

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CSL BEHRING LLC,
Plaintiff,

v.

JOSEPH CHIAO, M.D. and

PHARMING HEALTHCARE INC.,

Defendants.

CIVIL ACTION NO. 2:19-cv-04538-JS

JURY TRIAL DEMANDED

VERIFIED AMENDED COMPLAINT

Plaintiff, CSL Behring LLC, by and through its attorneys, Stradley, Ronon, Stevens & Young, LLP, file this Verified Amended Complaint against Defendants, Joseph Chiao, M.D. (“Chiao”) and Pharming Healthcare Incorporated (“Pharming”), seeking emergency injunctive and other appropriate relief.

INTRODUCTION

1. CSL Behring LLC (“CSL Behring”) brings this action for injunctive relief, as well as compensatory and punitive damages, against its former employee, Chiao, as a result of his systematic, wrongful, and malicious conduct, including, but not limited to, breach of his confidentiality agreement, misappropriation of trade secrets, violation of the Computer Fraud and Abuse Act, and tortious interference with actual and prospective business relations. As a result of Chiao’s actions, CSL Behring has suffered or will suffer significant damages including, but not limited to, lost profits due to the highly sensitive nature of its internal company data and trade secrets, as well as irreparable harm to its industry relationships and goodwill.

2. This action is also against Pharming, CSL Behring's direct competitor, to enjoin it from employing Chiao in order to unlawfully procure CSL Behring's confidential and proprietary information and trade secrets.

3. As set forth in detail below, Chiao has embarked upon an unlawful and systematic scheme to unfairly compete against CSL Behring and blatantly violate his confidentiality agreement. Chiao announced his resignation on September 23, 2019. In the weeks and days preceding his resignation, Chiao surreptitiously removed CSL Behring's confidential and proprietary information and trade secrets from its computer servers. Specifically, Chiao emailed to his personal email address and downloaded to a thumb drive *thousands of CSL Behring files – indeed, over 21,000 files coming from over 2,500 network folders* – many of which contained highly sensitive, proprietary company information and trade secrets including, but not limited to, information on therapy outcomes, product development, comparisons of different therapies, high-level business strategies, marketing plans, medical affairs strategies, contractual relationships, internal company data, and employee training materials.

4. Chiao's actions were anything but benign or well-intentioned. Beginning in or around April 2019, Chiao began discussions with Pharming, one of CSL Behring's direct competitors. CSL Behring is a leader in the Hereditary Angioedema ("HAE") market (described in detail below), and Pharming is a smaller, younger company.

5. By mid-September 2019, Pharming had made an offer to Chiao to join it in a position designed to capitalize on the work that Chiao has been doing on behalf of CSL Behring. Chiao accepted Pharming's offer and was intending to begin working at Pharming on September 30, 2019.

6. Upon information and belief, Pharming has a clear competitive incentive to poach CSL Behring employees and obtain CSL Behring's confidential, proprietary information and trade secrets.

7. Upon information and belief, Pharming has obtained and used, and/or is in a position to obtain and use CSL Behring's confidential, proprietary information and trade secrets.

8. CSL Behring requested from Chiao and Pharming that, while CSL Behring investigates Chiao's misconduct, Chiao not begin working for Pharming. CSL Behring also reminded both Chiao and Pharming of Chiao's obligations under his confidentiality agreement. Chiao and Pharming initially agreed. However, on Friday, October 4, 2019, counsel for both Pharming and Chiao confirmed that, notwithstanding Chiao's misappropriation of thousands of CSL Behring files in the days and weeks prior to his resignation, and in complete disregard of CSL Behring's request that Pharming not allow Chiao to begin work until CSL Behring has at least completed a forensic analysis of the thumb drive and other devices in Chiao's possession, Pharming intends for Chiao to begin working on Monday, October 7, 2019. Chiao's attorney confirmed this intention in a telephone message to CSL Behring's undersigned counsel on October 5, 2019.

9. Upon information and belief, Chiao's unlawful conduct in secreting confidential and proprietary information and files from CSL Behring was done directly for his own and Pharming's benefit, and to the detriment of CSL Behring. In order to prevent Chiao and/or Pharming from unlawfully utilizing CSL Behring's confidential and proprietary materials and trade secrets, CSL Behring files this action seeking injunctive relief, as well as damages, arising out of Chiao's and Pharming's conduct.

PARTIES

10. Plaintiff, CSL Behring LLC, is a Delaware corporation with its principal place of business in the State of Pennsylvania at 1020 1st Avenue, King of Prussia, Pennsylvania 19406.

11. Defendant, Joseph Chiao, M.D., is an individual who resides at 26 Ridgeview Way, Allentown, New Jersey 08501.

12. Defendant, Pharming Healthcare Inc., is a Delaware corporation with its principal place of business in the State of New Jersey at 685 US Highway 202/206, Bridgewater, New Jersey 08807.

Jurisdiction and Venue

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between CSL Behring and Chiao and the value of the amount in controversy exceeds \$75,000, exclusive of interest and costs.

14. This Court also has subject matter jurisdiction over this action pursuant to the provisions of 28 U.S.C. § 1331, in that this action arises, in part, under the “Defend Trade Secrets Act of 2016,” 18 U.S. Code § 1836.

15. This Court also has supplemental jurisdiction over CSL Behring’s state law claims pursuant to 28 U.S.C. § 1367, in that these claims are transactionally related to its claim under the Defend Trade Secrets Act of 2016.

16. Venue is proper in this district pursuant to 28 U.S.C. §1391(a), in that a substantial part of the events or omissions which give rise to CSL Behring’s claims occurred within this judicial district.

FACTUAL BACKGROUND

CSL Behring's Business and Hereditary Angioedema ("HAE") Therapies

17. CSL Behring is a global biotherapeutics leader, offering the broadest range of quality plasma-derived and recombinant therapies in the industry.

18. CSL Behring uses the latest technologies and develops and delivers innovative therapies to treat people in more than 60 countries with serious and life-threatening medical conditions. CSL Behring's therapeutic areas focus on immunology and neurology, hematology and thrombosis, respiratory, cardiovascular and metabolic, and transplant.

19. With over 25,000 employees worldwide, CSL Behring has more than 1,700 dedicated scientists who focus on solving patients' unmet needs.

20. Among other therapies, CSL Behring has developed and markets two primary therapies to treat Hereditary Angioedema ("HAE"), a rare disease that can cause severe and even life-threatening attacks of swelling and pain in specific parts of the body including the stomach, hands, feet, arms, legs, genitals, throat, and face. Depending on the severity of the disease, some people will have many attacks each month, while others will go months without an attack.

21. CSL Behring's first HAE therapy, BERINERT®, is an intravenous C1-INH therapy used for on-demand treatment of HAE symptoms. Patients administer BERINERT at the onset of an attack. The second therapy is HAEGARDA®, which is a subcutaneous C1-INH therapy used prophylactically to prevent HAE attacks from occurring.

22. Because the biotherapeutics industry is competitive, CSL Behring and its employees understand that the confidentiality of the company's proprietary information and trade secrets is paramount.

23. If CSL Behring's confidential and proprietary information and trade secrets were to be acquired by a competitor, CSL Behring would be put at an unfair competitive disadvantage and would face severe damage to its business operations. For example, proprietary information about CSL Behring's business and marketing strategies could easily be exploited by a competitor to gain an advantage in the industry.

24. CSL Behring diligently protects and safeguards its business interests, relationships, and confidences. Among other things, CSL Behring requires employees to safeguard all such interests as a condition of their employment by signing a confidentiality agreement.

Chiao's Employment and Confidentiality Agreement with CSL Behring

25. In or around July 2016, CSL Behring hired Chiao as a Medical Therapeutic Area Lead-Specialty in its North America Medical Affairs department.

26. Chiao came to CSL Behring with a wealth of pharmaceutical experience, including having worked at Bristol-Myers Squibb, ViroPharma, Shire Pharmaceuticals, and BTG International.

27. On or about July 18, 2016, at the beginning of his employment, Chiao signed a written confidentiality agreement (the "Agreement"). The Agreement is attached herein as Exhibit "A."

28. CSL Behring's Agreement included a provision stating, in part, that, with a few exceptions, Chiao:

shall, during the period of his/her employment, make prompt and full disclosure of the following, which shall become CSL Behring's exclusive property: All discoveries, inventions, improvements and ideas relating to any process, machine, manufacture, composition of matter, plant or design, whether patentable or not, which Employee makes or conceives, individually or jointly, either during working

hours or with CSL Behring's materials and/or facilities, which relate to CSL Behring's business or in which CSL Behring is interested.

(See Agreement § 2.)

29. The Agreement also states, in part:

Unless authorized in writing by CSL BEHRING, Employee agrees that during the time of his/her employment and any time thereafter, **he/she is prohibited from (a) disclosing or publishing confidential information and (b) using confidential information for him/herself or others**, except as required in work assigned him/her by CSL Behring. The term "confidential information" means the whole or any portion or phase of any compilation of scientific, technical, or business information, design, process, procedure, formula, or improvement which is of value and has been specifically identified by CSL Behring as of a confidential nature and which has not been published or otherwise become a matter of general public knowledge.

(Id. § 8.) (Emphasis added.)

30. Additionally, the Agreement states:

Employee is authorized to and will access CSL BEHRING's electronic communications system and/or download CSL BEHRING information for the benefit of and on behalf of CSL BEHRING only and Employee is not authorized to access or use CSL Behring's electronic communication systems for Employee's personal gain. Further, **Employee is expressly prohibited from accessing and sending messages on CSL Behring's electronic communication systems, including CSL Behring's e-mail system or any private e-mail account, for Employee's own gain or for the benefit of other companies or persons**. In addition, Employee is **prohibited from downloading files to hard drives external to CSL Behring's electronic computer systems and/or to portable USB or other memory devices**.

* * * *

Employee is prohibited from storing CSL BEHRING owned information on Employee's own personal communication systems including but not limited to computers, portable computers, personal digital assistants, USB memory devices, palm or other computers or electronic systems for Employee's personal gain or when the information is no longer needed for any current work assignment with CSL BEHRING.

(Id. § 10.) (Emphasis Added.)

31. At the time he signed the Agreement, Chiao gave every indication that he understood and agreed to be bound by the above provisions.

32. Throughout his tenure with CSL Behring, Chiao played a central role in the development, and medical affairs strategy associated with its HAE therapies. Indeed, Chiao was widely recognized as a leading expert in the HAE scientific community and as a “face” of CSL Behring’s HAE therapies and innovations to the medical community.

33. Indeed, in recognition of his contributions to CSL Behring’s HAE initiatives, Chiao was promoted to “Senior Director Medical, HAE” on or around July 1, 2019.

34. While employed at CSL Behring, Chiao acquired significant knowledge of, and had extensive and detailed exposure to, CSL Behring’s trade secrets and other confidential information relating to its HAE products and underlying technical and medical processes and know-how, as well as its pricing, sales, marketing, medical affairs, and product development strategies. In addition, Chiao acquired significant knowledge of, and had extensive and detailed exposure to, CSL Behring’s trade secrets and other confidential information relating to other CSL Behring therapeutic areas, including Immunodeficiency.

35. Plainly, CSL Behring viewed Chiao as an important member of its HAE medical team, and it expected that he would honor his contractual and fiduciary duties to his employer. Unfortunately, Chiao appears to have had other designs, both for himself and the confidential material to which he had access as a CSL Behring employee.

Chiao Seeks Employment with a Direct Competitor in HAE Therapies

36. Unbeknownst to CSL Behring, in or around April 2019 Chiao began exploring employment with Pharming Health Care, Inc. (“Pharming”).

37. Pharming is a specialty pharmaceutical company that develops therapies for rare diseases, and it competes directly with CSL Behring in HAE therapies, the area in which Chiao has worked on behalf of CSL Behring since 2016.

38. Pharming's self-proclaimed "lead product," RUCONEST®, is a "recombinant human C1 esterase inhibitor approved for the treatment of acute hereditary angioedema ("HAE") attacks in patients in Europe, the United States, Israel, and South Korea. The product is available on a named-patient basis in other territories where it has not yet obtained marketing authorization."¹

39. RUCONEST® competes directly with CSL Behring's therapy BERINERT®.

40. As it states on its website, Pharming's "Strategic Focus" is to, among other things, commercialize RUCONEST® as its lead product, obtain the best value for RUCONEST® and patients by pursuing additional regulatory approvals and additional indications for the product, develop more dosing forms, and develop RUCONEST® for additional indications. Upon information and belief, Pharming is evaluating and/or developing a subcutaneous form of injection for prophylactic therapy, which would compete directly with CSL Behring's HAEGARDA® offering.

41. Unlike CSL Behring, Pharming is not a leader in the HAE market. However, Pharming has put substantial resources in the development of RUCONEST® to directly compete with CSL Behring's products and to obtain market share.

42. Upon information and belief, Pharming's intense desire to increase its share of the HAE therapeutic market at CSL Behring's expense led to Pharming's efforts to

¹ See Pharming's website at <https://www.pharming.com/about-us>.

recruit Chiao and improperly capitalize on and exploit his extensive knowledge of both the HAE market and CSL Behring's confidential and proprietary information and trade secrets.

43. Pharming's Vice President of Clinical Research and Medical Affairs is Anurag Relan ("Relan"). Between April and September 2019, Relan and Chiao engaged in extensive discussions about Chiao leaving CSL Behring to join Pharming.

44. As early as May 2019, Relan coordinated a meeting between Chiao and Pharming's General Manager. Later that month, Relan and Chiao arranged to meet while they were both attending a conference in Budapest. Following that meeting –which took place in a hotel adjacent to the conference venue, presumably to avoid being seen together – Relan and Chiao exchanged the following text message:

Relan: Joe – great to see you last week. I think you and I are very much aligned in our thinking. I would like to move this forward and formalize the process if okay with you also. But first I need to discuss with my boss, who is out till mid-June. So, we'll be in touch soon afterwards.

Chiao: Anurag: I'm hopeful that you will be able to convince your boss regarding how we would align together to effect a large difference to the bottom line from Pharming, in both HAE and non-HAE markets.

Relan: Joe – I had a chat with our COO, and he is supportive. I'll reach out to Steve so we can begin the process formally. I'm [out] next week, but feel free to reach out with anything. Thanks and excited about the possibilities!

45. The discussions between Chiao and Pharming progressed throughout the summer. And as their relationship developed, Chiao appeared very willing to share information – including confidential information – with Relan. For example, in early August 2019, Chiao offered to provide Relan with sections of a "draft copy" manuscript of a submission prepared by the Hereditary Angioedema Association ("HAEA") manuscript, despite being told by HAEA

members that he was not permitted to share the manuscript with anyone. As Chiao states in a text dated August 2, 2019, “I’m not even sharing the manuscript internally at CSL.” Nonetheless, Chiao was perfectly happy to provide Relan with portions of the manuscript in which he expressed a particular interest.²

46. Relan was also not shy about requesting information from Chiao. Less than two weeks later, while Chiao was still a CSL Behring employee, Relan asked Chiao to provide him with information on primary immunodeficiencies (“PID”) and common variable immune deficiency disorders (“CVID”). Notably, Relan acknowledged that his inquiry was “Maybe a premature question,” but Chiao happily provided the information. In response, Relan wrote: “Excellent – you’ll soon see why I am asking . . .”

47. In early September, as he and Relan exchanged texts regarding Chiao’s upcoming interviews at Pharming, Chiao wrote: “I want to assure everyone [sic] the qualities I will bring Pharming too.” Chiao also disclosed that he was “being asked to assist with [CSL Behring’s] C1-INH recombinant program,” which he added were “[a]ll non-HAE-studies . . .” Later that same day, Chiao wrote the following to Relan: “I have a research and publication idea that I was working on with Allen, Peter, Spath, Michael Frank, Colin Mas and Marco. Spath and I spoke about this over the weekend and said we need to replace Frank and Marco with others. I can bring this concept to Pharming. Nothing has been signed yet. . .”

48. Plainly, not only was Chiao willing to share information with CSL Behring’s competitor, he was offering to transport publication initiatives to Pharming despite having conceived of and initiated them while still on CSL Behring’s payroll.

² By text message on August 13, 2019, Chiao wrote to Relan: “I cannot send you the HAEA Recommendations manuscript, as I promised not to send it, but I put the sections into a slide. Note that this info was from the draft prior to their finalizing the manuscript at the HAEA Summit.” Relan responded: “This is very useful. Much appreciated. Largely in line but nice to see the details.”

49. Having spent months exchanging ideas and information with Pharming, Chiao was finally offered employment as Pharming's Executive Medical Director in mid-September 2019. He accepted almost immediately.

50. By text dated September 20th, Chiao wrote to Relan that he was "excited and looking forward to joining Pharming and working with you in HAE, Immunodeficiency and business development." Thus, by his own admission, Chiao's was hired at Pharming to work on HAE and Immunodeficiency, as well as related business development initiatives. Chiao's start date with Pharming was to be September 30, 2019.

51. Having secured a position with Pharming, Chiao tendered his resignation to CSL Behring on Monday, September 23, 2019. Notably, however, despite having already committed to starting at Pharming on September 30, 2019, Chiao provided two weeks' notice of his resignation – meaning he presumably intended to work for both CSL Behring and Pharming for one week. This is particularly troubling given that, before he notified anyone at CSL Behring that he was leaving, Chiao spent the weekend e-mailing and downloading documents from CSL Behring's computer systems, in direct violation of his Confidentiality Agreement.

Chiao Takes CSL Behring's Confidential Information

52. Chiao's abrupt resignation and the fact that he was believed to be going to a competitor raised concerns at CSL Behring that Chiao may have taken confidential information with him.

53. On September 24, 2019, CSL Behring reviewed Chiao's outgoing email from CSL Behring's server. The review revealed that within the prior 30 days, Chiao had sent approximately 68 messages to his personal email account. The vast majority of these emails were sent on September 19, the Friday before Chiao's resignation.

54. The emails that Chiao sent to his personal email account contain confidential, proprietary information and trade secrets. Many of the documents contain high-level company strategy and supporting data that is not only confidential and proprietary, but also has enormous value to CSL Behring's competitors. Some of the documents even contain conspicuous footers that stated, "CONFIDENTIAL and PROPRIETARY – for Internal CSL Behring Use Only."

55. After discovering that Chiao had sent dozens of emails to his personal account, CSL Behring likewise ran a query to see whether Chiao had taken any other improper actions prior to his departure. This query revealed that between Friday, September 19 and Sunday, September 22, Chiao had copied and downloaded over 21,000 files across 2600 folders to a portable USB drive. All told, Chiao misappropriated almost 25 gigabytes of CSL Behring information – the equivalent of well over 1,000,000 pages.

56. CSL Behring is still investigating the full extent of the documents Chiao copied to a USB drive. Even at this preliminary stage in the investigation, CSL has verified that many of these documents contain confidential, proprietary information and trade secrets. Among other information, Chiao downloaded and misappropriated CSL Behring computer files containing:

- Confidential and proprietary market research regarding HAE and the HAE market;
- CSL Behring new product development and clinical trials;
- CSL Behring Competitive Intelligence reports in the HAE market;
- CSL Behring submissions to the FDA relating to product labeling and related approvals;

- Bi-Monthly Status Reports for CSL Behring’s HAE franchise, which reports contain highly confidential and sensitive information relating to key business drivers, ongoing sales activity and programs, and competitive intelligence;
- Patient and physician information relating to the use of CSL Behring’s products;
- Physician prescription information from CSL Behring’s proprietary “Patient Service Hub”;
- Detailed information on KOLs, including proprietary compensation information and CSL Behring’s strategies for interacting and engaging with KOLs.
- Sales training materials associated with several of CSL’s HAE products; and
- Many strategy and medical documents pertaining to CSL’s Immunology products.

57. Upon information and belief, CSL Behring believes that many more of the documents also contain confidential, proprietary information and trade secrets belonging to CSL Behring.

58. Given their sensitive nature, it is CSL Behring’s practice to maintain confidentiality of this type of information. Knowledge of this information could be of the utmost value to CSL Behring’s competitors, including Pharming, which was been attempting to erode CSL Behring’s position in the HAE therapies market.

59. CSL Behring also has reason to suspect that Pharming intends to exploit Chiao’s knowledge of – and access to confidential information relating to – its Immunodeficiency products and marketing initiatives.

60. Among the files that Chiao downloaded on September 20th was a file containing the names of approximately 800 doctors with whom CSL Behring has contracted over the last 4 years as Key Opinion Leaders (“KOLs”) together with the rates CSL Behring paid them, including KOLs in the areas of HAE and Immunodeficiency. Earlier that same day, in a text to Relan, Chiao stated: “I could also set up a series of HAE KOL and Immunodeficiency KOLs to meet with us” during an upcoming conference. Relan responded: “The PID [Primary Immunodeficiency] KOLs will be useful as we don’t know them. Let’s coordinate with Heather.”

61. Shortly after that text message exchange, Chiao began downloading documents to his USB device, including CSL Behring’s confidential KOL documents.

62. Approximately one month earlier, on August 19, 2019, Pharming announced that it was entering the immunodeficiency market through a licensing agreement with Novartis, which would allow Pharming to develop and market a late-stage drug for the treatment of APSD, a primary immune deficiency. Having access to CSL Behring’s confidential and proprietary immunodeficiency information, including information about its extensive network of KOLs, would be of immense benefit to Pharming and of tremendous detriment to CSL Behring.

63. As if this were not damning enough, CSL Behring has also learned that Chiao retained a number of hard copy documents that he used during the course of his employment with CSL Behring, including sales presentations, marketing plans, and “messaging booklets” for Hizentra®, one of CSL Behring’s lead immunodeficiency products. Given Pharming’s stated interest of moving into immunodeficiency products – as well as the fact that Chiao’s work did not focus on these products while at CSL Behring – his decision to retain the messaging booklets rather than return them prior to his resignation further suggests that he

intended to use such materials to his and Pharming's benefit, at the expense of his former employer.

64. Upon information and belief, Chiao, in concert with Pharming, has already misappropriated, or intends to misappropriate, CSL Behring's confidential, proprietary information and trade secrets.

65. In the course of his job performance, Chiao acquired and developed trade secrets and confidential and proprietary information with regard to the business of CSL Behring, which is not generally known to the public.

66. During Chiao's employment with CSL Behring, he was provided with and obtained unique and valuable information about the business, strategy and methods, scientific data, and contracts of CSL Behring, and other confidential and proprietary information.

67. Indeed, in his positions at CSL Behring, Chiao had access to CSL Behring's documents and information, including confidential and proprietary information.

68. At all relevant times, CSL Behring entrusted Chiao with its confidential and proprietary information with the express understanding that he would not improperly use or disclose it.

69. CSL Behring derives substantial economic value from maintaining the secrecy of the confidential and proprietary information it develops, and CSL Behring relies on this information to conduct its business in a competitive industry.

70. The confidential and proprietary information to which Chiao gained access and used during his employment with CSL Behring and unlawfully took when he departed the company, is not readily available to the general public, and cannot be assembled from publicly available information or sources. Indeed, even internally CSL Behring restricts

access to information on its computer systems so that employees generally only have access to materials and computer directories that correspond with his or her job function or closely related functions. Therefore, maintaining the confidentiality of such core confidential and proprietary information is crucial to CSL Behring. The disclosure to and use of such information about customers by a competitor such as Pharming would give that competitor an unfair road map into CSL Behring's research and development, and business operations and, indeed, would give the competitor the capability of undermining CSL Behring's businesses.

71. CSL Behring has taken reasonable steps to protect and maintain the secrecy of its confidential and proprietary information.

72. Upon information and belief, Chiao's and Pharming's unlawful conduct or threatened unlawful conduct is likely to continue unless both parties are ordered to cease such conduct by a court of law.

73. As a direct result of Chiao's and Pharming's wrongful conduct, CSL Behring has already suffered and will, absent enforcement of the Agreement, continue to suffer immediate and irreparable harm from the loss of its proprietary information and trade secrets.

**COUNT I
BREACH OF CONTRACT (AGAINST CHIAO)**

74. CSL Behring incorporates the foregoing paragraphs of this Complaint as if fully set forth herein.

75. The Agreement constitutes a valid and enforceable contract between CSL Behring and Chiao.

76. Upon information and belief, Chiao breached and continues to breach his Agreement by unlawfully obtaining CSL Behring's confidential, proprietary information and trade secrets, in direct violation of the terms of his Agreement. Specifically, Chiao e-mailed and

downloaded numerous documents for his own personal gain and use that contain highly sensitive, confidential information about the company.

77. These breaches have caused CSL Behring to suffer damages, including but not limited to the loss of value of confidential and proprietary information, interference with relationships, diminishment of CSL Behring's competitive standing, and other damages.

78. The foregoing conduct was willful, wanton, outrageous and/or reckless, and Chiao must be punished and deterred from continuing such conduct through an appropriate award of damages.

79. CSL Behring has fulfilled all obligations to Chiao.

80. Unless restrained, Chiao will continue to breach the Agreement, causing continuing and irreparable injury to CSL Behring's business, for which there exists no adequate remedy at law.

81. Unless preliminarily and permanently enjoined from working for Pharming and the Court grants CSL Behring's other requested relief, Chiao will cause CSL Behring irreparable harm for which there is no adequate remedy at law.

82. CSL Behring will suffer greater injury if no injunction is granted than Chiao will suffer if the injunction is granted. The public interest weighs in favor of the requested relief.

COUNT II
VIOLATION OF THE PENNSYLVANIA UNIFORM TRADE SECRETS ACT
12 PA. C.S. § 5301 (AGAINST ALL DEFENDANTS)

83. CSL Behring incorporates the foregoing paragraphs of this Complaint as if fully set forth herein.

84. CSL Behring's confidential and proprietary information and trade secrets derive independent economic value from not being generally known to, and not being readily ascertainable by, competitors in the same industry through proper means. As set forth above, CSL engages in significant and reasonable efforts to maintain the secrecy of this information.

85. CSL Behring's misappropriated confidential and proprietary and trade secrets are of enormous value to CSL Behring and important in the conduct of its business because it includes, but is not limited to, high-level strategies, internal company data, and research and development of medical therapies.

86. Chiao, a high-level employee, was entrusted with and acquired CSL Behring's confidential and proprietary information and trade secrets while he was under contractual obligations to maintain their secrecy and limit their use. The circumstances of Chiao's employment and role make it inequitable and unjust for him to disclose it to others, including Pharming, or make use of it himself, as it will prejudice CSL Behring.

87. Upon information and belief, Chiao and Pharming misappropriated and/or intend to misappropriate CSL Behring's confidential and proprietary information and trade secrets by disclosing and using such confidential and proprietary information and trade secrets without CSL Behring's consent. Additionally, at the time of his misappropriation of such confidential and proprietary information and trade secrets, Chiao knew he had a duty to CSL Behring to maintain their secrecy.

88. Upon information and belief, Chiao and Pharming willfully, wantonly, outrageously and/or maliciously obtained and utilized and/or intends to obtain and utilize CSL Behring's confidential and proprietary information and trade secrets to gain an unfair

competitive advantage over CSL Behring, and to diminish CSL Behring's competitive advantage – all for Chiao's financial benefit and/or the benefit of Pharming.

89. Pursuant to Bimbo Bakeries USA, Inc. v. Botticella, 613 F.3d 102, 110-111 (3d Cir. 2010), this Court can apply the “inevitable disclosure doctrine,” under which “a person may be enjoined from engaging in employment or certain aspects of his employment where that employment is likely to result in the disclosure of information, held secret by a former employer, of which the employee gained knowledge as a result of his former employment situation.”

90. Chiao will inevitably disclose and/or is likely to disclose CSL Behring's confidential, proprietary information and trade secrets to Pharming without CSL Behring's consent, for his and/or Pharming's benefit, and to CSL Behring's detriment.

91. These aforementioned actions of Chiao and Pharming constitute actual and/or threatened misappropriation of confidential and proprietary information and trade secrets as contemplated under the Pennsylvania Uniform Trade Secrets Act, and such conduct or threatened conduct is willful, wanton, outrageous and/or malicious, and sufficient to warrant the imposition of injunctive relief, actual damages, damages for unjust enrichment or damages in the form of a reasonable royalty for the misappropriation, exemplary damages, and attorneys' fees.

92. Chiao's and Pharming's misappropriation of trade secrets will cause CSL Behring immediate and irreparable harm.

93. Unless this Court preliminarily and permanently enjoins Chiao from working at Pharming, and preliminarily and permanently enjoins Pharming from employing Chiao, their conduct, individually and collectively, will cause CSL Behring to suffer irreparable harm for which there exists no adequate remedy at law.

94. CSL Behring will suffer greater injury if no injunction is granted than Chiao and/or Pharming will suffer if the injunction is granted. The public interest weighs in favor of the requested relief.

**COUNT III
VIOLATION OF THE DEFEND TRADE SECRETS ACT
18 U.S.C. § 1836 (AGAINST ALL DEFENDANTS)**

95. CSL Behring incorporates the foregoing paragraphs of this Complaint as if fully set forth herein.

96. CSL Behring's confidential and proprietary information and trade secrets as set forth herein, including but not limited to its contractual relationships, business strategies, training strategies, and medical research, constitute trade secrets under the federal Defend Trade Secrets Act, 18 U.S.C. § 1836.

97. CSL Behring's confidential and proprietary information and trade secrets derive independent economic value from not being generally known to, and not being readily ascertainable by, competitors in the same industry through proper means. As set forth above, CSL engages in significant and reasonable efforts to maintain the secrecy of this information.

98. CSL Behring's misappropriated confidential and proprietary information and trade secrets are of enormous value to CSL Behring and important in the conduct of its business because it includes, but is not limited to, high-level strategies, internal company data, and research and development of medical therapies.

99. Chiao, a high-level employee, was entrusted with and acquired CSL Behring's confidential and proprietary information and trade secrets while he was under contractual obligations to maintain their secrecy and limit their use. The circumstances of

Chiao's employment and role make it inequitable and unjust for him to disclose it to others, including Pharming, or make use of it himself, as it will prejudice CSL Behring.

100. Upon information and belief, Chiao and Pharming misappropriated and/or intend to misappropriate CSL Behring's confidential and proprietary information and trade secrets by disclosing and using such confidential and proprietary information and trade secrets without CSL Behring's consent. Additionally, at the time of his misappropriation of such confidential and proprietary information and trade secrets, Chiao knew he had a duty to CSL Behring to maintain their secrecy.

101. Upon information and belief, Chiao and Pharming willfully, wantonly, outrageously and/or maliciously obtained and utilized and/or intends to obtain and utilize CSL Behring's confidential and proprietary information and trade secrets to gain an unfair competitive advantage over CSL Behring, and to diminish CSL Behring's competitive advantage – all for Chiao's financial benefit and/or the benefit of Pharming.

102. Pursuant to Bimbo Bakeries USA, Inc. v. Botticella, 613 F.3d 102, 110-111 (3d Cir. 2010), this Court can apply the “inevitable disclosure doctrine,” under which “a person may be enjoined from engaging in employment or certain aspects of his employment where that employment is likely to result in the disclosure of information, held secret by a former employer, of which the employee gained knowledge as a result of his former employment situation.”

103. Chiao will inevitably disclose and/or is likely to disclose CSL Behring's confidential, proprietary information and trade secrets to Pharming without CSL Behring's consent, for his and/or Pharming's benefit, and to CSL Behring's detriment.

104. These aforementioned actions of Chiao and Pharming constitute actual and/or threatened misappropriation of confidential and proprietary information and trade secrets as contemplated under the Defend Trade Secrets Act, and such conduct or threatened conduct is willful, wanton, outrageous and/or malicious, and sufficient to warrant the imposition of injunctive relief, actual damages, damages for unjust enrichment or damages in the form of a reasonable royalty for the misappropriation, exemplary damages, and attorneys' fees.

105. Chiao's and Pharming's misappropriation of trade secrets will cause CSL Behring immediate and irreparable harm.

106. Unless this Court preliminarily and permanently enjoins Chiao from working at Pharming, and preliminarily and permanently enjoins Pharming from employing Chiao, their conduct, individually and collectively, will cause CSL Behring to suffer irreparable harm for which there exists no adequate remedy at law.

CSL Behring will suffer greater injury if no injunction is granted than Chiao and/or Pharming will suffer if the injunction is granted. The public interest weighs in favor of the requested relief.

**COUNT IV
COMMON LAW MISAPPROPRIATION OF TRADE SECRETS (AGAINST ALL
DEFENDANTS)**

107. CSL Behring incorporates all preceding paragraphs as if set forth at length herein.

108. CSL Behring pleads, in the alternative, Chiao's misappropriation of confidential and proprietary information and trade secrets under Pennsylvania common law.

109. CSL Behring's confidential and proprietary information and trade secrets as set forth herein, including but not limited to its research and development of medical

therapies, high-level business strategies, and training strategies, are protectable under the common law of Pennsylvania.

110. CSL Behring's confidential and proprietary information and trade secrets derive independent economic value from not being generally known to, and not being readily ascertainable by, competitors in the same industry through proper means. As set forth above, CSL engages in significant and reasonable efforts to maintain the secrecy of this information.

111. CSL Behring's misappropriated confidential and proprietary and trade secrets are of enormous value to CSL Behring and important in the conduct of its business because it includes, but is not limited to, high-level strategies, internal company data, and research and development of medical therapies.

112. Chiao, a high-level employee, was entrusted with and acquired CSL Behring's confidential and proprietary information and trade secrets while he was under contractual obligations to maintain their secrecy and limit their use. The circumstances of Chiao's employment and role make it inequitable and unjust for him to disclose it to others, including Pharming, or make use of it himself, as it will prejudice CSL Behring.

113. Upon information and belief, Chiao and Pharming misappropriated and/or intend to misappropriate CSL Behring's confidential and proprietary information and trade secrets by disclosing and using such confidential and proprietary information and trade secrets without CSL Behring's consent. Additionally, at the time of his misappropriation of such confidential and proprietary information and trade secrets, Chiao knew he had a duty to CSL Behring to maintain their secrecy.

114. Upon information and belief, Chiao and Pharming willfully, wantonly, outrageously and/or maliciously obtained and utilized and/or intends to obtain and utilize CSL

Behring's confidential and proprietary information and trade secrets to gain an unfair competitive advantage over CSL Behring, and to diminish CSL Behring's competitive advantage – all for Chiao's financial benefit and/or the benefit of Pharming.

115. Pursuant to Bimbo Bakeries USA, Inc. v. Botticella, 613 F.3d 102, 110-111 (3d Cir. 2010), this Court can apply the “inevitable disclosure doctrine,” under which “a person may be enjoined from engaging in employment or certain aspects of his employment where that employment is likely to result in the disclosure of information, held secret by a former employer, of which the employee gained knowledge as a result of his former employment situation.”

116. Chiao will inevitably disclose and/or is likely to disclose CSL Behring's confidential, proprietary information and trade secrets to Pharming without CSL Behring's consent, for his and/or Pharming's benefit, and to CSL Behring's detriment.

117. These aforementioned actions of Chiao and Pharming constitute actual and/or threatened misappropriation of confidential and proprietary information and trade secrets as contemplated under the Pennsylvania common law, and such conduct or threatened conduct is willful, wanton, outrageous and/or malicious, and sufficient to warrant the imposition of injunctive relief, actual damages, damages for unjust enrichment or damages in the form of a reasonable royalty for the misappropriation, exemplary damages, and attorneys' fees.

118. Chiao's and Pharming's misappropriation of trade secrets will cause CSL Behring immediate and irreparable harm.

119. Unless this Court preliminarily and permanently enjoins Chiao from working at Pharming, and preliminarily and permanently enjoins Pharming from employing

Chiao, their conduct, individually and collectively, will cause CSL Behring to suffer irreparable harm for which there exists no adequate remedy at law.

120. CSL Behring will suffer greater injury if no injunction is granted than Chiao and/or Pharming will suffer if the injunction is granted. The public interest weighs in favor of the requested relief.

COUNT V
TORTIOUS INTERFERENCE WITH ACTUAL AND PROSPECTIVE BUSINESS
RELATIONS (AGAINST ALL DEFENDANTS)

121. CSL Behring incorporates the foregoing paragraphs of this Complaint as if fully set forth herein.

122. As set forth above, CSL Behring has business relationships with various doctors, hospitals, patients, medical facilities, and a litany of other individuals and organizations. Pharming is a direct competitor of CSL Behring, and Chiao and Pharming are aware of CSL Behring's business relationships.

123. Through their actions more fully described above, Chiao and Pharming willfully and knowingly interfered with and are continuing to interfere with CSL Behring's business relationships, including based upon CSL Behring's confidential information.

124. Chiao's and Pharming's actions are without privilege or justification.

125. This interference with CSL Behring's business relations is improper and calculated to cause damage to CSL Behring.

126. As a direct and proximate result of the foregoing wrongful acts, CSL Behring has suffered and will continue to suffer irreparable harm, along with substantial financial and other damages.

127. CSL Behring will continue to suffer irreparable harm unless injunctive relief is granted.

128. The foregoing conduct was willful, wanton, outrageous and/or reckless, and Chiao and Pharming must be punished and deterred from continuing such conduct through an appropriate award of damages, including an award of punitive damages.

129. Unless this Court preliminarily and permanently enjoins Chiao from working at Pharming, preliminarily and permanently enjoins Pharming from employing Chiao, and grants the other requested relief, CSL Behring will suffer irreparable harm for which there exists no adequate remedy at law.

130. CSL Behring will suffer greater injury if no injunction is granted than Chiao and/or Pharming will suffer if the injunction is granted. The public interest weighs in favor of the requested relief.

**COUNT VI
VIOLATION OF COMPUTER FRAUD AND ABUSE ACT
18 U.S.C. § 1030 (AGAINST CHIAO)**

131. CSL Behring incorporates the foregoing paragraphs of this Complaint as if fully set forth herein.

132. Chiao knowingly, and with intent to defraud, accessed CSL Behring's protected computer(s) with no, or outside of the scope of his, authorization, to procure CSL Behring's valuable trade secrets and confidential information. This information exceeds \$5,000 in value for any one-year period of time.

133. While employed with CSL Behring, Chiao accessed, copied, and transmitted by, among other things, downloading or emailing, CSL Behring trade secret information that he was not allowed to access, copy, or transmit.

134. Chiao's misconduct has greatly damaged CSL Behring and resulted in loss to the company, or is likely to result in loss to the company.

135. Chiao's misconduct threatens CSL Behring with immediate and irreparable harm.

136. Unless this Court preliminarily and permanently enjoins Chiao from working at Pharming and grants the other requested relief, CSL Behring will suffer irreparable harm for which there exists no adequate remedy at law.

137. CSL Behring will suffer greater injury if no injunction is granted than Chiao will suffer if the injunction is granted. The public interest weighs in favor of the requested relief.

WHEREFORE, Plaintiff, CSL Behring, respectfully requests that this Court enter judgment in its favor and against Defendant, Joseph Chiao, M.D., and enter an Order granting the following relief:

- a. Awarding to CSL Behring damages on account of Chiao's wrongful conduct, including compensatory and punitive damages;
- b. Awarding to CSL Behring its costs and expenses, including reasonable attorneys' fees, incurred in connection with this action;
- c. Ordering Pharming to rescind its offer of employment to Chiao, and be preliminarily and permanently enjoined from working for Pharming for a period of one year;
- d. Preliminarily and permanently enjoining and restraining Chiao from employment with Pharming for a period of one year;
- e. Preliminarily and permanently enjoining and restraining Chiao from being involved, directly, or indirectly, in the research of Hereditary Angioedema (HAE), or the

research and development of any HAE-related products at Pharming (or at any subsequent employer) for a period of one year;

f. Preliminarily and permanently enjoining and restraining Chiao from being involved, directly or indirectly, in strategy meetings at Pharming (or at any subsequent employer) that address HAE or address any research, development, marketing or sale of any products designed for HAE for a period of one year;

g. Preliminarily and permanently enjoining and restraining Chiao from being involved, directly or indirectly, in the marketing or sale of HAE-related products at Pharming (or at any subsequent employer) for a period of one year;

h. Preliminarily and permanently enjoining and restraining Chiao from, for a period of one year, directly or indirectly, soliciting, enticing, inducing or encouraging any employee of CSL Behring to leave CSL Behring or become employed or affiliated with Pharming, or hiring, employing or contracting with any CSL Behring employee.

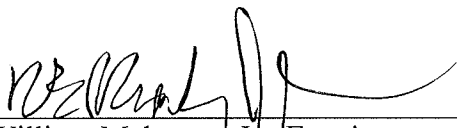
i. Preliminarily and permanently enjoining and restraining Chiao and Pharming from, either directly or indirectly, using or disclosing, in whole or in part, any CSL Behring confidential or proprietary information, or trade secrets;

j. Requiring Chiao and Pharming to return to CSL Behring all documents and property (including but not limited to papers, files, notes, tapes, address books and computer disks and printouts) that contain confidential or proprietary information of CSL Behring (including all CSL Behring “Confidential Information” as defined in the Confidentiality Agreement), and all other

property belonging to CSL Behring, regardless of whether or not such information is CSL Behring confidential information;

k. Requiring Chiao and Pharming to make available to CSL Behring and/or its designated outside computer forensic consultants all of his electronic devices, so CSL Behring can perform a forensic review concerning its data, any other CSL Behring confidential or proprietary information or trade secrets, and other of its property; and

l. Awarding such other equitable or legal relief that this Court deems just and proper.



William Mahoney, Jr., Esquire
Sharenda P. Coleman, Esquire
Identification Nos. 67407 and 325623
STRADLEY, RONON, STEVENS & YOUNG, LLP
2005 Market St, Suite 2600
Philadelphia, PA 19103-7098
(215) 564-8000

*Attorneys For Plaintiff,
CSL Behring LLC*

Dated: October 7, 2019

VERIFICATION

I, Debra Bensen-Kennedy, state that I am CSL Behring LLC's Vice President, North America Medical Affairs, that I am authorized to make this Verification on behalf of Plaintiff, CSL Behring, LLC, and that the facts contained in the foregoing Verified Amended Complaint are true and correct to the best of my knowledge, information, and belief. I understand that these statements are made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: 5 OCTOBER 2019

By:

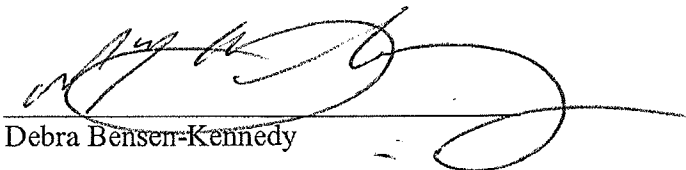

Debra Bensen-Kennedy

Exhibit A

CSL Behring

CONFIDENTIALITY AGREEMENT

between

CSL Behring, L.L.C.

And

Joseph Chirao

(Employee)

THIS AGREEMENT is made this 18 day of JULY 18 2016, Between Joseph Chirao (hereinafter "Employee") residing at 26 Ridgewood Way, Allentown, NJ 08501 and CSL BEHRING, L.L.C. (hereinafter "CSL BEHRING" and defined to include subsidiary or affiliated companies of CSL BEHRING), 1020 First Avenue, King of Prussia, PA 19406-0901.

CSL BEHRING wishes to employ Employee "at will" (which means that either CSL BEHRING or Employee may terminate the employment relationship at any time) at an agreed-upon compensation, and intends to make to Employee disclosures of CSL BEHRING's confidential information and trade secrets. Employee wishes to be employed by CSL BEHRING at will at an agreed-upon compensation, and recognizes that he/she will, by reason of his/her employment, have access to or acquire certain confidential and trade secrets, and will or may develop inventions, improvements and ideas.

For these and other valuable considerations, CSL BEHRING and Employee agree as follows:

1. Discoveries are Property of CSL BEHRING

Except as provided in paragraphs 3 and 4, Employee shall, during the period of his/her employment, make prompt and full disclosure of the following, which shall become CSL BEHRING's exclusive property:

All discoveries, inventions, improvements and ideas relating to any process, machine, manufacture, composition of matter, plant or design, whether patentable or not, which Employee makes or conceives, individually or jointly, either during working hours or with CSL BEHRING's materials and/or facilities, which relate to CSL BEHRING's business or in which CSL BEHRING is interested.

Employee agrees that for all patent applications which relate to such discoveries, inventions, improvements, and ideas for which Employee is an inventor, Employee shall assign his/her rights in such patent applications to CSL BEHRING.

2. CSL BEHRING to Release Certain Discoveries to Employee

Employee understands that it is CSL BEHRING's policy to release in writing to the inventor or inventors those discoveries, inventions, improvements and ideas disclosed pursuant to paragraph 1 which do not, in CSL BEHRING's sole judgment, include any subject matter of interest to CSL BEHRING.

3. Prior Inventions to be Excluded

Employee agrees that there are no inventions which he/she desires to exclude from the operation of this Agreement except those, if any, designated by Patent number, application serial number or brief description (where no application has been filed), on the Attachment signed by the parties and made part of this Agreement.

4. Employee not to Divulge Trade Secrets of Former Employers

Employee agrees he/she will not subject CSL BEHRING or himself/herself to criminal or civil liability by divulging to CSL BEHRING confidential or proprietary information including trade secrets, of any former employers. The term "confidential information" means the whole or any portion or phase of any compilation of scientific, technical, or business information, design, process, procedure, formula, or improvement which is of value and has been specifically identified by the owner as of a confidential nature and which has not been published or otherwise become a matter of general public knowledge. Employee agrees to discuss the matter of non-disclosure of confidential information of former employers with CSL BEHRING's designees to effect compliance with this paragraph.

5. Employee to keep Records which are CSL BEHRING's Property

Employee will keep and maintain complete written records of all discoveries, inventions, improvements, and ideas referred to in paragraph 1, and of all work or investigations done or carried out by Employee for CSL BEHRING at all stages thereof, which records shall be the property of CSL BEHRING

Upon termination of employment, Employee agrees to deliver promptly to CSL BEHRING any unpublished memoranda, notes, records, reports, sketches, plans or other documents held by him/her concerning any information, knowledge or data referred to in paragraph 1 herein, or pertaining to CSL BEHRING's business or contemplated business, whether confidential or not.

6. Employee to Execute Certain Papers

Either during employment or after termination thereof, Employee will execute, acknowledge, and deliver to CSL BEHRING all such papers including applications for and assignments of patents, as may be necessary to enable CSL BEHRING, its nominees, successors or assigns, at its or their expense, to publish, protect by litigation or otherwise, and obtain title and/or patents to the discoveries, inventions, improvements and ideas referred to in paragraph 1, in any and all countries. After termination of employment, Employee's time spent complying with this paragraph will be reasonably compensated by CSL BEHRING.

7. Patent Applications filed after Employment Ceases

If any application for letters patent for any discoveries, inventions, improvements and/or ideas relating to subject matter with which Employee was involved during his/her employment with CSL BEHRING shall be filed by Employee, during a period of one (1) year after termination of his/her employment with CSL BEHRING, the subject matter covered thereby shall be presumed to have been conceived during his/her employment by CSL BEHRING. Such patent applications shall be assigned from Employee to CSL BEHRING

8. Employee not to Disclose Confidential Information and Trade Secrets

Unless authorized in writing by CSL BEHRING, Employee agrees that during the time of his/her employment and any time thereafter, he/she is prohibited from (a) disclosing or publishing confidential information and (b) using confidential information for him/herself or others, except as required in work assigned him/her by CSL BEHRING. The term "confidential information" means the whole or any portion or phase of any compilation of scientific, technical, or business information, design, process, procedure, formula, or improvement which is of value and has been specifically identified by CSL BEHRING as of a confidential nature and which has not been published or otherwise become a matter of general public knowledge.

CSL BEHRING agrees that these prohibitions shall not restrict Employee in the exercise of his technical skill, provided that no disclosure of trade secrets or confidential knowledge or information is thereby involved.

9. Transfer of Employee to Subsidiary Company

Employee agrees that his/her transfer to a subsidiary or affiliate of CSL BEHRING shall not operate to terminate or modify this Agreement.

10. EMPLOYEE'S USE OF CSL BEHRING'S ELECTRONIC COMMUNICATION SYSTEMS

Employee agrees that CSL BEHRING'S electronic communication systems, including but not limited to personal computers, computer files, laptop computers, computer disks, computer tapes, mainframe computers, software or other computer programs, I-Pods, USB memory devices, telephones, databases, e-mail, fax machines, and voice mail are the property of CSL BEHRING and should be used for business purposes only. CSL BEHRING reserves the right to monitor these systems to ensure compliance with user agreements or applicable code.

Employee agrees to comply with the following regarding use of CSL BEHRING's electronic communication systems (as set forth above):

- a) Employee's use of the electronic communication systems will be considered consent to CSL BEHRING's right to review, read or listen to messages generated by Employee without prior notice.
- b) Employee shall disclose or send information only on a need to know basis to authorized persons or employees of CSL BEHRING.
- c) Communications generated by Employee by or with the electronic communication systems of CSL BEHRING may be subject to confiscation under the Freedom of Information Act or other legal processes.

- d) CSL BEHRING's electronic communication systems will be used for CSL BEHRING related projects only, and Employee shall not use CSL BEHRING's electronic communication systems for unlawful purposes, or for activities that expose CSL BEHRING to litigation or unauthorized expenses, or that violate policy, laws or procedures of CSL BEHRING, the Commonwealth of Pennsylvania or the Federal Government, or for work for other employers, nor allow use of such systems by other persons not authorized by CSL BEHRING.
- e) Employee is authorized to and will access CSL BEHRING's electronic communication systems and/or download CSL BEHRING information for the benefit of and on behalf of CSL BEHRING only and Employee is not authorized to access or use CSL BEHRING's electronic communication systems for Employee's personal gain. Further, Employee is expressly prohibited from accessing and sending messages on CSL BEHRING's electronic communication systems, including CSL BEHRING's e-mail system or any private e-mail account, for Employee's own gain or for the benefit of other companies or persons. In addition, Employee is prohibited from downloading files to hard drives external to CSL BEHRING's electronic computer systems and/or to portable USB or other memory devices.
- f) Employee is prohibited from the use, distribution or retention of foul, defamatory, offensive, pornographic, harassing or other inappropriate communication on CSL BEHRING's electronic communication systems.
- g) Employee is prohibited from storing CSL BEHRING owned information on Employee's own personal communication systems including but not limited to computers, portable computers, personal digital assistants, USB memory devices, palm or other computers or electronic systems for Employee's personal gain or when the information is no longer needed for any current work assignment with CSL BEHRING.

11. Obligations to be Continuing

Employee agrees that pertinent obligations contained in this Agreement shall be binding upon his/her legal representatives and assigns and shall inure to the benefit of CSL BEHRING, its successors and assigns.

12. Employment at Will

Nothing contained in this Agreement shall be construed or interpreted as an employment contract between CSL BEHRING and Employee for any period of time. The employment relationship between CSL BEHRING and Employee will be "at will".

13. Severability Clause

The parties intend that if any part of this Agreement shall for any reason be adjudged to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Agreement.

14. The Defend Trade Secrets Act

Employee understands that, notwithstanding Employee's obligation to protect confidential information, Employee may disclose confidential information in confidence to a federal, state, or local government official, directly or indirectly, or to an attorney advising Employee about such disclosures, provided that the disclosure is made solely for the purpose of reporting or investigating a suspected violation of law. Employee also understands that, should Employee ever file a lawsuit or claim against CSL Behring claiming retaliation, or if Employee is involved in any other lawsuit or proceeding, Employee may disclose confidential information to his or her attorney and use it in a court proceeding if Employee: (i) files under seal any document containing the confidential information, and (ii) does not disclose the confidential information except pursuant to a court order.

15. Governing Law

This Agreement will be governed by Pennsylvania Law.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CSL BEHRING LLC,
Plaintiff,

v.

JOSEPH CHIAO, M.D. and
PHARMING HEALTHCARE INC.,

Defendants.

CIVIL ACTION NO. 2:19-cv-04538-JS

JURY TRIAL DEMANDED

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTIVE RELIEF**

I. INTRODUCTION

CSL Behring LLC (“CSL Behring”) brings this action for injunctive relief, as well as compensatory and punitive damages, against its former employee, Chiao, as a result of his systematic, wrongful, and malicious conduct, including, but not limited to, breach of his confidentiality agreement, misappropriation of trade secrets, violation of the Computer Fraud and Abuse Act, and tortious interference with actual and prospective business relations. As a result of Chiao’s actions, CSL Behring has suffered or will suffer significant damages including, but not limited to, lost profits due to the highly sensitive nature of its internal company data and trade secrets, as well as irreparable harm to its industry relationships and goodwill. This action is also against Pharming, CSL Behring’s direct competitor, to enjoin it from employing Chiao in order to unlawfully procure CSL Behring’s confidential and proprietary information and trade secrets.

As set forth in detail below, Chiao has embarked upon an unlawful and systematic scheme to unfairly compete against CSL Behring and blatantly violate his Confidentiality Agreement. Chiao announced his resignation on September 23, 2019. In the weeks and days

preceding his resignation, Chiao surreptitiously removed CSL Behring's confidential and proprietary information and trade secrets from its computer servers. Specifically, Chiao emailed to his personal email address and downloaded to a thumb drive *thousands of CSL Behring files – indeed, over 21,000 files coming from over 2,500 network folders* – many of which contained highly sensitive, proprietary company information and trade secrets including, but not limited to, information on therapy outcomes, product development, comparisons of different therapies, high-level business strategies, marketing plans, medical affairs strategies, contractual relationships, internal company data, and employee training materials.

Chiao's actions were anything but benign or well-intentioned. Beginning in or around April 2019, Chiao began discussions with Pharming, one of CSL Behring's direct competitors. CSL Behring is a leader in the Hereditary Angioedema ("HAE") market (described in detail below), and Pharming is a smaller, younger company. By mid-September 2019, Pharming had made an offer to Chiao to join it in a position designed to capitalize on the work that Chiao has been doing on behalf of CSL Behring. Chiao accepted Pharming's offer, and was intending to begin working at Pharming on September 30, 2019.

Upon information and belief, Pharming has a clear competitive incentive to poach CSL Behring employees and obtain CSL Behring's confidential, proprietary information and trade secrets. Upon further information and belief, Pharming has obtained and used, and/or is in a position to obtain and use CSL Behring's confidential, proprietary information and trade secrets. CSL Behring requested from Chiao and Pharming that, while CSL Behring investigates Chiao's misconduct, Chiao not begin working for Pharming. CSL Behring also reminded both Chiao and Pharming of Chiao's obligations under his Confidentiality Agreement. Chiao and Pharming initially agreed.

However, on Friday, October 4, 2019, counsel for both Pharming and Chiao confirmed that, notwithstanding Chiao's misappropriation of thousands of CSL Behring files in the days and weeks prior to his resignation, and in complete disregard of CSL Behring's request that Pharming not allow Chiao to begin work until CSL Behring has at least completed a forensic analysis of the thumb drive and other devices in Chiao's possession, Pharming intends for Chiao to begin working on Monday, October 7, 2019. Chiao's attorney confirmed this intention in a telephone message to CSL Behring's undersigned counsel on October 5, 2019.

Upon information and belief, Chiao's unlawful conduct in secreting confidential and proprietary information and files from CSL Behring was done directly for his own and Pharming's benefit, and to the detriment of CSL Behring. In order to prevent Chiao and/or Pharming from unlawfully utilizing CSL Behring's confidential and proprietary materials and trade secrets, CSL Behring files this action seeking injunctive relief, as well as damages, arising out of Chiao's and Pharming's conduct.

II. FACTUAL BACKGROUND¹

A. CSL Behring's Business and Hereditary Angioedema ("HAE") Therapies

CSL Behring is a global biotherapeutics leader, offering the broadest range of quality plasma-derived and recombinant therapies in the industry. CSL Behring uses the latest technologies and develops and delivers innovative therapies to treat people in more than 60 countries with serious and life-threatening medical conditions. CSL Behring's therapeutic areas focus on immunology and neurology, hematology and thrombosis, respiratory, cardiovascular and metabolic, and transplant. With over 25,000 employees worldwide, CSL Behring has more than 1,700 dedicated scientists who focus on solving patients' unmet needs.

¹ In support of its factual recitation, CSL Behring incorporates by reference its Verified Amended Complaint, attached to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction as Exhibit "1".

Among other therapies, CSL Behring has developed and markets two primary therapies to treat Hereditary Angioedema (“HAE”), a rare disease that can cause severe and even life-threatening attacks of swelling and pain in specific parts of the body including the stomach, hands, feet, arms, legs, genitals, throat, and face. Depending on the severity of the disease, some people will have many attacks each month, while others will go months without an attack. CSL Behring’s first HAE therapy, BERINERT®, is an intravenous C1-INH therapy used for on-demand treatment of HAE symptoms. Patients administer BERINERT at the onset of an attack. The second therapy is HAEGARDA®, which is a subcutaneous C1-INH therapy used prophylactically to prevent HAE attacks from occurring.

Because the biotherapeutics industry is competitive, CSL Behring and its employees understand that the confidentiality of the company’s proprietary information and trade secrets is paramount. If CSL Behring’s confidential and proprietary information and trade secrets were to be acquired by a competitor, CSL Behring would be put at an unfair competitive disadvantage and would face severe damage to its business operations. For example, proprietary information about CSL Behring’s business and marketing strategies could easily be exploited by a competitor to gain an advantage in the industry. CSL Behring diligently protects and safeguards its business interests, relationships, and confidences. Among other things, CSL Behring requires employees to safeguard all such interests as a condition of their employment by signing a Confidentiality Agreement.

B. Chiao’s Employment and Confidentiality Agreement with CSL Behring

In or around July 2016, CSL Behring hired Chiao as a Medical Therapeutic Area Lead-Specialty in its North America Medical Affairs department. Chiao came to CSL Behring with a wealth of pharmaceutical experience, including having worked at Bristol-Myers Squibb,

ViroPharma, Shire Pharmaceuticals, and BTG International. On or about July 18, 2016, at the beginning of his employment, Chiao signed a written confidentiality agreement (the “Confidentiality Agreement”).² The Confidentiality Agreement included a provision stating, in part, that, with a few exceptions, Chiao:

shall, during the period of his/her employment, make prompt and full disclosure of the following, which shall become CSL Behring’s exclusive property: All discoveries, inventions, improvements and ideas relating to any process, machine, manufacture, composition of matter, plant or design, whether patentable or not, which Employee makes or conceives, individually or jointly, either during working hours or with CSL Behring’s materials and/or facilities, which relate to CSL Behring’s business or in which CSL Behring is interested.

(See Confidentiality Agreement § 2.)

The Confidentiality Agreement also states, in part:

Unless authorized in writing by CSL BEHRING, Employee agrees that during the time of his/her employment and any time thereafter, **he/she is prohibited from (a) disclosing or publishing confidential information and (b) using confidential information for him/herself or others**, except as required in work assigned him/her by CSL Behring. The term “confidential information” means the whole or any portion or phase of any compilation of scientific, technical, or business information, design, process, procedure, formula, or improvement which is of value and has been specifically identified by CSL Behring as of a confidential nature and which has not been published or otherwise become a matter of general public knowledge.

(Id. § 8.) (Emphasis added.)

Additionally, the Confidentiality Agreement states:

Employee is authorized to and will access CSL BEHRING’s electronic communications system and/or download CSL BEHRING information for the benefit of and on behalf of CSL BEHRING only and Employee is not authorized to access or use CSL Behring’s electronic communication systems for Employee’s personal gain. Further, **Employee is expressly**

² The Agreement is attached to Plaintiff’s Verified Amended Complaint as Exhibit “A.”

prohibited from accessing and sending messages on CSL Behring’s electronic communication systems, including CSL Behring’s e-mail system or any private e-mail account, for Employee’s own gain or for the benefit of other companies or persons. In addition, Employee is prohibited from downloading files to hard drives external to CSL Behring’s electronic computer systems and/or to portable USB or other memory devices.

* * * *

Employee is prohibited from storing CSL BEHRING owned information on Employee’s own personal communication systems including but not limited to computers, portable computers, personal digital assistants, USB memory devices, palm or other computers or electronic systems for Employee’s personal gain or when the information is no longer needed for any current work assignment with CSL BEHRING.

(Id. § 10.) (Emphasis Added.)

At the time he signed the Confidentiality Agreement, Chiao gave every indication that he understood and agreed to be bound by the above provisions.

Throughout his tenure with CSL Behring, Chiao played a central role in the development, and medical affairs strategy associated with its HAE therapies. Indeed, Chiao was widely recognized as a leading expert in the HAE scientific community and as a “face” of CSL Behring’s HAE therapies and innovations to the medical community. Indeed, in recognition of his contributions to CSL Behring’s HAE initiatives, Chiao was promoted to “Senior Director Medical, HAE” on or around July 1, 2019.

While employed at CSL Behring, Chiao acquired significant knowledge of, and had extensive and detailed exposure to, CSL Behring’s trade secrets and other confidential information relating to its HAE products and underlying technical and medical processes and know-how, as well as its pricing, sales, marketing, medical affairs, and product development strategies. In addition, Chiao acquired significant knowledge of, and had extensive and detailed

exposure to, CSL Behring's trade secrets and other confidential information relating to other CSL Behring therapeutic areas, including Immunodeficiency.

Plainly, CSL Behring viewed Chiao as an important member of its HAE medical team, and it expected that he would honor his contractual and fiduciary duties to his employer. Unfortunately, Chiao appears to have had other designs, both for himself and the confidential material to which he had access as a CSL Behring employee.

C. Chiao Seeks Employment with a Direct Competitor in HAE Therapies

Unbeknownst to CSL Behring, in or around April 2019 Chiao began exploring employment with Pharming Health Care, Inc. ("Pharming"). Pharming is a specialty pharmaceutical company that develops therapies for rare diseases, and it competes directly with CSL Behring in HAE therapies, the area in which Chiao has worked on behalf of CSL Behring since 2016. Pharming's self-proclaimed "lead product," RUCONEST®, is a "recombinant human C1 esterase inhibitor approved for the treatment of acute hereditary angioedema ("HAE") attacks in patients in Europe, the United States, Israel, and South Korea. The product is available on a named-patient basis in other territories where it has not yet obtained marketing authorization."³

RUCONEST® competes directly with CSL Behring's therapy BERINERT®. As it states on its website, Pharming's "Strategic Focus" is to, among other things, commercialize RUCONEST® as its lead product, obtain the best value for RUCONEST® and patients by pursuing additional regulatory approvals and additional indications for the product, develop more dosing forms, and develop RUCONEST® for additional indications. Upon information and belief, Pharming is evaluating and/or developing a subcutaneous form of

³ See Pharming's website at <https://www.pharming.com/about-us>.

injection for prophylactic therapy, which would compete directly with CSL Behring's HAEGARDA® offering.

Unlike CSL Behring, Pharming is not a leader in the HAE market. However Pharming has put substantial resources in the development of RUCONEST® to directly compete with CSL Behring's products and to obtain market share. Upon information and belief, Pharming's intense desire to increase its share of the HAE therapeutic market at CSL Behring's expense led to Pharming's efforts to recruit Chiao and improperly capitalize on and exploit his extensive knowledge of both the HAE market and CSL Behring's confidential and proprietary information and trade secrets.

Pharming's Vice President of Clinical Research and Medical Affairs is Anurag Relan ("Relan"). Between April and September 2019, Relan and Chiao engaged in extensive discussions about Chiao leaving CSL Behring to join Pharming. As early as May 2019, Relan coordinated a meeting between Chiao and Pharming's General Manager. Later that month, Relan and Chiao arranged to meet while they were both attending a conference in Budapest. Following that meeting –which took place in a hotel adjacent to the conference venue, presumably to avoid being seen together – Relan and Chiao exchanged the following text message:

Relan: Joe – great to see you last week. I think you and I are very much aligned in our thinking. I would like to move this forward and formalize the process if okay with you also. But first I need to discuss with my boss, who is out till mid-June. So, we'll be in touch soon afterwards.

Chiao: Anurag: I'm hopeful that you will be able to convince your boss regarding how we would align together to effect a large difference to the bottom line from Pharming, in both HAE and non-HAE markets.

Relan: Joe – I had a chat with our COO, and he is supportive. I’ll reach out to Steve so we can begin the process formally. I’m [out] next week, but feel free to reach out with anything. Thanks and excited about the possibilities!

The discussions between Chiao and Pharming progressed throughout the summer. And as their relationship developed, Chiao appeared very willing to share information – including confidential information – with Relan. For example, in early August 2019, Chiao offered to provide Relan with sections of a “draft copy” manuscript of a submission prepared by the Hereditary Angioedema Association (“HAEA”) manuscript, despite being told by HAEA members that he was not permitted to share the manuscript with anyone. As Chiao states in a text dated August 2, 2019, “I’m not even sharing the manuscript internally at CSL.” Nonetheless, Chiao was perfectly happy to provide Relan with portions of the manuscript in which he expressed a particular interest.⁴

Relan was also not shy about requesting information from Chiao. Less than two weeks later, while Chiao was still a CSL Behring employee, Relan asked Chiao to provide him with information on primary immunodeficiencies (“PID”) and common variable immune deficiency disorders (“CVID”). Notably, Relan acknowledged that his inquiry was “Maybe a premature question,” but Chiao happily provided the information. In response, Relan wrote: “Excellent – you’ll soon see why I am asking . . .”

In early September, as he and Relan exchanged texts regarding Chiao’s upcoming interviews at Pharming, Chiao wrote: “I want to assure everyone [sic] the qualities I will bring Pharming too.” Chiao also disclosed that he was ‘being asked to assist with [CSL Behring’s]

⁴ By text message on August 13, 2019, Chiao wrote to Relan: “I cannot send you the HAEA Recommendations manuscript, as I promised not to send it, but I put the sections into a slide. Note that this info was from the draft prior to their finalizing the manuscript at the HAEA Summit.” Relan responded: “This is very useful. Much appreciated. Largely in line but nice to see the details.”

C1-INH recombinant program,” which he added were “[a]ll non-HAE-studies . . .” Later that same day, Chiao wrote the following to Relan: “I have a research and publication idea that I was working on with Allen, Peter, Spath, Michael Frank, Colin Mas and Marco. Spath and I spoke about this over the weekend and said we need to replace Frank and Marco with others. I can bring this concept to Pharming. Nothing has been signed . . .” Plainly, not only was Chiao willing to share information with CSL Behring’s competitor, he was offering to transport publication initiatives to Pharming despite having conceived of and initiated them while still on CSL Behring’s payroll.

Having spent months exchanging ideas and information with Pharming, Chiao was finally offered employment as Pharming’s Executive Medical Director in mid-September 2019. He accepted almost immediately. By text dated September 20th, Chiao wrote to Relan that he was “excited and looking forward to joining Pharming and working with you in HAE, Immunodeficiency and business development.” Thus, by his own admission, Chiao’s was hired at Pharming to work on HAE and Immunodeficiency, as well as related business development initiatives. Chiao’s start date with Pharming was to be September 30, 2019.

Having secured a position with Pharming, Chiao tendered his resignation to CSL Behring on Monday, September 23, 2019. Notably, however, despite having already committed to starting at Pharming on September 30, 2019, Chiao provided two weeks’ notice of his resignation – meaning he presumably intended to work for both CSL Behring and Pharming for one week. This is particularly troubling given that, before he notified anyone at CSL Behring that he was leaving, Chiao spent the weekend e-mailing and downloading documents from CSL Behring’s computer systems, in direct violation of his Confidentiality Agreement.

D. Chiao Takes CSL Behring's Confidential Information

Chiao's abrupt resignation and the fact that he was believed to be going to a competitor raised concerns at CSL Behring that Chiao may have taken confidential information with him. On September 24, 2019, CSL Behring reviewed Chiao's outgoing email from CSL Behring's server. The review revealed that within the prior 30 days, Chiao had sent approximately 68 messages to his personal email account. The vast majority of these emails were sent on September 19, the Friday before Chiao's resignation. The emails that Chiao sent to his personal email account contain confidential, proprietary information and trade secrets. Many of the documents contain high-level company strategy and supporting data that is not only confidential and proprietary, but also has enormous value to CSL Behring's competitors. Some of the documents even contain conspicuous footers that stated, "CONFIDENTIAL and PROPRIETARY – for Internal CSL Behring Use Only."

After discovering that Chiao had sent dozens of emails to his personal account, CSL Behring likewise ran a query to see whether Chiao had taken any other improper actions prior to his departure. This query revealed that between Friday, September 19 and Sunday, September 22, Chiao had copied and downloaded over 21,000 files across 2600 folders to a portable USB drive. All told, Chiao misappropriated almost 25 gigabytes of CSL Behring information – the equivalent of well over 1,000,000 pages.

CSL Behring is still investigating the full extent of the documents Chiao copied to a USB drive. Even at this preliminary stage in the investigation, CSL has verified that many of these documents contain confidential, proprietary information and trade secrets. Among other information, Chiao downloaded and misappropriated CSL Behring computer files containing:

- Confidential and proprietary market research regarding HAE and the HAE market;

- CSL Behring new product development and clinical trials;
- CSL Behring Competitive Intelligence reports in the HAE market;
- CSL Behring submissions to the FDA relating to product labeling and related approvals;
- Bi-Monthly Status Reports for CSL Behring's HAE franchise, which reports contain highly confidential and sensitive information relating to key business drivers, ongoing sales activity and programs, and competitive intelligence;
- Patient and physician information relating to the use of CSL Behring's products;
- Physician prescription information from CSL Behring's proprietary "Patient Service Hub";
- Detailed information on KOLs, including proprietary compensation information and CSL Behring's strategies for interacting and engaging with KOLs.
- Sales training materials associated with several of CSL's HAE products; and
- Many strategy and medical documents pertaining to CSL's Immunology products.

Upon information and belief, CSL Behring believes that many more of the documents also contain confidential, proprietary information and trade secrets belonging to CSL Behring.

Given their sensitive nature, it is CSL Behring's practice to maintain confidentiality of this type of information. Knowledge of this information could be of the utmost value to CSL Behring's competitors, including Pharming, which was been attempting to erode CSL Behring's position in the HAE therapies market. CSL Behring also has reason to suspect that Pharming intends to exploit Chiao's knowledge of – and access to confidential information relating to – its Immunodeficiency products and marketing initiatives.

Among the files that Chiao downloaded on September 20th was a file containing the names of approximately 800 doctors with whom CSL Behring has contracted over the last 4

years as Key Opinion Leaders (“KOLs”) together with the rates CSL Behring paid them, including KOLs in the areas of HAE and Immunodeficiency. Earlier that same day, in a text to Relan, Chiao stated: “I could also set up a series of HAE KOL and Immunodeficiency KOLs to meet with us” during an upcoming conference. Relan responded: “The PID [Primary Immunodeficiency] KOLs will be useful as we don’t know them. Let’s coordinate with Heather.” Shortly after that text message exchange, Chiao began downloading documents to his USB device, including CSL Behring’s confidential KOL documents.

Approximately one month earlier, on August 19, 2019, Pharming announced that it was entering the immunodeficiency market through a licensing agreement with Novartis, which would allow Pharming to develop and market a late-stage drug for the treatment of APSD, a primary immune deficiency. Having access to CSL Behring’s confidential and proprietary immunodeficiency information, including information about its extensive network of KOLs, would be of immense benefit to Pharming and of tremendous detriment to CSL Behring.

As if this were not damning enough, CSL Behring has also learned that Chiao retained a number of hard copy documents that he used during the course of his employment with CSL Behring, including sales presentations, marketing plans, and “messaging booklets” for Hizentra®, one of CSL Behring’s lead immunodeficiency products. Given Pharming’s stated interest of moving into immunodeficiency products – as well as the fact that Chiao’s work did not focus on these products while at CSL Behring – his decision to retain the messaging booklets rather than return them prior to his resignation further suggests that he intended to use such materials to his and Pharming’s benefit, at the expense of his former employer.

Upon information and belief, Chiao, in concert with Pharming, has already misappropriated, or intends to misappropriate, CSL Behring’s confidential, proprietary

information and trade secrets. In the course of his job performance, Chiao acquired and developed trade secrets and confidential and proprietary information with regard to the business of CSL Behring, which is not generally known to the public. During Chiao's employment with CSL Behring, he was provided with and obtained unique and valuable information about the business, strategy and methods, scientific data, and contracts of CSL Behring, and other confidential and proprietary information. Indeed, in his positions at CSL Behring, Chiao had access to CSL Behring's documents and information, including confidential and proprietary information.

At all relevant times, CSL Behring entrusted Chiao with its confidential and proprietary information with the express understanding that he would not improperly use or disclose it. CSL Behring derives substantial economic value from maintaining the secrecy of the confidential and proprietary information it develops, and CSL Behring relies on this information to conduct its business in a competitive industry. The confidential and proprietary information to which Chiao gained access and used during his employment with CSL Behring and unlawfully took when he departed the company, is not readily available to the general public, and cannot be assembled from publicly available information or sources.

Indeed, even internally CSL Behring restricts access to information on its computer systems so that employees generally only have access to materials and computer directories that correspond with his or her job function or closely related functions. Therefore, maintaining the confidentiality of such core confidential and proprietary information is crucial to CSL Behring. The disclosure to and use of such information about customers by a competitor such as Pharming would give that competitor an unfair road map into CSL Behring's research

and development, and business operations and, indeed, would give the competitor the capability of undermining CSL Behring's businesses.

CSL Behring has taken reasonable steps to protect and maintain the secrecy of its confidential and proprietary information. Upon information and belief, Chiao's and Pharming's unlawful conduct or threatened unlawful conduct is likely to continue unless both parties are ordered to cease such conduct by a court of law. As a direct result of Chiao's and Pharming's wrongful conduct, CSL Behring has already suffered and will, absent enforcement of the Confidentiality Agreement, continue to suffer immediate and irreparable harm from the loss of its proprietary information and trade secrets.

III. ARGUMENT

A. Standard of Review

Whether framed as a temporary restraining order or a preliminary injunction, a request for injunctive relief must meet four requirements: "[a] plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Ferring Pharms., Inc. v. Watson Pharmaceuticals, Inc., 765 F.3d 205, 210 (3d Cir. 2014).

Under Third Circuit law, "a movant for preliminary equitable relief must meet the threshold for the first two 'most critical' factors: it must demonstrate that it can win on the merits (which requires a showing significantly better than negligible but not necessarily more likely than not) and that it is more likely than not to suffer irreparable harm in the absence of preliminary relief." Reilly v. City of Harrisburg, 858 F.3d 173, 179 (3d Cir. 2017).

Once these “gateway factors” are met,” a court then looks to “the remaining two factors and determines in its sound discretion if all four factors, taken together, balance in favor of granting the requested preliminary relief.” Id. Third Circuit courts are advised to take a flexible approach to this analysis: “How strong a claim on the merits is enough depends on the balance of the harms: the more net harm an injunction can prevent, the weaker the plaintiff’s claim on the merits can be while still supporting some preliminary relief.” Id. (quoting Hoosier Energy Rural Elec. Coop., Inc. v. John Hancock Life Ins. Co., 582 F.3d 721, 725 (7th Cir. 2009)). A “primary goal” of temporary or preliminary injunctive relief “is to maintain the status quo, defined as the last, peaceable, noncontested status of the parties.” Kos Pharms., Inc. v. Andrx Corp., 369 F.3d 700, 708 (3d Cir. 2004) (citation omitted).

In order to obtain a preliminary injunction, the plaintiff need only make a *prima facie* case of a reasonable probability of prevailing on the merits. Oburn v. Shapp, 521 F.2d 142, 148 (3d Cir. 1975). The burden of showing “likelihood of success” is lower than the burden of showing “success,” because the immediate nature of preliminary injunction proceedings demands less formal procedures than a trial on the merits. See, e.g., Clark v. K-Mart Corp., 979 F.2d 965 (3d Cir. 1992). The decision to grant a request for preliminary injunctive relief is a matter for the discretion of the district court. Clean Ocean Action v. York, 57 F.3d 328, 334 (3d Cir. 1995).

CSL Behring will establish the necessary elements to support the issuance of a preliminary injunction. It has a clear right to relief on the merits of its claims, absent injunctive relief it will suffer immediate and irreparable harm, an injunction will maintain the status quo and prevent Chiao and Pharming from engaging in further wrongful conduct, and the issuance of an injunction will serve the public interest. This Court should grant CSL Behring’s requested

relief and issue a temporary restraining order to maintain the status quo until expedited discovery and a preliminary injunction hearing can take place.

B. CSL Behring is Likely to Succeed on the Merits of its Claims

1. CSL Behring is Likely to Succeed on Its Breach of Contract Claim

Under Pennsylvania law, the elements of a claim for breach of contract are: (i) the existence of a contract, (ii) a breach by the defendant of a duty imposed by the contract, and (iii) resultant damages. Hopkins v. GNC Franchising, Inc., 288 F. App'x 871, 874 (3d Cir. 2008) (citing CoreStates Bank, N.A. v. Cutillo, 723 A.2d 1053, 1058 (Pa. Super. Ct. 1999)); E. Elec. Corp. of New Jersey v. Shoemaker Const. Co., 657 F. Supp. 2d 545, 555 (E.D. Pa. 2009).

CSL Behring can establish each of these elements. First, there is no dispute that Chiao entered into a valid and enforceable Confidentiality Agreement with CSL Behring on or around July 18, 2016, at the outset of his employment with CSL Behring. The Confidentiality Agreement unambiguously prohibits Chiao, either during his employment or any time thereafter, from “(a) disclosing or publishing confidential information and (b) using confidential information for him/herself or others, except as required in work assigned him/her by CSL BEHRING.” (Confidentiality Agreement § 8.) The Confidentiality Agreement further defines “confidential information” as follows:

The term “confidential information” means the whole or any portion or phase of any compilation of scientific, technical, or business information, design, process, procedure, formula, or improvement which is of value and has been specifically identified by CSL BEHRING as of a confidential nature and which has not been published or otherwise become a matter of general public knowledge.

(Id.) The Confidentiality Agreement also expressly prohibited Chiao from (i) accessing or using “CSL Behring’s electronic communication systems for Employee’s personal gain,” (ii)

“accessing and sending messages on CSL Behring’s electronic communication systems, including its e-mail system or any private e-mail account, for Employee’s own gain or for the benefit of other companies or persons,” and (iii) “downloading files to hard drives external to CSL Behring’s electronic computer systems and/or to portable USB or other memory devices.”

(Id. § 10.) Finally, Chiao expressly and unambiguously agreed that he would not store any CSL Behring information on his own personal communication systems,

including but not limited to computers, portable computers, personal digital assistants, USB memory devices, palm or other computers or electronic systems for Employee’s personal gain or when the information is no longer needed for any current work assignment with CSL BEHRING.

(Id.)

Second, Chiao breached each of these prohibitions and the duties imposed upon him by the Confidentiality Agreement. In the weeks prior to his resignation, Chiao sent approximately 68 email messages containing confidential CLS Behring information to his personal email account. In the *days* prior to his resignation – after he had decided to join Pharming but before he told anyone at CSL Behring that he was leaving – Chiao surreptitiously downloaded almost 25 gigabytes of confidential and proprietary CSL Behring information to a portable USB drive, which he then took with him and retained after he left CSL Behring. The information that Chiao downloaded comprise almost 25,000 computer files. All of this was done to advance Chiao and Pharming’s interests at the expense of CSL Behring. CSL Behring is still investigating the nature of the documents Chiao obtained in violation of his Confidentiality Agreement, but it has confirmed many of these documents contain confidential, proprietary information and trade secrets.

As a result of Chiao's breach of the Confidentiality Agreement, CSL Behring has suffered and will continue to suffer damages to its business, including but not limited to the loss of valuable proprietary information and trade secrets, loss of contractual relationships, and loss of good will. Moreover, given that Chao, who for the past three years has overseen CSL Behring's HAE portfolio, has taken a position as Executive Medical Director at Pharming, CSL Behring's direct competitor in the HAE market, it is inevitable that he will disclose CSL Behring trade secrets and other confidential information. CSL Behring will be able to show damages as a result of these inevitable disclosure. Indeed, injunctive relief is an appropriate vehicle for enforcing the Confidentiality Agreement. See Home Line Furniture Industries, Inc. v. Banner Retail Marketing, 630 F. Supp. 2d 527, 529 (E.D. Pa. 2009).

2. CSL Behring is Likely to Succeed on Its Claim under the Pennsylvania Uniform Trade Secrets Act

CSL Behring is also likely to succeed on the merits of its misappropriation of trade secrets claim under the Pennsylvania Uniform Trade Secrets Act ("PUTSA"). The PUTSA prohibits the acquisition and disclosure or use of a trade secret without the owner's consent. See 12 Pa. Cons. St. § 5302. "A person has misappropriated a trade secret under Pennsylvania law when he acquires knowledge of another's trade secret in circumstances giving rise to a duty to maintain its confidentiality and then discloses or uses that trade secret without the other's consent." Bimbo Bakeries USA, Inc. v. Botticella, 613 F.3d 102, 110 (3d Cir. 2010) (citing 12 Pa. Cons. St. § 5302). A trade secret is defined as:

Information, including a formula, drawing, pattern, compilation including a customer list, program, device, method, technique or process that:

(1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable

by proper means by, other persons who can obtain economic value from its disclosure or use.

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Id. Both actual and threatened misappropriation may be enjoined. See 12 Pa. Cons. St. § 5303(a); Bimbo Bakeries, 613 F.3d at 110.

To be entitled to an injunction against use or disclosure of confidential information, the plaintiff must show the following:

“(1) that the information constitutes a trade secret; (2) that it was of value to the employer and important in the conduct of his business; (3) that by reason of discovery or ownership the employer had the right to the use and enjoyment of the secret; and (4) that the secret was communicated to the defendant while employed in a position of trust and confidence under such circumstances as to make it inequitable and unjust for him to disclose it to others, or to make use of it himself, to the prejudice of his employer.”

Freedom Med. Inc. v. Whitman, 343 F. Supp. 3d 509, 518 (E.D. Pa. 2018) (quoting SI Handling Sys., Inc. v. Heisley, 753 F.2d 1244, 1255 (3d Cir. 1985)). CSL Behring can establish each of these elements.

First, it is beyond dispute that the files Chiao unlawfully misappropriated constitute CSL Behring’s trade secrets. Among the over 21,000 computer files that Chiao downloaded from CSL Behring’s computer servers were files containing the following information:

- Confidential and proprietary market research regarding HAE and the HAE market;
- CSL Behring new product development and clinical trials;
- CSL Behring Competitive Intelligence reports in the HAE market;
- CSL Behring submissions to the FDA relating to product labeling and related approvals;

- Bi-Monthly Status Reports for CSL Behring's HAE franchise, which reports contain highly confidential and sensitive information relating to key business drivers, ongoing sales activity and programs, and competitive intelligence;
- Patient and physician information relating to the use of CSL Behring's products;
- Physician prescription information from CSL Behring's proprietary "Patient Service Hub";
- Detailed information on KOLs, including proprietary compensation information;
- CSL Behring's strategies for interacting and engaging with KOLs.
- Sales training materials associated with several of CSL's HAE products; and
- Many strategy and medical documents pertaining to CSL's Immunology products.

This information is not known outside of CSL Behring's business, and CSL Behring restricts access to such information to only those employees who have a reasonable need to use it to advance CSL Behring's business interests.

Moreover, CSL Behring has taken reasonable steps protect and maintain the confidentiality and secrecy of the forgoing information, as well as any similar types of information that Chiao may have misappropriated, including requiring employees to sign a confidentiality agreement as a condition of their employment. See Whitman, 343 F. Supp. 3d at 519 (use of confidentiality agreements is reasonable measure to keep company's information secret).

Behring derives significant economic value from having its company strategy, research and development, and business operations data kept secret. Because this information is not generally known, CSL Behring remains competitive in the pharmaceutical industry and can provide unique therapies. Behring has invested heavily, both in terms of money and effort, in developing its confidential information, which cannot easily be legitimately duplicated or

acquired by competitors or others. In sum, the information that Chiao misappropriated falls squarely within the definition of protected trade secrets. See Bimbo Bakeries, 613 F.3d at 109-110 (company's information relating to formulas and designs for products, strategic sales and marketing efforts, new product development, customer identities, and cost and pricing of products constitute protected trade secrets under the PUTSA); Whitman, 343 F. Supp. 3d at 519.

Second, the trade secrets were of value to CSL Behring and important to its business. These secrets included high-level strategies, research and development of medical therapies, internal company data and other proprietary information. This information forms the basis of CSL Behring's pharmaceutical business and without it CSL Behring would lose its competitive edge in the industry. Third, CSL Behring developed and owned all of this information and plainly had the exclusive right to its use and enjoyment. Fourth, Chiao only obtained these trade secrets by virtue of his high-ranking role and confidential relationship with CSL Behring. "Under Pennsylvania law, the duty of an employee not to disclose the secrets of his employer may arise either from an express contract, or may be implied from the confidential relationship existing between the employer and employee." BIEC Int'l, Inc. v. Glob. SteelServs., Ltd., 791 F. Supp. 489, 548 (E.D. Pa. 1992).

Here, Chiao signed a Confidentiality Agreement that expressly prohibited his disclosure, publication, or use of any CSL Behring confidential information. The Confidentiality Agreement also prohibited Chiao from sending information to his personal e-mail account and from downloading files to any external hard drives or portable USB or other memory devices. Moreover, as a Senior Medical Director with CSL Behring, Chiao was entrusted with the company's valuable and proprietary information and trade secrets with the understanding that he would not disclose its contents to anyone outside of CSL Behring, least of all a competitor.

The facts alleged also state a claim for threatened misappropriation of trade secrets, and this Court should enjoin Chiao from working at Pharming. “The Third Circuit has held that where an employee’s work for a new employer substantially overlaps with work for a former employer, based on the same role, industry, and geographic region, a district court may conclude that those employees would likely use confidential information to the former employer’s detriment.” Jazz Pharmaceuticals, Inc. v. Synchrony Group, LLC, 343 F. Supp.3d 434, 446 (E.D. Pa. 2018); see Fres-co Sys. USA, Inc. v. Hawkins, 690 F. App’x 72, 76 (3d Cir. 2017) (“Under the [DTSA and PUTSA] giving rise to [plaintiff]’s causes of action, misappropriation of trade secrets need not have already occurred to warrant injunctive relief; threatened misappropriation is sufficient.”)

Further, Pennsylvania courts recognize the “inevitable disclosure” doctrine, which provides that an injunction may issue so long as “defendant’s new employment ‘is likely to result in the disclosure’ of a former employer’s trade secrets.” Bimbo Bakeries, 613 F.3d at 111-12 (citation omitted). In fact, courts have given plaintiffs injunctive relief that enjoins a former employee from working at a direct competitor to the extent his proposed employment threatens to lead to the misappropriation of confidential information. See id. at 111. This is so even if the former employee and plaintiff do not have a valid non-compete. Id. at 105.

Chiao’s has accepted a high-level position with Pharming, a direct competitor of CSL Behring, as its Executive Medical Director in the areas of HAE and Immunodeficiency. In so doing, he will be capitalizing on the work he did for CSL Behring since 2016. Chiao’s anticipated role at Pharming not only reflects a breach of his obligations under the Confidentiality, but it also will lead to the likely disclosure of CSL Behring trade secrets and other confidential information. Given the confidential and proprietary information and trade

secrets CSL Behring confirmed Chiao unlawfully obtained, CSL has already suffered and will continue to suffer damages because of these inevitable disclosures. Thus, as in Bimbo, this Court should grant CSL Behring's request for injunctive relief that will enjoin Chiao from working at Pharming. Based on the foregoing, CSL Behring is likely prevail on the merits of its PUTSA claim.

3. CSL Behring is Likely to Succeed on Its Claim Under The Defense of Trade Secrets Act

As argued above, Chiao misappropriated CSL Behring's trade secrets in violation of the PUTSA. "Although the DTSA and the PUTSA use different wording to define a trade secret, they essentially protect the same type of information." Freedom Med. Inc., 343 F. Supp. 3d at 509 (citations omitted). Like the PUTSA, the DTSA prohibits the "acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means" 18 U.S.C. §1839(5)(a). It also prohibits "disclosure or use of a trade secret of another without express or implied consent." 18 U.S.C. §1839(5)(b).

This Court has held that misappropriation under the PUTSA also suffices as misappropriation under the DTSA because they target the same conduct. Freedom Med. Inc., 343 F. Supp. 3d at 518; see also Jazz Pharm., Inc., 343 F. Supp. 3d at 445 (recognizing that both statutes define trade secrets and misappropriation in the same manner and therefore applying the same analysis to both claims); Teva Pharm. USA, Inc. v. Sandhu, 291 F. Supp. 3d 659, 675 (E.D. Pa. 2018) (same). Given the identical prohibitions, the elements required to sustain an injunction under the DTSA are the same as those under the PUTSA. Freedom Med. Inc., 343 F. Supp. 3d at 518. For the reasons stated above, CSL Behring is likely to succeed on the merits of its DTSA claim.

**4. CSL is Likely to Succeed on Its Common Law
Misappropriation of Trade Secrets Claim**

CSL Behring is also likely to succeed on its common law misappropriation of trade secrets claim. Pennsylvania courts have long embraced the general principles of misappropriation of trade secrets outlined in the Restatement (2nd) of Torts §757. A.M. Skier Agency, Inc. v. Gold, 747 A.2d 936, 940 (Pa. 2000); O.D. Anderson, Inc. v. Cricks, 815 A.2d 1063, 1072 (Pa. 2003). The common law provides the following grounds for a misappropriation of trade secrets action:

One who discloses or uses another's trade secret, without a privilege to do so, is liable to another if: (a) he discovered the secret by improper means, or (b) his disclosure or use constitutes a breach of confidence reposed in him by the other in disclosing the secret to him.

O.D. Anderson, Inc., 815 A.2d at 1072 (citing Restatement (2nd) of Torts §757).

Here, Chiao misappropriated CSL's confidential and proprietary information. As more fully described above, Chiao discovered the company's trade secrets by improper means when he accessed and downloaded and e-mailed CSL Behring's confidential information in violation of the Confidentiality Agreement. Chiao was entrusted with the company's valuable and proprietary information and trade secrets with the understanding that he would not remove it from CSL Behring's computer systems and use and/or disclose the information for his personal gain or the benefit of another company like Pharming. Chiao breached this confidence in spectacular fashion by, among other things, downloading tens of thousands of computer files in the days before his departure, with the intent to use them for his own and Pharming's benefit. For the reasons stated above, CSL will likely prevail on its common law misappropriation claim. See Orthovita, Inc. v. Erbe, 2008 WL 423446, *5 (E.D. Pa. Feb. 14, 2008) (citing Freedom Med. Inc. v. Gillespie, 634 F. Supp. 2d 490, 517 (E.D. Pa. 2007) (denying motion to dismiss because

Pennsylvania “imposes a common law duty on an employee not to use or disclose trade secrets obtained in the course of a confidential employment relationship” and rejecting the gist of the action doctrine)).

5. CSL is Likely to Succeed on Its Claim Under the Computer Fraud and Abuse Act Claim

Chiao violated the Computer Fraud and Abuse Act (“CFAA”), and CSL Behring is likely to succeed on its claim against him. Section 1030(a)(4) of the CFAA expressly prohibits one from “knowingly and with intent to defraud, access[ing] a protected computer without authorization, or exceed[ing] authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value 18 U.S.C. §1030(a)(4). Notably, the term “exceeds authorized access” is defined as “access[ing] a computer with authorization and [using] such access to obtain or alter information in the computer that the accesser is not entitled to so obtain or alter.” 18 U.S.C. §1030(e)(6). An employee accessing and downloading confidential company files for personal use is a prime example of such unlawful conduct under the CFAA. See Bro-Tech Corp. v. Thermax, Inc., 651 F. Supp. 2d 378, 394 (E.D. Pa. 2009); see also Estes Forwarding Worldwide LLC v. Cuellar, 239 F. Supp. 3d 918, 921 (E.D. Va. 2017) (denying employee’s motion to dismiss CFAA claim where, prior to quitting and working for a competitor, he downloaded an archive of his employer’s account spreadsheets for himself).

Here, Chiao exceeded his authorized use of CSL Behring’s computer and obtained information from it which he was not entitled to. Under his Confidentiality Agreement, Chiao was, *inter alia*, prohibited from accessing or using CSL Behring’s electronic communication systems for his or another company’s benefit or gain. Chiao exceeded this purpose when he accessed, copied, and transmitted by, among other things, downloading or emailing, CSL Behring’s confidential and trade secret information. These trade secrets are of

immeasurable value to CSL Behring because they form the basis of its business and allow it to remain competitive in the pharmaceutical industry. Further, it is clear that Chiao's purpose for unlawfully obtaining this information was to advance his own personal and professional interests and to benefit Pharming, all to the substantial detriment of CSL Behring. Given the facts and circumstances surrounding Chiao's misappropriation of CSL Behring's computer files and confidential information, CSL Behring is likely to succeed on the merits of this claim.

**6. CSL Behring is Likely to Succeed on Its
Tortious Interference Claim**

To succeed on a claim for tortious interference with contractual, actual, or prospective business relations, a plaintiff must show (1) the existence of a current prospective contractual relationship between the plaintiff and a third party; (2) that the defendant purposely or intentionally interfered therewith; (3) that the defendant was not privileged to act in this manner; and (4) that the plaintiff suffered pecuniary loss as a result. Remick v. Manfredy, 238 F.3d 248, 263 (3d Cir. 2001) (citing Pelagatti v. Cohen, 536 A.2d 1337, 1343 (Pa. Super. Ct. 1987)); SHV Coal, Inc. v. Continental Grain Co., 545 A.2d 917, 921 (Pa. Super. Ct. 1988), rev'd on other grounds, 587 A.2d 702 (Pa. 1991). To show that a defendant acted with the "purpose or intent" to harm existing or prospective relationships, a plaintiff only needs to show that the defendant "know[s] that interference is certain or substantially certain to occur." Barmasters Bartending School, Inc. v. Authentic Bartending School, Inc., 931 F. Supp. 377, 386 (E.D. Pa. 1996).

Importantly, tortious conduct is only justified if the defendant is acting to support a legitimate interest. See Empire Trucking Co., Inc. v. Reading Anthracite Coal Co., 71 A.3d 923, 934 (Pa. Super. Ct. 2013). There is no legitimate interest in, and hence no justification for,

hiring an employee from a competitor to gain access to the competitor's trade secrets. See Barmasters, 931 F. Supp. at 386.

In this case, CSL Behring has business relationships with various doctors, hospitals, medical facilities, and a litany of other organizations. Pharming is a direct competitor of CSL Behring, and Chiao is aware of CSL Behring's business relationships. Pharming's employment of Chiao will directly interfere with these relationships because, as discussed above, Chiao's employment will likely result in his disclosure of CSL Behring's trade secret and confidential information, including the information he unlawfully took in the days and weeks prior to his resignation. Thus, both Chiao and Pharming, through their respective and collective actions, effectively guarantee that they will interfere with CSL Behring's existing and prospective business relationships.

C. CSL Behring Will Suffer Irreparable Harm Unless the Court Grants Injunctive Relief

CSL Behring has already suffered irreparable harm and further irreparable harm will ensue if Chiao and Pharming are not enjoined from their course of wrongful conduct. The Third Circuit has stated that "in order to demonstrate irreparable harm the plaintiff must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial." Campbell's Soup Co. v. ConAgra, Inc., 977 F.2d 86, 91 (3d Cir. 1992); see also National Bus. Serv., Inc. v. Wright, 2 F. Supp. 2d 701, 709 (E.D. Pa. 1998) ("Harm is irreparable when it cannot be adequately compensated in damages, either because of the nature of the right that is injured, or because there exists no certain pecuniary standards for the measurement of damages.").

Grounds for irreparable injury include the loss of trade and loss of goodwill. S & R Corp. v. Jiffy Lube Intern., Inc., 968 F.2d 371, 374 (citing Opticians Ass'n of America v.

Independent Opticians of America, 920 F.2d 187, 192 (3d Cir. 1990)). Courts also recognize that lost business opportunities or market share are inherently difficult to quantify, so that remedies otherwise available to a plaintiff are deemed inadequate. See, e.g., West Penn Specialty MSO Inc. v. Nolan, 737 A.2d 295, 299 (Pa. Super. Ct. 1999);

The threat of continued, actionable conduct on the part of Chiao clearly involves incalculable damage to CSL Behring that is irreparable and makes preliminary injunctive relief appropriate. Courts regularly find the requisite irreparable harm, and grant injunctive relief, where, as here, an employee of one company is hired by a competitor and utilizes the former employer's proprietary information. See, e.g., Quaker Chem. Corp. v. Varga, 509 F. Supp. 2d at 478-79 (holding that equitable relief is appropriate to protect trade secrets, confidential information, and goodwill); Fisher Bioservices, 2006 WL 1517382, at *20 ("Within the Third Circuit, courts have found that injury to goodwill and the use of a company's confidential information are the types of injuries which would constitute irreparable harm that cannot be compensated with monetary damages.").

Here, Chiao has been engaged in a course of conduct – in violation of his Confidentiality Agreement and applicable law – to access and disclose CSL's proprietary business information and trade secrets and thereby damage CSL Behring's business, its industry relationships and its goodwill. Moreover, once Chiao is employed by Pharming and takes up his new role to advance Pharming's HAE and Immunodeficiency franchises, it is exceptionally likely that he will disclose the confidential information he stole from CSL Behring, thereby giving Pharming a competitive advantage that it otherwise would not have. The harm suffered by CSL Behring goes to the heart of its business, will result in incalculable damage, and cannot be compensable by monetary damages. Preliminary injunctive relief is the only way of

protecting CSL Behring from the irreparable harm. See, e.g., Pappan Enterprises, Inc. v. Hardee's Food Systems, Inc., 143 F.3d 800, 805 (3d Cir. 1998) (“Grounds for irreparable injury include loss of control of reputation, loss of trade, and loss of good will.”). Under these circumstances, CSL Behring will suffer irreparable harm if the Court does not grant its request for injunctive relief.

D. An Injunction Would Restore the Parties to the Status Quo and the Balance of Equities Favors Issuance of an Injunction

The relief requested by CSL Behring is designed to maintain the status quo until the action is heard on the merits. The relief requested by CSL Behring is tailored to protect its legal rights and interests in its confidential and trade secret information, while prevent Chiao and Pharming from benefiting from their possession and/or use of that information, to which they have no legal right under any circumstances. “Balancing of the equities requires evaluating whether the harm done to [CSL] through the misappropriation of its trade secrets outweighs the potential harm done to [Chiao and Pharming] through the issuance of a preliminary injunction.” Freedom Med. Inc., 343 F. Supp. 3d at 524.

Injunctive relief would maintain the status quo and would not cause any undue harm to Chiao or Pharming. A preliminary injunction will do nothing more than prevent them from using or disseminating any of CSL Behring’s confidential and proprietary information. Once Chiao begins to divulge CSL Behring’s trade secrets and confidential information, it will be impossible to restore the status quo or adequately compensate CSL Behring with monetary damages.

Put simply, an injunction would hold Chiao to the terms of the Confidentiality Agreement that he previously signed and leave Pharming in the exact same position it was in prior to Chiao’s unlawful misappropriation of CSL Behring’s confidential information. See

Bimbo Bakeries, 613 F.3d at 118-19 (trial court properly enjoined former employee from working at competitor “when, faced with evidence of [employee’s] suspicious conduct during his final weeks at Bimbo, it determined that a stronger remedy was needed in the interim to protect Bimbo from imminent irreparable harm” and where potential harm of trade secrets being disclosed to competitor outweighed harm to employee of not being able to commence employment with the competitor).

E. The Issuance of a Preliminary Injunction Would Serve the Public Interest

The issuance of a preliminary injunction would serve the public interest. Courts have recognized “a generalized public interest in upholding the inviolability of trade secrets and enforceability of confidentiality agreements.” Bimbo Bakeries, 613 F.3d at 119 (internal citations omitted). Enjoining Chiao’s improper and unlawful conduct would prevent him from reaping the benefits of his wrongful actions and send a clear message that such conduct is intolerable.

IV. CONCLUSION

For all of the foregoing reasons, Plaintiff, CSL Behring LLC, respectfully requests that this Court grant its motion for a temporary restraining order and for a preliminary injunction, each providing that Pharming be enjoined from employing Chiao, that Chiao and Pharming be enjoined, temporarily and preliminarily until hearing, and thereafter indefinitely, from using CSL Behring's trade secrets and other confidential information, or presenting such information to any other party other than CSL Behring, and other such relief as set forth in the accompanying proposed orders.

Respectfully submitted,

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