**11.1 Trade Secrets - Misappropriation of a Trade Secret**

[Name of plaintiff] claims that [name of defendant] misappropriated a trade secret belonging to [name of plaintiff].

To prove [his/her/its] claim, [name of plaintiff] must prove the following facts by a preponderance of the evidence:

1: [Name of plaintiff] owns a valid trade secret; and

2: That trade secret relates to a product or service used in, or intended for use in, interstate or foreign commerce, that [name of plaintiff] calls [name of trade secret(s)]; and

3: [Name of defendant] misappropriated that trade secret.

[Name of plaintiff] claims [he/she/it] owns [name of trade secret(s)]. To prove that [name of plaintiff] owns [name of trade secret], [he/she/it] must prove that [name of trade secret] is [his/her/its] property.

Trade Secret. A trade secret may take many forms, including all forms and types of financial, business, scientific, technical, economic, or engineering information. A trade secret may include patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes. A trade secret may be tangible or intangible. A trade secret does not have to be stored, compiled, or memorialized. But if it is, it does not have to be stored, compiled, or memorialized in any particular manner, such as physically, electronically, graphically, photographically, or in writing.

To qualify as a trade secret, [name of plaintiff], must prove the following by a preponderance of the evidence:

1: [Name of trade secret] is not generally known to another person who can obtain economic value from the disclosure or use of the information;

2: Another person cannot readily discover [name of trade secret] through proper means;

3: [Name of trade secret] derives independent economic value, actual or potential, from not being known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information; and

4: [Name of plaintiff] has taken reasonable steps to keep [name of trade secret] secret.

Interstate or Foreign Commerce. [Name of plaintiff] claims that [name of trade secret] relates to a product or service used in, or intended for use in, interstate or foreign commerce. Use or intended use of the product or service in interstate commerce means that the product or service involves travel, trade, transportation, or communication between a place in one state and a place in another state. Use of the product or service in foreign commerce means that the product or service involves travel, trade, transportation, or communication between a place in the United States and a place outside of the United States.

Misappropriation. [Name of plaintiff] claims that [name of defendant] acquired, disclosed, or used [name of trade secret] without the right to do so. This is called “misappropriation.”

For [name of plaintiff] to prove that [name of defendant] misappropriated [name of trade secret], [name of plaintiff] must prove the following by a preponderance of the evidence:

1: [Name of defendant] acquired, disclosed, or used [name of trade secret] without [name of plaintiff]’s express or implied consent; and

2: [Name of defendant] knew or should have known that [name of trade secret]

i. was derived from or through a third person who used improper means to acquire the trade secret;

ii. was acquired under circumstances giving rise to a duty to maintain the secrecy of [name of trade secret] or limit the use of [name of trade secret], or

iii. was derived from or through a third person who was under a duty to maintain the secrecy of or limit the use of [name of trade secret].

“Improper means” may include theft, bribery, misrepresentation, breach or inducement of a breach of duty to maintain secrecy, and espionage through electronic or other means.

Each act of acquiring, disclosing, or using [name of trade secret] may constitute a separate act of misappropriation.

“Express consent” is consent that is clearly and unmistakably stated. “Implied consent” is consent that is inferred from one’s conduct rather than from one’s direct expression.

**Special Interrogatories to the Jury**

**Do you find by a preponderance of the evidence that:**

 [Name of trade secret] is [name of plaintiff]’s property?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

2. [Name of trade secret] is not generally known to another person who can obtain economic value from the disclosure or use of the information?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

3. [Name of trade secret] is not readily discoverable through proper means?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

4. [Name of trade secret] derives independent economic value, actual or potential, from not being known to, and not readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

5. [Name of plaintiff] has taken reasonable steps to keep [name of trade secret] secret?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

6. [Name of trade secret] relates to a product or service used in, or intended for use in, interstate or foreign commerce?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

7. Acquired, Used or Disclosed Without Consent: [Name of defendant] acquired, used, or disclosed [name of trade secret] without express or implied consent?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “No,” this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is “Yes,” go to the next question.

8. Improper Means:

 (a) [Name of defendant] acquired [name of trade secret] and knew or should have known that [name of trade secret] was acquired by improper means?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 (b) [Name of defendant] knew or should have known [name of trade secret] was derived from or through a third person who used improper means to acquire [name of trade secret]?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 (c) [Name of defendant] knew or should have known [he/she/it] had a duty to maintain the secrecy of the trade secret or limit use of [name of trade secret]?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

 (d) [Name of defendant] knew or should have known [name of trade secret] was derived from or through a third person who had a duty to maintain the secrecy of [name of trade secret] or limit use of [name of trade secret]?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “Yes” to any of the subparts of this question (8(a) – (d)), go to the next question. If your answer is “No” to all of the subparts of this question (8(a) – (d)), this ends your deliberations, and your foreperson should sign and date the last page of this verdict form.