

Ashok Ramani (SBN 200020)
DAVIS POLK & WARDWELL LLP
1600 El Camino Real
Menlo Park, California 94025
Tel: (650) 752-2000
Fax: (650) 752-2111
ashok.ramani@davispolk.com

Dana M. Seshens (NY SBN 4148128)
(*pro hac vice application forthcoming*)
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Tel: (212) 450-4000
Fax: (212) 701-5800
dana.seshens@davispolk.com

Attorneys for Plaintiff Pfizer Inc.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

PFIZER INC.,

Plaintiff,

- against -

CHUN XIAO LI and DOES 1-5,

Defendants.

Civil Action No. **'21CV1980 CAB JLB**

COMPLAINT

Plaintiff PFIZER INC., (“Pfizer”), through its undersigned attorneys, Davis Polk & Wardwell LLP, as and for its Complaint against Defendant CHUN XIAO LI (“Li”) and DOES 1-5, respectfully alleges, upon knowledge as to itself, and otherwise upon information and belief, as follows:

SUMMARY OF THE ACTION

1. Conventional wisdom says that the cover up is worse than the crime. Pfizer is not yet sure whether that is the case here, and thus comes to this Court for

1 expedited relief in support of arbitration. What Pfizer can say for sure is that its
2 soon-to-be former employee Chun Xiao (Sherry) Li uploaded over 12,000 files—
3 including scores of confidential Pfizer documents—from her Pfizer-issued laptop
4 to a personal Google Drive account and onto other personal devices. Upon
5 learning of Ms. Li’s troubling conduct, Pfizer addressed it with her. Although Ms.
6 Li initially gave the appearance of cooperation, it turns out that Ms. Li instead has
7 misled Pfizer about what she took, how she took it, when and why she did it, and
8 where those files (and possibly others) can be found today.

9 2. For over 150 years, Pfizer has been an industry leader in the
10 development of vaccines and drugs for the treatment of life-threatening diseases.
11 As just one example, Pfizer has been at the forefront of the global effort to develop
12 a vaccine for COVID-19. Through hard work, ingenuity, perseverance, and
13 billions of dollars in capital expense, Pfizer secured the first emergency-use
14 authorization in the United States for its COVID-19 vaccine in December 2020.
15 Pfizer’s work related to COVID-19 and other debilitating diseases such as
16 urothelial carcinoma, Merkel cell carcinoma, and non-small-cell lung cancer, to
17 name but a few, saves tens of thousands of lives each year.

18 3. Success breeds imitation, and competitors have been trying to recruit
19 Pfizer’s employees relentlessly, especially during 2021. The vast majority of
20 Pfizer employees choose to remain at Pfizer, pleased to remain on a winning team
21 that recognizes individuals’ efforts with generous compensation packages and
22 advancement opportunities within Pfizer. Not so for Ms. Li, who decided to leave
23 Pfizer for a competitor believed to be Xencor, Inc.

24 4. Had Ms. Li left Pfizer honorably, she would not be named in this
25 Complaint. But she made a different choice: on her way out the door, she
26 transferred onto personal accounts and devices over 12,000 files, scores of which
27 contain Pfizer confidential and trade-secret information, and tried covering her
28 tracks repeatedly. She went so far as to provide Pfizer’s security team a decoy

1 laptop, leading Pfizer to believe it was the one she used to download the 12,000
2 files from her Google Drive account. Forensic analyses confirmed it was not, and
3 Ms. Li (or somebody else, including potentially DOES 1-5) likely remains in
4 possession of the actual computer that contains those 12,000 files.

5 5. Pfizer believes in robust, fair competition. It was specifically that sort
6 of competition that led Pfizer and its competitors to develop different COVID-19
7 vaccines with record-breaking speed. And it is specifically that sort of competition
8 that compels Pfizer and its competitors to push the boundaries to develop other
9 blockbuster medications. It would be unjust to permit Ms. Li and anybody with
10 whom she may be working in concert to trade on Pfizer's successes and
11 experience, whether at Xencor or elsewhere, by leveraging the numerous
12 confidential Pfizer documents she took without permission and refuses to return.

13 6. Pfizer therefore brings this action against Ms. Li and DOES 1-5 for
14 (a) misappropriation of trade secrets in violation of the Defend Trade Secrets Act
15 of 2016 ("DTSA"), 18 U.S.C. § 1836, *et seq.*, and the California Uniform Trade
16 Secrets Act ("CUTSA"), Cal. Civ. Code § 3426, *et seq.*; (b) breach of contract; (c)
17 conversion; and (d) trespass to chattel. Pfizer concurrently seeks a temporary
18 restraining order and injunctive relief to preserve the status quo and prevent further
19 irreparable harm while Pfizer promptly commences arbitration proceedings in
20 accordance with the terms of Ms. Li's Mutual Arbitration and Class Waiver
21 Agreement.

22 **PARTIES**

23 7. Pfizer is a Delaware corporation, with its principal place of business at
24 235 East 42nd Street, New York, New York 10017. As part of its business, Pfizer
25 is involved in researching, developing, making and selling pharmaceutical
26 products, including vaccines, which it distributes in California, throughout the
27 United States, and around the world.
28

1 8. Ms. Li resides, on information and belief, in San Diego, California.
2 Ms. Li was hired in 2006 and currently serves as Associate Director of Statistics in
3 Pfizer's Global Product Development group at Pfizer's facility in La Jolla,
4 California. Ms. Li informed Pfizer that she intends to resign effective November
5 24, 2021.

6 9. The true names and capacities, whether individual, corporate,
7 associate or otherwise, of DOES 1 through 5 are unknown to Pfizer, who therefore
8 sues them by fictitious names. DOES 1 through 5, on information and belief, are
9 individuals or corporations who acted or are acting in concert with Ms. Li in
10 connection with the misappropriation of Pfizer's trade-secret and confidential
11 information and/or knowingly and intentionally have acquired, disclosed, and/or
12 used Pfizer's trade-secret and confidential information. Pfizer will amend this
13 Complaint to state the true names and capacities of DOES 1 through 5 once they
14 have been ascertained.

15 **JURISDICTION AND VENUE**

16 10. This action arises under the DTSA, 18 U.S.C. § 1836, *et seq.*, as well
17 as under California and New York law. This Court has federal-question
18 jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Pfizer has claims
19 for misappropriation of trade secrets under the DTSA, 18 U.S.C. § 1836(c). This
20 Court has supplemental jurisdiction over the state-law claims alleged in this
21 complaint pursuant to 28 U.S.C. § 1367.

22 11. This Court has personal jurisdiction over Ms. Li because she is a
23 resident of the State of California. Ms. Li has also had continuous and systematic
24 contacts with the State of California by and through her employment with Pfizer at
25 its facility in La Jolla, California where, upon information and belief, a substantial
26 part of the actions causing Pfizer's injuries and giving rise to Pfizer's claims
27 occurred. Ms. Li has also purposefully directed business activities at the State of
28 California, which constitute at least minimum contacts with the State of California

1 such that the maintenance of this suit in this Court does not offend traditional
2 notions of fair play and substantial justice.

3 12. Venue is proper in this Court because Ms. Li is subject to the personal
4 jurisdiction of this Court, and because a substantial part of the events giving rise to
5 Pfizer's claims and causing Pfizer's injuries occurred at Pfizer's facility in La
6 Jolla, California, *i.e.*, within this Judicial District. Further, based on information
7 and belief, Ms. Li resides within this Judicial District.

8 **FACTUAL ALLEGATIONS**

9 13. Due to the sheer number of documents Ms. Li misappropriated, Pfizer
10 has yet to understand the full scope of trade-secret and confidential information in
11 her possession. While Ms. Li possesses thousands of documents potentially related
12 to numerous Pfizer vaccines, drugs, and other innovations, this Complaint focuses
13 on Pfizer's COVID-19 vaccine and its avelumab and elranatamab monoclonal
14 antibodies.

15 **Background on the Covid-19 Vaccine**

16 14. As the COVID-19 pandemic spread globally, Pfizer decided that it
17 had a moral and scientific imperative to develop and bring to the public a vaccine
18 as quickly as possible. On March 17, 2020, Pfizer signed a letter of intent to
19 partner with BioNTech to co-develop an mRNA-based coronavirus vaccine
20 program, BNT162, aimed at preventing COVID-19 disease. The collaboration
21 leverages Pfizer's expertise in vaccine research and development, regulatory
22 capabilities, and global manufacturing and distribution network.

23 15. To date, Pfizer has invested over \$2 billion of its own capital to
24 develop its COVID-19 vaccine and has dedicated hundreds of Pfizer scientists,
25 strategists, and other personnel to the COVID-19 vaccine effort. By risking its
26 own investment, rather than relying on government funds, Pfizer could be more
27 nimble in the development of the vaccine.

1 16. The speed at which Pfizer was able to develop and gain approval of its
2 vaccine was not due only to pandemic-related efforts and spending. Rather, Pfizer
3 had recently reorganized its research and development arm into biotech-like
4 subdomains, allowing for better start-to-finish ownership of new products, like the
5 COVID-19 vaccine. Moreover, Pfizer leveraged its prior breakthrough innovations
6 in the antiviral space to create the COVID-19 vaccine in record time.

7 17. Beginning in March 2020, Pfizer conducted numerous clinical trials
8 and made various regulatory submissions in collaboration with BioNTech, in an
9 effort to obtain emergency use authorization for the vaccine from the Food and
10 Drug Administration (“FDA”). The FDA so authorized the Pfizer-BioNTech
11 COVID-19 vaccine on or about December 11, 2020, making it the first COVID-19
12 vaccine available to the general public. The FDA has since fully approved the
13 vaccine for individuals 16 and older and has extended emergency use authorization
14 for children as young as five years old. Needless to say, Pfizer’s vaccine has been
15 a huge medical and commercial success.

16 Background on Monoclonal Antibodies

17 18. The COVID-19 vaccine has rightfully garnered significant praise and
18 recognition around the world, but it should not overshadow the important work
19 Pfizer does in other fields. For example, Pfizer is a world leader in the research
20 and development of monoclonal antibodies that combat rare and debilitating
21 diseases.

22 19. In general, a body’s immune system attacks foreign substances by
23 generating a large number of antibodies, which are proteins that bind to certain
24 targets in the body such as antigens that cause infections. Once an antibody
25 attaches to an antigen, it triggers the body’s immune system to target and destroy
26 cells containing that antigen. A monoclonal antibody is an antibody made in a
27 laboratory that is designed to bind to a specific antigen, such as an antigen on the
28 surface of a particular cancer cell. Once the monoclonal antibody binds to the

1 cancer cell, the body begins targeting and destroying cells like it. Monoclonal
2 antibodies may also be designed to target immune system cells to increase their
3 activity against cancer cells.

4 20. One of the greatest challenges with respect to developing monoclonal
5 antibodies is identifying the right antigen to target. It takes years of research and
6 development, trial and error work, and hundreds of millions of dollars in
7 investment capital to investigate a potential new monoclonal antibody. Most
8 investigational monoclonal antibodies turn out to be failures, and the few that make
9 it past early phase studies require even more resources and capital to bring to
10 market. Simply stated, finding the right antigen to target and developing a
11 compatible monoclonal antibody requires absolute precision; anything short of that
12 would fail to improve patients' health and could even prove fatal.

13 21. In 2014, Pfizer entered into an agreement with Merck KGaA to co-
14 develop avelumab, a groundbreaking monoclonal antibody now sold under the
15 tradename Bavencio. Avelumab is FDA-approved to treat a specific type of cancer
16 in the bladder or urinary tract called urothelial carcinoma (UC) when it has spread
17 or cannot be removed by surgery. It is also approved for patients with a rare and
18 aggressive form of skin cancer called Merkel cell carcinoma. Pfizer is currently
19 researching whether avelumab could treat other forms of cancer, and whether
20 avelumab could be effectively combined with other drugs. Pfizer has invested over
21 millions of dollars in the research and development of avelumab and as a direct
22 result has saved countless lives.

23 22. Following in the footsteps of avelumab, Pfizer scientists discovered
24 and began developing elranatamab, a bispecific monoclonal antibody. Bispecific
25 monoclonal antibodies are antibodies that can simultaneously bind to two different
26 types of antigens or two different target sites on the same antigen. Pfizer scientists
27 believe elranatamab could be effective in treating multiple myeloma, a rare blood
28 cancer that affects plasma cells made in the bone marrow. There is currently a

1 high unmet medical need for treating multiple myeloma, and Pfizer is in a race
2 with its competitors to develop more advanced treatments. Recently, the FDA
3 granted elranatamab Fast Track Designation, which is a process designed to
4 facilitate the development, and expedite the review, of new drugs and vaccines that
5 are intended to treat or prevent serious conditions that have the potential to address
6 an unmet medical need. To date, Pfizer has invested millions of dollars in the
7 research and development of elranatamab, as it hopes elranatamab will prove to be
8 the company's next blockbuster drug.

9 Ms. Li's Employment at Pfizer

10 23. On August 2, 2006, Pfizer hired Ms. Li as Associate Director of
11 Statistics in Pfizer's Global Product Development ("GPD") group based in China.
12 On or around August 22, 2016, Ms. Li transferred to Pfizer's facility in La Jolla,
13 California and continued her role as Associate Director of Statistics.

14 24. Pfizer's GPD group is responsible for evaluating drug efficacy and
15 safety in human clinical trials to obtain regulatory approval for drugs. Given her
16 role and responsibilities as Associate Director of Statistics, Ms. Li had access to
17 highly confidential, proprietary, and trade-secret information related to numerous
18 vaccines and medications, including the COVID-19 vaccine, avelumab, and
19 elranatamab.

20 25. GPD employees are well aware of their obligations to safeguard Pfizer
21 confidential information. In addition to supervisors constantly issuing reminders
22 about confidentiality at meetings and discussions, Pfizer conducts periodic
23 trainings designed to ensure that employees are aware of the policies and
24 expectations around data security. For example, Ms. Li was required to take a
25 course titled "Collaborate Securely: Safeguarding Sensitive Pfizer Information"
26 that detailed the importance of safeguarding Pfizer confidential information. Ms.
27 Li took this training three times in the last five years, on April 17, 2020, May 8,
28 2018, and January 20, 2017. Ms. Li also took required trainings on the "Blue

1 Book,” the Pfizer employee manual, on February 16, 2021, February 13, 2019,
2 April 18, 2017, and November 23, 2016. This training included reminders about
3 Pfizer’s corporate policies regarding safeguarding sensitive information.

4 26. In addition, as part of her employment with Pfizer, Ms. Li entered into
5 a Confidentiality Agreement, which imposed a number of restrictions on Ms. Li’s
6 activities during and after her employment. For example, by virtue of executing
7 the Confidentiality Agreement, Ms. Li agreed not to “disclose or use any
8 Confidential Information” without Pfizer’s written permission, other than in the
9 course of her employment with Pfizer. Ms. Li also agreed to “return within 48
10 hours” of her termination “all Company property and material within [her]
11 possession, whether confidential or proprietary or that in any way relates to the
12 business of the Company or any of its subsidiaries or affiliates.”

13 *Pfizer’s Protection of Its Confidential, Proprietary, and Trade-Secret Information*

14 27. Pfizer’s confidential, proprietary, and trade-secret information is used
15 in connection with Pfizer’s business, products, and services, including its
16 development, manufacture, and sale of drugs and vaccines.

17 28. Pfizer’s confidential, proprietary, and trade-secret information gives
18 Pfizer a substantial competitive advantage over its existing and would-be
19 competitors, including Xencor, due to the significant investment of time, money,
20 and resources in developing drug and vaccine programs, the drugs and vaccines
21 themselves, as well as the overall business strategy and business plans for such
22 programs, drugs, and vaccines. These advantages provide significant value to
23 Pfizer over its competitors, such as Xencor.

24 29. Pfizer employs a set of robust measures to protect its intellectual
25 property. Those measures include employing a dedicated team of in-house
26 forensics specialists, tracking employee activity on company devices, and using
27 automated monitoring alerts to escalate suspicious employee activity.
28

1 30. Additionally, Pfizer employs a variety of employee-facing data-
2 security measures including policies, agreements, and blocks on certain activity.
3 For example, Pfizer’s Systems Policy #403 prohibits “unauthorized . . . disclosure,
4 transfer, use or unapproved release of Pfizer Information,” the use of
5 “unauthorized devices (e.g. personal/home computers and laptops, public
6 computers, etc.) . . . to transmit, store or work on Pfizer Information,” and the
7 “[u]nauthorized use of non-Pfizer cloud service accounts for the storage,
8 computation or transfer of Pfizer information.” In furtherance of this prohibition
9 on non-Pfizer cloud service accounts, in October 2021, Pfizer implemented a
10 technology that monitors when employees upload files to cloud-based platforms
11 such as Google Drive. Additionally, in 2019, Pfizer disabled USB access on all
12 company laptops to prevent unauthorized transfer of Pfizer files onto external hard
13 drives.

14 31. Pfizer requires employees to sign, as a condition of employment,
15 agreements obligating employees to protect Pfizer’s confidential documents,
16 information, trade secrets, and intellectual property.

17 32. Pfizer’s confidential, proprietary, and trade-secret information derives
18 independent economic value from not being generally known to the public or other
19 person who can obtain economic value from their disclosure, and from not being
20 readily ascertainable by proper means.

21 *Pfizer’s Investigation of Ms. Li’s Suspicious Digital Activity*

22 33. As part of Pfizer’s tracking of employee activity on company devices,
23 Pfizer’s security team discovered on October 29, 2021, that, between Saturday,
24 October 23, 2021 and Tuesday, October 26, 2021, Ms. Li transferred over 12,000
25 files from her Pfizer laptop to an online Google Drive account. Ms. Li was “out of
26 the office” on October 25–26, but, unbeknownst to Pfizer, she was conducting
27 mass transfers of files from her Pfizer laptop to her Google Drive account during
28 that time. Pfizer immediately initiated a digital review of Ms. Li’s emails, her file

1 access, and her internet activity on her Pfizer-issued laptop. An investigation into
2 Ms. Li's Pfizer email account revealed that she had been interviewing with and had
3 received an offer of employment from Xencor.

4 34. Pfizer human-resources, security, and digital-forensics personnel
5 spoke with Ms. Li twice on Friday, October 29, 2021. During the first
6 conversation, which occurred over the telephone with Pfizer human-resources and
7 security personnel, Ms. Li admitted to having transferred the files and claimed that
8 she did so because she wanted to organize her files offline and have them for her
9 own personal use. Ms. Li represented that she had transferred the files from the
10 Google Drive onto an external hard drive using her personal laptop and had not
11 copied the files elsewhere. A couple of hours later, Pfizer's digital-forensics
12 personnel had a second conversation with Ms. Li via videoconference. Between
13 the two conversations, Ms. Li logged onto her Google Drive account and deleted
14 all of the files saved there. During the second conversation, after Ms. Li disclosed
15 that she had deleted all the files from her Google Drive account, Pfizer personnel
16 asked Ms. Li to come to Pfizer's La Jolla office on Monday, November 1, and turn
17 over her external hard drive and personal laptop for inspection. Ms. Li expressed
18 reluctance to provide her personal laptop, explaining that it contained personal
19 information, but ultimately agreed to do so. Later that night, Pfizer personnel
20 subsequently deactivated Ms. Li's Pfizer system access, her laptop, and her badge.

21 35. On November 1, 2021, Ms. Li came in to Pfizer's offices in La Jolla
22 to return her Pfizer-issued laptop. Ms. Li also provided a personal laptop that she
23 led Pfizer to believe was the one she used to download the Pfizer documents from
24 her Google Drive account onto her external hard drive, as well as the external hard
25 drive itself. Pending completion of Pfizer's forensic analyses of the devices, Pfizer
26 placed Ms. Li on paid administrative leave.

27 36. The forensic examination of Ms. Li's devices revealed that Ms. Li had
28 not been truthful with Pfizer. Specifically, the forensic examination showed that

1 Ms. Li downloaded the 12,000 files to a folder having a file path
2 “C:\Users\cli\Downloads.” This is the Downloads folder associated with a user
3 having a user profile “cli,” which coincides with Ms. Li’s first initial and last
4 name. No such user profile or folder exists on Ms. Li’s Pfizer-issued laptop, the
5 personal laptop she provided Pfizer, or the external hard drive. In the opinion of
6 the experienced forensics analyst who conducted the analysis, the most likely
7 explanation for this discrepancy is that Ms. Li provided Pfizer with a personal
8 laptop *other than* the one she used to download the 12,000 files. The forensics
9 analysis also revealed that the laptop Ms. Li had provided to Pfizer was hardly
10 used during the week of October 25 when the downloads occurred, corroborating
11 that she most likely used a different laptop to initiate the downloads. This conduct
12 casts doubt on Ms. Li’s truthfulness but, far more troublingly for Pfizer, indicates
13 that another, unknown laptop likely contains the 12,000 files she downloaded,
14 which include scores of Pfizer confidential documents such as the examples
15 discussed below.

16 37. The forensic examination also showed that a significant number of
17 Pfizer documents were deleted from Ms. Li’s external hard drive prior to turning it
18 in. Specifically, forensic examination of Ms. Li’s external hard drive showed that
19 hundreds of files and folders having Pfizer related names were deleted the night of
20 Saturday, October 30, 2021. She turned the hard drive over to Pfizer on Monday,
21 November 1, 2021 without mentioning anything about these deleted files.

22 *Ms. Li Misappropriates Pfizer’s Trade Secrets*

23 38. Ms. Li has misappropriated Pfizer information concerning a broad
24 range of topics, including confidential, proprietary, and trade-secret information
25 regarding Pfizer’s COVID-19 vaccine and monoclonal antibody programs.
26 Pfizer’s investigation of the more than 12,000 files is ongoing, but below are some
27 examples of documents Ms. Li misappropriated that contain such highly sensitive
28 information:

- 1 • A September 24, 2021 presentation titled “E2E Clinical Development +
2 Submissions Playbook” that reflects, among other things, Pfizer’s
3 analysis of the successes and breakthroughs of Pfizer’s COVID-19
4 vaccine studies, end-to-end recommendations based on the COVID-19
5 vaccine studies, analysis concerning why the Pfizer and BioNTech
6 relationship was successful compared to other partnerships, and the
7 identification of critical data variables for drug studies and ways to
8 manage them
- 9 • A February 21, 2021 presentation titled “Pfizer Oncology Virtual
10 Hematology Franchise Year Beginning Meeting” that contains, among
11 other things, operational goals, key achievements and key goals for
12 various drugs, development plans and timelines, key next steps for
13 elranatamab, clinical development overview for elranatamab, and key
14 strategies for various drugs including elranatamab
- 15 • A July 6, 2021 “Clinical Development Plan Document” that details
16 development plans for combining encorafenib and binimetinib to treat
17 melanoma. The document discusses Pfizer’s clinical development
18 strategy, rationales, target product profiles, key elements of statistical
19 analysis, global strategy, pediatric strategy, timelines, as well as a
20 plethora of other highly sensitive trade secrets and confidential
21 information
- 22 • A February 20, 2019 presentation titled “Avelumab Case Study –
23 Implementation of BLRM in Oncology Dose Finding Trials with
24 Multiple Drug Combinations” that discusses, among other things,
25 Pfizer’s approach to implementing the Bayesian Logistic Regression
26 Model in studies with multiple drug combination, challenges in designing
27 Phase 1 drug combination studies, dosing strategies for drug
28 combinations, implementation issues, and specifics related to the design
and decision processes related to Pfizer’s Phase 1 avelumab studies

39. Pfizer did not authorize Ms. Li to transfer the aforementioned Pfizer files to her personal Google Drive account, and Pfizer is not aware of any legitimate business purpose for these transfers, which breach her obligations under her Confidentiality Agreement.

Ms. Li Tries to Resign and Declines an Exit Interview, Giving Rise to This Lawsuit

40. While Pfizer was conducting its investigation and forensic analyses, Ms. Li notified Pfizer on November 12, 2021, that she was leaving Pfizer and that her last day at the company would be November 24, 2021. She refused to disclose the reason for her departure, including if she had a new employer. As discussed above, Pfizer's investigation of Ms. Li's Pfizer email account showed that Ms. Li had received an offer to start at Xencor on November 29, 2021.

41. Pfizer decided to give Ms. Li a final opportunity to come clean. It asked Ms. Li to come in for a meeting on Monday, November 22, 2021, to answer some follow up questions to better understand the pathways that she used to transfer the 12,000 files at issue. Pfizer expressed that it would appreciate Ms. Li's cooperation in making sure Pfizer's confidential information does not fall into the hands of any of its competitors, including her potential new employer Xencor. Ms. Li declined to meet with Pfizer, stating that she had already provided Pfizer all the information it requested and also citing health issues.

42. Given that Ms. Li is leaving Pfizer to start work for a competitor, possibly in less than a week, that Ms. Li has lacked candor and affirmatively misled Pfizer personnel, and that she appears to remain in possession of Pfizer trade-secret and confidential information, Pfizer has no choice but to commence this action and seek a temporary restraining order against her. Indeed, Ms. Li acknowledged in her signed Confidentiality Agreement that "any breach by me of my obligations under this agreement . . . would cause irreparable harm to the Company, and that in the event of such breach the Company shall have . . . the right to an injunction, specific performance and other equitable relief to prevent violations of my obligations hereunder."

43. The Confidentiality Agreement further provides that "[d]isputes arising under this Agreement will be subject to the Mutual Arbitration and Class Waiver Agreement." However, the Mutual Arbitration and Class Waiver

1 Agreement provides that “[e]ither party to this Agreement may make application to
2 a court for temporary or preliminary injunctive relief in aid of arbitration or for the
3 maintenance of the status quo pending arbitration.”

4 44. Pfizer intends to promptly commence arbitration proceedings in
5 accordance with the Confidentiality Agreement.

6 **FIRST CAUSE OF ACTION**
7 **Trade Secret Misappropriation under the DTSA**

8 45. Pfizer repeats and realleges the allegations in the foregoing
9 paragraphs as if fully set forth herein.

10 46. This is a claim for violation of the DTSA, 18 U.S.C § 1836, *et seq.*,
11 for the misappropriation of Pfizer’s confidential, proprietary, and trade-secret
12 information.

13 47. Pfizer owns the confidential, proprietary, and trade-secret information
14 misappropriated by Ms. Li, and those trade secrets are related to products used in,
15 or intended for use in, interstate and/or foreign commerce. Furthermore, the
16 confidential, proprietary, and trade-secret information misappropriated by Ms. Li
17 discloses Pfizer’s analyses of its vaccine and drug programs, end-to-end
18 recommendations based on its COVID-19 studies, operational goals, clinical
19 development strategies and timelines, key achievements, and numerous other
20 highly sensitive Pfizer information.

21 48. Ms. Li, by and through the Confidentiality Agreement signed pursuant
22 thereto, is subject to continuing confidentiality restrictions and has a duty to
23 maintain confidentiality and not to use for any of her own purposes, or other’s
24 purposes, the confidential, proprietary, and trade-secret information to which she
25 had access pursuant to her employment with Pfizer.

26 49. Ms. Li knowingly and intentionally acquired, disclosed and/or used
27 Pfizer’s confidential, proprietary, and trade-secret information, including
28 information about Pfizer’s COVID-19 vaccine and avelumab and elranatamab

1 monoclonal antibody medications, among other products and/or services intended
2 for use in interstate and/or foreign commerce, without the consent of Pfizer and by
3 improper means, including conduct in breach of the Confidentiality Agreement.
4 The types of documents that Ms. Li took are documents that Pfizer carefully
5 protected and that any reasonable business in the industry would carefully protect
6 from disclosure to a competitor. The information that Ms. Li misappropriated
7 derives independent economic value from not being generally known to, and not
8 readily ascertainable through proper means by, a competitor.

9 50. A digital forensics review of Ms. Li's digital activities, completed in
10 November 2021, confirmed that Ms. Li had transferred over 12,000 files, scores of
11 which are Pfizer confidential documents, from her Pfizer laptop to her personal
12 Google Drive account between the dates of October 23, 2021 and October 26,
13 2021. Ms. Li then downloaded those files onto a personal laptop and then copied
14 the files onto an external hard drive.

15 51. Ms. Li was or should have been aware at the time she accessed and/or
16 copied Pfizer's documents that those documents contained Pfizer's trade secrets.
17 Ms. Li took Pfizer's confidential, proprietary, and trade-secret information and
18 transferred Pfizer's documents onto her personal Google Drive account, personal
19 laptop, and external hard drive for no business purpose, and in violation of the
20 Confidentiality Agreement.

21 52. Having taken Pfizer's documents, Ms. Li was untruthful to Pfizer
22 about her actions and interfered with its investigation. Ms. Li refused to disclose
23 the identity of her employer, provided Pfizer with a decoy laptop, and apparently
24 deleted hundreds of files from her external hard drive before turning it over for
25 inspection. Ms. Li's conduct, combined with her apparent imminent plan to begin
26 working at Xencor, makes it highly likely that Ms. Li will disclose and/or use
27 Pfizer's confidential, proprietary, and trade-secret information.
28

1 53. The wrongful acquisition, disclosure, and/or use of Pfizer's
2 confidential, proprietary, and trade-secret information gives Ms. Li an unfair
3 benefit and wrongful advantage in the marketplace over Pfizer, the rightful owner
4 of Pfizer's confidential, proprietary, and trade-secret information.

5 54. As a result of the aforementioned allegations, Ms. Li has wrongfully
6 misappropriated Pfizer's confidential, proprietary, and trade-secret information and
7 threatens to use and/or disclose it to her benefit and to the detriment of Pfizer.

8 55. The aforementioned actions by Ms. Li in wrongfully converting and
9 misappropriating Pfizer's confidential, proprietary, and trade-secret information
10 was intentional, knowing, willful, malicious, fraudulent and oppressive. The
11 actions of Ms. Li, as set forth herein, constitute actual and threatened
12 misappropriation under the DTSA, 18 U.S.C. § 1836, *et seq.*

13 56. As a direct and proximate result of Ms. Li's actions, Pfizer has been
14 greatly damaged, has suffered irreparable harm, and will continue to suffer
15 irreparable harm.

16 57. If not directed by this Court to provide access to all relevant accounts
17 and devices and to refrain from using or disclosing Pfizer's confidential
18 information and trade secrets as well as destroying relevant evidence, Ms. Li will
19 continue to benefit from the misappropriation of Pfizer's confidential, proprietary,
20 and trade-secret information, causing Pfizer continued irreparable harm, damage
21 and injury

22 **SECOND CAUSE OF ACTION**
23 **Misappropriation of Trade Secrets under the CUTSA**

24 58. Pfizer repeats and realleges the allegations in the foregoing
25 paragraphs as if fully set forth herein.

26 59. This is a claim for violation of the CUTSA, Cal. Civ. Code § 3426, *et*
27 *seq.*, for the misappropriation of Pfizer's confidential, proprietary, and trade-secret
28 information.

1 60. Pfizer owns the confidential, proprietary, and trade-secret information
2 misappropriated by Ms. Li. Furthermore, the confidential information and trade
3 secrets misappropriated by Ms. Li discloses Pfizer's analyses of its vaccine and
4 drug programs, end-to-end recommendations based on its COVID-19 studies,
5 operational goals, clinical development strategies and timelines, key achievements,
6 and numerous other highly sensitive Pfizer information.

7 61. Ms. Li, by and through the Confidentiality Agreement signed pursuant
8 thereto, is subject to continuing confidentiality restrictions and has a duty to
9 maintain confidentiality and not to use for any of her own purposes, or other's
10 purposes, the confidential, proprietary, and trade-secret information to which she
11 had access pursuant to her employment with Pfizer.

12 62. Ms. Li, knowingly and intentionally, acquired, disclosed and/or used
13 Pfizer's confidential, proprietary, and trade-secret information, including
14 information about Pfizer's COVID-19 vaccine and avelumab and elranatamab
15 monoclonal antibody medications, among other products and/or services, without
16 the consent of Pfizer and by improper means, including conduct in breach of the
17 Confidentiality Agreement. The types of documents that Ms. Li took are
18 documents that Pfizer carefully protected and that any reasonable business in the
19 industry would carefully protect from disclosure to a competitor. The information
20 that Ms. Li misappropriated derives independent economic value from not being
21 generally known to the public or a competitor.

22 63. A digital forensics review of Ms. Li's digital activities, completed in
23 November 2021, confirmed that Ms. Li had transferred over 12,000 files, the vast
24 majority of which are Pfizer confidential documents, from her Pfizer laptop to her
25 personal Google Drive account between the dates of October 23, 2021 and October
26 26, 2021. Ms. Li then downloaded those files onto a personal laptop and then
27 copied the files onto an external hard drive.
28

1 64. Ms. Li was or should have been aware at the time she accessed and/or
2 copied Pfizer's documents that those documents contained Pfizer's trade secrets.
3 Ms. Li took Pfizer's confidential, proprietary, and trade-secret information and
4 transferred Pfizer's documents onto her personal Google Drive account for no
5 business purpose, and in violation of the Confidentiality Agreement.

6 65. Having taken Pfizer's documents, Ms. Li was untruthful to Pfizer
7 about her actions and interfered with its investigation. Ms. Li refused to disclose
8 the identity of her employer, provided Pfizer with a decoy laptop, and deleted
9 hundreds of files from her external hard drive before turning it over for inspection.
10 Ms. Li's conduct, combined with her apparent imminent plan to begin working at
11 Xencor, makes it highly likely that Ms. Li will disclose and/or use Pfizer's
12 confidential, proprietary, and trade-secret information.

13 66. The wrongful acquisition, disclosure, and/or use of Pfizer's
14 confidential, proprietary, and trade-secret information gives Ms. Li an unfair
15 benefit and wrongful advantage in the marketplace over Pfizer, the rightful owner
16 of Pfizer's confidential, proprietary, and trade-secret information.

17 67. As a result of the aforementioned allegations, Ms. Li has wrongfully
18 misappropriated Pfizer's confidential, proprietary, and trade-secret information and
19 threatens to use and/or disclose it to her benefit and to the detriment of Pfizer.

20 68. The aforementioned actions by Ms. Li in wrongfully converting and
21 misappropriating Pfizer's confidential, proprietary, and trade-secret information
22 was intentional, knowing, willful, malicious, fraudulent and oppressive. The
23 actions of Ms. Li, as set forth herein, constitute actual and threatened
24 misappropriation under the CUTSA, Cal. Civ. Code § 3426, *et seq.*

25 69. As a direct and proximate result of Ms. Li's actions, Pfizer has been
26 greatly damaged, has suffered irreparable harm, and will continue to suffer
27 irreparable harm.
28

1 70. If not directed by this Court to provide access to all relevant accounts
2 and devices and to refrain from using or disclosing Pfizer's confidential
3 information and trade secrets as well as destroying relevant evidence, Ms. Li will
4 continue to benefit from the misappropriation of Pfizer's confidential, proprietary,
5 and trade-secret information, causing Pfizer continued irreparable harm, damage
6 and injury.

7 **THIRD CAUSE OF ACTION**
8 **Breach of Contract under New York Law**

9 71. Pfizer repeats and realleges the allegations in the foregoing
10 paragraphs as if fully set forth herein.

11 72. Ms. Li knowingly and for valuable consideration, entered into the
12 Confidentiality Agreement with Pfizer.

13 73. The Confidentiality Agreement expressly: (a) precludes Ms. Li from
14 "disclos[ing] or us[ing]" any "secret or confidential information and/or trade
15 secrets" without Pfizer's written permission, other than in the course of her
16 employment with Pfizer; (b) requires that Ms. Li, "prior to accepting any new
17 employment," inform the new employer "of the existence of this Agreement and
18 provide a copy to such new employer to ensure that the new employer is aware of
19 [her] post-employment obligations"; and (c) requires Ms. Li to "return within 48
20 hours" of her termination "all Company property and material within [her]
21 possession, whether confidential or proprietary or that in any way relates to the
22 business of the Company or any of its subsidiaries or affiliates."

23 74. The terms of the Confidentiality Agreement are reasonable in scope
24 and duration, and are necessary to protect Pfizer's interest in its confidential,
25 proprietary, and trade-secret information, as well as other legitimate business
26 interests.

27 75. The Confidentiality Agreement is a lawful contract governed by New
28 York law, voluntarily and knowingly entered into by Ms. Li.

1 76. During the course of her employment, Ms. Li was able to obtain
2 confidential, proprietary, and trade-secret information about Pfizer, which was
3 covered by the terms of the Confidentiality Agreement.

4 77. Pfizer has performed all of its contractual obligations owed to Ms. Li
5 under the terms of the Confidentiality Agreement.

6 78. Ms. Li has unjustifiably and inexcusably breached, and continues to
7 breach, the Confidentiality Agreement by, *inter alia*: (a) using without Pfizer's
8 written permission confidential, proprietary, and trade-secret information for
9 unauthorized purposes; (b) transferring without Pfizer's written permission
10 confidential, proprietary, and trade-secret information, from Pfizer's systems to
11 Ms. Li's personal Google Drive account, laptop, and external hard drive for
12 unauthorized purposes; (c) failing to return Pfizer's confidential, proprietary, and
13 trade-secret information; and (d) using Pfizer's confidential, proprietary, and trade-
14 secret information without Pfizer's permission.

15 79. Ms. Li acknowledged in her signed Confidentiality Agreement that
16 "any breach by me of my obligations under this agreement . . . would cause
17 irreparable harm to the Company, and that in the event of such breach the
18 Company shall have . . . the right to an injunction, specific performance and other
19 equitable relief to prevent violations of my obligations hereunder."

20 80. As a result of Ms. Li's breaches of the Confidentiality Agreement,
21 Pfizer has been irreparably injured and continues to face irreparable injury. Pfizer
22 is threatened with losing the value of its confidential, proprietary, and trade-secret
23 information, customer and business relationships, and goodwill.

24 **FOURTH CAUSE OF ACTION**
25 **Conversion under California Common Law**

26 81. Pfizer repeats and realleges the allegations in the foregoing
27 paragraphs as if fully set forth herein.
28

1 82. Ms. Li has received salary, benefits, and expenses to which she was
2 not entitled by virtue of her unlawful conduct described herein.

3 83. At all relevant times, Pfizer was and still is the rightful owner of the
4 at-issue confidential, proprietary, and trade-secret information related to Pfizer's
5 analyses of its vaccine and drug programs, end-to-end recommendations based on
6 its COVID-19 studies, operational goals, clinical development strategies and
7 timelines, key achievements, and numerous other highly sensitive Pfizer
8 information.

9 84. Ms. Li intentionally and improperly, in violation of the
10 Confidentiality Agreement, took Pfizer's documents containing confidential,
11 proprietary, and trade-secret information that exclusively belong to Pfizer.

12 85. Ms. Li was not authorized by Pfizer to retain, take or not return
13 Pfizer's confidential, proprietary, and trade-secret information, and she is required
14 to return all such information upon termination of her employment with Pfizer.
15 Ms. Li took Pfizer's documents with the intent to use and/or disclose such
16 confidential, proprietary, and trade-secret information in a manner adverse to
17 Pfizer's rights and interests. Ms. Li improperly transferred Pfizer's confidential,
18 proprietary, and trade-secret information from Pfizer's electronic systems to Ms.
19 Li's personal Google Drive account, laptop, and external hard drive thereby
20 depriving Pfizer of control over its property to this day.

21 86. By this conduct, and upon information and belief, Ms. Li has
22 unreasonably withheld and continues to unreasonably withhold Pfizer's property,
23 including confidential, proprietary, and trade-secret information, from Pfizer, in
24 defiance of Pfizer's rights and interests therein. As a result, Ms. Li has and
25 continues to misuse and seriously damage Pfizer's property, including confidential,
26 proprietary, and trade-secret information. Ms. Li's misconduct in this regard
27 remains ongoing, and continues to harm Pfizer.
28

1 87. As a direct and proximate result of Ms. Li's conversion of Pfizer's
2 confidential, proprietary, and trade-secret information, Pfizer has been damaged
3 and has suffered irreparable harm, and continues to suffer significant irreparable
4 harm by, *inter alia*, damaging the secrecy and exclusivity of Pfizer's confidential,
5 proprietary, and trade-secret information.

6 **FIFTH CAUSE OF ACTION**
7 **Trespass to Chattels under California Common Law**

8 88. Pfizer repeats and realleges the allegations in the foregoing
9 paragraphs as if fully set forth herein.

10 89. At all relevant times, Pfizer was and still is the rightful owner of the
11 at-issue confidential, proprietary, and trade-secret information related to Pfizer's
12 analyses of its vaccine and drug programs, end-to-end recommendations based on
13 its COVID-19 studies, operational goals, clinical development strategies and
14 timelines, key achievements, and numerous other highly sensitive Pfizer
15 information.

16 90. Ms. Li intentionally and improperly, in violation of the
17 Confidentiality Agreement, took Pfizer's documents containing confidential,
18 proprietary, and trade-secret information that exclusively belong to Pfizer.

19 91. Through these acts, which Ms. Li has performed without written
20 permission, authorization, justification, or consent, Ms. Li has interfered with
21 Pfizer's possession of confidential, proprietary, and trade-secret information that
22 exclusively belongs to Pfizer.

23 92. As a direct and proximate result of Ms. Li's wrongful actions, Pfizer
24 has been damaged and has suffered irreparable harm, and continues to suffer
25 significant irreparable harm by, *inter alia*, damaging the secrecy and exclusivity of
26 Pfizer's confidential, proprietary, and trade-secret information.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Pfizer respectfully requests that this Court:

1 A. Enjoin Ms. Li from further using, disclosing, or transmitting Pfizer's
2 confidential information or trade secrets;

3 B. Enjoin Ms. Li from destroying, manipulating, or otherwise altering
4 any of Pfizer's confidential information and trade secrets in her possession,
5 including any electronic information such as metadata that shows last access-date
6 and creation date;

7 C. Directs Ms. Li to provide Pfizer's outside counsel with attorneys-
8 eyes-only access to (i) her personal Google Drive account(s), (ii) any and all
9 computing devices in her possession, custody, and control, and (iii) to any other
10 account or device on which she may have stored Pfizer's confidential information
11 or trade secrets, as well as to return any hard copy documents containing Pfizer's
12 confidential information or trade secrets;

13 D. Award Pfizer reasonable attorneys' fees, costs, expert fees, expenses
14 and all other sums expended by Pfizer in connection with the prosecution of this
15 Action; and

16 E. Order any such other and further relief as the Court may deem just
17 and proper.
18
19
20
21
22
23
24
25
26
27
28

1 November 23, 2021

Respectfully submitted,

2 *s/ Ashok Ramani*

3 Ashok Ramani (SBN 200020)
4 DAVIS POLK & WARDWELL LLP
5 1600 El Camino Real
6 Menlo Park, California 94025
7 Tel: (650) 752-2000
8 Fax: (650) 752-2111
9 ashok.ramani@davispolk.com

10 Dana M. Seshens (NY SBN 4148128)
11 (*pro hac vice application forthcoming*)
12 DAVIS POLK & WARDWELL LLP
13 450 Lexington Avenue
14 New York, New York 10017
15 Tel: (212) 450-4000
16 Fax: (212) 701-5800
17 dana.seshens@davispolk.com

18 *Attorneys for Plaintiff Pfizer Inc.*

CIVIL COVER SHEET

21CV1980 CAB JLB

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

PFIZER INC.

(b) County of Residence of First Listed Plaintiff New York
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ashok Ramani, (650) 752-2000, Davis Polk & Wardwell
LLP, 1600 El Camino Real, Menlo Park, CA 94205

DEFENDANTS

CHUN XIAO LI and DOES 1-5.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input checked="" type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
18 U.S.C. § 1836(b)(1)

Brief description of cause:

Claim for misappropriation of trade secrets intended for use in interstate and foreign commerce.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/23/2021

SIGNATURE OF ATTORNEY OF RECORD

s/ Ashok Ramani

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

TABLE OF EXHIBITS TO COMPLAINT

Exhibit No.	Description	Page
1	Plaintiff's <i>Ex Parte</i> Motion for Temporary Restraining Order and Order to Show Cause for Preliminary Injunction; and Memorandum of Points and Authorities in Support Thereof [Redacted]	27

EXHIBIT 1

Ashok Ramani (SBN 200020)
DAVIS POLK & WARDWELL LLP
1600 El Camino Real
Menlo Park, California 94025
Tel: (650) 752-2000
Fax: (650) 752-2111
ashok.ramani@davispolk.com

Dana M. Seshens (NY SBN 4148128)
(*pro hac vice application forthcoming*)
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Tel: (212) 450-4000
Fax: (212) 701-5800
dana.seshens@davispolk.com

Attorneys for Plaintiff Pfizer Inc.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

<p>PFIZER INC.,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>CHUN XIAO LI and DOES 1-5,</p> <p style="text-align: right;">Defendants.</p>	<p>Civil Action No. '21CV1980 CAB JLB</p> <p>PLAINTIFF'S <i>EX PARTE</i> MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF</p> <p>Judge:</p>
---	---

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Civil Local Rule 83.3(g), Rule 65 of the Federal Rules of Civil Procedure, 18 U.S.C. § 1836(b)(3)(A), and other applicable law, Plaintiff Pfizer Inc. ("Pfizer") respectfully moves for an order that:

1 (a) Enjoins Ms. Chun Xiao Li from further using, disclosing, or
2 transmitting Pfizer's confidential information or trade secrets;

3 (b) Enjoins Ms. Li from destroying, manipulating, or otherwise altering
4 any of Pfizer's confidential information and trade secrets in her possession,
5 custody, and control, including any electronic information such as metadata that
6 shows last-access date and creation date; and

7 (c) Directs Ms. Li to provide Pfizer's outside counsel with attorneys-
8 eyes-only access to (i) her personal Google Drive account(s), (ii) any and all
9 computing devices in her possession, custody, and control, and (iii) to any other
10 account or device on which she may have stored Pfizer's confidential information
11 or trade secrets, as well as to return any hard copy documents containing Pfizer's
12 confidential information or trade secrets.

13 A temporary restraining order and preliminary injunction are appropriate in
14 this case because Ms. Li has misappropriated Pfizer's confidential, proprietary, and
15 trade-secret information, threatens to use or disclose that information further, and
16 Pfizer will be imminently and irreparably harmed as a result. The grounds for this
17 motion are set forth in Plaintiff's accompanying memorandum of points and
18 authorities, Declarations of Ashok Ramani, Dan Meyer, Thomas Smith, Brian
19 Coleman, and Kevin Clarke and exhibits attached thereto, and all the pleadings and
20 proceedings herein.

21 Pursuant to Federal Rule of Civil Procedure 65(b)(1)(B) and Civil Local
22 Rule 83.3(g)(2), Counsel for Pfizer did not inform Ms. Li that Pfizer was filing this
23 *Ex Parte* Motion for Temporary Restraining Order and Order to Show Cause for
24 Preliminary Injunction in this Court because of the substantial risk that Ms. Li
25 would destroy further evidence upon receiving notice. The reasons for why notice
26 to Ms. Li is not required are set forth in the Declaration of Ashok Ramani.

November 23, 2021

Respectfully submitted,

s/ Ashok Ramani

Ashok Ramani (SBN 200020)
DAVIS POLK & WARDWELL LLP
1600 El Camino Real
Menlo Park, California 94025
Tel: (650) 752-2000
Fax: (650) 752-2111
ashok.ramani@davispolk.com

Dana M. Seshens (NY SBN 4148128)
(pro hac vice application forthcoming)
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Tel: (212) 450-4000
Fax: (212) 701-5800
dana.seshens@davispolk.com

Attorneys for Plaintiff Pfizer Inc.

TABLE OF CONTENTS

		<u>PAGE</u>
1		
2		
3	I. INTRODUCTION.....	1
4	II. FACTUAL BACKGROUND	2
5	A. Pfizer’s Development of Its COVID-19 Vaccine.....	3
6	B. Pfizer’s Development of Its Monoclonal Medications.....	4
7	C. Ms. Li’s Employment at Pfizer.....	5
8	D. Pfizer’s Protection of Its Confidential Information	6
9	E. Pfizer’s Investigation of Ms. Li’s Suspicious Digital	
10	Activity.....	8
11	F. Ms. Li Misappropriates Pfizer’s Trade Secrets	10
12	G. Ms. Li Tries to Resign and Declines an Exit Interview,	
13	Giving Rise to This Lawsuit	11
14	III. A TEMPORARY RESTRAINING ORDER IS WARRANTED.....	13
15	A. Pfizer Is Likely to Succeed on the Merits of Its Claims	14
16	1. Ms. Li Misappropriated the Pfizer Trade Secrets.....	14
17	a. The Pfizer Trade Secrets	14
18	b. Misappropriation of the Pfizer Trade Secrets	16
19	2. Ms. Li Breached the Confidentiality Agreement	17
20	B. Pfizer Will Suffer Irreparable Harm Absent Injunctive	
21	Relief.....	18
22	C. The Balance of Hardships Tips Decidedly in Pfizer’s	
23	Favor	20
24	D. The Public Interest Favors Issuance of a Preliminary	
25	Injunction	21
26	E. The Relief Requested Preserves the Status Quo.....	21
27	IV. A TEMPORARY RESTRAINING ORDER SHOULD BE	
28	GRANTED <i>EX PARTE</i> WITHOUT NOTICE	22
	V. CONCLUSION	23

TABLE OF AUTHORITIES

	<u>PAGE</u>
Cases	
<i>All. for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011).....	13
<i>Allstate Ins. Co. v. Rote</i> , No. 16-cv-01432, 2016 WL 4191015 (D. Or. Aug. 7, 2016)	22
<i>Arizona Dream Act Coal. v. Brewer</i> , 757 F.3d 1053 (9th Cir. 2014).....	18
<i>Arkley v. Aon Risk Servs. Companies, Inc.</i> , No. 12-cv-1966, 2012 WL 12885707 (C.D. Cal. June 13, 2012).....	18
<i>Beckman Instruments, Inc. v. Cincom Sys., Inc.</i> , 165 F.3d 914, 1998 WL 783774 (9th Cir. 1998)	19
<i>BOKF, NA v. Estes</i> , 923 F.3d 558 (9th Cir. 2019).....	13
<i>ESI Grp. v. Wave Six, LLC</i> , No. 17-CV-2293-TWR, 2021 WL 5206136 (S.D. Cal. Nov. 9, 2021).....	14
<i>Farris v. Seabrook</i> , 677 F.3d 858 (9th Cir. 2012).....	13
<i>Indep. Techs., LLC v. Otodata Wireless Network, Inc.</i> , No. 20-CV-72-RJC-CLB, 2020 WL 1433525 (D. Nev. Mar. 23, 2020).....	19
<i>Int’l Ass’n of Plumbing & Mech. Officials v. Int’l Conference of Bldg. Officials</i> , No. 95–55944, 1996 WL 117447 (9th Cir. Mar. 15, 1996).....	19
<i>Intertek Testing Servs., N.A., Inc. v. Pennisi</i> , 443 F.Supp. 3d 303 (E.D.N.Y. Mar. 9, 2020).....	18
<i>Kraus USA, Inc. v. Magarik</i> , No. 17-cv-6541, 2020 WL 2415670 (S.D.N.Y. May 12, 2020).....	18
<i>MAI Sys. Corp. v. Peak Comput., Inc.</i> , 991 F.2d 511 (9th Cir. 1993).....	16
<i>Regeneron Pharms., Inc. v. U.S. Dep’t of Health & Hum. Servs.</i> , No. 20-CV-10488, 2020 WL 7778037 (S.D.N.Y. Dec. 30, 2020).....	21

1	<i>Rent-A-Center., Inc. v. Canyon Television & Appliance Rental, Inc.,</i>	
2	944 F.2d 597 (9th Cir. 1991).....	19
3	<i>Shutterfly, Inc. v. ForeverArts, Inc.,</i>	
4	No. 12-cv-3671, 2012 WL 2911887 (N.D. Cal. July 13, 2012)	23
5	<i>Softketeers, Inc. v. Regal W. Corp.,</i>	
6	No. 19-cv-519-JVS-JDEx, 2019 WL 4418819 (C.D. Cal. May 6, 2019)	19
7	<i>Spring Design, Inc. v. Barnesandnoble.com, LLC,</i>	
8	No. 09-cv-05185, 2009 WL 10702160 (N.D. Cal. Dec. 1, 2009)	18
9	<i>Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.,</i>	
10	240 F.3d 832 (9th Cir. 2001).....	19
11	<i>Sun Distrib. Co., LLC v. Corbett,</i>	
12	No. 18-CV-2231-BAS, 2018 WL 4951966	
13	(S.D. Cal. Oct. 12, 2018).....	14, 15, 16, 21
14	<i>TGG Mgmt. Co. v. Petraglia,</i>	
15	No. 19-cv-2007-BAS, 2020 WL 209103 (S.D. Cal. Jan. 14, 2020) ..	15, 17, 21, 22
16	<i>Toyo Tire Holdings of Americas Inc. v. Cont’l Tire N. Am., Inc.,</i>	
17	609 F.3d 975 (9th Cir. 2010).....	13
18	<i>WeRide Corp. v. Kun Huang,</i>	
19	379 F. Supp. 3d 834 (N.D. Cal. 2019)	16
20	<i>Zeetogroup, LLC v. Fiorentino,</i>	
21	No. 19-cv-458-JLS, 2019 WL 2090007 (S.D. Cal. May 13, 2019).....	14, 15, 16
22	Statutes	
23	18 U.S.C. § 1836.....	1
24	Rules	
25	Fed. R. Civ. 65	1
26	S.D. Cal. Civ. R. 83.3	22

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Pfizer Inc. (“Pfizer”) respectfully submits this memorandum of points and authorities in support of its motion for an *ex parte* temporary restraining order and order to show cause for preliminary injunction pending arbitration of its trade-secret and breach-of-contract claims against defendant Chun Xiao (Sherry) Li. *See* Fed. R. Civ. 65(a)–(b); 18 U.S.C. § 1836(b)(3)(A).

I. INTRODUCTION

Conventional wisdom says that the cover up is worse than the crime. Pfizer is not yet sure whether that is the case here, and thus comes to this Court for expedited relief in support of arbitration. What Pfizer can say for sure is that its soon-to-be former employee Chun Xiao (Sherry) Li uploaded over 12,000 files—including scores of confidential Pfizer documents—from her Pfizer-issued laptop to a personal Google Drive account and onto other personal devices. Clarke Decl. ¶ 7. Upon learning of Ms. Li’s troubling conduct, Pfizer addressed it with her. Smith Decl. ¶ 9. Although Ms. Li initially gave the appearance of cooperation, she instead misled Pfizer about what she took, how she took it, when and why she did it, and where those files (and possibly others) can be found today. *Id.* ¶ 10; Clarke Decl. ¶ 14–15. Indeed, Ms. Li went so far as to provide Pfizer’s security team with a decoy laptop, leading Pfizer to believe that it was the one she used to download the 12,000 files from her Google Drive account. *See* Clark Decl. ¶¶ 14–18. Forensic analyses confirmed it was not, and Ms. Li (or some third party) likely remains in possession of the actual computer that contains those 12,000 files. *See id.*

Ms. Li’s conduct is all the more troubling because of her impending departure from Pfizer to begin employment with Xencor, Inc., a Pfizer competitor. Coleman Decl. ¶ 8. Pfizer cannot stand idly by while Ms. Li’s departure threatens further dissemination of its prized trade secrets. Although the parties are obligated to arbitrate the merits of the underlying dispute, only preliminary relief from this

1 Court can maintain the status quo and ensure that Pfizer receives the benefits of the
2 agreed-upon arbitral arrangement.

3 Under these circumstances, a temporary restraining order and order to show
4 cause for preliminary injunction are warranted. Pfizer is likely to succeed on the
5 merits of its claims: Ms. Li has not only acquired over 12,000 files containing
6 Pfizer confidential information using improper means, but there also is a
7 significant risk that she will use and disclose the trade-secret information contained
8 therein, particularly in light of her impending departure from Pfizer. Ms. Li further
9 has breached her confidentiality obligations to Pfizer by the same conduct. Absent
10 injunctive relief, Pfizer will suffer irreparable harm: among other harms, Pfizer
11 will lose the value of its trade secrets forever—a loss that cannot be quantified—if
12 they were disclosed to a competitor such as Xencor. Finally, temporary injunctive
13 relief would preserve the status quo pending arbitration, and should be granted *ex*
14 *parte* to prevent Ms. Li from destroying evidence before the Court hears this
15 Motion.

16 **II. FACTUAL BACKGROUND**

17 For over 150 years, Pfizer has been an industry leader in the development of
18 vaccines and drugs for the treatment of life-threatening diseases. As just one
19 example, Pfizer has been at the forefront of the global effort to develop a vaccine
20 for COVID-19. Through hard work, ingenuity, perseverance, and billions of
21 dollars in capital expense, Pfizer secured the first emergency-use authorization in
22 the United States for its COVID-19 vaccine in December 2020. Meyer Decl. ¶¶ 3–
23 6. Pfizer’s work related to COVID-19 and other debilitating diseases such as
24 urothelial carcinoma, Merkel cell carcinoma, and non-small-cell lung cancer, to
25 name but a few, saves tens of thousands of lives each year.

26 Success breeds imitation, and competitors have been trying to recruit
27 Pfizer’s employees relentlessly, especially during 2021. The vast majority of
28 Pfizer employees choose to remain at Pfizer, pleased to remain on a winning team

1 that recognizes individuals' efforts with generous compensation packages and
 2 advancement opportunities within Pfizer. Not so for Ms. Li, who decided to leave
 3 Pfizer for a competitor believed to be Xencor, Inc.

4 Had Ms. Li chosen to leave Pfizer honorably, she would not be the subject
 5 of this Motion. But she made a different choice: on her way out the door she
 6 transferred onto personal accounts and devices 12,000 files, scores of which
 7 contain Pfizer's confidential, proprietary, and trade-secret information
 8 ("Confidential Information"), and tried covering her tracks repeatedly. Due to the
 9 sheer number of documents Ms. Li misappropriated, Pfizer has yet to understand
 10 the full scope of confidential information in her possession. While Ms. Li
 11 possesses thousands of documents potentially related to numerous Pfizer vaccines,
 12 drugs, and other innovations, this motion focuses on Pfizer's COVID-19 vaccine
 13 and its avelumab and elranatamab monoclonal antibodies.

14 **A. Pfizer's Development of Its COVID-19 Vaccine**

15 As the COVID-19 pandemic spread globally, Pfizer decided that it had a
 16 moral and scientific imperative to develop and bring to the public a vaccine as
 17 quickly as possible. Pfizer partnered with BioNTech to co-develop an mRNA-
 18 based coronavirus vaccine program, BNT162, aimed at preventing COVID-19
 19 disease. Meyer Decl. ¶ 3. The collaboration leverages Pfizer's expertise in vaccine
 20 research and development, regulatory capabilities, and global manufacturing and
 21 distribution network. *Id.* To date, Pfizer has invested over \$2 billion of its own
 22 capital to develop its COVID-19 vaccine and has dedicated hundreds of Pfizer
 23 scientists, strategists, and other personnel to the COVID-19 vaccine effort. *Id.* ¶ 4.

24 Beginning in March 2020, Pfizer conducted numerous clinical trials and
 25 made various regulatory submissions in collaboration with BioNTech, in an effort
 26 to obtain emergency use authorization for the vaccine from the Food and Drug
 27 Administration ("FDA"). *Id.* ¶ 6. The FDA so authorized the Pfizer-BioNTech
 28 COVID-19 vaccine on or about December 11, 2020, making it the first COVID-19

1 vaccine available to the general public. *Id.* The FDA has since fully approved the
 2 vaccine for individuals 16 and older and has extended emergency use authorization
 3 for children as young as five years old. *Id.* Needless to say, Pfizer's vaccine has
 4 been a medical and commercial success. *Id.*

5 **B. Pfizer's Development of Its Monoclonal Medications**

6 The COVID-19 vaccine has rightfully garnered praise and recognition
 7 around the world, but it should not overshadow the important work Pfizer does in
 8 other fields. For example, Pfizer is a world leader in the research and development
 9 of monoclonal antibodies that combat rare and debilitating diseases. *Id.* ¶ 7.

10 In general, a body's immune system attacks foreign substances by
 11 generating a large number of antibodies, which are proteins that bind to certain
 12 targets in the body such as antigens that cause infections. *Id.* ¶ 8. Once an
 13 antibody attaches to an antigen, it triggers the body's immune system to target and
 14 destroy cells containing that antigen. *Id.* A monoclonal antibody is an antibody
 15 made in a laboratory that is designed to bind to a specific antigen, such as an
 16 antigen on the surface of a particular cancer cell. *Id.* Once the monoclonal
 17 antibody binds to the cancer cell, the body begins targeting and destroying cells
 18 like it. *Id.* Monoclonal antibodies may also be designed to target immune system
 19 cells to increase their activity against cancer cells. *Id.*

20 One of the greatest challenges with respect to developing monoclonal
 21 antibodies is identifying the right antigen to target. *Id.* ¶ 9. It takes years of
 22 research and development, trial and error work, and hundreds of millions of dollars
 23 in investment capital to investigate a potential new monoclonal antibody. *Id.* Most
 24 investigational monoclonal antibodies turn out to be failures, and the few that make
 25 it past early phase studies require even more resources and capital to bring to
 26 market. *Id.* Simply stated, finding the right antigen to target and developing a
 27 compatible monoclonal antibody requires absolute precision; anything short of that
 28 would fail to improve patients' health and could even prove fatal. *Id.*

1 In 2014, Pfizer entered into an agreement with Merck KGaA to co-develop
 2 avelumab, a groundbreaking monoclonal antibody now sold under the tradename
 3 Bavencio. *Id.* ¶ 10. Avelumab is FDA-approved to treat a specific type of cancer
 4 in the bladder or urinary tract called urothelial carcinoma (UC) when it has spread
 5 or cannot be removed by surgery. *Id.* It is also approved for patients with a rare
 6 and aggressive form of skin cancer called Merkel cell carcinoma. *Id.* Pfizer is
 7 currently researching whether avelumab could treat other forms of cancer, and
 8 whether avelumab could be effectively combined with other drugs. *Id.* Pfizer has
 9 invested over millions of dollars in the research and development of avelumab and
 10 as a direct result has saved countless lives. *Id.*

11 Following in the footsteps of avelumab, Pfizer scientists discovered and
 12 began developing elranatamab, a bispecific monoclonal antibody. *Id.* ¶ 11.
 13 Bispecific monoclonal antibodies are antibodies that can simultaneously bind to
 14 two different types of antigens or two different target sites on the same antigen. *Id.*
 15 Pfizer scientists believe elranatamab could be effective in treating multiple
 16 myeloma, a rare blood cancer that affects plasma cells made in the bone marrow.
 17 *Id.* There is currently a high unmet medical need for treating multiple myeloma,
 18 and Pfizer is in a race with its competitors to develop more advanced treatments.
 19 *Id.* Recently, the FDA granted elranatamab Fast Track Designation, which is a
 20 process designed to facilitate the development, and expedite the review, of new
 21 drugs and vaccines that are intended to treat or prevent serious conditions that have
 22 the potential to address an unmet medical need. *Id.* To date, Pfizer has invested
 23 millions of dollars in the research and development of elranatamab, as it hopes
 24 elranatamab will prove to be the company's next blockbuster drug. *Id.*

25 **C. Ms. Li's Employment at Pfizer**

26 On August 2, 2006, Pfizer hired Ms. Li as Associate Director of Statistics in
 27 Pfizer's Global Product Development ("GPD") group based in China. Smith Decl.
 28

¶ 4. On or around August 22, 2016, Ms. Li transferred to Pfizer's facility in La Jolla, California and continued her role as Associate Director of Statistics. *Id.*

Pfizer's GPD group is responsible for evaluating drug efficacy and safety in human clinical trials to obtain regulatory approval for drugs. Meyer Decl. ¶ 12. Given her role as Associate Director of Statistics, Ms. Li had access to Pfizer's Confidential Information related to numerous vaccines and medications, including the COVID-19 vaccine, avelumab, and elranatamab. *Id.* ¶ 14.

GPD employees are well aware of their obligations to safeguard Pfizer confidential information. *Id.* ¶ 13. In addition to supervisors constantly issuing reminders about confidentiality, Ms. Li was required to take training courses on maintaining the confidentiality of Pfizer information. *Id.*; Smith Decl. ¶ 6. For example, Ms. Li was required to take a course titled "Collaborate Securely: Safeguarding Sensitive Pfizer Information" that detailed the importance of safeguarding Pfizer confidential information. Smith Decl. ¶ 7. Ms. Li took this training three times in the last five years, on April 17, 2020, May 8, 2018, and January 20, 2017. *Id.* Ms. Li also took required trainings on the "Blue Book," the Pfizer employee code of conduct, on February 16, 2021, February 13, 2019, April 18, 2017, and November 23, 2016. *Id.* ¶ 8. This training included reminders about Pfizer's corporate policies regarding safeguarding sensitive information. *Id.*

In addition, as part of her employment with Pfizer, Ms. Li entered into a Confidentiality Agreement, which imposed a number of restrictions on Ms. Li's activities during and after her employment. *Id.* ¶ 5. For example, by virtue of executing the Confidentiality Agreement, Ms. Li agreed not to "disclose or use any Confidential Information" without Pfizer's written permission, other than in the course of her employment with Pfizer. *Id.*

D. Pfizer's Protection of Its Confidential Information

Pfizer uses its Confidential Information in connection with Pfizer's business, products, and services, including its development, manufacture, and sale of drugs

1 and vaccines. Pfizer's Confidential Information gives Pfizer a substantial
2 competitive advantage over its existing and would-be competitors, including
3 Xencor, due to the significant investment of time, money, and resources in
4 developing drug and vaccine programs, as well as the overall business strategy and
5 business plans for such programs, drugs, and vaccines. *See* Meyer Decl. ¶ 20.

6 Pfizer employs a set of robust measures to protect its intellectual property.
7 Those measures include employing a dedicated team of in-house forensics
8 specialists, tracking employee activity on company devices, and using automated
9 monitoring alerts to escalate suspicious employee activity. Coleman Decl. ¶ 5.

10 Additionally, Pfizer employs a variety of data-security measures, including
11 policies, agreements, and blocks on certain activity. *Id.* ¶ 6. For example, Pfizer's
12 corporate policy, entitled Global Acceptable Use of Information Systems Policy
13 #403, prohibits "unauthorized . . . disclosure, transfer, use or unapproved release of
14 Pfizer Information," the use of "unauthorized devices (e.g. personal/home
15 computers and laptops, public computers, etc.) . . . to transmit, store or work on
16 Pfizer Information," and the "[u]nauthorized use of non-Pfizer cloud service
17 accounts for the storage, computation or transfer of Pfizer information." *Id.* In
18 furtherance of this policy, in October 2021, Pfizer implemented a technology that
19 monitors when employees upload files to cloud-based platforms such as Google
20 Drive. *Id.* And in 2019, Pfizer disabled USB access on all company laptops to
21 prevent unauthorized transfer of Pfizer files onto external hard drives. *Id.*

22 Moreover, Pfizer conducts periodic trainings designed to ensure that
23 employees are aware of the policies and expectations around data security. Smith
24 Decl. ¶ 6. These trainings include an overview on the "Blue Book," the Pfizer
25 employee code of conduct, and additional training on the company's acceptable
26 use and handling sensitive information policies on how to protect and appropriately
27 share Pfizer information. *Id.* Pfizer also requires employees to sign, as a condition
28

1 of employment, agreements obligating employees to protect Pfizer's confidential
2 documents, information, trade secrets, and intellectual property. *Id.* ¶ 5.

3 **E. Pfizer's Investigation of Ms. Li's Suspicious Digital Activity**

4 As part of Pfizer's tracking of employee activity on company devices,
5 Pfizer's security team discovered on October 29, 2021, that, between Saturday,
6 October 23, 2021 and Tuesday, October 26, 2021, Ms. Li transferred over 12,000
7 files from her Pfizer laptop to an online Google Drive account. Coleman Decl. ¶ 7;
8 Smith Decl. ¶ 9. Ms. Li was "out of the office" on October 25–26, but,
9 unbeknownst to Pfizer, she was conducting mass transfers of files from her Pfizer
10 laptop to her Google Drive account during that time. Coleman Decl. ¶ 8. Pfizer
11 immediately initiated a digital review of Ms. Li's emails, her file access, and her
12 internet activity on her Pfizer-issued laptop. *Id.* ¶ 7. An investigation into Ms. Li's
13 Pfizer email account revealed that she had been interviewing with and had received
14 an offer of employment from Xencor. *Id.* ¶ 8.

15 Pfizer human-resources, security, and digital-forensics personnel spoke with
16 Ms. Li twice on Friday, October 29, 2021. *Id.* ¶ 10; Smith Decl. ¶ 9. During the
17 first conversation by phone with Pfizer human-resources and security personnel,
18 Ms. Li admitted to having transferred the files and claimed that she did so because
19 she wanted to organize her files offline and have them for her own personal use.
20 Smith Decl. ¶ 9. Ms. Li represented that she had transferred the files from the
21 Google Drive onto an external hard drive using her personal laptop and had not
22 copied the files elsewhere. *Id.*

23 A couple of hours later, Pfizer's digital-forensics personnel had a second
24 conversation with Ms. Li via videoconference. Coleman Decl. ¶ 10. Between the
25 two conversations, Ms. Li had apparently logged onto her Google Drive account
26 and deleted all of the files saved there. *Id.* After Ms. Li disclosed that she had
27 deleted these files, Pfizer personnel asked Ms. Li to come to Pfizer's La Jolla
28 office on Monday, November 1, and turn over her external hard drive and personal

laptop for inspection. *Id.* ¶¶ 9–10. Ms. Li expressed reluctance to provide her personal laptop, explaining that it contained personal information, but ultimately agreed to do so. *Id.* ¶ 11; Smith Decl. ¶ 10. Later that night, Pfizer personnel deactivated Ms. Li’s Pfizer system access, her laptop, and her badge. Coleman Decl. ¶ 11.

On November 1, 2021, Ms. Li came in to Pfizer’s offices in La Jolla to return her Pfizer-issued laptop. Smith Decl. ¶ 10. Ms. Li also provided a personal laptop that she led Pfizer to believe was the one she used to download the Pfizer documents from her Google Drive account onto her external hard drive, as well as the external hard drive itself. *Id.* Pending completion of Pfizer’s forensic analyses of the devices, Pfizer placed Ms. Li on paid administrative leave. *Id.*

The forensic examination of Ms. Li’s devices revealed that Ms. Li had not been truthful with Pfizer. Specifically, the forensic examination showed that Ms. Li downloaded the 12,000 files to a folder having a file path “C:\Users\cli\Downloads.” Clarke Decl. ¶ 12. This is the Downloads folder associated with a user having a user profile “cli,” which coincides with Ms. Li’s first initial and last name. *Id.* No such user profile or folder exists on Ms. Li’s Pfizer-issued laptop, the personal laptop she provided Pfizer, or the external hard drive. *Id.* ¶ 17. In the opinion of the experienced forensics analyst who conducted the analysis, the most likely explanation for this discrepancy is that Ms. Li provided Pfizer with a personal laptop *other than* the one she used to download the 12,000 files. *Id.* ¶ 18. The forensics analysis also revealed that the laptop Ms. Li had provided to Pfizer was hardly used during the week of October 25 when the downloads occurred, corroborating that she most likely used a different laptop to initiate the downloads. *Id.* ¶ 15. This conduct casts doubt on Ms. Li’s truthfulness but, far more troublingly for Pfizer, indicates that another, unknown laptop likely contains the 12,000 files she downloaded, which include scores of Pfizer confidential documents such as the examples below.

1 The forensic examination also showed that a significant number of Pfizer
 2 documents were deleted from her external hard drive prior to turning it in. *Id.*
 3 ¶ 16. Specifically, forensic examination showed that hundreds of files and folders
 4 having Pfizer-related names were deleted the night of Saturday, October 30, 2021.
 5 *Id.* She turned the hard drive over to Pfizer on Monday, November 1, 2021
 6 without mentioning anything about these deleted files.

7 **F. Ms. Li Misappropriates Pfizer's Trade Secrets**

8 Ms. Li has misappropriated Pfizer's Confidential Information concerning a
 9 broad range of topics, including information regarding Pfizer's COVID-19 vaccine
 10 and monoclonal antibody programs. Meyer Decl. ¶ 15. Pfizer's investigation of
 11 the more than 12,000 files is ongoing, but below are some examples of documents
 12 (the "Pfizer Trade Secrets") Ms. Li misappropriated that contain such highly
 13 sensitive information:

- 14 • A September 24, 2021 presentation titled "E2E Clinical Development +
 15 Submissions Playbook" ("E2E Submissions Playbook") that reflects, among
 16 other things, Pfizer's analysis of the successes and breakthroughs of Pfizer's
 17 COVID-19 vaccine study, end-to-end recommendations based on the
 18 COVID-19 study, analysis concerning why the Pfizer and BioNTech
 19 relationship was successful compared to other partnerships, and the
 20 identification of critical data variables for drug studies and ways to manage
 21 them. *Id.* ¶ 16.
- 22 • A February 21, 2021 presentation titled "Pfizer Oncology Virtual
 23 Hematology Franchise Year Beginning Meeting" ("Virtual Hematology
 24 Presentation") that contains, among other things, operational goals, key
 25 achievements and key goals for various drugs, development plans and
 26 timelines, key next steps for elranatamab, clinical development overview for
 27 elranatamab, and key strategies for various drugs including elranatamab. *Id.*
 28 ¶ 17.

- 1 • A July 6, 2021 “Clinical Development Plan Document” (“Clinical
2 Development Plan”) detailing development plans for combining encorafenib
3 and binimetinib to treat melanoma. The document discusses Pfizer’s clinical
4 development strategy, rationales, target product profiles, key elements of
5 statistical analysis, global strategy, pediatric strategy, timelines, as well as a
6 plethora of other highly sensitive trade secrets and confidential information.
7 *Id.* ¶ 18.
- 8 • A February 20, 2019 presentation titled “Avelumab Case Study –
9 Implementation of BLRM in Oncology Dose Finding Trials with Multiple
10 Drug Combinations” (“Avelumab Case Study”), which discusses Pfizer’s
11 approach to implementing the Bayesian Logistic Regression Model in
12 studies with multiple drug combination, challenges in designing Phase 1
13 drug combination studies, dosing strategies for drug combinations,
14 implementation issues, and specifics related to the design and decision
15 processes related to Pfizer’s Phase 1 avelumab studies. *Id.* ¶ 19.

16 Pfizer did not authorize Ms. Li to transfer the aforementioned Pfizer files to
17 her personal Google Drive account, and Pfizer is not aware of any legitimate
18 business purpose for these transfers. *See id.* ¶ 14.

19 **G. Ms. Li Tries to Resign and Declines an Exit Interview, Giving**
20 **Rise to This Lawsuit**

21 While Pfizer was conducting its investigation, Ms. Li notified Pfizer on
22 November 16, 2021 that she was leaving the company and that her last day at
23 Pfizer would be November 24, 2021. Smith Decl. ¶ 11. She refused to disclose
24 the reason for her departure, including whether she had a new employer. *Id.* ¶ 11.
25 As discussed above, Pfizer’s investigation of Ms. Li’s Pfizer email account showed
26 that Ms. Li had received an offer to start at Xencor on November 29, 2021.
27 Coleman Decl. ¶ 8.
28

1 Pfizer decided to give Ms. Li a final opportunity to come clean. It asked Ms.
 2 Li to come in for a meeting on Monday, November 22, 2021, to answer some
 3 follow up questions to better understand the pathways that she used to transfer the
 4 12,000 files at issue. Smith Decl. ¶ 12. Pfizer expressed that it would appreciate
 5 Ms. Li's cooperation in making sure Pfizer's confidential information does not fall
 6 into the hands of any of its competitors, including her potential new employer
 7 Xencor. *Id.* Ms. Li declined to meet with Pfizer, stating that she had already
 8 provided Pfizer all the information it requested and citing health issues. *Id.*

9 Given that Ms. Li is leaving Pfizer to start work for a competitor, possibly in
 10 less than a week, that Ms. Li has lacked candor and affirmatively misled Pfizer
 11 personnel, and that she appears to remain in possession of Pfizer trade-secret and
 12 confidential information, Pfizer has no choice but to commence this action and
 13 seek a temporary restraining order against her. Indeed, Ms. Li acknowledged in
 14 her signed Confidentiality Agreement that "any breach by me of my obligations
 15 under this agreement . . . would cause irreparable harm to the Company, and that in
 16 the event of such breach the Company shall have . . . the right to an injunction,
 17 specific performance and other equitable relief to prevent violations of my
 18 obligations hereunder."

19 Pfizer asserts claims against Ms. Li for: (a) misappropriation of trade secrets
 20 in violation of the Defend Trade Secrets Act of 2016 ("DTSA"), 18 U.S.C. § 1836,
 21 *et seq.*, and the California Uniform Trade Secrets Act ("CUTSA"), Cal. Civ. Code
 22 § 3426, *et seq.*; (b) breach of contract; (c) conversion; and (d) trespass to chattel.
 23 Pursuant to Ms. Li's Confidentiality Agreement, Pfizer intends to promptly
 24 commence arbitration proceedings once the status quo is preserved.¹

25
 26
 27
 28

 1 The Confidentiality Agreement further provides that "[d]isputes arising
 under this Agreement will be subject to the Mutual Arbitration and Class Waiver
 Agreement." Ex. 1 (Confidentiality Agt.) ¶ 8. However, the Mutual Arbitration
 and Class Waiver Agreement provides that "[e]ither party to this Agreement may
 make application to a court for temporary or preliminary injunctive relief in aid of

1 III. A TEMPORARY RESTRAINING ORDER IS WARRANTED

2 “[A] district court may issue interim injunctive relief on arbitrable claims if
3 interim relief is necessary to preserve the status quo and the meaningfulness of the
4 arbitration process—provided, of course, that the requirements for granting
5 injunctive relief are otherwise satisfied.” *Toyo Tire Holdings of Americas Inc. v.*
6 *Cont’l Tire N. Am., Inc.*, 609 F.3d 975, 981 (9th Cir. 2010). Here, Pfizer and Ms.
7 Li have agreed to arbitrate all claims “arising out of and/or directly or indirectly
8 related to” Ms. Li’s employment with Pfizer, including “claims relating to breach
9 of contract” and “any other claim under any federal . . . statute . . . or common
10 law.” Ex. 2 (Arb. Agt.) ¶ 1.

11 Courts apply the same standard for injunctions to preserve the status quo
12 pending arbitration and preliminary injunctions generally. *See Toyo*, 609 F.3d at
13 982. “To obtain a preliminary injunction, a plaintiff must establish (1) that he is
14 likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the
15 absence of preliminary relief, (3) that the balance of equities tips in his favor, and
16 (4) that an injunction is in the public interest.” *BOKF, NA v. Estes*, 923 F.3d 558,
17 561–62 (9th Cir. 2019) (internal quotations omitted). The Ninth Circuit applies a
18 “sliding scale” approach, according to which “a stronger showing of one element
19 may offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*, 632
20 F.3d 1127, 1131 (9th Cir. 2011). Under this approach, “‘serious questions going to
21 the merits’ and a balance of hardships that tips sharply towards the plaintiff can
22 support issuance of a preliminary injunction, so long as the plaintiff also shows
23 that there is a likelihood of irreparable injury and that the injunction is in the public
24 interest.” *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) (quoting *Cottrell*,
25 632 F.3d at 1135). As set forth herein, Pfizer has satisfied each of these elements.²

26 arbitration or for the maintenance of the status quo pending arbitration.” Ex. 2
27 (Mutual Arb. Agt.) ¶ 1.

28 ² Although Pfizer seeks a temporary restraining order and a preliminary
injunction, the standard for entry of a TRO in this Circuit is the same as for entry

1 **A. Pfizer Is Likely to Succeed on the Merits of Its Claims**

2 Pfizer is likely to succeed on the merits of its claims that Ms. Li has
3 misappropriated the Pfizer Trade Secrets under the DTSA and CUTSA and that
4 she has breached the parties' Confidentiality Agreement.

5 **1. Ms. Li Misappropriated the Pfizer Trade Secrets**

6 The elements of trade-secret misappropriation under the DTSA and CUTSA
7 are "essentially the same." *ESI Grp. v. Wave Six, LLC*, No. 17-CV-2293-TWR,
8 2021 WL 5206136, at *3 (S.D. Cal. Nov. 9, 2021). These include "(1) the
9 existence and ownership of a trade secret, and (2) misappropriation of the trade
10 secret." *Sun Distrib. Co., LLC v. Corbett*, No. 18-CV-2231-BAS, 2018 WL
11 4951966, at *3 (S.D. Cal. Oct. 12, 2018) (citing 18 U.S.C. § 1836).

12 **a. The Pfizer Trade Secrets**

13 Under both the DTSA and CUTSA, "all forms and types of financial,
14 business, scientific, technical, economic, or engineering information" can qualify
15 as a trade secret, so long as: (1) "the owner thereof has taken reasonable measures
16 to keep such information secret"; and (2) "the information derives independent
17 economic value . . . from not being generally known to, and not being readily
18 ascertainable through proper means by, another person who can obtain economic
19 value from the disclosure or use of the information." *Zeetogroup, LLC v.*
20 *Fiorentino*, No. 19-cv-458-JLS, 2019 WL 2090007, at *3 (S.D. Cal. May 13,
21 2019) (citing 18 U.S.C. § 1839(3); Cal. Civ. Code § 3426.1(d)).

22 Pfizer has identified four examples of Pfizer Trade Secrets (among
23 numerous others sure to be found following a complete investigation into the
24 documents misappropriated by Ms. Li), each of which qualifies for trade-secret
25 protection and relates to Pfizer's COVID-19 vaccine and/or monoclonal antibody
26 programs. *See supra* Section II.F. The E2E Submissions Playbook contains highly
27 confidential analyses of Pfizer's COVID-19 vaccine studies as well as end-to-end

28 of a preliminary injunction. *Rovio Ent. Ltd. v. Royal Plush Toys, Inc.*, 907 F. Supp.
2d 1086, 1092 (N.D. Cal. 2012).

1 recommendations based on those studies. Meyer Decl. ¶ 16; *see generally* Ex. 3.
 2 The Virtual Hematology Presentation discloses Pfizer’s operational goals, clinical
 3 development strategies and timelines, and key steps, goals, and strategies for
 4 various drugs. Meyer Decl. ¶ 17; *see generally* Ex. 4. The Clinical Development
 5 Plan describes Pfizer’s development plans for combining monoclonal antibodies to
 6 treat melanoma, including target product profiles, key elements of statistical
 7 analysis, global strategy, pediatric strategy, and timelines. Meyer Decl. ¶ 18; *see*
 8 *generally* Ex. 5. The Avelumab Case Study discusses Pfizer’s approach to
 9 implementing the Bayesian Logistic Regression Model in studies with multiple
 10 drug combinations, including dosing strategies, implementation issues, and design
 11 and decision processes. Meyer Decl. ¶ 19; *see generally* Ex. 6.

12 These documents and types of information constitute trade secrets under the
 13 DTSA and the CUTSA. *See, e.g., TGG Mgmt. Co. v. Petraglia*, No. 19-cv-2007-
 14 BAS, 2020 WL 209103, at *4–5 (S.D. Cal. Jan. 14, 2020) (finding that “[q]uality
 15 assurance materials,” “[p]roprietary sales and marketing materials,” “[t]raining
 16 materials,” and “financial models, templates, and statements” can constitute
 17 protected trade secrets); *Zeetogroup*, 2019 WL 2090007, at *3 (holding that
 18 plaintiff sufficiently identified a list of its “advertising campaigns and all of the
 19 associated metrics of the campaign” as a protectable trade secret).

20 Pfizer employs a variety of measures to protect the Pfizer Trade Secrets,
 21 including, among others, employing a dedicated team of in-house forensics
 22 specialists, tracking employee activity on company devices, and using automated
 23 monitoring alerts to escalate suspicious employee activity. *See* Coleman Decl. ¶ 5.
 24 Pfizer further requires employees to sign confidentiality agreements, participate in
 25 periodic data security trainings, and abide by various data-security restrictions on
 26 their devices, among other measures. *Id.* ¶ 6. Under these circumstances, Pfizer
 27 more than adequately guards its Trade Secrets from disclosure. *See, e.g., Corbett*,
 28 2018 WL 4951966, at *4 (finding trade secrets adequately pled where plaintiff

1 restricted access to the trade secrets via employee confidentiality agreements and a
 2 network security system); *Zeetogroup*, 2019 WL 2090007, at *4 (finding employer
 3 took adequate steps to protect its trade secret through the use of “Proprietary
 4 Information and Inventions Assignment Agreements” and password protection).

5 The Pfizer Trade Secrets also have significant economic value, particularly
 6 because they are not known or ascertainable by those who could leverage them. If
 7 disclosed, they would provide a competitor such as Xencor with substantial
 8 guidance as to how Pfizer develops and assesses its vaccines and drugs, including
 9 for both its COVID-19 vaccine and monoclonal antibody programs. Meyer Decl.
 10 ¶¶ 16, 20. Such guidance is the result of considerable investment by Pfizer: for
 11 example, Pfizer has invested over \$2 billion of its own capital to develop its
 12 COVID-19 vaccine, and has dedicated hundreds of Pfizer scientists, strategists, and
 13 other personnel to the COVID-19 vaccine effort. *Id.* ¶ 4. *See, e.g., MAI Sys. Corp.*
 14 *v. Peak Comput., Inc.*, 991 F.2d 511, 521 (9th Cir. 1993) (finding plaintiff’s
 15 customer database qualified as a trade secret in part because of its “potential
 16 economic value” to plaintiff’s competitors); *see also WeRide Corp. v. Kun Huang*,
 17 379 F. Supp. 3d 834, 847 (N.D. Cal. 2019) (finding trade secrets adequately pled
 18 where source code required “investments of over \$45 million” to develop). Pfizer
 19 also invests millions of dollars into investigating each potential new monoclonal
 20 antibody drug. Meyer Decl. ¶¶ 10-11.

21 **b. Misappropriation of the Pfizer Trade Secrets**

22 Misappropriation is “nearly identical” under the DTSA and CUTSA, defined
 23 as (1) “[a]cquisition of a trade secret of another by a person who knows or has
 24 reason to know that the trade secret was acquired by improper means,” or
 25 (2) “[d]isclosure or use of a trade secret of another without express or implied
 26 consent” by a person who used improper means to acquire the trade secret or had
 27 knowledge it was improperly acquired. *Corbett*, 2018 WL 4951966, at *5.

Ms. Li misappropriated the Pfizer Trade Secrets. Between Saturday, October 23, 2021 and Tuesday, October 26, 2021, Ms. Li transferred over 12,000 files from her Pfizer laptop to an online Google Drive account. Coleman Decl. ¶ 8. Ms. Li was “out of the office” on October 25–26, but, unbeknownst to Pfizer, she was conducting mass transfers of files from her Pfizer laptop to her Google Drive account during that time. *Id.* These actions constituted improper acquisition of the Pfizer Trade Secrets, as they were in clear violation of the Confidentiality Agreement and company policies. Ms. Li did not transmit these documents in the course of her work for Pfizer. *See Petraglia*, 2020 WL 209103, at *2, *5 (finding improper acquisition adequately alleged where forensic analysis of former employees’ laptops revealed one defendant “connected a personal external USB storage device to his [work] laptop and accessed various files” and sent “various [work] materials” to his personal email account).

Given the nature of the Trade Secrets, the timing of their transmission, and Ms. Li’s apparent imminent plan to work for Xencor, there is significant risk that Ms. Li used and/or disclosed Pfizer’s Confidential Information contained within the documents in her interviews with Xencor or in interviews or discussions with other third parties. Indeed, it appears Ms. Li continues to retain the laptop that she used to transfer the 12,000 Pfizer files to this day. Clarke Decl. ¶ 18. Pfizer does not yet know if any use and/or disclosure occurred, but, to the extent that it did, that would provide another basis for Ms. Li’s liability under the trade-secret laws. *See Petraglia*, 2020 WL 209103, at *6 (finding that defendant “used” plaintiff’s trade secrets where defendant stored nearly identical copies of plaintiff’s Excel workbooks on its own computers).

Accordingly, Pfizer is likely succeed on the merits of its DTSA and CUTSA claims.

2. Ms. Li Breached the Confidentiality Agreement

1 To prevail on a breach of contract claim under New York law, a plaintiff
 2 must show “the existence of a contract, the plaintiff’s performance pursuant to the
 3 contract, the defendant’s breach of his or her contract obligations, and damages
 4 resulting from the breach.”³ *Kraus USA, Inc. v. Magarik*, No. 17-cv-6541, 2020
 5 WL 2415670, at *18 (S.D.N.Y. May 12, 2020). Here, Ms. Li entered into the
 6 Confidentiality Agreement with Pfizer in August 2016. Smith Decl. ¶ 5. In
 7 exchange for compensation and other benefits that Pfizer provided to her, *see id.*,
 8 Ms. Li agreed not to “disclose or use” Pfizer’s “secret or confidential information
 9 and/or trade secrets” without its written permission, Ex. 1 (Confidentiality Agt.)
 10 ¶ 1. Yet as discussed in Section III.A.1.b, *supra*, Ms. Li “uploaded [Pfizer]
 11 documents for her own personal reference” and sought to “rearrange and organize
 12 her Pfizer documents” for non-business purposes. Smith Decl. ¶ 9. Thus, Pfizer is
 13 likely to succeed on its breach of contract claim as well. *See Intertek Testing*
 14 *Servs., N.A., Inc. v. Pennisi*, 443 F.Supp. 3d 303, 337 (E.D.N.Y. Mar. 9, 2020)
 15 (finding likelihood of success on breach of contract claim where employer had a
 16 “legitimate interest in enforcing the confidentiality provision in [the] Employment
 17 Agreement . . . in order to prevent the use and disclosure of its confidential and
 18 proprietary information”).

19 **B. Pfizer Will Suffer Irreparable Harm Absent Injunctive Relief**

20 To establish irreparable harm, a plaintiff must demonstrate that it is likely to
 21 suffer a harm “for which there is no adequate legal remedy, such as an award of
 22 damages.” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir.
 23 2014). Accordingly, while “economic injury alone does not support a finding of
 24 irreparable harm . . . intangible injuries, such as damage to ongoing recruitment
 25

26 ³ New York law applies only to Pfizer’s breach of contract claim due to the narrow
 27 choice-of-law provision in the parties’ Confidentiality Agreement. *See Spring*
 28 *Design, Inc. v. Barnesandnoble.com, LLC*, No. 09-cv-05185, 2009 WL 10702160,
 at *3 (N.D. Cal. Dec. 1, 2009). California law applies to Pfizer’s state trade-secret
 misappropriation claim. *See Arkley v. Aon Risk Servs. Companies, Inc.*, No. 12-cv-
 1966, 2012 WL 12885707, at *2 (C.D. Cal. June 13, 2012).

efforts and goodwill, qualify as irreparable harm.” *Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991); *see also Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001) (holding that a company’s “loss of prospective customers or goodwill certainly supports a finding of the possibility of irreparable harm”).

Given the very nature of a trade secret, the Ninth Circuit has recognized that “[o]nce a trade secret is enabled to fly from its oubliette, it cannot be recaptured. Once lost, it is lost forever. The harm is irreparable.” *Beckman Instruments, Inc. v. Cincom Sys., Inc.*, 165 F.3d 914, 1998 WL 783774, at *2 (9th Cir. 1998), *amended on denial of reh’g* (Dec. 4, 1998). Thus, the Ninth Circuit routinely has upheld a finding of irreparable harm where a party faces a risk of loss of a trade secret. *See, e.g., Indep. Techs., LLC v. Otodata Wireless Network, Inc.*, No. 20-CV-72-RJC-CLB, 2020 WL 1433525, at *5 (D. Nev. Mar. 23, 2020), *aff’d*, 836 F. App’x 531, 533 (9th Cir. 2020) (finding of irreparable harm sustained where device manufacturer faced risk that former employees would use its internal marketing strategies, product information, and customer list); *Softketeers, Inc. v. Regal W. Corp.*, No. 19-cv-519-JVS-JDEx, 2019 WL 4418819, at *10 (C.D. Cal. May 6, 2019), *aff’d in relevant part, remanded in part on other grounds*, 788 F. App’x 468 (9th Cir. 2019) (finding of irreparable harm upheld where software company faced risk that former employee would disclose its source code).⁴

Here, too, Pfizer will suffer irreparable harm absent a TRO or preliminary injunction because it would otherwise lose the value of the Trade Secrets forever—a loss that cannot be quantified—if they were disclosed to a third party, let alone to a competitor such as Xencor. Indeed, the Pfizer Trade Secrets would give a competitor insight into how to follow Pfizer’s path to COVID-19 vaccine success,

⁴ In entering into the Confidentiality Agreement, Ms. Li agreed that “any breach of any of my obligations under this Agreement” would “cause irreparable harm” to Pfizer. Ex. 3 ¶ 8. Such an agreement can be evidence of irreparable injury. *See Int’l Ass’n of Plumbing & Mech. Officials v. Int’l Conference of Bldg. Officials*, No. 95–55944, 1996 WL 117447, at *2 n.3 (9th Cir. Mar. 15, 1996).

1 along with strategies for how to replicate Pfizer's monoclonal antibody programs.
 2 *See* Meyer Decl. ¶¶ 15-20. For example, the Clinical Development Plan would
 3 allow a competitor to build a similar research and development pipeline for
 4 combining monoclonal antibodies, employ the same target product profiles, and
 5 use the same strategies and timelines. *See generally* Ex. 5. And the E2E
 6 Submissions Playbook would provide a competitor with blueprints on how to
 7 execute clinical development and regulatory submissions with the same speed and
 8 precision Pfizer did with respect to its COVID-19 vaccine studies. Ex. 3. If
 9 Xencor or another competitor is able to supplant Pfizer's market position as a
 10 result of Ms. Li's misappropriation, Pfizer will not be able to restore its reputation
 11 or goodwill to the positions they were in before her theft. *Id.*

12 Nor is the risk of disclosure speculative. Ms. Li's statements and conduct to
 13 date indicate that she wishes to use the Pfizer Trade Secrets for her own benefit—
 14 so much so that she attempted to deceive Pfizer by providing a decoy laptop and
 15 deleting documents from her external hard drive. *See* Clark Decl. ¶¶ 14–18. And
 16 moreover, in light of her refusal to meet with Pfizer again, Smith Decl. ¶ 12, Pfizer
 17 is unable to take any reasonable measures to protect against disclosure of the Pfizer
 18 Trade Secrets, such as inspecting Ms. Li's remaining accounts and devices and
 19 quarantining any Pfizer files that may reside within.

20 **C. The Balance of Hardships Tips Decidedly in Pfizer's Favor**

21 The balance of hardships here strongly favors Pfizer. Ms. Li will suffer
 22 minimal harm if Pfizer's request is granted: she will only have to refrain from
 23 committing trade-secret misappropriation and destroying evidence, as well as
 24 endure some modest personal inconvenience in making her devices and accounts
 25 available for forensic review. Pfizer will ensure that Ms. Li's personal information
 26 is handled with utmost care and will only be accessible to Pfizer's outside counsel
 27 and outside forensics firm. On the other hand, if the Court denies Pfizer's request
 28 for a preliminary injunction, the harm to Pfizer will be immense: the loss of its

1 most valuable Trade Secrets and considerable damage to its reputation as the
 2 market leader in next-generation vaccines and monoclonal antibody drugs. *See*,
 3 *e.g.*, *Petraglia*, 2020 WL 209103, at *8 (finding plaintiff’s risk of “lost value of its
 4 trade secrets” outweighed any harm to former employees temporarily enjoined
 5 from using, accessing, or copying plaintiff trade secrets in their possession).

6 **D. The Public Interest Favors Issuance of a Preliminary Injunction**

7 The final factor, the public interest, also weighs heavily in favor of the
 8 requested injunctive relief. *See Corbett*, 2018 WL 4951966, at *8 (“The public
 9 interest is served when [a] defendant is asked to do no more than abide by trade
 10 laws and the obligations of contractual agreements signed with [his] employer.
 11 Public interest is also served by enabling the protection of trade secrets.”). In light
 12 of the ongoing COVID-19 pandemic and the material impact Pfizer’s vaccine has
 13 had in combating the virus, preservation of the Pfizer Trade Secrets and Pfizer’s
 14 ability to continue unimpeded with its efforts indisputably furthers the public
 15 interest. If Pfizer is unable to safeguard against disclosure of the most sensitive
 16 aspects of its vaccine and drug programs, then it may not be able to complete
 17 future work that promises to save millions of lives. *See Regeneron Pharms., Inc. v.*
 18 *U.S. Dep’t of Health & Hum. Servs.*, No. 20-CV-10488, 2020 WL 7778037
 19 (S.D.N.Y. Dec. 30, 2020) (finding public interest weighed in favor of enjoining
 20 application of regulation, which plaintiff argued would “risk restricting medical
 21 innovation and limiting Americans’ access to new prescription drugs”).

22 **E. The Relief Requested Preserves the Status Quo**

23 As set forth in Pfizer’s proposed order that accompanies its Motion, Pfizer
 24 requests not only that Ms. Li be enjoined from using or disclosing Pfizer’s
 25 confidential information and destroying evidence, but also that she be ordered to
 26 provide Pfizer’s outside counsel with attorneys-eyes-only access to her personal
 27 Google Drive account and any other relevant account or device. Such relief is
 28 essential to preserve the status quo, particularly in light of Ms. Li’s refusal to

disclose her employer, provision of a decoy laptop, and deletion of hundreds of files from her external hard drive before turning it over to Pfizer. *See* Clark Decl. ¶¶ 14–18. Unless Ms. Li turns over her devices and accounts, Pfizer cannot determine the full extent of her misappropriation or ensure that she does not use or disclose its trade secrets. *See Petraglia*, 2020 WL 209103, at *9–10 (enjoining defendants from “accessing, copying, or using any of [plaintiff’s] documents” and requiring defendants to “*return* to [plaintiff] any external drives or USB storage devices that contain [plaintiff’s] documents” (emphasis added)); *Allstate Ins. Co. v. Rote*, No. 16-cv-01432, 2016 WL 4191015, at *7 (D. Or. Aug. 7, 2016) (granting preliminary injunction ordering employee to return confidential information to former employer).

IV. A TEMPORARY RESTRAINING ORDER SHOULD BE GRANTED EX PARTE WITHOUT NOTICE

As set forth in the Declaration of Ashok Ramani accompanying this Motion, Pfizer submits that the requested TRO should be granted *ex parte* without notice to Ms. Li. Courts may issue such relief if: “(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1); *see also* S.D. Cal. Civ. R. 83.3(g)(2) (providing that “[a] motion . . . must not be made *ex parte* unless it appears by affidavit or declaration . . . that for reasons specified the party should not be required to inform the opposing party”). Pfizer satisfies these requirements.

Ms. Li’s deceptive conduct and interference with Pfizer’s internal investigation demonstrate the very material risk that she is willing to take additional steps to cover her tracks. If Ms. Li were provided notice of this Motion, there would be nothing to stop her from deleting additional documents or disposing

of accounts or devices—just as she deleted hundreds of documents from her external hard drive before turning over to Pfizer for forensic inspection. Ramani Decl. ¶ 9. Moreover, to this day, there is reason to believe that Ms. Li retains the personal laptop that she used to upload 12,000 files that include Pfizer confidential information to her personal Google Drive account—a laptop that she avoided relinquishing by providing a decoy device in its stead to Pfizer. *Id.* Temporary *ex parte* relief is therefore necessary to prevent further harm to Pfizer and to prevent Ms. Li from destroying evidence. *See Shutterfly, Inc. v. ForeverArts, Inc.*, No. 12-cv-3671, 2012 WL 2911887, at *4 (N.D. Cal. July 13, 2012) (granting TRO *ex parte* where “defendant ignored signed obligations regarding the [source] code at issue” and the existence of a “duplicate Chinese website suggests that defendants may be able to use the code to the injury of plaintiff even if it is destroyed [in the United States],” and enjoining defendants from “destroying any current or archived electronic logs, metadata, and directories . . . as well as any emails and electronic documents that relate to [plaintiff]”).

V. CONCLUSION

For the above reasons, Pfizer respectfully requests that the Court grant Pfizer’s motion and enter a temporary restraining order and preliminary injunction that:

- (a) Enjoins Ms. Li from further using, disclosing, or transmitting Pfizer’s confidential information or trade secrets;
- (b) Enjoins Ms. Li from destroying, manipulating, or otherwise altering any of Pfizer’s confidential information and trade secrets in her possession, including any electronic information such as metadata that shows last access-date and creation date; and
- (c) Directs Ms. Li to provide Pfizer’s outside counsel with attorneys-eyes-only access to (i) her personal Google Drive account(s), (ii) any and all computing devices in her possession, custody, and control, and

(iii) to any other account or device on which she may have stored Pfizer's confidential information or trade secrets, as well as to return any hard copy documents containing Pfizer's confidential information or trade secrets.

November 23, 2021

Respectfully submitted,

s/ Ashok Ramani

Ashok Ramani (SBN 200020)
DAVIS POLK & WARDWELL LLP
1600 El Camino Real
Menlo Park, California 94025
Tel: (650) 752-2000
Fax: (650) 752-2111
ashok.ramani@davispolk.com

Dana M. Seshens (NY SBN 4148128)
(pro hac vice application forthcoming)
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, New York 10017
Tel: (212) 450-4000
Fax: (212) 701-5800
dana.seshens@davispolk.com

Attorneys for Plaintiff Pfizer Inc.