UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)

COESTERVMS.COM, INC.	:	
d/b/a Coester Valuation Management Service	:	
and Coester VMS	:	
	:	
Plaintiff,	:	
	:	**Case No. 8:16-cv-02717-PX**
v.	:	
	:	
Robert T. Scheer	:	
	:	
Defendant.	:	
	:	

DEFENDANT'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS

Defendant Robert T. Scheer ("Mr. Scheer" or "Defendant"), by and through his undersigned counsel, Robert J. Baror, Esq., hereby submits Defendant's Memorandum of Law in Support of his Motion to Dismiss, which is filed pursuant to 12(b)(1) for lack of jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted. Defendant further asks the Court to decline to exercise supplemental jurisdiction over any remaining state law claims pursuant to its discretion under 28 U.S.C. 1367(c)(3). Mr. Scheer states that:

1. The only count in Plaintiff's lawsuit brought under this Court's original jurisdiction is Count III for alleged violations of the Defend Trade Secrets Act, 28 U.S.C. § 1836, *et seq*.
2. The Defend Trade Secrets Act did not become law until May 11, 2016.
3. Mr. Scheer resigned his employment with CVMS on April 11, 2016.

4. Any alleged misappropriation would have then necessarily occurred before the effective date of the Defend Trade Secrets Act, because Mr. Scheer had no access to CVMS information subsequent to his resignation.
5. Mr. Scheer, on or before May 4, 2016 provided his personal computer, which CVMS avers belongs to it, to his counsel, who subsequently provided it to HLP Integration (an information technology vendor selected by CVMS to review the computer as part of a pre-mediation agreement) which held the computer between May 5, 2016 and August 12, 2016. On August 12, 2016, the computer was returned to Mr. Scheer's counsel, who retains possession of it and who has not provided Mr. Scheer with access to it. *See Exhibit 1*, Interim Pre-Mediation Agreement.
6. Accordingly, since May 4, 2016—one week before the Defend Trade Secrets Act became effective—Mr. Scheer has not had possession of the computer which supposedly harbors trade secrets.
7. Mr. Scheer is not alleged to have used trade secrets beyond May 11, 2016, the effective date of the Defend Trade Secrets Act, except for three alleged instances. However, the three alleged instances, even if believed, do not constitute the use of information which could be considered a trade secret. All three allegations concern only the use of contact information which is generally available to the public.
8. Accordingly, no actionable conduct is alleged within the effective period of the Defend Trade Secrets Act ("DTSA").
9. Therefore, this Court has no original jurisdiction over this matter and CVMS fails to state a claim upon which relief can be granted with regard to the DTSA.

10. While state law claims may remain, this Court, in its discretion, should not retain supplemental jurisdiction over them. This is because the same corpus of facts is currently being adjudicated in Montgomery County Circuit Court in a preexisting lawsuit between the same parties which Mr. Scheer filed on May 31, 2016, seeking, among other things, a declaratory judgment that there is no enforceable non-solicitation agreement. *See Scheer v. CoesterVMS, Inc.*, et al. Case No. 421906-V. Judicial economy would be undermined by having two suits over the same subject matter pending at the same time in federal and state court when there would be no pending federal claims and only state law claims were at issue—including whether the alleged non-solicitation agreement exists in any form other than as a forged document.

I. INTRODUCTION

A. Documents Were Retained Before May 11, 2016 (DTSA Effective Date), to Show CVMS' Fraud Upon its Customers; Not for Competitive Use.

Plaintiff CVMS filed this litigation in response to the lawsuit Mr. Scheer filed in Montgomery County Circuit Court on May 31, 2016 against CVMS and CVMS' CEO, Brian Coester ("Mr. Coester"), Case No. 421906-V. *See* Exhibit 2, Amended Complaint. The Amended Complaint, filed on July 29, 2016 has three counts: Count I is against all defendants for tortious interference with business relations; Count II is against CVMS for a declaratory judgment that the alleged Non-Disclosure/Confidentiality Agreement between CVMS and Mr. Scheer is a forgery, as is supported by the expert report of Kathy Koppenhaver, which is appended to the Amended Complaint as Exhibit 1; and Count III is for defamation against Brian Coester for his repeated use of such defamatory terms as "faggot" (Mr. Scheer is a homosexual), "liar", and "thief."

Mr. Scheer has had a professional relationship with Brian Coester ("Mr. Coester"), the CEO of CVMS, dating to 2008, when Mr. Scheer was the Vice President of Operations of First Choice Bank, which used Mr. Coester's services. *Exhibit 3*, Declaration of Robert Scheer, ¶ 3. Mr. Coester subsequently persuaded Mr. Scheer to come work for him, and on June 4, 2012, Mr. Scheer began working as CVMS' Senior Vice President. *Id*. at ¶ 4. As Mr. Scheer learned about CVMS' operations, he was appalled to learn that Mr. Coester allowed his then-wife to use the company credit card for purchases like a $3,500 purse, two BMW automobiles, and various expensive trips. *Id*. at ¶ 5. Mr. Scheer voiced his objections to this kind of inappropriate spending, and he believed that Mr. Coester had put an end to it. *Id*. at ¶ 6. However, this was not the case. *Id*. Through the course of his employment, Mr. Scheer learned that Mr. Coester created an account called "BC OWES", that kept track of the money Mr. Coester "borrowed" from the company with the alleged intention of paying it back. *Id*. at ¶ 7. At the time that Mr. Scheer discovered this in January of 2013 the account was over $225,000, and it has now grown to over $400,000. *Id*.

In July of 2013 an external hacking attack on CVMS' bank accounts resulted in a loss of $90,000. In the course of the ensuing investigation, it was discovered that many CVMS appraisers had not been paid in a timely manner. *Id*. at ¶ 8. Mr. Scheer literally spoke to hundreds of appraisers who told him that they had not been paid by CVMS for over a year, despite performing compensable services. *Id*. at ¶ 9. Mr. Scheer also saw what he believed were suspicious profit and loss documents that Mr. Coester had prepared for the accounting department. *Id*. at ¶ 10. Additionally, financial statements

provided to potential clients and financial institutions were falsified to make CVMS' financial situation look better than it was. *Id*. at ¶ 11.

In 2014 the State of North Carolina contacted CVMS to alert it that they were going to suspend its license for not paying appraisers according to state regulations. *Id*. at ¶ 12. This would have greatly financially harmed CVMS. *Id*. at ¶ 13. In response to North Carolina's investigation, Mr. Coester reluctantly agreed to allow an outside firm to audit CVMS' payment practices. *Id*. at ¶ 14. However, before Mr. Coester allowed the outside accounting firm access to CVMS' records, Mr. Coester went into the electronic records and altered the data creating fictitious information which reflected that Coester had been timely in making payments. *Id*. at ¶ 15. Mr. Coester, who knew that Mr. Scheer was aware of what had occurred, told Mr. Scheer that if he ever told anyone about CVMS' fraud then Mr. Coester would "take him down". *Id*. at ¶16. Even after North Carolina's investigation, CVMS continued to pay its appraisers late; the records would simply be altered to reflect timely payments. *Id*. at ¶ 17. As 2014 progressed, Mr. Coester, continued his fraudulent activities, including providing fraudulent profit and loss statements to banks to obtain lines of credit. *Id*. at ¶ 18.

During 2015, Mr. Coester continued violating the law. *Id*. at ¶ 19. For example, the states of Pennsylvania, Illinois, Louisiana, and Virginia would routinely contact CVMS concerning potential disciplinary action against CVMS in connection with the failure to properly pay appraisers. *Id*. In response to this, Mr. Coester would use a number of tactics involving altered documents and fraudulent statements. *Id*. at ¶ 20. At the same time, Mr. Coester was charging over $10,000 per month on the company American Express card, paying for, among other things, trips to Greece, Africa, and Florida with his new girlfriend. *Id*.

As Mr. Coester's fraud continued and deepened, it eventually reached the point where Mr. Scheer had no option but to leave CVMS; since, despite his best efforts, Mr. Scheer could not force Mr. Coester to mend his ways. *Id*. at ¶ 21. Thus, Mr. Scheer resigned his employment with CVMS on April 11, 2016 to take a new position with a company called ValuationLink. *Id*. at ¶ 22.

Prior to leaving CVMS, it is true that Mr. Scheer forwarded a number of documents from his work email account to his personal email account concerning the fraudulent activities in which CVMS had engaged. *Id*. at ¶ 23. These documents were taken so that Mr. Scheer could: (1) substantiate any accusations of fraudulent activity if he ever had to support an assertion that he left CVMS due to ethical/legal concerns and; (2) so that if Mr. Coester ever tried to lay blame for CVMS' illegal activities upon Mr. Scheer, he would be able to show that Mr. Coester was the wrongdoer and he could exonerate himself. *Id*. at ¶ 24.

Mr. Scheer was concerned that Mr. Coester might try to blame him for the fraud at CVMS in retaliation for his leaving CVMS. *Id*. at ¶ 25. This fear was based upon comments made to him by Mr. Coester. *Id*. For example, without limitation, two weeks prior to Mr. Scheer's departure from CVMS, Mr. Coester had said to Mr. Scheer, regarding him seeking alternate employment, ***"You are not going anywhere. If you ever think about leaving me, I will ruin you. No one will ever hire you and you will be a washed-up faggot."*** *Id*.

Of utmost importance, the emails Mr. Scheer forwarded to himself have not been shared with any third parties, apart from counsel. *Id*. at ¶ 27. Crucially, these documents were forwarded *before* May 11, 2016, the effective date of the DTSA. *Id*. Specifically, they were forwarded before Mr. Scheer resigned from CVMS in April 2016. *Id*. And, the

documents have not been used for any business purpose whatsoever—they were acquired *only* so that if Mr. Scheer ever had to defend himself from allegations that he committed fraud or that he left CVMS for any reason other than ethical concerns that he could defend himself and show that the perpetrator of the fraud was Brian Coester. *Id.* at ¶ 28.

On April 14, 2016—after Mr. Scheer left CVMS, but before he began working for VL—counsel for CVMS, Michael Y. Kieval, Esq. of Weiner Brodsky Kider PC, sent a letter to the CEO of VL making the false allegation that Mr. Scheer was constrained by non-disclosure/non-solicitation agreement. *Exhibit 4,* Kieval Correspondence of April 14, 2016. This ultimately caused ValuationLink to not hire Mr. Scheer. *Exhibit 3*, Declaration of Robert Scheer, ¶ at 29.

When Mr. Scheer learned of CVMS' counsel's letter, he demanded that CVMS provide him with the supposed agreement. CVMS then produced a Non-Disclosure/Confidentiality Agreement dated June 4, 2012, which purports to be signed by Mr. Scheer. *See Exhibit 5*. This document is a forgery, as is confirmed by the expert report of Katharine Mainolfi Koppenhaver, Certified Forensic Document Examiner *See Exhibit 6,* Curriculum Vitae and Expert Report), and since Mr. Scheer pointed out that it is a forgery, CVMS has made no effort to rebut this assertion. *Exhibit 3,* Declaration of Robert Scheer, ¶ 30. There are two tell-tale signs that the document is a forgery—first through forensic analysis, Ms. Koppenhaver determined that the signature was physically "cut and pasted" and second, the signature that was "pasted" was one using Mr. Scheer's married name of Scheer, whereas his 2012 signature would have included his non-married name of Chasteen. Accordingly, based upon CVMS and Brian Coester's acts in making false statements to Mr. Scheer's potential employer to dissuade them

from hiring Mr. Scheer, he has brought suit for tortious interference with business relations, among other claims, in Montgomery County Circuit Court.

B. Mr. Sheer Never Used CVMS Trade Secrets

Mr. Scheer did not use CVMS trade secrets. Of particular importance, CVMS only alleges three uses of trade secrets after May 11, 2016—when the DTSA became law. Mr. Scheer is alleged to have done the following limited acts in Plaintiff's Complaint: (1) He supposedly, "on or about June 7, 2016...contacted executive-level employees" of a "Sacramento company [who upon information and belief is Summit Funding]." Compl. ¶ 54.; (2) He purportedly "on or about mid-to-late June contacted David Margulies, the President of AnnieMac Home Mortgaging Services, LLC." Compl. ¶ 77; and (3) He allegedly "during the week of June 12, 2016... contacted... Southwest Funding ...through its employee...Yvette Dobbins." Compl. ¶ 80. CVMS alleges that these acts were undertaken to aid his present employer, Landmark Network, Inc. ("Landmark"). Landmark, like CVMS, is an appraisal management company.

However, these allegations are problematic for CVMS because with regard to Summit Funding ("Summit") and Southwest Funding ("Southwest") these companies were preexisting Landmark customers dating to before Mr. Scheer even resigned from CVMS in April 2016, let alone from when he began working for Landmark in June 2016. *See Exhibit 7,* Declaration of Erik Richard. With regard to Summit, it became a Landmark client in 2012. *Exhibit 7,* Declaration of Erik Richard ¶ 13. While it is true that Landmark was looking to expand the volume of work it did with Summit, the point-person for this was John Dingeman, Landmark's Chief Appraiser, who began working for Landmark in February 2016. *Id*. at ¶ 14. Moreover, the CEO of Landmark, Erik

Richard, began exchanging emails with Summit's Executive Vice President of Administration, Jeff Cook, in April 2016 and had a meeting with him on April 26, 2016. *Id*. at ¶ 15.

Accordingly, given Landmark's four year client history with Summit, and the fact that Mr. Dingeman and CEO Erik Richard had repeated high-level contacts with Summit in 2016, before Mr. Scheer came to Landmark, it is nearly preposterous to say that any contact information for Summit was a trade secret, when such obviously would already have been in the possession of Landmark due to preexisting relationships.

As regards Southwest, they too were a preexisting client of Landmark. Southwest became a client of Landmark in the fall of 2015. *Id.* at ¶ 19. In fact, Yvette Dobbins of Southwest, who is referenced by Plaintiff in its Complaint, was in regular email communication with Landmark CEO Erik Richard beginning in the fall of 2015 and it was Mr. Richard who was the individual who solicited Southwest to become a Landmark client in October 2015, approximately eight months before Mr. Scheer became a Landmark employee. *Id.* at ¶ 19. Obviously, because Mr. Richard was emailing with Ms. Dobbins, her contact information was not a trade secret of CVMS.

Regarding AnnieMac Home Mortgage Servicing, LLC ("AnnieMac"), it is not even on Landmark's target list of potential clients. *Id*. at ¶ 17. And, if Landmark had desired to contact AnnieMac, either CEO Erik Richard or one of his subordinates could easily have obtained contact information for the relevant individuals at AnnieMac, including David Margulies, from the Mortgage Bankers Association Directory or LinkedIn. *Id*. Accordingly, any use of contact information relating to AnnieMac would not constitute use of a trade secret.

In fact, what is true for AnnieMac is true for the breadth of the lending industry: the contact information for the lenders who CoesterVMS, Landmark, and other appraisal management companies do business with or target for business is generally available throughout the industry and to the public. *Id.* at ¶ 22. For instance, the contact information can be found not only in the Mortgage Bankers Association Directory, and on LinkedIn, but also in the publicly available consumer access directory for financial institutions, on the lenders' own websites, and through membership and peer organizations. *Id.* And, as an example of this, a google search for David Marguiles comes up with an AnnieMac webpage displaying Mr. Marguiles' email address and phone number. *See Exhibit 8.*

II. STANDARD OF REVIEW

When ruling on a motion under Rule 12(b)(6), the court must "accept the well-pled allegations of the complaint as true," and "construe the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff." *Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir. 1997). "The mere recital of elements of a cause of action, supported only by conclusory statements, is not sufficient to survive a motion made pursuant to Rule 12(b)(6)." *Walters v. McMahen*, 684 F.3d 435, 439 (4th Cir. 2012) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

To survive a motion to dismiss, a complaint's factual allegations "must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted). "To satisfy this standard, a plaintiff need not 'forecast' evidence sufficient to prove the elements of the

claim. However, the complaint must allege sufficient facts to establish those elements." *Walters,* 684 F.3d at 439 (citation omitted). "Thus, while a plaintiff does not need to demonstrate in a complaint that the right to relief is 'probable,' the complaint must advance the plaintiff's claim 'across the line from conceivable to plausible.' " *Id.* (quoting *Twombly,* 550 U.S. at 570).

A motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction challenges a court's authority to hear the matter brought by a complaint. *See Davis v. Thompson,* 367 F.Supp.2d 792, 799 (D.Md.2005). This challenge under Rule 12(b)(1) may proceed either as a facial challenge, asserting that the allegations in the complaint are insufficient to establish subject matter jurisdiction, or a factual challenge, asserting "that the jurisdictional allegations of the complaint [are] not true."*Kerns v. United States,* 585 F.3d 187, 192 (4th Cir.2009) (citation omitted). With respect to a facial challenge, a court will grant a motion to dismiss for lack of subject matter jurisdiction "where a claim fails to allege facts upon which the court may base jurisdiction." *Davis,* 367 F.Supp.2d at 799. When addressing such a facial challenge, "the plaintiff, in effect, is afforded the same procedural protection as he would receive under a Rule 12(b)(6) consideration." *Kerns v. United States,* 585 F.3d 187, 192 (4th Cir.2009) (quoting *Adams v. Bain,*697 F.2d 1213, 1219 (4th Cir.1982)). Where the challenge is factual, the district court may look beyond the pleadings and "decide disputed issues of fact with respect to subject matter jurisdiction." *Kerns,* 585 F.3d at 192; *see also Khoury v. Meserve,* 268 F.Supp.2d 600, 606 (D.Md.2003) ("[T]he court may look beyond the pleadings and 'the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists.' "). A plaintiff

carries the burden of establishing subject matter jurisdiction. *Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir.1999).

III. ARGUMENT

A. DTSA Took Effect May 11, 2016—After Any Alleged Misappropriation Occurred

The DTSA became law on May 11, 2016. Publ. L. 114-53, 130 Stat. 376. Prior to May 11, 2016 there was no federal cause of action concerning trade secrets. Nothing in the text of the DTSA states that it is retroactive. Absent mention of retroactivity, there is a presumption against retroactivity, and there is no controlling authority rebutting that presumption. *See Hughes Aircraft Co. v. United States ex rel. Schumer,* 590 U.S. 939, 946 (1997). Thus, because the DTSA is not retroactive, it does not apply to conduct alleged to have occurred before May 11, 2016. Accordingly, all alleged misappropriation regarding the taking of information is outside of the applicable timeframe, because it is alleged to have occurred before Mr. Scheer resigned on April 11, 2016.

B. The Allegations of Use After May 11, 2016 Do Not Involve Trade Secrets

As for alleged use of misappropriated information which was misappropriated before the enactment of the DTSA, this could form the basis of a claim under the DTSA. However, there are only three allegations of alleged use after May 11, 2016, and they involve the use of information which was not a trade secret. Therefore, they cannot form the predicate for a DTSA lawsuit.

Specifically, the three allegations of use of contact information fail because the contact information was not a trade secret. The issue of when a customer list (i.e. customer contact information) is a trade secret was addressed at length by the Maryland

Court of Special Appeals in *Dworkin v. Blumenthal*, 77 Md.App. 774 (1989). In *Dworkin*, the Court stated that

> Although we are aware that a customer list may constitute a trade secret, there are several factors which must be weighed in making that determination: Those factors are: (1) the extent to which the information is known outside of the employer's business; (2) the extent to which it is known by employees and others involved in the employer's business; (3) the extent of measures taken by the employer to guard the secrecy of the information; (4) the value of the information to the employer and to his competitors; (5) the amount of effort or money expended by the employer in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Id. at 781-82 (internal citations omitted). This Court has adopted and applied the *Dworkin* factors in adjudicating trade secret cases involving customer lists. *See Home Paramount Pest Control Companies, Inc. v. FMC Corp./Agr. Products Group*, 107 F. Supp.2d 684, 693 (D. Md. 2000) (holding that a customer list was not a trade secret because, among other reasons, the names and addresses of the customers were available through public sources such as phone directories and trade associations). While *Dworkin* is a common law case, which was superseded by the Maryland Uniform Trade Secrets Act ("MUTSA"), the courts have continued to look to the *Dworkin* factors, as is seen in *Home Paramount Pest Control*. And, while it is true that *Home Paramount Pest Control* deals with the Maryland Uniform Trade Secrets Act, and not specifically with DTSA, the factors are persuasive guides when examining if CVMS' alleged customer information could be a trade secret.

Under DTSA, a trade secret is information for which:

> (A) the owner has taken reasonable measures to keep such information secret; and
>
> (B) the information derives independent economic value, actual or potential from not being generally known to, and not being readily ascertainable through proper means by another person who can obtain economic value from the disclosure or use of the information.

28 U.S.C. § 1893(3). Thus, looking at the DTSA statutory language, and the *Dworkin* factors as a guide, it is apparent that any customer information Mr. Scheer is alleged to have taken and used was not a trade secret. The fact that a simple google search returns the contact information for David Marguilies (phone number and email address) of AnnieMac demonstrates that this information is no more a trade secret than is the address of the White House at 1600 Pennsylvania Avenue. Because this information is generally available to the public and known throughout the mortgage lending industry, it has no "independent economic value" and it obviously, via means such as Google, is "readily ascertainable through proper means by another person."

Looking at the *Dworkin* factors, the following augurs strongly against treating the alleged contact information as a trade secret: (1) the information is known broadly throughout the lending industry, including to other appraisal management companies; (2) the information, being so readily accessible, is known or can be known by any employee of any appraisal management company; (3) while some security measures may have been in place regarding the contact information, it appears as if these were nothing more than the routine of logging into one's network, which is commonplace (4) the information is essentially valueless to competitors because it is already so well known; (5) it takes virtually no effort, other than entering search terms in google, to obtain the contact information; and (6) the information is easily acquired, again all one needs is an internet connection and a mobile device.

Accordingly, when looking at the language of the DTSA or the common law jurisprudence concerning trade secrets, which has been applied to the Maryland Uniform Trade Secrets Act, it is self-evident that the contact information Mr. Scheer is accused of using would not be a trade secret. Therefore, because the three post-May 11,

2016 incidents did not involve the use of a trade secret, there is no basis for bringing any DTSA claim against Mr. Scheer, and no basis for the original jurisdiction of this Court over this matter.

C. The Court Should Decline to Exercise Supplemental Jurisdiction

For reasons of judicial economy, namely that nearly the exact same facts are being litigated in the Montgomery County Circuit Court in a preexisting lawsuit filed May 31, 2016, the Court should decline to exercise supplemental jurisdiction over any remaining state claims if it dismisses the DTSA claim. A district court has discretion to dismiss a case where it "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. 1367(c)(3). The supplemental jurisdiction doctrine is one of "flexibility," and therefore, a court's exercise of discretion under § 1367(c)(3) is afforded "wide latitude." *Shananghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995)(internal quotation marks omitted). The four factors a court considers in deciding whether to exercise supplemental jurisdiction are "convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, and considerations of judicial economy." *Id*. When the balance of these factors indicates that a case properly belongs in state court, as when the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal court should decline the exercise of jurisdiction by dismissing the case without prejudice." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988).

Looking to the Fourth Circuit's *Shananghan* four factor test, in the instant litigation: (1) it is inconvenient for the parties to litigate related state claims simultaneously in two forums, and it is unfair to Mr. Scheer, as the party with fewer

resources, to force him to expend legal fees in two lawsuits, when all claims can be adjudicated in one proceeding. Moreover, both parties are Maryland residents and would suffer no prejudice from being within the Maryland court system; (2) if the DTSA claim is dismissed, as Mr. Scheer urges that it should be, then there would be no federal policy issue involved in the lawsuit; (3) if both the Montgomery County Circuit Court and this Court adjudicate intertwined matters relating to the same facts, potential issues of comity may arise; and (4) judicial economy dictates that it is senseless to have overlapping lawsuits between the same parties pertaining to the same facts in two forums at the same time. Accordingly, Mr. Scheer respectfully asks the Court to use its discretion to decline to exercise its supplemental jurisdiction over remaining state law claims.

IV. CONCLUSION

Plaintiff brought only one federal claim in this lawsuit, and it was for misappropriation under the DTSA. However, any alleged taking of information occurred before the DTSA was signed into law, and therefore the DTSA is inapplicable. Moreover, the only three alleged instances of use of misappropriated information during the period after the DTSA took effect do not have to do with trade secrets, but rather information which is generally available to the public. Accordingly, the DTSA is inapt. Thus, the DTSA claim, the only federal claim, should be dismissed because no facts are pled which could sustain DTSA liability within the period when the DTSA was law. As for the remaining state law claims, for reasons of judicial economy and fairness, and in adherence to the Supreme Court's *Carnegie-Mellon* decision, the Court should decline to exercise supplemental jurisdiction over those state law claims.

Respectfully submitted,

_____/s/_____
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