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Pursuant to the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, *et seq.* (DTSA), Plaintiff Blue Star Land Services, LLC (“Blue Star”) respectfully moves for the *ex parte* issuance of an order for civil seizure.¹

I. FACTUAL BACKGROUND²

A. Blue Star possesses its clients’ most secret and valuable information.

Blue Star’s primary focus is Oklahoma-specific oil-and-gas work for companies like Devon Energy and Marathon Oil Company. Some of Blue Star’s clients are based in other states (*e.g.*, Texas, Colorado, Wyoming), thus sometimes resulting in Blue Star’s work crossing state lines.

To do its work, Blue Star’s clients routinely give Blue Star their highly detailed, confidential, proprietary, and trade-secret maps, rig schedules, and strategic plans for specific areas. Clients provide this information to enable Blue Star to efficiently do its work, *i.e.*, so that Blue Star knows which properties need Corporation Commission regulatory filings, as well as where to check records and buy oil-and-gas leases. For example, nearly every Oklahoma Corporation Commission application filed on Devon Energy’s behalf is handled by Blue Star.

Blue Star therefore possesses extremely sensitive and valuable information of its clients. Naturally, Blue Star’s contracts with its various clients include confidentiality provisions and protections. (*See* Exh. 11 at art. IV.) Blue Star must take the necessary

¹ Capitalized, undefined terms used herein take the meaning set forth in Dkt. 1, the Verified Original Complaint and Request for Seizure.

² This fact section is summarized from Blue Star’s Original Complaint (Dkt. 1), which contains a more complete, fully verified version deserving primary attention. Blue Star’s Original Complaint, the Appendix and all its exhibits, as well as the Trade-Secret Exhibit (Exh. 26) are incorporated herein by reference. Accordingly, all exhibit references herein are to the documents submitted with Blue Star’s Appendix to its Original Complaint.

steps to ensure that the information remains protected, which includes this lawsuit. While Defendants stole thousands of documents in the weeks leading up to their resignation to start a competing business, two specific examples of trade-secret information of Blue Star's clients illustrate the significance of Defendants' misappropriation:

- ***Devon Energy Rig Schedule.*** This spreadsheet sets forth the entire schedule for all wells to be drilled by Devon Energy in the entire State of Oklahoma. It is updated weekly. It names the location of the well, the date drilling will begin, the section-township-range information of precisely where the drilling will be, when the rig will be moved, and the relative expiration dates for the underlying leases for the land on which the drilling will take place. This information is essential to Blue Star's work for Devon, to ensure all the regulatory approvals are in line and what areas are higher time priorities. As the exploration activity in Oklahoma has turned to horizontal drilling and shale development, the success rate of this drilling for Devon is virtually 100%. Thus, with this rig schedule, any third party interested in easy profits would be able to identify sections to buy minerals or remaining leasehold positions, competitively against Devon—especially because many of these drilled wells turn out even more successfully than anticipated, thus leading to further drilling activity. Some particular sections can be secretly and confidentially identified as having as much as tens of millions of barrels of oil reserves.
- ***Marathon Oil Company Section-Township-Range Map.*** It shows the location of the client's leases for each 640-acre tract. The tracts are color-coded to show the company's leasing priorities, *i.e.*, the specific areas where the company is most interested in buying leases, based upon the client's (a) knowledge of already discovered minerals and (b) internal, expert analysis about the likelihood of return on investment in each particular 640-acre tract. With this one map, a competitor would know precisely where to compete for leases—whether for its own exploration, or to bundle the leases and then turn the package to the exploration company at a premium.

These are mere examples of the kind of information necessary to Blue Star's work for its clients, but which is highly protected and extremely, closely guarded within Blue Star. Indeed, these sorts of documents are so sensitive that the only persons at Blue Star

with copies were Blue Star's president and founder, David Swafford, and its only two vice-presidents, Defendants Coleman and Morris—who recently absconded with Blue Star's and its clients' Trade-Secret Information to go start Rock Creek.

B. Defendants' obligations for and access to Trade-Secret Information.

As a condition of employment, Defendants executed a "Contract" primarily concerning the protection of confidential, proprietary, and trade-secret information (the "Trade-Secret Information"). (See Exhs. 2, 3, 4 at 1–2.) The referenced "Trade-Secret Information" includes three sub-types: (a) Client-Specific Trade-Secret Information; (b) Blue Star Work Product; and (c) Blue Star Operating Information, each of which is discussed further in Blue Star's Verified Trade-Secret Exhibit (Exh. 26).

Besides Swafford, Coleman and Morris were Blue Star's managers. They were responsible for enforcing the protections of the Trade-Secret Information within Blue Star. (See Exhibit 25.) They recently made several demands for an equity position in Blue Star in exchange for paying nothing. Eventually, Blue Star agreed to Profit Sharing Agreements, again binding Coleman and Morris to Blue Star's policies, and requiring each of them to protect, not disclose, and not improperly use Blue Star's Trade-Secret Information. (Exhs. 5 & 6 § 2(e)(iii), (v).)

C. Coleman and Morris's misappropriation of the Trade-Secret Information.

While Coleman was still employed as a Blue Star Vice President, he downloaded thousands of files containing Trade-Secret Information to his personal Dropbox, including his entire .pst file (which refers to a proprietary file format used to store email

messages, calendar events, and other items from Microsoft Outlook). (Exh. 1-3 at 7:23 am.) The .pst spanned 4.18.2016 through 4.19.2017.

This download is significant. Coleman was routinely copied on emails that would include highly protected client information and Trade-Secret Information. And the volume is also significant: some 20,788 items. (Exhibit 1 at ¶ 8.) By taking one year of email and their attachments, Coleman copied approximately 90% of Blue Star's work product produced over the final year of his employment with Blue Star, as well as clients' rig schedules, acreage reports, ownership reports, and detailed maps which reveal the clients' highly protected business plans and strategies. **Thus, by taking his entire .pst, Coleman took and, upon information and belief, has maintained possession of Blue Star's clients' highly valuable property.**

Perhaps explaining the timing of Coleman's massive download of Blue Star Trade-Secret Information on April 19th, an existing Blue Star client apparently told Coleman in mid-April that it had a new big project for Blue Star. Prior to his departure from Blue Star, Coleman, Vice President of Business Development, tried to use this work and his relationship with the client in an attempt to leverage Swafford into giving up 66% of his company to Coleman and Morris for nothing in exchange, or threatening that they would take the new project to fund their competing company.³

³ Blue Star understands, on information and belief, that LEFCO and its close affiliate, Black Hawk, are now clients of Rock Creek. This belief is confirmed by the fact that LEFCO and Black Hawk have not continued their previous, ongoing work with Blue Star following Coleman's and Morris's departure. Primarily, LEFCO identifies working interests that the larger operators have not yet leased, packages them all together, and sells off the packages in big bundles. Thus, the rig schedules and other Trade-Secret Information to which Coleman was privy would be extremely valuable to LEFCO. These circumstances—with Coleman and Morris possessing extremely valuable Trade-Secret Information of one of the largest oil and gas exploration companies in Oklahoma—creates a significant

Coleman did not take only his .pst. Over many days, while he was still employed by Blue Star, Coleman also copied megabyte upon megabyte of Blue Star's Trade-Secret Information into his Dropbox in a folder innocuously labeled "Stuff." (*E.g.*, Exhibit 1-3.)

D. Why Defendants' misappropriated the Trade-Secret Information.

For years, it appears, Coleman and Morris had been planning to leave Blue Star to start up a competitor company. (Exhibit 7; *see also* Exh. 1 at ¶ 12.) They did not want to pay Swafford to purchase the company; instead, based upon the information uncovered, they apparently decided to restart under a new company name using all of Blue Star's Trade-Secret Information and confidential/proprietary documents, attempting to siphon the business—both its clients and its staff. (*E.g.*, Dkt. 1 at ¶¶ 24, 44.) They surreptitiously made a spreadsheet blueprinting this scheme, using Blue Star's Trade-Secret Information. (*See, e.g.*, Exh. 7 (redactions of the protected information).) Indeed, to be successful in their competitive venture, Defendants had to have Blue Star's Trade-Secret Information.⁴

E. Defendants' lies and duplicity while still at Blue Star.

As they completed their theft of Blue Star Trade-Secret Information, Coleman approached Swafford and argued that the new project from the Blue Star client should not

concern about more than misappropriation by Rock Creek, but that, under the present circumstances, Rock Creek would be significantly tempted to directly or indirectly share the information to favor its clients.

This concern is especially significant because of the way in which improper use of the Trade-Secret Information could be hidden but used for improper gain. For example, the competitor could create an LLC for the competitive work, name it in a way that it publicly appears unconnected to the competitor, privately purchase leases in that LLC's nondescript name, and thereby shield the true owner (the competitor) from disclosure in a way that would give away the improper use of the Trade-Secret Information, leaving the public and Blue Star unaware as to whether improper competition ever took place.

⁴ They needed it for a few reasons. *First*, to create its valuable work product, Blue Star's staff uses the hundreds of templates Swafford independently created over the decades of his work to ensure Blue Star's continued work quality as the company grew. The templates are derived and developed from Swafford's prior knowledge and experience gained while working inside a large exploration company—dealing with the exploration company's Legal Department and title attorneys—and his 30+ years of running a land services company (the "Work Templates"). *Second*, the Client-Specific Trade-Secret Information is by itself incredibly valuable. Possessing it would assist third parties wanting an advantage to surreptitiously compete against the likes of Devon and Marathon.

be handled according to his and Morris's Profit Sharing Agreements with Blue Star. Though unpersuaded, Swafford agreed to meet further with both Coleman and Morris.

When they later met together, Coleman and Morris demanded that they each be awarded a 33% share of Blue Star for nothing in exchange. Swafford turned that "offer" down. Coleman and Morris did not enter that discussion to be open and honest—indeed, Morris's wife strongly encouraged him via text message to *not* be open and honest with Swafford. (Exhibit 1-9 at 4.21.17 at 7:10–11 am.)⁵

1. Soliciting Blue Star employees while Coleman and Morris were still Blue Star vice presidents and managers.

As it became clear during the conversation that Coleman and Morris would be leaving Blue Star, Swafford simply asked them to not solicit Blue Star employees while they were wrapping up their Blue Star work and on Blue Star's payroll. They indicated they agreed—even though they had already been doing this surreptitiously—and then went on to do precisely that which Swafford asked them not to do, and worse, told the solicited employees to lie to Swafford about who approached whom:

Morris: I'm talking to [male employee]
Coleman: Do it yourself. I don't want Dave to get pissed
If that's ok.
Morris: I'm not going to offer right now
Coleman: What did you tell him[?]
Morris: nothing at all. i asked him about grizzly. changed my mind
and opened the door.

(Exhibit 1-11 at 4.21.17 15:06–15:17.) Coleman directed Morris that, when he spoke with Blue Star staff about coming to Rock Creek, he needed to ensure that those individuals

⁵ The times of these texts is the central time zone, in contrast to the Microsoft Office logs and Defendants' search and internet history, which are listed in GMT.

“tell Dave that they [the Blue Star employee] approached us because they wanted to work with us.” (*Id.* at 4.21.17 at 16:32.) Morris replied: “I told him that three times.” (*Id.* at 16:33.) Morris then immediately texted [that male employee]: “u are in. title. and be sure to tell dave you asked. not me.” (*Id.* at 16:33.)

On April 23, Coleman asked Morris about approaching another Blue Star employee about going with them to the new venture. Morris agreed to Coleman’s plan. (*See* Exhibit 1-11 at 4.23.17 at 10:44 am.) Coleman explained, “Yeah I feel like he’s the last one we should reach out to first. Then those Merge guys will likely come to me asking what’s up and I’ll let them know they can continue with the new company.” (*Id.* at 10:49 am.) Morris said that sounded good, but raised his concern about how quickly Rock Creek would have work. (*Id.* at 11:12 am.) Coleman assured Morris, “There should be stuff to work on pretty quickly.” (*Id.* at 11:14 am.) Coleman spoke with the targeted employee and reported back to Morris: he’s “definitely interested lol... I’m just laughing because I thought maybe a few [of the Blue Star staff] would at least think about it or go 50/50 but it sounds like a clean sweep.” (*Id.* at 15:38–39.) Morris replied: “It’s not even close.” (*Id.* at 15:42.)

It is critical to note that all these secret conversations occurred while Coleman and Morris were still employed as Vice Presidents and managers of Blue Star.

2. *Encouraging and creating damaging circumstances for Blue Star’s business before exiting the company.*

Another Blue Star employee, Johnson, was apparently aware of the impending exit. (*See* Exh. 1-12). She openly joked about harming Blue Star’s ongoing operations, in

some apparent effort to assist Defendants: *e.g.*, Johnson noted that she was going to “wait to email” a new Blue Star hire until later in the afternoon that day; Coleman replied, “Lol.” (Exhibit 8 at 1.) Johnson would later admit via text with Morris that the surreptitious plan was making her very nervous.⁶ (Exh. 1-12 at 4.21.17 15:15–15:52.)

3. *Intent to take Blue Star’s corporate assets and opportunities.*

While Morris had been texting with Coleman on April 21st after their discussion with Swafford, Morris also reached out to his mother, Donna:

Morris: I need to talk to you when you have time. business we are leaving. don’t tell sunny [Morris’s wife]. she will die short meeting in reality. He [Swafford] was willing to increase our pay, but zero equity and still a long term buyout. that doesn’t make sense to us in this business

Donna: ok well when does this happen...

Morris: one week...

Donna: so what do you think office set up will cost? computers etc?...

Morris: shit I will take this one here

Donna: not if you didn’t pay for it...

Morris: i made [Coleman] sign a contract. lol...

Donna: well good. you need it I’m sure. big risk but reward should be good

Morris: we could do very well.

Donna: i think you will.

you guys sure the new client is in?

Morris: yes. meetings next week

Donna: oh. that’s great.

(Exh. 1-10 at 4.21.17 15:26–16:01.)⁷

⁶ Blue Star does not regularly review any of its employees’ text messages or personal information. These conversations were forensically uncovered and reviewed only due to Defendants’ repeated lies, denying having taken anything, as a part of preparing this lawsuit to protect its clients’ Trade-Secret Information.

⁷ Coleman continued downloading Blue Star materials to his personal Dropbox account that afternoon (April 21st), including Blue Star’s Division of Duties spreadsheet and several more Blue Star Work Templates, all before downloading the .pdf of his letter of resignation at 4:49 pm. (Exh. 1-5.) In his letter, Coleman asked for his resignation to be effective as of Friday, April 28. (Exhibit 10.)

Over the weekend, Coleman used his Blue Star computer to access a word version of Blue Star's January 6, 2017 Master Land Services Contract with Black Hawk Mineral Partners, LLC and LEFCO Energy, LLC. (*See* Exh. 11.) That Master Land Services Contract required 30 days written notice to cancel it (*id.* at Art. III(A)) and, unsurprisingly, it included confidentiality and non-disclosure agreements. (*Id.* at Art. IV(A).) Coleman advised Morris that he had "reformatted" Black Hawk's Services Contract. (Exh. 1-11 at 4.23.17 at 18:56.) In essence, he simply replaced Blue Star with Rock Creek, and his own signature in place of Swafford's. (*See* Exh. 12 at 1.) Thus, Coleman was knowingly preparing to usurp Blue Star business and violate the very terms of the agreement he intended to pursue on behalf of Rock Creek.

On April 25, Coleman began informing other Blue Star staff from his Blue Star email account that Rock Creek would take the "Merge project" (what this employee was working on) away from Blue Star, inviting him to reach out to talk. (Exh. 18.) The "Merge Project" was an existing Blue Star project for LEFCO, which Blue Star had been working on for several months. It was not the "new" LEFCO project that Coleman used as a basis to try to leverage his position at Blue Star (which, based on information received, is apparently located in Ellis County). Nevertheless, the above email shows that Coleman and Morris intentionally took this Blue Star work with them, despite their existing fiduciary duties and duties of loyalty to Blue Star. LEFCO and Black Hawk have not continued their previous, ongoing work with Blue Star following Coleman's and Morris's departure, indicating that LEFCO and Black Hawk are now Rock Creek clients.

4. *Duplicity in exit announcement and selection of replacements.*

Apparently wanting to give the impression that they intended to do the right thing in how they would handle their exit, Coleman asked Swafford on April 24 if he and Morris could go ahead and inform the others at the company about their departure.

In reality, a few minutes before Coleman had even asked Swafford for this permission, Coleman had already reached out to Blue Star clients about his leaving Blue Star. (Exh. 14.) He noted that he would be reaching out to that particular contact “later this week about my future plans and going forward,” and he emphasized, “I hope we have an opportunity to work together again in the near future.” (*Id.*)

Morris was sending similar messages, but was also connecting multiple Blue Star clients with alternative Blue Star employees to contact about the work he was leaving behind. (*E.g.*, Exh. 17 at 1–2.) Yet Morris was connecting the Blue Star clients with alternative Blue Star employees who were predominately individuals that Morris knew or believed already had plans to go to Rock Creek following Morris and Coleman’s exit from Blue Star. (*Compare* Exh. 17 with Exh. 7 at 8.) Coleman complimented Morris’s competitive strategy: “Nice work divvying those wells out.” (Exh. 17 at 1.)

5. *Attempting to cover their wrongful behavior by deleting evidence.*

On April 24, Morris googled “1TB dropbox,” “delete imessage accounts,” and “delete iphoto accounts.” (*See* Exh. 1-15 at 4.24.17 at 7:49.) Later that day, Morris searched “can I delete emails,” “can I delete work emails,” and “**is it ethical to delete work emails.**” (*Id.* at 4.24.17 at 23:15 (emphasis added).) The website on which he clicked explicitly informed him that this plan was indeed unethical, as his Blue Star email

was Blue Star's property. (See <https://workplace.stackexchange.com/questions/35097/can-i-delete-all-my-professional-e-mails-after-resigning-my-job>.) As the mere existence of this google search proves, the Defendants knew what they were doing was wrong.

At this time it is not directly evidenced that the Defendants in fact acted on their searches about deleting their email and conversation history. Blue Star backs up its email to an exchange server which can be accessed via an internet browser on Office 365, but Ernst & Young confirmed that the logs for that site are not capable of showing whether deletions from the cloud occurred. Nevertheless, the logs do show user access to Office 365 when logging in from an internet browser. (See Exh. 1-19.)

Circumstantial evidence, however, supports the inference of deletion activity: Morris's first search after clicking on "is it ethical to delete work emails" was for "office 365." (Exh. 1-16 at 4.24.17 at 23:17.) Similarly, between April 20 and his exit from the company on April 26, Coleman accessed Office 365 some 34 times. (See Exh. 1-19.) The email he left behind appears virtually void of personal messages one might expect for an employee working at the same company for nearly a decade.

The same day (April 24), while still employed by Blue Star, Coleman changed the email address for the Dropbox account for which he had been billing Blue Star as a company business expense. (Exh. 17.) He changed the email address from his Blue Star email account to his personal Gmail address. (*Id.*) This was an important change, Dropbox emails an end-of-week summary that would have, if sent to his Blue Star email address, shown Blue Star Coleman's substantial Dropbox downloading of hundreds, if not thousands, of Blue Star documents. (See Exhs. 1-3 – 1-6.)

That next day, after accessing his Rock Creek email address from his Blue Star computer, on the same machine, Morris googled how to disable the syncing for Dropbox, Google Drive, and his internet browser. (Exh. 1-15 at 4.25.17 at 12:15–19 pm.)

6. *Coleman and Morris lie to Swafford about their soliciting Blue Star employees.*

On Tuesday, April 25, the next-highest-ranking individuals at Blue Star, Amara Johnson and Kory Cook, notified Swafford that they intended to leave the company. Cook had the temerity to admit that he was headed to Rock Creek. So Swafford asked him to go ahead and move up his exit date to as soon as reasonably possible.

Johnson, on the other hand, advised Swafford that she was getting engaged and moving either to South Carolina or Florida, where her boyfriend was going to end up. So Swafford let her stay to close out her last several days before her scheduled departure.

When Swafford learned that Coleman and Morris (while still Blue Star Vice Presidents and managers) had offered Kory Cook a Rock Creek position, he asked Coleman and Morris to immediately vacate. Coleman replied: “If you’re under the impression that we tried to recruit or steal people, that’s not the case at all.” (See Dkt. 1 at ¶ 57.) Coleman was lying. Apparently 11 former Blue Star staff now work at Rock Creek

7. *Johnson’s lie to stay behind at Blue Star and attempts to delete evidence.*

Johnson lied to Swafford about her intentions in leaving Blue Star: On April 26th, the morning after she gave her notice of resignation and advised Swafford of her plans to move out-of-state, Johnson used her Blue Star computer to access her new Rock Creek email (amara.johnson@rockcreekland.com). (Exh. 1-18 at 4.26.17 at 8:14 am.)

On May 1, multiple times Johnson googled how to disable the link between the cloud and her conversation history. (Exh. 1-17 at 5.1.17 at 7:57 am, 8:00 am, 10:09 am.) She was apparently planning to leave the company shortly after payroll day. She searched “delete lync history on mac” and “delete all lync history.” (Exh. 1-17 at 5.1.17 at 7:57 am.) She clicked on a site that explained that these wrongful efforts would be in vain without accessing the exchange server: “Even if you delete all conversations saved in Outlook folder named Conversation History, the conversations will still remain on the server (Lync or Exchange Server).” (*See id.* at 5.1.17 at 8:00 am (accessing [https://lotzysan.wordpress.com/2015/06/24/\[\] hello-world/](https://lotzysan.wordpress.com/2015/06/24/[] hello-world/).)

A few minutes after learning the server needed attention to effectively delete things, Johnson accessed it. (*See* Exh. 1-18 at 5.1.17 at 8:17 am.) A few hours later she asked Microsoft Office Support how to find a previous conversation. (*Id.* at 10:09 am.) After that, Johnson would access the exchange server on Office 365 some seven times. (*See* 1-19 at 5.1.17.) A few days later, Dropbox emailed her work address: “We noticed that you recently deleted a large number of files from your Dropbox.” (Exh. 24.)

G. Defendants’ lies after leaving Blue Star.

Defendants’ were obligated by the contracts they signed as a condition of employment to return Blue Star’s information upon request. (Exhs. 2 & 3, at 1–2.)

On April 27, 2017, Blue Star obtained counsel and demanded that Coleman and Morris cease and desist their improper behavior and return *all* proprietary and confidential information that Coleman and Morris had in their possession. (Exh. 19.) Blue Star notified them of their obligation to preserve evidence, while simultaneously

demanding that Blue Star's Trade-Secret Information be returned. (*Id.*) The letter further notified Coleman and Morris that they were terminated for cause. (*Id.*)

Defendants' attorney, Mark Houts, responded to Blue Star's cease-and-desist letter on May 1, "expressly" denying "any wrongdoing." (Exh. 20.)

Blue Star tried one more time on May 11, specifically asking the Defendants to identify what Blue Star materials and information they took. (Exhibit 21.) Blue Star also asked the Defendants to share their passwords to their Blue Star machines. (*Id.*) But a few days later, Defendants denied that they had taken "anything that did not belong to them," and told Blue Star to just leave them alone. (Exh. 22.)

At a stalemate, Blue Star's counsel contacted Defendants' counsel, who reiterated that his clients had done nothing wrong and that they had not taken anything that was not theirs. Blue Star asked for the passwords to Defendants' computers. Defendants asked, "If we give you the passwords, will this be over?" Blue Star emphasized its duty to diligently ensure its clients' Trade-Secret Information was not taken. Defendants again said they took nothing from Blue Star and asked if the matter would be over if they gave the passwords. Blue Star explained that it needed to perform an investigation to see if Defendants' counsel's clients were telling the truth. A few hours later, Defendants' counsel explained that the passwords came from an outside IT group, which Blue Star subsequently contacted for assistance.

H. Blue Star's Forensic Investigation.

Blue Star hired Ernst & Young to perform a forensic investigation to see if any information was taken. Ernst & Young's investigation confirms that Coleman and Morris

were lying when they repeatedly represented that they neither took nor possessed anything belonging to Blue Star. (*E.g.*, Exh. 1-2 – 1-8.) Further, the information that Ernst & Young discovered proves that Johnson was lying when she misled Swafford that she was quitting Blue Star to move out of the State. (Exh. 1-18 at 4.26.17 at 8:14 am.)

Coleman transferred the Trade-Secret Information to his Dropbox account. (*See* Dkt. 1 ¶ 30.) Dropbox stores information in the “cloud.”⁸ Because the information is in the cloud, no matter the device used, the information can be accessed and downloaded through the internet. Thus, (a) simply seizing Defendants’ devices will not be an effective seizure because the Trade-Secret Information is predominately located on Dropbox; and (b) by the very nature of the misappropriation, neither Blue Star nor the court could know, prior to carrying out an order for seizure, to what devices or drives Defendants have downloaded the Trade-Secret Information from their electronic storage accounts.

II. REQUESTED SEIZURE ORDER

To effectuate seizure of the Trade-Secret Information on cloud-based storage facilities, as well as typical devices, Blue Star requests entry of an order as follows:

- Directs the United States Marshals to seize the following materials located, on information and belief, on and through devices at Defendants’ business location, 330 NW 10th Street, Oklahoma City, OK 73103:
 - Any computers, computer hard drives, or memory devices in Defendants’ possession that, after a forensic image, reveal that they contain the Blue Star Trade-Secret Information at issue (any of the following electronic devices that might be on or about Defendants’ work space, including: smart phones, tablets, desktop computers, laptop computers, and disks, memory files, flash drives, hard drives, thumb drives, and the like);

⁸ *See* Exh. 1 at n.1 (further describing “cloud computing”)

- The username and password information for the above-described devices, including any codes required to overcome encryption; and
 - The username and password information needed to access the Defendants' Dropbox accounts, Rock Creek email accounts. And after a third party forensic analyst reviews the obtained forensic images, the username and password information needed to access any and all devices and locations (including email) where Blue Star's Trade-Secret Information is found or strongly suspected to be housed (collectively with all the above the "Property Subject to Seizure").
- Authorizes a third party forensic analyst, Ernst & Young, to image the Property Subject to Seizure, including by accessing the devices or storage locations, to preserve the evidence located thereon by imaging and then reviewing the contents for the Trade-Secret Information (*identified at Exh. 1-2 – 1-8*).
 - To effectuate seizure of the Trade-Secret Information on cloud-based storage facilities, directs the United States Marshals, with any necessary assistance of the third party forensic analyst, to temporarily change the passwords to the cloud locations or specific folders housing such Trade-Secret Information (as well as take any related, necessary steps to ensure the security of the information, *e.g.*, temporarily changing the authorized controller of the account to the U.S. Marshals so that no one but the Marshals at the court's direction can change the password on the account by simply calling Dropbox) in the most reasonably narrow manner available that also fully protects the seized information from access until the matters can be addressed at a hearing within seven (7) days of seizure.⁹

III. ARGUMENT AND AUTHORITIES

A. Statutory authorization of *ex parte* seizure.

The DTSA directs the entry of orders and other acts "as may be necessary and appropriate to preserve the confidentiality of trade secrets." 18 U.S.C. § 1835. "Based on an affidavit or verified complaint" that satisfies the statutory requirements, "the court

⁹ Blue Star has carefully considered if there are any more narrow means of seizing the Property Subject to Seizure that is located in the cloud on Dropbox. But because altering the account, *e.g.*, deletion or removal of the Trade-Secret Information, compromises the evidence, it appears there is no other avenue than changing the password and controls to adequately protect the information. *See, e.g.*, 18 U.S.C. § 1836(b)(2)(D)(ii) ("If the seized material includes a storage medium, or if the seized material is stored on a storage medium, the court shall prohibit the medium from being connected to a network or the Internet without the consent of both parties, until the hearing required under subparagraph (B)(v) and described in subparagraph (F).").

may, upon *ex parte* application but only in extraordinary circumstances, issue an order providing for the seizure of property necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action” *Id.* at § 1836(b)(2).

Those statutory requirements are as follows:

The court may not grant an application under clause (i) unless the court finds that it clearly appears from specific facts that--

(I) an order issued pursuant to Rule 65 of the Federal Rules of Civil Procedure or another form of equitable relief would be inadequate to achieve the purpose of this paragraph because the party to which the order would be issued would evade, avoid, or otherwise not comply with such an order;

(II) an immediate and irreparable injury will occur if such seizure is not ordered;

(III) the harm to the applicant of denying the application outweighs the harm to the legitimate interests of the person against whom seizure would be ordered of granting the application and substantially outweighs the harm to any third parties who may be harmed by such seizure;

(IV) the applicant is likely to succeed in showing that--

(aa) the information is a trade secret; and

(bb) the person against whom seizure would be ordered--

(AA) misappropriated the trade secret of the applicant by improper means; or

(BB) conspired to use improper means to misappropriate the trade secret of the applicant;

(V) the person against whom seizure would be ordered has actual possession of--

(aa) the trade secret; and

(bb) any property to be seized;

(VI) the application describes with reasonable particularity the matter to be seized and, to the extent reasonable under the circumstances, identifies the location where the matter is to be seized;

(VII) the person against whom seizure would be ordered, or persons acting in concert with such person, would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice to such person; and

(VIII) the applicant has not publicized the requested seizure.

18 U.S.C. § 1836(b)(2)(A)(ii). Such relief is consistent with other pretrial relief.

When seizure is ordered, a hearing is held for the parties to attend “at the earliest possible time, and not later than 7 days after the order has issued,” absent consent by the party against whom the order has been issued. 18 U.S.C. § 1836(b)(2)(B)(v).

B. Evidence grounding the court’s grant of *ex parte* seizure.

1. A Rule 65 Order will not be adequate in this case.

Defendants have demonstrated a likelihood to evade, avoid, or otherwise not comply with the law. While the DTSA has been in effect for only approximately one year, other courts weighing the effectiveness of a Rule 65 order in contrast to granting seizure have focused on whether the defendants have demonstrated a likelihood to evade, avoid, or otherwise not comply with the law. *See AVX Corp. v. JunHee Kim*, No. 6:17-624-MGL, Order Granting *Ex Parte* Seizure at 5 (D. S.Car. March 13, 2017); *USSPEEDO 5, Inc. v. Pierce*, No. 17-108876-CB (Genesee County, Michigan) (April 17, 2017).

In an order signed earlier this year, the United States District Court for the District of South Carolina granted seizure instead of a Rule 65 order because the defendant had demonstrated a likelihood to evade, avoid, or otherwise not comply with the law “when

he repeatedly lied and attempted to conceal the fact that he surreptitiously accessed and downloaded the Stolen Computer Files.” See *AVX Corp.*, 6:17-624-MGL, Order Granting *Ex Parte* Seizure at 5 (D. S.Car. March 13, 2017).

The same was true in *USSPEEDO 5*, where a former employee misled his employer, stole trade secrets to start his own company to compete against his former employer, and lied about what he had done. See No. 17-108876-CB (Genesee County, Michigan) (April 17, 2017). And that court granted seizure relief under the DTSA.

This case is very similar to the recent cases discussed above. The Defendants have repeatedly lied. For example:

- They promised Blue Star that they would not to solicit Blue Star staff for employment with Rock Creek while still employed by Blue Star (Dkt. 1 at ¶ 37), *but* went on to do so that very same day they made the promise (Exh. 1-11 at 4.21.17 15:06–15:17) and over weekend (Exh. 1-11 at 4.23.17 at 10:44 am)—all while still employed as vice presidents of Blue Star. And when Swafford later asked Coleman and Morris to vacate before their notice period ended, Coleman continued to deny that he and Morris had “tried to recruit or steal people...” (Dkt. 1 at ¶ 57.)
- Coleman and Morris told others at Blue Star to lie about whether they had been solicited by Coleman and Morris to go to Rock Creek while Defendants were still employed by Blue Star. (Exh. 1-11 at 4.21.17 at 16:33.)
- Johnson, when resigning, lied about her intentions to move out of state (Dkt. 1 at ¶ 56) rather than disclose her employment by Rock Creek, which is evidenced by her prior text messages with Morris (Exh. 1-12 at 4.21.17 15:15–15:52) and her accessing her Rock Creek business email account from her Blue Star computer the next day, before she had resigned. (Exh. 1-18 at 4.26.17 at 8:14 am (p. 21).)
- Through counsel, in response to Blue Star’s demand for the return of any misappropriated Trade-Secret Information, Defendants denied they had done anything wrong. (Exh. 20.)

- Through counsel, in response to Blue Star's second, repeated demand for the return of any misappropriated Trade-Secret Information, Defendants denied that they had taken "anything that did not belong to them." (Exhibit 22.)
- Through counsel, over the phone, Defendants repeatedly reiterated that they had not taken anything that was not theirs. (Dkt. 1 at ¶ 73.)

Additionally, Defendants attempted to conceal evidence by disabling electronic links within Blue Star's system/devices, *e.g.*:

- Four days before the effective date of his resignation, Coleman changed his email address for his Dropbox account on April 24 (Exh. 17), redirecting his end-of-week summary Dropbox emails (*e.g.*, Exh. 9) which otherwise would have gone to Coleman's Blue Star email account and would have notified Blue Star of Coleman's substantial Dropbox downloads of hundreds, if not thousands, of Blue Star documents to his personal Dropbox account just prior to announcing his resignation. (*See* Exhs. 1-3 – 1-6.)
- Morris googled how to disable the syncing for his Dropbox account, Google Drive account, and his internet browser. (Exhibit 1-15 at 4.25.17 at 12:15–19 pm.)
- Multiple times Johnson googled how to disable the link between the cloud and her conversation history, likely seeking to eliminate all evidence of her previous conversations with Defendants on Blue Star's corporate messaging system. (Exh. 1-17 at 5.1.17 at 7:57 am, 8:00 am, 10:09 am.) A few minutes later, she searched "delete lync history on mac" and "delete all lync history." (Exhibit A-17 at 5.1.17 at 7:57 am.)

Even worse, it appears that the Defendants deleted evidence of their conduct. Blue Star backs up its email to an exchange server which can be accessed via an internet browser at a website called Office 365. Ernst & Young confirmed that Blue Star's logs for that site are not capable of showing whether deletions from the cloud occurred. (Dkt. 1 at ¶ 51.) But the logs *do* show the details of each user access to Office 365 when a user logs in from an internet browser:

- Morris searched “can I delete emails,” “can I delete work emails,” and “is it ethical to delete work emails.” (1-15 at 4.24.17 at 23:15 (emphasis added).) After clicking on a result for his search “is it ethical to delete work emails,” Morris’s first google search was for “office 365.” (Exh. 1-16 at 4.24.17 at 23:17.)
- Between April 20 and his exit from the company on April 26, Coleman accessed Office 365 some 34 times. (*See* 1-19.) Interestingly, the email he left behind appears void of any of the personal messages one might expect for an employee that had worked at Blue Star for nearly a decade.
- Johnson searched “delete lync history on mac” and “delete all lync history.” (Exhibit 1-17 at 5.1.17 at 7:57 am.) She clicked on a site that explained that these wrongful efforts might be in vain: “Even if you delete all conversations saved in Outlook folder named Conversation History, the conversations will still remain on the server (Lync or Exchange Server).” (*See id.* at 5.1.17 at 8:00 am (accessing <https://lotzysan.wordpress.com/2015/06/24/hello-world/>.) So a few minutes after learning the she needed to access the server itself to effectively delete things, Johnson accessed it. (*See* Exh. 1-18 at 5.1.17 at 8:17 am.) A few hours later she asked Microsoft Office Support how to find a previous conversation. (*Id.* at 10:09 am.) [No conversations of Johnsons’ from 2016–17 were found during the investigation.] And between May 1 and when she left the company two days later, Johnson would access Office 365 (where Blue Star’s email is stored in the cloud) at least 8 times. (*See* 1-19 at 5.1.17.)

The above strongly suggests that the Defendants have already engaged in repeated, surreptitious attempts to delete and hide evidence.

Consequently, a Rule 65 order or other equitable relief would be inadequate here to achieve the purpose of 18 U.S.C. § 1836(2) because—disregarding their contractual and fiduciary/duty of loyalty obligations—the Defendants surreptitiously downloaded Blue Star’s Trade-Secret Information, took actions to hide evidence, apparently deleted evidence, and, in response to Blue Star’s accusations of misappropriation, have repeatedly lied about their actions.

Rule 65 orders cannot adequately ensure against hidden misappropriation. Cases like this one, which involve predominantly electronic information, present the reality that an immediate and irreparable injury will occur if *ex parte* seizure is not ordered because “any Stolen Computer Files stored on the Property Subject to Seizure at any moment could be transferred or conveyed to a third party such as a competitor of [plaintiff].” *USSPEEDO 5, Inc. v. Pierce*, No. 17-108876-CB (Genesee County, Michigan) (April 17, 2017) at 5. Indeed, the threat of a frustrated judicial process is real because the Trade-Secret Information stolen “is in electronic form and subject to quick, easy, untraceable destruction by Defendants.” *See Dell Inc. v. BelgiumDomains, LLC*, 2007 WL 6862341, at *2 (S.D. Fla. Nov. 21, 2007) (granting request for *ex parte* seizure and noting that, because the key evidence was electronic in nature, “Defendants thus could destroy this evidence all with just a few keystrokes, leaving no paper trail”).

Rule 65 orders have not adequately worked for similarly situated defendants.

Persons similarly situated to the Defendants in this case have ignored Rule 65 orders to turn over their devices to counsel for imaging. *See Magnesita Refractories Co. v. Mishra*, No. 2:16-CV-524-PPS-JEM, 2017 WL 365619 (N.D. Ind. Jan. 25, 2017); *Mission Capital Advisors LLC v. Christopher D. Romaka*, No. 16-cv-5878, Dkt. 7 (July 29, 2016).

In *Magnesita*, the plaintiff sought only a Rule 65 injunction, attempting to avoid having to meet the requirements for DTSA seizure. *See Magnesita*, 2:16-CV-524-PPS-JEM, Dkt. 10 at 3 (“[Defendant] shall turn over to [plaintiff’s] counsel his personal laptop upon request on December 20, 2016. [Plaintiff] will then immediately deliver the laptop to the Clerk of Court to be secured. [Plaintiff] shall not review any of the contents of the

laptop prior to delivering it to the Clerk of Court.”). Nevertheless, after the former employee was served with the order, he refused to surrender his laptop computer as directed. *See Magnesita*, 2:16-CV-524-PPS-JEM, Dkt. 11 at 2–3. This required the Court to then enter a show-cause order. *Id.* at Dkt. 14.

Indeed, an injunctive order like that issued in *Magnesita* would be completely ineffectual in this case because Defendants’ Dropbox account—the application they used to steal the Trade-Secret Information—holds the information in “the cloud” and can be accessed from *any* electronic device with internet access and such access is not necessarily traceable in a later forensic investigation.

In *Mission Capital*, the Southern District of New York simply entered a restraining order that the trade secrets not be accessed, disclosed, or copied. *Mission Capital*, No. 16-cv-5878, Dkt. 7, at 1 (July 29, 2016). The Court ordered plaintiff to email the order to the defendant, and then also personally serve him. *Id.* Plaintiff sent the email; but then the former employee evaded personal service on five separate occasions and did not appear at the hearing that was noticed in the email plaintiff sent to the defendant. *See id.* at 2. So the court finally entered the seizure order, but without the protections that such relief would have provided had it been initially granted on an *ex parte* basis. *Id.* Consequently, similarly situated defendants have shown a proclivity to evade the effectiveness of regular injunctive orders, supporting *ex parte* seizure in this case.

2. *Immediate and irreparable injury without seizure.*

Because the Defendants share access to the Dropbox account where the Trade-Secret Information was downloaded, without seizure of credentials and access to the

cloud account (and a temporarily changed password and controls), persons acting in concert with Defendants could easily try to replicate Defendants' previous behavior by destroying, moving, hiding, or disseminating the Trade-Secret Information.

Ex parte seizure relief tends to result in preserved information because the Defendants are left unable to respond by spoliating evidence or otherwise destroying its value by immediately disseminating it broadly. Without this relief, Blue Star faces an immediate and irreparable injury that is separate from the immediate and irreparable injury already presented under the facts of this case.

3. *The balance of harms weighs in favor of seizure.*

The harm to Blue Star of denying its application for civil seizure outweighs the harm to any legitimate interests of Defendants and outweighs the harm to any third parties who may be affected by such seizure. *See AVX Corp. v. JunHee Kim*, No. 6:17-624-MGL, Order Granting *Ex Parte* Seizure at 5-6 (D. S.Car. March 13, 2017) (“The harm to [plaintiff] includes the harm of its valuable trade secrets being disclosed to competitors or other third parties, whereas there would be no harm to any third parties, and any harm to [defendant] would be minimal and no greater than the mere inconvenience of losing possession of his computers, drives, and/or smart phone for a limited time in order for forensic analysis to be completed.”).

4. *Likelihood of success on the merits.*

As shown above and in the Complaint (Dkt. 1) and its exhibits which are expressly incorporated herein, Blue Star has a likelihood of success on the merits. Specifically, Blue Star is likely to succeed in showing that the information stolen is trade secret and

that Defendants misappropriated it by improper means just prior to their resignation from Blue Star to start a competing land services company.

Where the defendant downloads a current employer's confidential information to a personal device, after having agreed to keep the protected information secret, courts have concluded that the employer is likely to succeed on the merits of under the DTSA. *See Henry Schein, Inc. v. Cook*, 191 F.Supp.3d 1072, 1077 (N.D. Cal. 2016).

5. *The identity and location of the materials to be seized.*

The identity of the materials to be seized, referred to herein as the Property Subject to Seizure, is specifically described document-by-document by the filenames on Exhibits A-2 through A-8 and addressed categorically in Exhibit 26.

The Property Subject to Seizure is work-related and therefore will likely be found on devices at Defendants' place of work, publicized as 330 NW 10th Street, Oklahoma City, OK 73103 on Rock Creek's website. (Dkt. 1 at ¶ 75.) Further, the above facts and evidence made part of the Complaint demonstrate that Defendants obtained actual possession of the Trade-Secret Information and likely still have the files, at minimum, on their shared Dropbox account, accessed electronically through their work computers, devices, and/or tablets.

6. *Publicity.*

Blue Star has not publicized the requested seizure.

IV. PRAYER

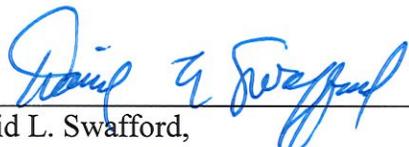
Blue Star's application for *ex parte* seizure meets the requirements of 18 U.S.C. § 1836 and should be granted, along with any general relief to which it is entitled.

VERIFICATION

STATE OF OKLAHOMA §
 §
COUNTY OF CLEVELAND §

BEFORE ME, the undersigned notary, on this day personally appeared David L. Swafford, who being by me first duly sworn, stated as follows:

“I am the President and CEO of Blue Star Land Services, LLC, and I hereby verify that Blue Star has not publicized the requested seizure.”

By: 
David L. Swafford,
Blue Star Land Services, LLC

Subscribed and Sworn to Before Me this 28 day of August, 2017.




Notary Public