

NORTH CAROLINA  
NEW HANOVER COUNTY

FILED  
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NEW HANOVER COUNTY CLERK  
GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
20-CVS-1232

DAVID CHRISTIAN LUDWIG  
and ARUZA, LLC,

Plaintiffs,

v.

DAMON LILLY,

Defendant.

**NOTICE OF DESIGNATION AS A  
MANDATORY BUSINESS CASE**

Pursuant to N.C. Gen. Stat. § 7A-45.4, and within 30 days of service of the complaint, Defendant Damon Lilly designates this action as a mandatory complex business case.

In good faith, and based on reasonably available information, Defendant, through counsel, certifies that this action meets the criteria for designation as a Mandatory Complex Business Case as follows:

  X   Designation as a Mandatory Complex Business Case in accordance with N.C. Gen. Stat. § 7A-45.4(a), as it involves a material issue related to:

- \_\_\_\_\_ (1) Disputes involving the law governing corporations, except charitable and religious organizations qualified under N.C. Gen. Stat. § 55A-1-40(4) on the grounds of religious purpose, partnerships, and limited liability companies, including disputes

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BY: *Jeanne M. Heckart*  
Deputy Clerk of Superior Court

arising under Chapters 55, 55A, 55B, 57D, and 59 of the General Statutes.

\_\_\_\_\_ (2) Disputes involving securities, including disputes arising under Chapter 78A of the General Statutes.

\_\_\_\_\_ (3) Disputes involving antitrust law, including disputes arising under Chapter 75 of the General Statutes that do not arise solely under N.C. Gen. Stat. § 75-1.1 or Article 2 of Chapter 75 of the General Statutes.

\_\_\_\_\_ (4) Disputes involving trademark law, including disputes arising under Chapter 80 of the General Statutes.

\_\_\_\_\_ (5) Disputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies.

  X   (8) Disputes involving trade secrets, including disputes arising under Article 24 of Chapter 66 of the General Statutes.

\_\_\_\_\_ (9) Contract disputes in which all of the following conditions are met:

(a) At least one Plaintiff and at least one Defendant is a corporation, partnership, or limited liability company, including any entity authorized to transact business in

North Carolina under Chapter 55, 55A, 55B, 57D, or 59 of the General Statutes.

- (b) The complaint asserts a claim for breach of contract or seeks a declaration of rights, status, or other legal relations under a contract.
- (c) The amount in controversy computed in accordance with N.C. Gen. Stat. § 7A-243 is at least one million dollars (\$1,000,000).
- (d) All parties consent to the designation.

  X   Designation as a Mandatory Complex Business Case pursuant to N.C. Gen. Stat. § 7A-45.4(b), in that it is an action:

\_\_\_\_\_ (1) Involving a material issue related to tax law that has been the subject of a contested tax case for which judicial review is requested under N.C.G.S. § 105-241.16, or a civil action under N.C.G.S. § 105-241.17 containing a constitutional challenge to a tax statute.

  X   (2) Described in subsection (1), (2), (3), (4), (5), or (8) of N.C. Gen. Stat. § 7A-45.4(a) in which the amount in controversy computed in accordance with N.C. Gen. Stat. § 7A-243 is at least five million dollars (\$5,000,000).

As described below, this case “involves a material issue related to . . . disputes involving trade secrets.” N.C. Gen. Stat. § 7A-45.4(a)(8). In addition, Plaintiffs allege

more than \$10 million in damages. Compl. ¶ 14. Therefore, designation of this action as a mandatory complex business case is required.

All pleadings filed to date in this action are attached. The complaint was filed on March 30, 2020 and was served on Defendant on April 7, 2020. Therefore, this notice is timely.

### **STATEMENT OF FACTS SUPPORTING DESIGNATION**

In February 2017, Plaintiff Christian Ludwig became a sales representative for Aptive Environmental, LLC, a leading pest-control company that delivers safe and environmentally friendly pest-control solutions. Def.'s Answer and Counterclaim at 8, ¶ 7; *see also* Compl. ¶ 4. As a condition of his employment, Mr. Ludwig executed an agreement that included non-compete provisions and covenants not to disclose Aptive's trade secrets. Def.'s Answer and Counterclaim at 8, ¶ 8

Under the non-compete agreement, Mr. Ludwig was required to hold "Confidential Information in the strictest of confidence." *Id.* ¶ 9. Furthermore, under the agreement, Mr. Ludwig could not "divulge, disclose, furnish transmit, transfer, convey, commit, sell, communicate or make accessible or available, any Confidential Information to any person or entity." *Id.* In addition, the agreement required Mr. Ludwig to surrender all confidential information if his employment with Aptive terminated. *Id.* ¶ 9.

In February 2018, Mr. Ludwig left Aptive to start his own pest-control company, Aruza, LLC. *Id.* ¶ 10; Compl. ¶ 6. In the course of starting his own pest-control company, Mr. Ludwig breached his agreement with Aptive in multiple ways, including by using Aptive's proprietary and confidential business information—for

example, Aptive’s pay structure, compensation metrics, and diagrams—to develop and market his own company. *Id.* ¶ 11.

In May of 2018, Aptive filed a lawsuit against Mr. Ludwig in Utah state court. *Id.* ¶ 12. The Utah lawsuit alleged that Mr. Ludwig had breached his employment agreement with Aptive and violated Utah’s Uniform Trade Secrets Act. *Id.* Ultimately, the Utah lawsuit culminated in a comprehensive settlement agreement (attached to Defendant’s Answer and Counterclaim as Exhibit A) with an effective date of October 25, 2019. *Id.*

Under the terms of the settlement agreement, Aptive dismissed the Utah lawsuit, and Mr. Ludwig agreed to pay Aptive \$135,000. *Id.* ¶ 13. In addition, the settlement agreement contained a broad, comprehensive release. *Id.* That release provides:

Mutual Release of Claims. The Parties hereby release and forever discharge each other and their parents, affiliates, predecessors, successors, members, officers, directors, agents, assigns, servants, employees and attorneys of and from any and all claims, actions, causes of actions and suits of every kind and nature, under any legal theory that they ever had, whether known or unknown, arising or accruing in whole or in part prior to the Effective Date of this Agreement and in any way related to, arising from, out of or based upon the transactions or claims asserted or which could have been asserted in the Lawsuit. . . .

*See* Def.’s Answer, Ex. A at 2–3.

Five months after this release was executed, Plaintiffs filed this lawsuit against Mr. Lilly, one of Aptive’s sales representatives.

The complaint alleges a bevy of claims against Mr. Lilly based on alleged conduct that occurred in the course of business competition between Aptive and Aruza. The complaint alleges that the Plaintiffs held “proprietary and confidential

business information, including client and sales representative lists and sales leaderboards, belonging to Aruza,” and that Mr. Lilly “induced Plaintiffs’ personnel to divulge” those trade secrets. Compl. ¶ 12. The complaint also alleges that Mr. Lilly attempted to persuade Aruza’s sales representatives to join Aptive in ways that caused Plaintiff Ludwig to suffer “severe emotional distress”—for example, by “falsely claim[ing] knowledge of an ongoing lawsuit by Aptive against Ludwig” (the lawsuit described above) when that lawsuit “had been resolved and any potential claims released” some weeks earlier. Compl. ¶¶ 9(b)-(c), 25–26.

The complaint asserts causes of action for defamation (Counts 1 and 2), emotional-distress claims (Counts 3 and 4), violations of section 75-1.1 (Count 5), tortious-interference claims (Counts 6 and 7), and a freestanding claim for punitive damages (Count 8). The complaint did not plead a stand-alone cause of action for violation of the North Carolina Trade Secrets Protection Act. As described more fully below, however, Plaintiffs rely on Mr. Lilly’s alleged trade-secrets misappropriation as a predicate for their section 75-1.1 claim and, to at least some degree, as a predicate for their tortious-interference claims.

### **DESIGNATION ANALYSIS**

Under N.C. Gen. Stat. § 7A-45.4(a)(8), Business Court designation is proper for cases that “involve a material issue related to . . . disputes involving trade secrets.” N.C. Gen. Stat. § 7A-45.4(a)(8). Designation under this section does not require a claim or counterclaim under the North Carolina Trade Secrets Protection Act. *Relx, Inc. v. Morrow*, 2020 NCBC Order 13 ¶ 7; *Relx, Inc. v. Morrow*, 2020 NCBC Order 8. Rather, the “underlying factual allegations” of the parties—as opposed to the

individual causes of action themselves—dictate “[w]hether a case involves the requisite dispute falling within the statutory requirements.”<sup>1</sup> *Relx*, 2020 NCBC Order 8 ¶ 7 (quoting *Cornerstone Health Care, P.A. v. Moore*, 2015 NCBC LEXIS 65, at \*7 (N.C. Super. Ct. June 22, 2015)).

Thus, designation is proper when “the allegations of [a] plaintiff’s complaint put the existence, ownership, or misuse of alleged trade secrets at issue.” *Id.* ¶ 8 (quoting *UNOX, Inc. v. Conway*, 2019 NCBC LEXIS 41, at \*7 (N.C. Super. Ct. June 28, 2019)); *see also Relx, Inc. v. Morrow*, 2020 NCBC Order 13 (same); *see also, e.g., Union Corrugating Co. v. Viechnicki*, No. 14 CVS 6240, 2014 WL 12817656, at \*2 (N.C. Super Ct. Sept. 9, 2014).

Here, the “complaint puts the existence, ownership, or misuse of alleged trade secrets at issue” in two significant ways.

First, the complaint alleges “the existence [and] ownership” of alleged trade secrets. *Relx*, 2020 NCBC Order 8 ¶ 8 (quoting *UNOX*, 2019 NCBC LEXIS 41, at \*7). Plaintiffs allege the existence of “proprietary and confidential business information, including client and sales representative lists and sales leaderboards belonging to Aruza.” Compl. ¶ 12. Those allegations, in combination with the misappropriation allegations described more fully below, create a material issue of whether the information allegedly “belonging to Aruza” is, in fact, a trade secret—for example,

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<sup>1</sup> The reason for this well-established rule is that the designation statute, N.C. Gen. Stat. § 7A-45.4(a)(8), uses the words “including disputes arising under the [Trade Secrets Protection Act],” thus indicating that the language of the statute “is meant to be illustrative not exhaustive.” *See Gurkin v. Sofield*, 2019 NCBC Order 16 (quoting *Jeffries v. Cty. of Harnett*, 817 S.E.2d 36, 49 (N.C. Ct. App. 2018)).

whether it has “independent commercial value from not being generally known.” *Ge Betz, Inc. v. Conrad*, 231 N.C. App. 214, 234, 752 S.E.2d 634, 649 (2013) (concluding that certain sales data constituted a trade secret); *see also, e.g., S. Fastening Sys. v. Grabber Const. Prods., Inc.*, 2015 NCBC LEXIS 42, \*11, 2015 WL 2031007 (N.C. Super. Ct. 2015) (concluding that “confidential customer information” and “sales reports” were trade secrets).

Second, the complaint alleges “misuse of [the] alleged trade secrets” by Mr. Lilly. *See Relx*, 2020 NCBC Order 8 ¶ 8 (quoting *UNOX*, 2019 NCBC LEXIS 41, at \*7). The complaint alleges that Mr. Lilly “induced Plaintiffs’ personnel to divulge” these alleged trade secrets. Compl. ¶ 12. The complaint then relies on this alleged misappropriation as the predicate for several claims—most notably, Plaintiffs’ section 75-1.1 claim. Indeed, the complaint explicitly alleges that Mr. Lilly violated section 75-1.1 by “seeking out and profiting from unlawfully acquired private business information”—in other words, that his misappropriation of the alleged trade secrets above is, by itself, a section 75-1.1 violation. Compl. ¶ 34; *see also id.* ¶ 12.

In addition, Plaintiffs appear to rely on this alleged trade-secret misappropriation as a predicate for their tortious-interference claims. Compl. ¶¶ 13, 40, 45. They allege that, by acquiring Plaintiffs’ trade secrets, Mr. Lilly was able to coerce “over one hundred total representatives” to leave Aruza and join Aptive—conduct that Plaintiffs allege in support of their tortious interference claims. Compl. ¶¶ 13, 40, 45. They further allege that “but for” Mr. Lilly’s misuse of trade secrets



(among the other conduct alleged), employees would not have left Aruza for Aptive. Compl. ¶¶ 40, 45.

Ultimately, if the alleged “proprietary and confidential information, including client and sales representative lists and sales leaderboards” is not a protected trade secret under North Carolina law or, in the alternative, if Mr. Lilly did not misappropriate these alleged trade secrets, it will have a major substantive effect on Plaintiffs’ case. If Mr. Lilly prevails on either of those two issues, he will be absolved of conduct that Plaintiffs assert is a violation of 75-1.1 (Count 5) and constitutes tortious interference (Counts 6 and 7). In other words, for a court to resolve Plaintiffs’ claims, it must resolve “material issue[s] related to . . . disputes involving trade secrets.” N.C. Gen. Stat. § 7A-45.4(a)(8). Therefore, designation is proper.

Furthermore, by alleging damages “reasonably estimated by Plaintiffs to exceed Ten Million Dollars,” designation was mandatory. *See* N.C. Gen. Stat. § 7A-45.4(b)(2) (requiring mandatory designation for a case arising under 7A-45.4(a)(8) that exceeds \$5,000,000).

For these reasons, Defendant respectfully designates this action as a mandatory complex business case under N.C. Gen. Stat. § 7A-45.4.

Respectfully submitted the 4th day of May, 2020.

**POYNER SPRUILL LLP**

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By: s/ Andrew H. Erteschik

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, addressed to the following person at the following address which is the last address known to me:

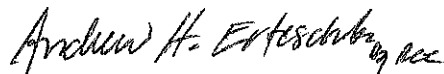
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And by e-mail to:

Chief Justice Cheri L. Beasley  
North Carolina Supreme Court  
c/o David F. Hoke  
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The Honorable Louis A. Bledsoe, III  
Chief Special Superior Court Judge  
for Complex Business Cases  
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This the 4th day of May, 2020.



s/ Andrew H. Erteschik  
Andrew H. Erteschik