as defined by California's

1 Uniform Trade Secrets Act. Applied Bio owns and possesses certain confidential,
2 proprietary, and trade secret information, as alleged above. One example of the trade
3 secret information is reflected in Applied Bio's detailed business plan contained in certain
4 files that Zolezzi obtained from Applied Bio. Various aspects of the business plan are
5 Applied Bio's trade secrets, including but not limited to the formulations of its products
6 and proposed products; its methods of manufacturing, developing, and producing
7 products, proposed products, and the ingredients within them; the mechanism of action of
8 Applied Bio's products, proposed products, and formulations; the non-public patent
9 applications filed by Applied Bio or its principles; information about every scientific test
10 or study that Applied Bio has carried out; and the names of each supplier of ingredients
11 for inclusion by Applied Bio in its products. Applied Bio's trade secret information is also
12 contained in the confidential and protected documents Defendants obtained as described
13 in paragraphs 26 and 29 above.

14 55. Applied Bio's asserted trade secrets are different than Applied Bio's patent
15 rights to its antiviral nasal spray technology. By way of example: The 2017 Applied Bio
16 patent application is directed to pharmaceutical compositions, such as nasal sprays, for
17 prophylaxis or treatment of respiratory infections. The claimed compositions generally
18 contain soluble ICAM-1 (or an ICAM-1 inhibitor), sialic acid, lysozyme, and lactoferrin.
19 The pre-clinical data contained in the 2017 patent application concerns the effects of these
20 ingredients on the viral replication rate of human rhinovirus A16 and influenza A H1N1
21 as well as the integrity of the infected mucosa. The 2017 patent application also describes
22 a novel vehicle for delivering these and other active agents to the nasal mucosa. In
23 contrast, Applied Bio's trade secrets include specific parameters, measurements,
24 formulations, and plans for Applied Bio's antiviral nasal spray technology that are *not*
25 disclosed in any Applied Bio patents. Examples of Applied Bio's trade secret information
26 that are not covered or disclosed by any Applied Bio patents include (i) Applied Bio's
27 business plan for the development, production, marketing, and regulatory pathway of
28 Applied Bio's antiviral nasal spray technology; (ii) the results of clinical trials Applied

1 Bio performed on its anti-viral nasal spray technology; (iii) the product development plan
2 for Applied Bio's anti-viral nasal spray technology; (iv) Applied Bio's manufacturing
3 plans for its anti-viral nasal spray technology; (v) Applied Bio's costing, pricing, and
4 labelling information for its anti-viral nasal spray technology; (vi) Applied Bio's sales and
5 marketing plan and target retail accounts for its anti-viral nasal spray technology;
6 (vii) Applied Bio's agreements with the contract manufacturing organizations that then
7 provided Applied Bio with pharmaceutical development services from drug development
8 through drug manufacturing; (viii) Applied Bio's supply chain information, including a
9 list of suppliers, prices, and key contract terms; (ix) Applied Bio's strategic relationship
10 information, including the names of the companies with whom Applied Bio was
11 developing business relationships to exploit its anti-viral nasal spray technology;
12 (x) employment information, including a list of all existing employees; the employees'
13 salaries, hiring dates, and roles; the accounts associated with each member of Applied
14 Bio's sales team; the individuals earmarked for future positions post funding; the open
15 positions to be filled; and the budgets and salaries for future employees; and (xi) Applied
16 Bio's research and exploration of "dead-end" concepts that ultimately proved ineffective,
17 unsafe, too expensive, or otherwise unworkable for the mass market.

18 56. Applied Bio has undertaken efforts that are reasonable under the
19 circumstances to maintain the secrecy of the trade secrets at issue. These efforts include,
20 but are not limited to, the use of passwords and encryption to protect data on its
21 computers, servers, and source code repositories; the maintenance of a Code of Conduct
22 that emphasizes all employees' duties to maintain the secrecy of Applied Bio's
23 confidential information; and the use of confidentiality agreements and non-disclosure
24 agreements to require vendors, partners, contractors, and employees to maintain the
25 secrecy of Applied Bio's confidential information. Due these security measures, Applied
26 Bio's confidential and proprietary trade secret information is not available for others in the
27 industry to use through any legitimate means.

1 57. Applied Bio's confidential, proprietary, and trade secret information derives
2 independent economic value from not being generally known to, and not being readily
3 ascertainable through proper means by, another person who could obtain economic value
4 from the disclosure or use of the information.

5 58. Defendants knew or should have known under the circumstances that the
6 information misappropriated by Defendants were trade secrets.

7 59. Defendants misappropriated and threaten to further misappropriate trade
8 secrets at least by acquiring trade secrets with knowledge of or reason to know that the
9 trade secrets were acquired by improper means, and Defendants are using and threatening
10 to use the trade secrets acquired by improper means without Applied Bio's knowledge or
11 consent.

12 60. As a direct and proximate result of Defendants' conduct, Applied Bio is
13 threatened with injury and has been injured in an amount in excess of the jurisdictional
14 minimum of this Court and that will be proven at trial. Applied Bio has also incurred, and
15 will continue to incur, additional damages, costs and expenses, including attorney's fees,
16 as a result of Defendants' misappropriation. As a further proximate result of the
17 misappropriation and use of Applied Bio's trade secrets, Defendants were unjustly
18 enriched.

19 61. The aforementioned acts of Defendants were willful, malicious and
20 fraudulent. Applied Bio is therefore entitled to exemplary damages under California Civil
21 Code § 3426.3(c).

22 62. Defendants' conduct constitutes transgressions of a continuing nature for
23 which Applied Bio has no adequate remedy at law. Unless and until enjoined and
24 restrained by order of this Court, Defendants will continue to retain and use Applied Bio's
25 trade secret information to enrich themselves and divert business from Applied Bio.
26 Pursuant to California Civil Code § 3426.2, Applied Bio is entitled to an injunction
27 against the misappropriation and continued threatened misappropriation of trade secrets as
28 alleged herein and further asks the Court to restrain Defendants from using all trade secret

1 information misappropriated from Applied Bio and to return all trade secret information to
2 Applied Bio.

3 63. Pursuant to California Civil Code § 3426.4 and related law, Applied Bio is
4 entitled to an award of attorneys' fees for Defendants' misappropriation of trade secrets.

5 **THIRD CAUSE OF ACTION**

6 **Violation of California Bus. & Prof. Code § 17200**

7 **Against All Defendants**

8 64. Applied Bio incorporates all of the above paragraphs as though fully set forth
9 herein.

10 65. Defendants engaged in unlawful, unfair, and fraudulent business acts and
11 practices. Such acts and practices include, but are not limited to, misappropriating Applied
12 Bio's confidential and proprietary information.

13 66. Defendants' business acts and practices were unlawful as described above.

14 67. Defendants' business acts and practices were fraudulent in that a reasonable
15 person would likely be deceived by their material misrepresentations and omissions.
16 Defendants have acquired and used Applied Bio's confidential and proprietary trade secret
17 information through material misrepresentations and omissions.

18 68. Defendants' business acts and practices were unfair in that the substantial
19 harm suffered by Applied Bio outweighs any justification that Defendants may have for
20 engaging in those acts and practices.

21 69. Applied Bio has been harmed as a result of Defendants' unlawful, unfair, and
22 fraudulent business acts and practices. Applied Bio is entitled to (a) recover restitution,
23 including without limitation, all benefits that Defendants received as a result of their
24 unlawful, unfair, and fraudulent business acts and practices; and (b) an injunction
25 restraining Defendants from engaging in further acts of unfair competition.

1 **VI. PRAYER FOR RELIEF**

2 WHEREFORE, Applied Bio respectfully requests the following relief:

- 3 1. Judgement in Applied Bio's favor and against Defendants on all causes of
4 action alleged herein;
- 5 2. For all damages caused by Defendants' unlawful acts in an amount to be
6 further proven at trial;
- 7 3. For permanent injunctive relief;
- 8 4. For exemplary and punitive damages as provided by law;
- 9 5. For restitution;
- 10 6. For costs of suit incurred herein;
- 11 7. For prejudgment interest;
- 12 8. For attorneys' fees and costs; and
- 13 9. For such other and further relief as the Court may deem to be just and proper.

14 **VII. DEMAND FOR JURY TRIAL**

15 Applied Bio hereby demands trial by jury for all causes of action, claims, or issues
16 in this action that are triable as a matter of right to a jury.

17
18 DATED: December 23, 2020 GREENBERG TRAURIG, LLP

19 By /s/ Colin W. Fraser

20 Colin W. Fraser
21 Tyler R. Andrews

22 Attorneys for Plaintiff
23 APPLIED BIOLOGICAL LABORATORIES, INC.
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25
26
27
28

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

APPLIED BIOLOGICAL LABORATOIREIS, INC.

(b) County of Residence of First Listed Plaintiff Kings County, New York
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
GREENBERG TRAURIG, LLP
18565 Jamboree Rd., Suite 500, Irvine, CA 92612
(949) 732-6500

DEFENDANTS

DIOMICS CORPORATION; ANTHONY ZOLEZZI

County of Residence of First Listed Defendant San Diego, CA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
EDMONDSON IP LAW
2660 SE 39th Loop, Suite D, Hillsboro, OR 97123
(503) 336-3749

'20CV2500 AJB LL**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
18 U.S.C. § 1836, California Civil Code § 3426, California Bus. & Prof. Code, § 17200

Brief description of cause:

Trade Secret Misappropriation; Violation of California Bus. & Prof. Code § 17200**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/23/2020

SIGNATURE OF ATTORNEY OF RECORD

Colin W. Fraser

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.