

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

T-MOBILE USA, INC., a Delaware
corporation,

Plaintiff,

v.

HUAWEI DEVICE USA, INC., a Texas
corporation; and HUAWEI TECHNOLOGIES
CO. LTD., a China company,

Defendants.

NO. C14-1351 RAJ

MOTION OF DEFENDANT HUAWEI
TECHNOLOGIES CO., LTD. TO
DISMISS COMPLAINT UNDER FED.
R. CIV. P. 12(b)(2) AND 12(b)(6)

NOTE ON MOTION CALENDAR:
May 15, 2015

ORAL ARGUMENT REQUESTED

MOTION OF DEFENDANT
HUAWEI TECHNOLOGIES CO., LTD.
TO DISMISS COMPLAINT
No. C14-1351 RAJ

GORDON TILDEN THOMAS & CORDELL LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154
Phone (206) 467-6477
Fax (206) 467-6292

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

INTRODUCTION1

STANDARD OF REVIEW2

 A. Standard for Dismissal Under Rule 12(b)(2)2

 B. Standard for Dismissal Under Rule 12(b)(6)3

ARGUMENT4

I. THE COURT LACKS PERSONAL JURISDICTION OVER HUAWEI TECHNOLOGIES4

 A. The Court Lacks General Jurisdiction over Huawei Technologies4

 B. The Court Also Lacks Specific Jurisdiction5

II. T-MOBILE HAS FAILED TO STATE A CLAIM FOR TRADE SECRET MISAPPROPRIATION7

 A. T-Mobile Failed to Identify Any Misappropriated Trade Secret with Sufficient Particularity to Withstand Dismissal.....8

 B. T-Mobile Had No Trade Secret Because It Had Already Publicly Disclosed All Such Information.....10

 C. T-Mobile Failed to Maintain the Secrecy of Its Purported Trade Secret.....15

III. T-MOBILE HAS FAILED TO STATE A CLAIM FOR BREACH OF CONTRACT16

 A. Huawei Technologies Is Not a Party to the Mutual Nondisclosure Agreement.....16

 B. T-Mobile Has Failed to State a Claim for Damages.....18

IV. T-MOBILE HAS FAILED TO STATE A CLAIM FOR TORTIOUS INTERFERENCE WITH A CONTRACT18

 A. T-Mobile Has Failed to Plead Interference for an Improper Purpose.....18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

B. T-Mobile’s Tortious Interference Claim Is Preempted by the Washington Uniform Trade Secret Act19

C. T-Mobile Has Failed to State a Claim Because a Parent Cannot Tortiously Interfere with Its Wholly Owned Subsidiary21

D. T-Mobile Has Failed to Plead Interference with “Other Applicable Agreements” with the Requisite Particularity.....22

V. T-MOBILE HAS FAILED TO STATE A CLAIM FOR A PRIVATE CONSUMER PROTECTION ACT VIOLATION22

A. T-Mobile Has Failed to Plead the Public Interest Element of a Consumer Protection Act Claim23

B. T-Mobile Has Failed to Plead an Unfair or Deceptive Act or Practice.....23

C. T-Mobile’s Consumer Protection Act Claim Is Preempted by the Washington Uniform Trade Secret Act23

CONCLUSION.....23

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

	Page(s)
CASES	
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	3, 4
<i>Baden Sports, Inc. v. Wilson Sporting Goods Co.</i> , No. C11-0603, 2011 WL 3158607 (W.D. Wash. July 26, 2011)	8, 9
<i>Bancroft & Masters, Inc. v. Augusta Nat. Inc.</i> , 223 F.3d 1082 (9th Cir. 2000)	4
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	3
<i>Bingham v. Blair LLC</i> , No. C10-5005 RBL, 2010 WL 2196106 (W.D. Wash. May 27, 2010).....	6
<i>Boeing Co. v. Sierracin Corp.</i> , 108 Wn. 2d 38, 738 P.2d 665 (Wash. 1987).....	7
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985).....	3, 7
<i>Centennial Energy Holdings, Inc. v. Colo. Energy Mgmt., LLC</i> , 934 N.Y.S.2d 32 (N.Y. Sup. Ct. 2011)	17
<i>Coe v. Philips Oral Healthcare Inc.</i> , No. 13-518, 2014 WL 585858 (W.D. Wash. Feb. 14, 2014).....	6
<i>Daimler AG v. Bauman</i> , 134 S. Ct. 746 (2014).....	6
<i>Doe v. Unocal Corp.</i> , 248 F.3d 915 (9th Cir. 2001)	5, 7
<i>Ed Nowogroski Ins., Inc. v. Rucker</i> , 88 Wn. App. 350, 944 P.2d 1093 (Wash. Ct. App. 1997), <i>aff'd</i> , 137 Wn. 2d 427, 971 P.2d 936 (Wash. 1999).....	19, 20
<i>Electric Mirror, LLC v. Janmar Lighting, Inc.</i> , 760 F. Supp. 2d 1033 (W.D. Wash. 2010).....	5

1 *Endeavor Capital Holdings Group, LLC v. Umami Sustainable Seafood, Inc.*,
 2 No. 13-4143, 2014 WL 3897577 (S.D.N.Y. Aug. 7, 2014).....17
 3
 4 *Enterprises Int’l, Inc. v. Int’l Knife & Saw, Inc.*,
 5 No. C12-5638 BHS, 2013 WL 6185241 (W.D. Wash. Nov. 26, 2013)19, 23
 6
 7 *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*,
 8 105 Wn. 2d 778, 719 P.2d 531 (Wash. 1986).....23
 9
 10 *Hansen v. Transworld Wireless TV-Spokane, Inc.*,
 11 44 P.3d 929 (Wash. Ct. App. 2002).....21
 12
 13 *Harris v. Sears Holding Corp.*,
 14 No. 2:10-CV-01339-MJP, 2011 WL 219669 (W.D. Wash. Jan. 24, 2011).....22
 15
 16 *Harris v. Seward Park Hous. Corp.*,
 17 913 N.Y.S.2d 161, 79 A.D.3d 425 (2010)18
 18
 19 *Horsehead Indus. v. Metallgesellschaft AG*,
 20 239 A.D.2d 171 (1st Dep’t 1997)17
 21
 22 *In re Lilley*,
 23 No. 10-91078C-13D, 2011 WL 1428089 (Bankr. M.D.N.C. Apr. 13, 2011).....13
 24
 25 *Intern. Shoe Co. v. Washington*,
 26 326 U.S. 310 (1945).....2
 27
 28 *Jason v. UNITE HERE*,
 29 No. C05-820 JLR, 2005 WL 3278004 (W.D. Wash. Dec. 2, 2005).....4
 30
 31 *Lake v. Lake*,
 32 817 F.2d 1416 (9th Cir. 1987)5
 33
 34 *Manshardt v. Fed. Judicial Qualifications Comm.*,
 35 408 F.3d 1154 (9th Cir. 2005)3
 36
 37 *Marks v. City of Seattle*,
 38 C03-1701P, 2003 WL 23024522 (W.D. Wash. Oct. 16, 2003).....18
 39
 40 *McCrary v. Elations Co., LLC*,
 41 No. EDCV 13-0242, 2013 WL 6403073 (C.D. Cal. July 12, 2013).....2
 42
 43 *McGlinchy v. Shell Chemical Co.*,
 44 845 F.2d 802 (9th Cir. 1988)7
 45

MOTION OF DEFENDANT
 HUAWEI TECHNOLOGIES CO., LTD.
 TO DISMISS COMPLAINT - iv
 No. C14-1351 RAJ

GORDON TILDEN THOMAS & CORDELL LLP
 1001 Fourth Avenue, Suite 4000
 Seattle, WA 98154
 Phone (206) 467-6477
 Fax (206) 467-6292

1 *Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Grp., Inc.*,
2 52 P.3d 30 (Wash. Ct. App. 2002).....18
3
4 *Nw. Prod. Design Grp., LLC v. Homax Products, Inc.*,
5 174 Wn. App. 1002 (Wash. Ct. App. 2013), *review denied*, 178 Wn. 2d 1004, 308
6 P.3d 641 (Wash. 2013).....23
7
8 *Omeluk v. Langsten Slip & Batbyggeri A/S*,
9 52 F.3d 267 (9th Cir. 1995)7
10
11 *Pollution Denim & Co. v. Pollution Clothing Co.*,
12 547 F. Supp. 2d 1132 (C.D. Cal. 2007)10
13
14 *Private Reserve Fin., LLC v. Borenstein*,
15 No. C13-5788 RBL, 2014 WL 2208944 (W.D. Wash. May 28, 2014).....5
16
17 *Pulver v. Battelle Mem’l Inst.*,
18 No. CV-05-5028-RHW, 2009 WL 224490 (E.D. Wash. Jan. 29, 2009)19, 21
19
20 *Robbins, Geller, Rudman & Dowd, LLP v. State*,
21 179 Wn. App. 711, 328 P.3d 905 (Wash. Ct. App. 2014)9
22
23 *Schwarzenegger v. Fred Martin Motor Co.*,
24 374 F.3d 797 (9th Cir. 2004)3, 5
25
26 *St. John’s Univ. v. Bolton*,
27 757 F. Supp. 2d 144 (E.D.N.Y. 2010)10
28
29 *Taylor v. Reliance Standard Life Ins.*,
30 No. C10-1317JLR, 2011 WL 62142 (W.D. Wash. Jan. 7, 2011).....13
31
32 *telSPACE, LLC v. Coast to Coast Cellular, Inc.*,
33 No. 2:13-CV-01477 RSM, 2014 WL 4364851 (W.D. Wash. Sept. 3, 2014).....9
34
35 *Thola v. Henschell*,
36 140 Wn. App. 70, 164 P. 3d 524 (Wash. Ct. App. 2007)19, 20
37
38 *Wells Fargo & Co. v. Wells Fargo Express Co.*,
39 556 F.2d 406 (9th Cir. 1977)7
40
41 *Ziegler v. Indian River Cnty.*,
42 64 F.3d 470 (9th Cir. 1995)6
43
44 **STATUTES**
45 RCW 19.108.010(4).....8, 15

MOTION OF DEFENDANT
HUAWEI TECHNOLOGIES CO., LTD.
TO DISMISS COMPLAINT - v
No. C14-1351 RAJ

GORDON TILDEN THOMAS & CORDELL LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154
Phone (206) 467-6477
Fax (206) 467-6292

1 RCW 19.108.90019
 2
 3 **RULES**
 4
 5 Fed. R. Civ. P. 8(a)(2).....3
 6
 7 Fed. R. Civ. P. 9(g)18
 8
 9 Fed. R. Civ. P. 12(b)(2)..... 1-2, 5, 7
 10
 11 Fed. R. Civ. P. 12(b)(6).....1, 3, 5
 12
 13 Fed. R. Evid. 201(b)(2).....15
 14 **PATENTS**
 15
 16 Canada Patent Application No. 2721793.....11
 17
 18 Canada Patent Application No. 2806546.....11
 19
 20 China Patent Publication No. 200980122850.6.....11
 21
 22 Europe Patent Application No. 09073272511
 23
 24 Hong Kong Patent Application No. 1111251711
 25
 26 International Patent Application No. PCT/US2009/41094.....11
 27
 28 International Patent Application No. PCT/US2011/42799.....11
 29
 30 Japan Patent Application No. 2011-50525011
 31
 32 South Korea Patent Application No. 10-2010-7025816.....11
 33
 34 U.S. Patent Application No. US 2009/0265035 (Patent No. US 8,761,938)..... 11-13
 35
 36 U.S. Patent Application No. US 2012/000398211, 13
 37
 38 U.S. Patent Application No. US 2012/0146956 11-13
 39 **BOOKS AND ARTICLES**
 40
 41 Aubrey Cohen, *T-Mobile Marks Anniversary with Tour, Unlimited Data*, Seattlepi.com
 42 (Sept. 5, 2012), [http://www.seattlepi.com/business/tech/article/T-Mobile-marks-](http://www.seattlepi.com/business/tech/article/T-Mobile-marks-anniversary-with-tour-unlimited-3842407.php#photo-3412686)
 43 [anniversary-with-tour-unlimited-3842407.php#photo-3412686](http://www.seattlepi.com/business/tech/article/T-Mobile-marks-anniversary-with-tour-unlimited-3842407.php#photo-3412686)14
 44
 45

1 Brier Dudley, *Video: T-Mobile USA Turns 10, Shows off Testing Labs*, The Seattle Times
 2 (Sept. 5, 2012),
 3 http://old.seattletimes.com/html/technologybrierdudleysblog/2019077344_t-
 4 [mobile usa turns 10 shows of.html](http://old.seattletimes.com/html/technologybrierdudleysblog/2019077344_t-) 14
 5
 6 David Beren, *T-Mobile Shows Off Device Testing Robot, Employees Do the Robot*
 7 *Dance*, Tmo News (Sept. 13, 2012), <http://www.tmonews.com/2012/09/t-mobile->
 8 [shows-off-device-testing-robot-employees-do-the-robot-dance/](http://www.tmonews.com/2012/09/t-mobile-) 14
 9
 10 Latif Salman, *T-Mobile Introduces Tappy, the Software Testing Robot*, *übergizmo.com*
 11 (Sept. 13, 2012), <http://www.ubergizmo.com/2012/09/t-mobile-introduces-tappy-the->
 12 [software-testing-robot/](http://www.ubergizmo.com/2012/09/t-mobile-introduces-tappy-the-) 14
 13
 14 Matt Markovich, *T-Mobile Testers Drop, Dunk and Tap Devices Before They’re Sold*,
 15 *KOMOnews.com* (Sept. 5, 2012),
 16 <http://www.komonews.com/home/video/168716536.html> 14
 17
 18 Milgrim on Trade Secrets (2015) 13
 19
 20 Nat Levy, *Phone Testing by Dummies Is Serious Stuff*, *Mercer Island Reporter* (Oct. 3,
 21 2012), <http://www.mi-reporter.com/news/172510031.html#> 14
 22
 23 Restatement (Third) of Unfair Competition (1995) 10
 24
 25 Stephanie Mlot, *T-Mobile Software-Testing Robot Gets Tap-Happy*, *PCMag.com* (Sept.
 26 13, 2012), <http://www.pcmag.com/article2/0,2817,2409695,00.asp> 14
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45

1 Defendant Huawei Technologies Co., Ltd. (“Huawei Technologies”), by and through its
2
3 undersigned counsel, hereby moves this Court pursuant to Federal Rule of Civil Procedure
4
5 12(b)(2) to dismiss the Complaint for lack of personal jurisdiction. Alternatively, Huawei
6
7 Technologies moves to dismiss the Complaint pursuant to Rule 12(b)(6) because Plaintiff, T-
8
9 Mobile USA, Inc. (“T-Mobile”), has failed to state any claim upon which relief can be granted.
10

11 **INTRODUCTION**

12
13 T-Mobile’s Complaint against Huawei Technologies should be dismissed in its entirety
14
15 for lack of personal jurisdiction. As explained more fully herein, there is no support for the
16
17 exercise of personal jurisdiction over Huawei Technologies. The company is based in China and
18
19 has no contacts with the State of Washington, let alone any of those typically required for
20
21 personal jurisdiction to attach. Huawei Technologies does not conduct business in Washington
22
23 and has no offices, employees, phone numbers, licenses to do business, or other such indicia of
24
25 personal jurisdiction. Huawei Technologies did not employ the individuals T-Mobile accuses of
26
27 misconduct. Put simply, there are no contacts with Washington, and the Complaint against
28
29 Huawei Technologies should be dismissed for lack of personal jurisdiction.
30

31 Huawei Device USA, Inc. (“Huawei USA”) is the entity at the heart of T-Mobile’s
32
33 allegations. Huawei USA entered into contracts to provide T-Mobile with cellular handsets and
34
35 established an office in Bellevue, Washington, to service the relationship with T-Mobile.
36
37 Huawei USA does not contest jurisdiction but has moved to dismiss the complaint under Rule
38
39 12(b)(6). Dkt. 32.
40

41 T-Mobile’s claims against Huawei Technologies also fail to satisfy Rule 12(b)(6)
42
43 pleading standard. The focus of T-Mobile’s Complaint is an allegation of trade secret
44
45

1 misappropriation related to its handset testing robot. Not only has T-Mobile not identified any
 2 specific trade secret that was allegedly misappropriated, but T-Mobile also did not keep its robot
 3 a secret. Instead, *eight months* before the alleged misappropriation occurred, T-Mobile featured
 4 the robot in a video posted on YouTube, invited the media (including KOMO-TV and *The*
 5 *Seattle Times*) into its lab to film and report on the robot to the public, and published
 6 comprehensive details regarding the design and specifications in numerous patents both in the
 7 United States and abroad. T-Mobile's trade secret claim is meritless, as are its derivative tortious
 8 interference and consumer protection claims, which are also each preempted by the Washington
 9 Uniform Trade Secret Act ("WUTSA").
 10

11 T-Mobile's breach of contract claim is similarly unfounded and should be dismissed, as
 12 Huawei Technologies was not a party to the agreement T-Mobile alleges has been breached.
 13

14 Not only does T-Mobile's Complaint fail to state a claim, but T-Mobile's omission of
 15 material facts is misleading and its use of Huawei's confidential information is reckless, at best.¹
 16 T-Mobile's overreaching Complaint should be dismissed in its entirety.
 17

18 STANDARD OF REVIEW

19 **A. Standard for Dismissal Under Rule 12(b)(2)**

20 A court must dismiss a complaint when it lacks personal jurisdiction over a defendant
 21 who does not possess sufficient contacts with the forum. Fed. R. Civ. P. 12(b)(2); *Intern. Shoe*
 22 *Co. v. Washington*, 326 U.S. 310, 316 (1945). The plaintiff has the burden to show by
 23

24 ¹ The Court should strike the following paragraphs of the Complaint to the extent that T-Mobile
 25 relies on information disclosed by Huawei in the context of settlement negotiation: Dkt. 1,
 26 Compl. ¶¶ 3, 15-18, 44, 45, 50, 52, 53, 56-60, 65-72, 82, & 100-105. *See, e.g., McCrary v.*
 27 *Elations Co., LLC*, No. EDCV 13-0242, 2013 WL 6403073, *5 (C.D. Cal. July 12, 2013)
 28 (explaining that "if the pre-litigation letters constitute offers to compromise or *statements made*
 29 *in pursuit of settlement*, they may be struck from the [complaint] as immaterial") (emphasis
 30 added).
 31

1 affirmative proof that jurisdiction exists. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d
2
3 797, 800 (9th Cir. 2004). There are two kinds of personal jurisdiction: general and specific.
4
5 General jurisdiction is subject to an “exacting standard,” found only where the plaintiff has
6
7 shown that the defendant has “continuous and systematic general business contacts that
8
9 approximate physical presence in the forum state.” *Id.* at 801 (quotations and citations omitted).
10
11 Specific jurisdiction, which is much narrower than general jurisdiction, exists when the cause of
12
13 action arises from the defendant’s contacts with the forum. *Schwarzenegger*, 374 F.3d at 801-02
14
15 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)). Neither general nor
16
17 specific jurisdiction can be found here.
18

19 **B. Standard for Dismissal Under Rule 12(b)(6)**

20
21 Dismissal is proper under Rule 12(b)(6) “if it appears beyond doubt that the plaintiff can
22
23 prove no set of facts to support his claims.” *Manshardt v. Fed. Judicial Qualifications Comm.*,
24
25 408 F.3d 1154, 1156 (9th Cir. 2005). While in reviewing the adequacy of the complaint the
26
27 Court must accept all well-pleaded allegations as true, the “[f]actual allegations must be enough
28
29 to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
30
31 555 (2007). In other words, “[t]o survive a motion to dismiss, a complaint must contain
32
33 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”
34
35 *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (internal quotation omitted).
36

37 Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a pleading contain a
38
39 “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.
40
41 Civ. P. 8(a)(2). This pleading standard “does not require ‘detailed factual allegations,’ but it
42
43 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, at
44
45 678. Moreover, the tenet that a court must accept all factual allegations in a plaintiff’s complaint

1 as true does not apply to legal conclusions; and threadbare recitals of the elements of a claim,
 2
 3 supported by mere conclusory statements, do not suffice. *Id.*
 4

5 ARGUMENT

7 **I. THE COURT LACKS PERSONAL JURISDICTION OVER HUAWEI** 8 **TECHNOLOGIES**

9
 10 While personal jurisdiction may be either general or specific, T-Mobile cannot show that
 11
 12 Huawei Technologies has ties to the State of Washington sufficient to satisfy either standard.
 13

14 **A. The Court Lacks General Jurisdiction over Huawei Technologies**

15
 16 T-Mobile's Complaint identifies Huawei Technologies and Huawei USA² as defendants
 17
 18 in this case; yet, T-Mobile does not allege any facts that could plausibly support the Court's
 19
 20 exercise of general jurisdiction over Huawei Technologies. In determining whether general
 21
 22 jurisdiction over a defendant exists, courts consider "whether the defendant makes sales, solicits
 23
 24 or engages in business in the state, serves the state's markets, designates an agent for service of
 25
 26 process, holds a license, or is incorporated there." *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*,
 27
 28 223 F.3d 1082, 1086 (9th Cir. 2000). The Ninth Circuit has "regularly declined to find general
 29
 30 jurisdiction [over a non-resident defendant] even where the defendant's contacts were quite
 31
 32 extensive." *Jason v. UNITE HERE*, No. C05-820 JLR, 2005 WL 3278004, *4 (W.D. Wash.
 33
 34 Dec. 2, 2005) (citation omitted).
 35

36
 37 The lack of personal jurisdiction over Huawei Technologies is so clear that it is not even
 38
 39 properly alleged in the Complaint. T-Mobile merely alleges that "Huawei Technologies Co. Ltd.
 40
 41 ('Huawei China') is a Chinese company with its principal place of business at Bantian,
 42
 43 Longgang District, Shenzhen, People's Republic of China." Dkt. 1, Compl. ¶ 25. This
 44

45 ² The claims against Huawei USA are the subject of a pending motion to dismiss. Dkt. 32.

1 allegation is wholly insufficient to show that the entity T-Mobile identified as Huawei
2
3 Technologies has “continuous and systematic general business contacts that approximate
4
5 physical presence” in the State of Washington. *Schwarzenegger*, 374 F.3d at 801 (citations and
6
7 quotations omitted). Rather, Huawei Technologies is a company based in China, has no offices
8
9 or employees in Washington, and is not and has never been licensed or registered to do business
10
11 in Washington. Declaration of Lily Xu at ¶¶ 4-10 (“Xu Decl.”).³ Huawei Technologies clearly
12
13 does not maintain the requisite “continuous and systematic” contacts needed to sustain general
14
15 jurisdiction. *See, e.g., Electric Mirror, LLC v. Janmar Lighting, Inc.*, 760 F. Supp. 2d 1033,
16
17 1036 (W.D. Wash. 2010) (finding no general jurisdiction absent showing that defendant was
18
19 doing business in Washington).

21 **B. The Court Also Lacks Specific Jurisdiction**

22
23 T-Mobile’s Complaint also fails to allege any facts sufficient to support the Court’s
24
25 exercise of specific jurisdiction over Huawei Technologies. The Ninth Circuit has held that
26
27 specific jurisdiction exists where: (1) the defendant has done some act or consummated some
28
29 transaction with the forum or performed some act by which it purposefully availed itself of the
30
31 privilege of conducting activities in the forum, thereby invoking the benefits and protections of
32
33 its laws, (2) the claim arises out of or results from the defendant’s forum-related activities, and
34
35 (3) the exercise of jurisdiction “comport[s] with fair play and substantial justice.”
36
37 *Schwarzenegger*, 374 F.3d at 802 (quoting *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987)).

38
39 The “purposeful availment” requirement ensures that a party has sufficient contacts with the

40
41 ³ “Unlike a Rule 12(b)(6) motion, a Rule 12(b)(2) motion to dismiss for lack of subject matter
42 jurisdiction enables a court to consider ‘affidavits or any other evidence properly before the
43 court,’ including material extrinsic to the pleadings.” *Private Reserve Fin., LLC v. Borenstein*,
44 No. C13-5788 RBL, 2014 WL 2208944, at *1 (W.D. Wash. May 28, 2014) (quoting *Doe v.*
45 *Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001)).

1 forum state to put it on notice that it could be haled into court there; “random, fortuitous, or
2 attenuated contacts” are not enough to satisfy the constitutional requirements of Due Process.
3

4
5 *See Ziegler v. Indian River Cnty.*, 64 F.3d 470, 473 (9th Cir. 1995).
6

7 Huawei Technologies was not involved in the actions set forth in the Complaint. At no
8 time relevant to the allegations in the Complaint did Huawei Technologies employ either of the
9 two individuals T-Mobile identifies as having misappropriated its alleged trade secret(s) or any
10 of the other individuals identified in the Complaint. Xu Decl. ¶¶ 11-13. At no time did Huawei
11 Technologies engage in any of the activities alleged in the Complaint. *Id.* ¶ 14. Moreover,
12 Huawei Technologies, which does not develop, manufacture, or sell handsets, was never a
13 signatory or party-in-interest to any of the contracts T-Mobile identifies in the Complaint. *Id.*
14 ¶¶ 15-19. T-Mobile’s naming of Huawei Technologies is erroneous and unjustified.
15
16
17
18
19
20
21
22

23 T-Mobile’s effort to create jurisdiction over this China-based corporation by conflating
24 Huawei Technologies and Huawei USA as “Huawei” does not overcome the Complaint’s clear
25 jurisdictional defects. Huawei Technologies is a distinct entity from Huawei USA. The mere
26 existence of a corporate relationship between the two entities does not confer jurisdiction over
27 the foreign entity that has neither purposefully availed itself of the laws of the State of
28 Washington nor engaged in forum-related activities. This Court, consequently, should not
29 exercise specific jurisdiction over Huawei Technologies. *See, e.g., Coe v. Philips Oral*
30 *Healthcare Inc.*, No. 13-518, 2014 WL 585858 (W.D. Wash. Feb. 14, 2014) (a foreign
31 corporation may not be subject to jurisdiction based on its domestic subsidiary’s actions) (citing
32 *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014)); *Bingham v. Blair LLC*, No. C10-5005
33 RBL, 2010 WL 2196106, *4 (W.D. Wash. May 27, 2010) (“it is well established that a parent-
34
35
36
37
38
39
40
41
42
43
44
45

1 subsidiary relationship by itself is insufficient to attribute the minimum contacts of the subsidiary
 2 to the parent”) (citing *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 420 (9th
 3 Cir. 1977)); *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 271 (9th Cir. 1995) (no
 4 purposeful availment where the connection to Washington was the act of another entity).
 5
 6

7
 8
 9 Moreover, any attempt by T-Mobile to assert personal jurisdiction over Huawei
 10 Technologies based on its breach of contract allegations is also unavailing. T-Mobile alleges
 11 that Huawei Technologies is bound by the Non-Disclosure Agreement (“NDA”). Dkt. 1, Compl.
 12 ¶¶ 38, 92. As discussed *infra* III.A, Huawei Technologies is not a party to the NDA.⁴
 13
 14

15
 16
 17 The Court should dismiss T-Mobile’s Complaint against Huawei Technologies pursuant
 18 to Rule 12(b)(2) due to the absence of either general or specific jurisdiction.
 19
 20

21 **II. T-MOBILE HAS FAILED TO STATE A CLAIM FOR TRADE SECRET**
 22 **MISAPPROPRIATION**
 23

24 T-Mobile claims that its robot qualifies for trade secret protection despite its own public
 25 relations campaign and broadcasting of the robot before Huawei USA first entered the lab. T-
 26 Mobile’s own self-defeating actions completely undercut its claims.
 27
 28

29
 30 A plaintiff asserting a trade secret claim bears the burden of “proving that legally
 31 protectable secrets exist.” *Boeing Co. v. Sierracin Corp.*, 108 Wn. 2d 38, 49, 738 P.2d 665
 32 (Wash. 1987). The Washington Uniform Trade Secret Act defines a trade secret as:
 33
 34

35 . . . information, including a formula, pattern, compilation,
 36 program, device, method, technique, or process that:
 37
 38

39
 40 ⁴ Even if Huawei Technologies was determined to be bound to the agreement, the NDA does not
 41 confer specific jurisdiction on Huawei Technologies with respect to T-Mobile’s other
 42 allegations. *See, e.g., Unocal Corp.*, 248 F.3d at 924 (explaining that “an individual’s contract
 43 with an out-of-state party alone [cannot] automatically establish sufficient minimum contacts to
 44 support personal jurisdiction”) (citing *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 816 n.9
 45 (9th Cir. 1988); quoting *Burger King*, 471 U.S. at 478) (quotation marks omitted).

1 (a) Derives independent economic value, actual or
2 potential, from not being generally known to, and not being readily
3 ascertainable by proper means by, other persons who can obtain
4 economic value from its disclosure or use; and
5

6 (b) Is the subject of efforts that are reasonable under the
7 circumstances to maintain its secrecy.
8

9 RCW 19.108.010(4). The Court should dismiss Count I of T-Mobile’s Complaint because T-
10 Mobile failed to adequately plead (1) the existence of a trade secret that was misappropriated,
11 (2) that its trade secret was not “readily ascertainable by proper means,” and (3) that it undertook
12 reasonable efforts to maintain secrecy.
13
14
15

16
17 **A. T-Mobile Failed to Identify Any Misappropriated Trade Secret with**
18 **Sufficient Particularity to Withstand Dismissal**
19

20 T-Mobile’s statement of the alleged trade secret is an insufficient, generic statement that
21 captures virtually *every component* of its robot. T-Mobile alleges:
22

23
24 The trade secrets owned by T-Mobile and improperly acquired by
25 Huawei include information and know-how relating to the design,
26 assembly, and operating methods of the T-Mobile testing robot –
27 including specifications, source code, component selection, and
28 operating instructions – as well as other non-public elements of the
29 robot technology, and proprietary combinations and
30 implementations of the robot.
31

32 Dkt. 1, Compl. ¶ 80. This statement does not state a claim for trade secret misappropriation, and
33 the Court should dismiss Count I.
34

35 In *Baden Sports*, this Court granted defendant’s motion to dismiss a similar claim due to
36 failure to plead sufficiently that its product “could plausibly be a trade secret.” *Baden Sports,*
37 *Inc. v. Wilson Sporting Goods Co.*, No. C11-0603, 2011 WL 3158607, *2 (W.D. Wash. July 26,
38 2011). The Court explained that, in its complaint, “Plaintiff fails to identify any component of
39 its [product] that is a trade secret,” *id.*, and criticized the description provided of the product:
40
41
42
43
44
45

1 This vague description does not provide sufficient detail. It fails to
2 identify what components of the device are claimed or whether it is
3 the combination of the components that is claimed. . . . Because
4 Plaintiff fails to plead the details about its [product] that make it a
5 trade secret, Plaintiff[] does not meet the pleading requirements for
6 this claim.
7

8 *Id.* The Court should similarly dismiss T-Mobile’s claim for failing to plead adequately what
9 trade secret Huawei Technologies allegedly misappropriated.
10

11 Courts are consistently wary of insufficiently pleaded trade secret claims, such as the one
12 in this case, viewing them as improper litigation tactics:
13

14 Experience has shown that it is easy to allege theft of trade secrets
15 with vagueness, then take discovery into the defendant’s files, and
16 then cleverly specify whatever happens to be there as having been
17 trade secrets stolen from plaintiff. A true trade secret plaintiff
18 ought to be able to identify, up front, and with specificity the
19 particulars of the trade secrets without any discovery.
20
21

22 *telSPACE, LLC v. Coast to Coast Cellular, Inc.*, No. 2:13-CV-01477 RSM, 2014 WL 4364851,
23 *5 (W.D. Wash. Sept. 3, 2014) (quotation marks and citation omitted). In *telSPACE*, this Court
24 ordered the plaintiff to “provide sufficient specificity for its . . . trade secret claims.” *Id.* Before
25 any trade secret claim can proceed, T-Mobile should, at a minimum, be required to provide
26 sufficient specificity for its claimed trade secret(s) allegedly misappropriated by Huawei
27 Technologies. *See Robbins, Geller, Rudman & Dowd, LLP v. State*, 179 Wn. App. 711, 722, 328
28 P.3d 905 (Wash. Ct. App. 2014) (“The alleged unique, innovative, or novel information must be
29 described with specificity and, therefore, ‘conclusory’ declarations that fail to ‘provide concrete
30 examples’ are insufficient to support the existence of a trade secret.”) (citation omitted).
31 Washington courts clearly require pleading a claim for trade secret misappropriation with
32 particularity exceeding that which T-Mobile provided in its Complaint in this case.
33
34
35
36
37
38
39
40
41
42
43
44
45

1 T-Mobile's misappropriation claim extends to every conceivable component of the robot,
 2 capturing elements that are indisputably public knowledge and failing to delineate with any level
 3 of detail what element(s) constitute the allegedly misappropriated trade secret(s). This "broad
 4 brush" pleading that indisputably includes information in the public domain lacks the requisite
 5 level of detail to put Huawei Technologies on notice of the specific trade secret(s) allegedly
 6 misappropriated by it, and the Court should, accordingly, dismiss Count I.
 7
 8
 9
 10
 11

12
 13 **B. T-Mobile Had No Trade Secret Because It Had Already Publicly Disclosed**
 14 **All Such Information**

15
 16 **1. T-Mobile Fully Disclosed Its Robot Via Its Patent Applications**

17 T-Mobile admits that Huawei USA did not have access to the "secret" robot until
 18 September 2012. *See* Dkt. 1, Compl. ¶¶ 37-41. By that time, T-Mobile had already published
 19 details of its robot and the testing software. In patent applications published between 2009 and
 20 2012, T-Mobile disclosed the elements of its robot over which it now claims trade secret
 21 protection. At least three U.S. patent applications, as well as numerous foreign applications,
 22 published detailed descriptions of the robot.⁵ The disclosures T-Mobile made in its patent
 23 applications eviscerate T-Mobile's ability to claim trade secret protection. "[I]nformation that is
 24 disclosed in a patent or contained in published materials reasonably accessible to competitors
 25 does not qualify for protection [as a trade secret]." Restatement (Third) of Unfair Competition
 26 § 39 cmt. F (1995).
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36

37 In the years preceding the alleged misappropriation in May 2013, T-Mobile filed three
 38 separate U.S. patent applications for its robot and numerous corresponding foreign applications:
 39
 40

41
 42 ⁵ Courts routinely take judicial notice of the contents of patents and of patent filing dates. *See*,
 43 *e.g.*, *St. John's Univ. v. Bolton*, 757 F. Supp. 2d 144, 154 (E.D.N.Y. 2010) (judicial notice of
 44 content of patent); *Pollution Denim & Co. v. Pollution Clothing Co.*, 547 F. Supp. 2d 1132, 1135
 45 n.11 (C.D. Cal. 2007) (judicial notice of patent filing date).

1 On September 26, 2008, T-Mobile filed its Robotic Device Tester patent application US
2
3 2009/0265035, now patent US 8,761,938, which bears a publication date of October 22, 2009.
4
5 Ex. 1. This application described the robot in detail, including the physical configuration, the
6
7 file structure of the configuration files, and the operating software. *See id.* at Fig. 3 & ¶¶ 26-27.
8
9 The Chinese equivalent of this application was filed on April 20, 2009 and published on May 18,
10
11 2011. Ex. 2, China Patent Publication No. 200980122850.6.⁶
12

13 On July 2, 2010, T-Mobile filed its Switching Matrix and Test Platform patent
14
15 application US 2012/0003982, which bears a publication date of January 5, 2012. Ex. 3. This
16
17 application described in detail how T-Mobile engineers envisioned testing the radio frequency
18
19 signals in devices (such as smartphones) during performance of functions “such as making voice
20
21 calls, transmitting and receiving data (messages, videos, music, etc.)” *Id.* at Abstract. This
22
23 functionality is precisely what T-Mobile uses its robot to test.⁷
24

25 On December 9, 2010, T-Mobile filed its Touch Screen Testing Platform patent
26
27 application US 2012/0146956, which bears a publication date of June 14, 2012. Ex. 4. This
28
29 application also described the robot in detail, including the “test protocol module” that
30
31 commands the movements of the robot as it tests the device. *See id.* at Fig. 2 & ¶¶ 25-34, 41.
32
33

34
35 ⁶ Additional equivalent foreign patent applications for Robotic Device Tester that published
36 before T-Mobile granted access to its testing robot include: International Patent Application No.
37 PCT/US2009/41094 (Oct. 22, 2009), Canada Patent Application No. 2721793 (Oct. 22, 2009),
38 Europe Patent Application No. 090732725 (Jan. 5, 2011), Japan Patent Application No. 2011-
39 505250 (June 23, 2011), South Korea Patent Application No. 10-2010-7025816 (Oct. 31, 2011),
40 and Hong Kong Patent Application No. 11112517 (July 13, 2012).
41

42 ⁷ Equivalent foreign patent applications for Switching Matrix and Test Platform that published
43 before T-Mobile granted access to its testing robot include: Canada Patent Application No.
44 2806546 (Jan. 5, 2012) and International Patent Application No. PCT/US2011/42799 (Feb. 23,
45 2012).

1 These patent applications amount to prior, voluntary, comprehensive public disclosures
2
3 by T-Mobile of each robot component that is even remotely identified as potentially constituting
4
5 a trade secret, let alone one misappropriated by Huawei Technologies (or Huawei USA). As a
6
7 result, T-Mobile has not identified anything not already disclosed, and the Court should dismiss
8
9 T-Mobile's trade secret claim.

10
11 While T-Mobile's Complaint is replete with vague references to alleged
12
13 misappropriation, the section of the Complaint entitled "Huawei's Theft of Trade Secrets," Dkt.
14
15 1, Compl. ¶¶ 41-72, only identifies two potential misappropriations, neither of which can
16
17 plausibly involve a trade secret given the content of T-Mobile's patent applications. First, T-
18
19 Mobile alleges misappropriation of the "end effector." *Id.* ¶¶ 54-60. The existence and purpose
20
21 of the end effector, however, is described in the T-Mobile patent applications, which were
22
23 published well before the alleged misappropriation. *See, e.g.*, Ex. 4, US 2012/0146956 ¶ 30
24
25 (published June 2012) ("The robotic device tester 200 may include a robot 202 that is configured
26
27 to control movement of an arm with a tip 206 using a robotic arm 208"); *id.* ¶ 32 ("In some
28
29 embodiments, the robot 202 is configured to move the arm 204 and tip 206 in six degrees of
30
31 freedom using the robotic arm 208"); *see also id.* Fig. 2; Ex. 1, US 2009/0265035 at Fig. 3
32
33 (published October 2009). The tip of the end effector is described in great detail, Ex. 1, US
34
35 2009/0265035 ¶ 85 ("a force sensor may sense force at the tip of the robotic arm and provide the
36
37 reading to the processor, e.g., robot controller PC"), as is the material comprising the tip, Ex. 4,
38
39 US 2012/0146956 ¶ 27 ("The tips may be synthetic pads (e.g., rubberized, plastic, etc.), that are
40
41 moveably controlled by the robotic device tester"); *id.* ¶ 31 ("In some embodiments, the tip 206
42
43 may be formed using a synthetic material (e.g., rubber, polymer material, etc.), such as a
44
45

1 conductive material that enables detection by the touch screen device 106 when the tip engages
2
3 the touch screen 212.”).

4
5 T-Mobile also alleges, “[o]n information and belief,” misappropriation of its “sequencing
6
7 files.” Dkt. 1, Compl. ¶ 62. T-Mobile has made this conclusory allegation without including any
8
9 supporting factual basis. Such general allegations, based “on information and belief,” are
10
11 insufficient to state a claim. *See Taylor v. Reliance Standard Life Ins.*, No. C10-1317JLR, 2011
12
13 WL 62142 (W.D. Wash. Jan. 7, 2011) (explaining that such “general allegations are not
14
15 sufficient to withstand a motion to dismiss”); *see also In re Lilley*, No. 10-91078C-13D, 2011
16
17 WL 1428089, *3 (Bankr. M.D.N.C. Apr. 13, 2011). Not only is the claim baseless, but T-Mobile
18
19 also disclosed information regarding the computer programs that control its robot in the
20
21 previously mentioned patent applications. These patent applications fully describe the
22
23 functionality of the robot, including the programming that controls the movement of the robot
24
25 arm and the radio frequency operations of the device. *See, e.g.*, Ex. 1, US 2009/0265035 at
26
27 ¶¶ 76-82, 85; Ex. 3, US 2012/0003982 at ¶¶ 22-23, 54-62; Ex. 4, US 2012/0146956 at ¶¶ 23-34,
28
29 40 & Figs. 4, 5. The publication of these programs, well before the alleged misappropriation,
30
31 extinguishes any possible trade secret protection, as patent and trade secret protection cannot
32
33 both attach to the same product. *See, e.g.*, Milgrim on Trade Secrets, Ch. 1, Secrecy, a Requisite
34
35 Element, § 1.03 (2015). Once a product has been disclosed to the public in a patent application,
36
37 as it has been here, trade secret protection with respect to that product is necessarily abandoned.
38
39 As a result, the Court should dismiss Count I of the Complaint.

1 **2. T-Mobile Unveiled Its “Secret” Lab to the Press and Public in**
 2 **September 2012**

3
 4 T-Mobile broadcast details of its “secret” robot in KOMO-TV and *Seattle Times*
 5
 6 segments in September 2012—eight months before the alleged misappropriation. *See* Dkt. 1,
 7
 8 Compl. ¶¶ 48, 54-55. In September 2012, T-Mobile “lifted the veil on their high-security testing
 9
 10 lab,” allowing the media into the lab not only for their own viewing, but with permission to write
 11
 12 reports and record video that was then broadcast over the air and/or posted online, where they
 13
 14 remain available today.⁸ [KOMO Video](#) at 0:07-0:09; *id.* at 0:24-0:29 (“For the first time in its
 15
 16 10-year history, T-Mobile opened up its validation lab”); *see also* Ex. 5 at 2-3. Then, on
 17
 18 September 13, 2012, T-Mobile released its own video showing off its robot.⁹ Judicial notice of
 19
 20 these public materials is proper because the videos and news reports “can be accurately and
 21

22
 23 ⁸ Matt Markovich, *T-Mobile Testers Drop, Dunk and Tap Devices Before They’re Sold*,
 24 KOMOnews.com (Sept. 5, 2012), <http://www.komonews.com/home/video/168716536.html>
 25 (KOMO reporter explains that T-Mobile “lifted the veil on their high security testing lab”)
 26 (“KOMO Video”) (*see* Ex. 5, stills from the KOMO Video); Ex. 6, Brier Dudley, *Video: T-*
 27 *Mobile USA Turns 10, Shows off Testing Labs*, *The Seattle Times* (Sept. 5, 2012),
 28 http://old.seattletimes.com/html/technologybrierdudleysblog/2019077344_t-
 29 [mobile_usa_turns_10_shows_of.html](http://old.seattletimes.com/html/technologybrierdudleysblog/2019077344_t-) (“*Seattle Times* Video”) (*see* Ex. 7, stills from the *Seattle*
 30 *Times* Video); *see also* Ex. 8, Aubrey Cohen, *T-Mobile Marks Anniversary with Tour, Unlimited*
 31 *Data*, *Seattlepi.com* (Sept. 5, 2012), [http://www.seattlepi.com/business/tech/article/T-Mobile-](http://www.seattlepi.com/business/tech/article/T-Mobile-marks-anniversary-with-tour-unlimited-3842407.php#photo-3412686)
 32 [marks-anniversary-with-tour-unlimited-3842407.php#photo-3412686](http://www.seattlepi.com/business/tech/article/T-Mobile-marks-anniversary-with-tour-unlimited-3842407.php#photo-3412686) (explaining that T-Mobile
 33 “open[ed] up its device lab for media tours”); Ex. 9, Latif Salman, *T-Mobile Introduces Tappy,*
 34 *the Software Testing Robot*, *übergizmo.com* (Sept. 13, 2012),
 35 <http://www.ubergizmo.com/2012/09/t-mobile-introduces-tappy-the-software-testing-robot/>; Ex.
 36 10, Stephanie Mlot, *T-Mobile Software-Testing Robot Gets Tap-Happy*, *PCMag.com* (Sept. 13,
 37 2012), <http://www.pcmag.com/article2/0,2817,2409695,00.asp>; Ex. 11, Nat Levy, *Phone Testing*
 38 *by Dummies Is Serious Stuff*, *Mercer Island Reporter* (Oct. 3, 2012), [http://www.mi-](http://www.mi-reporter.com/news/172510031.html#)
 39 [reporter.com/news/172510031.html#](http://www.mi-reporter.com/news/172510031.html#).

40
 41 ⁹ Ex. 12, David Beren, *T-Mobile Shows Off Device Testing Robot, Employees Do the Robot*
 42 *Dance*, *Tmo News* (Sept. 13, 2012), [http://www.tmonews.com/2012/09/t-mobile-shows-off-](http://www.tmonews.com/2012/09/t-mobile-shows-off-device-testing-robot-employees-do-the-robot-dance/)
 43 [device-testing-robot-employees-do-the-robot-dance/](http://www.tmonews.com/2012/09/t-mobile-shows-off-device-testing-robot-employees-do-the-robot-dance/) (“T-Mobile Video”). The video is also
 44 available on YouTube at <http://www.youtube.com/watch?v=mv69ZxKOFsw>. *See also* Ex. 13,
 45 stills from the T-Mobile Video.

1 readily determined from sources whose accuracy cannot reasonably be questioned”—namely the
2 media or T-Mobile itself. Fed. R. Evid. 201(b)(2).
3
4

5 The videos released by T-Mobile and news outlets undermine any claim to proprietary,
6 confidential information in the software and hardware of T-Mobile’s robot, including the
7 material comprising the finger tip. Kathy Barnes, T-Mobile’s Senior Director of Device
8 Technology, Network & Device Quality Assurance, explained: “We don’t need to have any
9 special software, we don’t need to have any special hardware, to put a device under test on these
10 robots. They actually have a rubber pen that simulates the finger, and they can press actual keys
11 or touchscreen.” [Seattle Times Video](#) at 3:28-3:42; *see also* Ex. 7 at 3. The videos also show
12 that Epson—not T-Mobile—manufactured the robot, *see, e.g.*, [T-Mobile Video](#) at 0:41-51; Ex.
13 13 at 5-6, which eviscerates T-Mobile’s ability to claim trade secret protection with respect to the
14 Epson component.
15
16
17
18
19
20
21
22
23

24 In short, T-Mobile’s extensive disclosures regarding its robot destroy any plausible claim
25 of trade secret protection.
26
27
28

29 **C. T-Mobile Failed to Maintain the Secrecy of Its Purported Trade Secret**

30 In voluntarily disclosing its alleged trade secret, as detailed *supra* II.B, T-Mobile *de facto*
31 fails to meet the second requirement for trade secret protection of undertaking reasonable efforts
32 to maintain its secrecy. RCW 19.108.010(4)(b).
33
34
35
36

37 T-Mobile has also failed to plead affirmatively that it implemented appropriate
38 precautionary measures to protect its claimed trade secret(s). For example, T-Mobile admitted
39 that its employees shared information; yet, nowhere did T-Mobile plead that it imposed any
40 measures on its own employees that would have or should have prevented those employees from
41
42
43
44
45

1 voluntarily disclosing material to Huawei. *Cf.* Dkt. 1, Compl. ¶¶ 11-14 (pleading imposition of
2 restrictions only on *suppliers* who entered its testing lab).
3
4

5 In addition, T-Mobile failed to plead the existence of adequate security measures in place
6 within the laboratory to maintain the secrecy of its alleged trade secrets. *See id.* T-Mobile
7 admits that it allowed Huawei employees access to the laboratory to use the robot and permitted
8 access to test results on the attached computer. *Id.* ¶ 42; *see also id.* ¶¶ 33, 62. Nevertheless, T-
9 Mobile did not plead the existence of any security measures on the laboratory computers, such as
10 even the most basic password or encryption protection on the files allegedly “accessed and sent.”
11 *Id.* ¶ 62.
12
13
14
15
16
17
18

19 Because of these significant defects and extensive public disclosures, T-Mobile has not
20 adequately pleaded that it took reasonable precautionary measures to maintain the secrecy of its
21 purported trade secret, and the Court should, therefore, dismiss Count I of the Complaint.
22
23
24

25 **III. T-MOBILE HAS FAILED TO STATE A CLAIM FOR BREACH OF** 26 **CONTRACT**

27 **A. Huawei Technologies Is Not a Party to the Mutual Nondisclosure Agreement**

28 T-Mobile’s only contract-based claim against Huawei Technologies—relating to an
29 alleged breach of the Mutual Nondisclosure Agreement (“NDA”), Dkt. 1, Compl. ¶ 92—should
30 be dismissed because Huawei Technologies is not a party to that agreement. Huawei
31 Technologies is not a signatory to the NDA. *See* Ex. 14. Instead, Huawei USA is a signatory.
32 The boilerplate language that Huawei USA was signing on behalf of “itself, its parents, affiliates,
33 subsidiaries, contract manufacturers, partner companies and alliances,” *id.* at 1, does not make
34 Huawei Technologies a party to the NDA.
35
36
37
38
39
40
41
42
43
44
45

1 It is hornbook law that corporate relationships, by themselves, are insufficient to bind a
2
3 parent to an agreement signed even by a subsidiary. “In general, a party that is not a signatory to
4
5 an executed contract is not bound by that agreement. Therefore, it cannot be sued for its
6
7 purported breach unless there is a separate basis for the nonsignatory’s liability, such as where
8
9 the nonsignatory manifests an intent to be bound by the contract.” *Centennial Energy Holdings,*
10
11 *Inc. v. Colo. Energy Mgmt., LLC*, 934 N.Y.S.2d 32 (N.Y. Sup. Ct. 2011) (citations omitted).¹⁰
12

13 T-Mobile has not pleaded a legal basis for binding a parent to its immediate subsidiary’s
14
15 agreement, let alone any basis for binding a remotely related entity. There are three ways a
16
17 parent company can be bound to the agreement of its immediate subsidiary: “[1] if the parent’s
18
19 conduct manifests an intent to be bound by the contract, which intent is inferable from the
20
21 parent’s participation in the negotiation of the contract, or [2] if the subsidiary is a dummy for
22
23 the parent, or [3] if the subsidiary is controlled by the parent for the parent’s own purposes.”
24
25 *Horsehead Indus. v. Metallgesellschaft AG*, 239 A.D.2d 171, 171 (1st Dep’t 1997) (citations
26
27 omitted). Courts routinely dismiss claims for breach of contract against non-signatories for
28
29 failure to plead supporting evidence. *See, e.g., Endeavor Capital Holdings Group, LLC v.*
30
31 *Umami Sustainable Seafood, Inc.*, No. 13-4143, 2014 WL 3897577, at *4-5 (S.D.N.Y. Aug. 7,
32
33 2014) (explaining that the plaintiff had “offer[ed] no basis for concluding that [defendant]
34
35 manifested an intent with respect to the [contract]” and granting the motion to dismiss upon
36
37 finding that the defendant “could not have breached the [contract] because it was not a party to
38
39 the agreement and did not manifest an intent to be bound by it”). Huawei Technologies is not a
40
41
42
43
44

45 ¹⁰ The NDA is subject to New York law. Ex. 14, NDA ¶ 13.

1 party to the NDA, is not bound by the NDA's provisions, and, consequently, is not subject to
 2
 3 liability for any alleged breach thereof.
 4

5 **B. T-Mobile Has Failed to State a Claim for Damages**

6
 7 An essential element of a breach of contract action is damages. *Harris v. Seward Park*
 8
 9 *Hous. Corp.*, 913 N.Y.S.2d 161, 162, 79 A.D.3d 425 (2010). In its breach of contract claim, T-
 10
 11 Mobile has failed to plead damages adequately as its claimed damages are identical for its trade
 12
 13 secret and breach of contract claims. *Compare* Compl. ¶ 86 *with id.* ¶ 97. As a result, T-Mobile
 14
 15 has not stated an independent claim for damages, and the Court should dismiss Count II.¹¹
 16

17 **IV. T-MOBILE HAS FAILED TO STATE A CLAIM FOR TORTIOUS**
 18 **INTERFERENCE WITH A CONTRACT**

19 **A. T-Mobile Has Failed to Plead Interference for an Improper Purpose**

20
 21 A tortious interference claim contains five elements: "(1) the existence of a valid
 22
 23 contractual relationship or business expectancy; (2) that the defendant had knowledge of that
 24
 25 expectancy; (3) an intentional interference inducing or causing a breach or termination of the
 26
 27 relationship or expectancy; (4) that the defendant interfered for an improper purpose or used
 28
 29 improper means; and (5) resulting damage." *Newton Ins. Agency & Brokerage, Inc. v.*
 30
 31 *Caledonian Ins. Grp., Inc.*, 52 P.3d 30, 33 (Wash. Ct. App. 2002).
 32
 33

34 T-Mobile has failed to state a claim for trade secret, *see supra* II, which is the basis for T-
 35
 36 Mobile's tortious interference claim. *See infra* IV.B. Accordingly, T-Mobile has also failed to
 37
 38 state a claim for tortious interference, and the Court should dismiss T-Mobile's tortious
 39

40 ¹¹ To the extent that T-Mobile is seeking standalone consequential damages pursuant to
 41 paragraph 96 of the Complaint, such damages should be dismissed for violating Rule 9(g) of the
 42 Federal Rules of Civil Procedure: "If an item of special damage is claimed, it must be
 43 specifically stated." Fed. R. Civ. P. 9(g); *see also, e.g., Marks v. City of Seattle*, C03-1701P,
 44 2003 WL 23024522 (W.D. Wash. Oct. 16, 2003) (striking claim for special damages where the
 45 Court found it "impossible to determine what the special damages alleged would consist of").

1 interference claim. *See, e.g., Pulver v. Battelle Mem'l Inst.*, No. CV-05-5028-RHW, 2009 WL
2 224490 (E.D. Wash. Jan. 29, 2009) (granting defendant's motion to dismiss tortious interference
3 claim due to plaintiff's failure to adequately plead one of the elements of the claim).
4
5

6
7 **B. T-Mobile's Tortious Interference Claim Is Preempted by the Washington**
8 **Uniform Trade Secret Act**
9

10 WUTSA provides that it "displaces conflicting tort, restitutionary, and other law of this
11 state pertaining to civil liability for misappropriation of a trade secret." RCW 19.108.900. A
12 plaintiff "may not rely on acts that constitute trade secret misappropriation to support other
13 causes of action." *Ed Nowogroski Ins., Inc. v. Rucker*, 88 Wn. App. 350, 358, 944 P.2d 1093
14 (Wash. Ct. App. 1997), *aff'd*, 137 Wn. 2d 427, 971 P.2d 936 (Wash. 1999). Moreover, a court
15 "need not first determine whether the information that [plaintiff] alleges was misappropriated
16 constitutes a trade secret before determining whether [the UTSA] displaces [plaintiff's]
17 common-law claims." *Enterprises Int'l, Inc. v. Int'l Knife & Saw, Inc.*, No. C12-5638 BHS,
18 2013 WL 6185241, *10 (W.D. Wash. Nov. 26, 2013) (quotations and citations omitted).
19
20
21
22
23
24
25
26
27

28 Washington courts have adopted a tripartite analysis to determine whether a claim is
29 preempted: "(1) assess the facts that support the plaintiff's civil claim; (2) ask whether those
30 facts are the same as those that support the plaintiff's UTSA claim; and (3) hold that the UTSA
31 preempts liability on the civil claim unless the common law claim is factually independent from
32 the UTSA claim." *Thola v. Henschell*, 140 Wn. App. 70, 82, 164 P. 3d 524 (Wash. Ct. App.
33 2007) (citation omitted). "[P]roper application of this three-step analysis precludes duplicate
34 recovery for a single wrong." *Id.*
35
36
37
38
39
40
41

42 Where the basis for a tortious interference claim is the alleged misappropriation,
43 Washington courts dismiss the tortious interference claim as preempted. In *Ed Nowogroski Ins.*,
44
45

1 *Inc. v. Rucker*, the Court of Appeals affirmed the lower court's ruling that the tortious
2
3 interference claim was preempted because it was "based upon the same acts" as the UTSA claim.
4
5 944 P.2d 1093, 1097 (Wash. Ct. App. 1997). The court explained that plaintiff was simply
6
7 relying on acts that constitute trade secret misappropriation to support other causes of action,
8
9 including a claim for tortious interference. *Id.*

10
11 While a claim based on allegations that are distinct from the alleged misappropriation
12
13 would not be preempted, reference to the alleged misappropriation to support the alternative
14
15 claim is not permitted. In *Thola*, the Court of Appeals found that the tortious interference claim
16
17 was based upon actions wholly distinct from the misappropriation of the customer list. 164 P. 3d
18
19 at 530. The tortious interference claim "did not involve the acquisition or disclosure of
20
21 confidential information," and, thus, plaintiff could proceed on this independent theory. *Id.* The
22
23 court further explained that, because the plaintiff was proceeding with both trade secret and
24
25 tortious interference claims, the jury should have been instructed not to consider evidence of the
26
27 trade secret misappropriation as supporting the tortious interference claim. *Id.* at 531.

28
29 Here, the only basis for the tortious interference claim is the alleged misappropriation. T-
30
31 Mobile alleges tortious interference based on the following:

- 32
33
- 34 • "breach [of] material obligations related to *T-Mobile's confidential information*
35 under the applicable agreements," Compl. ¶ 100 (emphasis added);
 - 36 • "Huawei China took advantage of Huawei USA's access to *T-Mobile's trade*
37 *secrets*," *id.* (emphasis added);
 - 38 • "Huawei China sent its employee, Mr. Wang, to the United States *to steal trade*
39 *secrets from T-Mobile*," *id.* ¶ 101 (emphasis added);
 - 40 • "Huawei China instructed Huawei USA to assist Mr. Wang in his attempt *to steal*
41 *trade secrets from T-Mobile*," *id.* (emphasis added);
 - 42
 - 43
 - 44
 - 45

- 1 • “Mr. Wang *disclosed the confidential information he wrongfully acquired* from
2 the T-Mobile testing chamber to Huawei China R&D team,” *id.* ¶ 102 (emphasis
3 added);
- 4 • “Huawei China instructed Mr. Xiong *to misappropriate T-Mobile’s confidential*
5 *information*,” *id.* ¶ 103 (emphasis added);
- 6 • “Specifically, it asked Mr. Xiong *to steal an end effector and report*
7 *measurements* to Huawei China’s R&D team, *id.* (emphasis added);
- 8 • “As instructed, Mr. Xiong *provided the information he misappropriated* to
9 employees of Huawei China,” *id.* (emphasis added); and
- 10 • “Employees of both Huawei China and Huawei USA have repeatedly explained
11 *that the purpose of these acts of misappropriation* was to facilitate Huawei
12 China’s efforts to build its own testing robot,” *id.* ¶ 104 (emphasis added).

13
14
15
16
17
18 As evidenced in the recounting of the allegations, T-Mobile’s tortious interference claim
19 is based exclusively on the alleged misappropriation of trade secrets. The Court should,
20 therefore, find that it is preempted by WUTSA and dismiss Count III of the Complaint.
21

22
23
24 **C. T-Mobile Has Failed to State a Claim Because a Parent Cannot Tortiously**
25 **Interfere with Its Wholly Owned Subsidiary**

26 A corporate parent cannot be held liable for tortious interference with its subsidiary’s
27 contracts when their financial interests are aligned. *Hansen v. Transworld Wireless TV-Spokane,*
28 *Inc.*, 44 P.3d 929, 935-36 (Wash. Ct. App. 2002) (parent corporation not liable for tortious
29 interference with its subsidiary’s contract). With respect to the Supply Agreement, the
30 supplemental Clean Room Letter, and “other applicable agreements,” Dkt. 1, Compl. ¶ 99,
31 Huawei Technologies’ financial interests as alleged would necessarily have been in alignment
32 with Huawei USA’s financial interests. Huawei Technologies, could not, therefore, be liable for
33 tortiously interfering with Huawei USA’s agreements with T-Mobile, and the Court should, thus,
34 dismiss Count III of the Complaint. *See, e.g., Pulver*, 2009 WL 224490 (granting motion to
35 dismiss on tortious interference claim).
36
37
38
39
40
41
42
43
44
45

1 **D. T-Mobile Has Failed to Plead Interference with “Other Applicable**
2 **Agreements” with the Requisite Particularity**

3
4 The Court should also dismiss the allegations relating to Huawei Technologies’
5
6 interference with “other applicable agreements” for failure to state a claim. T-Mobile alleges
7
8 that “Huawei China knew about . . . the terms of the Supply Agreement, the Clean Room Letter,
9
10 *and other applicable agreements,*” Dkt. 1, Compl. ¶ 99 (emphasis added), with only this
11
12 insufficiently pleaded, conclusory allegation. T-Mobile has not identified the individual “other
13
14 agreements” and, thus, has given Huawei Technologies no notice of the subject(s) of its alleged
15
16 interference. *See, e.g., Harris v. Sears Holding Corp.*, No. 2:10-CV-01339-MJP, 2011 WL
17
18 219669, at *4 (W.D. Wash. Jan. 24, 2011) (dismissing the tortious interference claim for
19
20 plaintiff’s having “failed to specify which contractual relationship was interfered with”).
21
22 Because T-Mobile has only identified the Supply Agreement and the Clean Room Letter in its
23
24 pleadings, any allegations with respect to any other agreements referenced vaguely in the
25
26 Complaint should be dismissed for failure to state a claim.

27
28 **V. T-MOBILE HAS FAILED TO STATE A CLAIM FOR A PRIVATE**
29 **CONSUMER PROTECTION ACT VIOLATION**

30
31 As detailed fully in Huawei USA’s Motion to Dismiss, which is incorporated fully
32
33 herein, T-Mobile’s consumer protection claim fails for three independent reasons: First, T-
34
35 Mobile has failed to plead the necessary element of public interest impact. Second, T-Mobile
36
37 has failed to plead the necessary element of an unfair or deceptive act or practice. Third, T-
38
39 Mobile’s consumer protection claim is preempted by the Washington Uniform Trade Secret Act.
40
41 Dkt. 32 at 19-24.

1 **A. T-Mobile Has Failed to Plead the Public Interest Element of a Consumer**
2 **Protection Act Claim**

3
4 T-Mobile failed to plead the factors evidencing public interest impact, and the Court
5
6 should, accordingly, dismiss Count IV for failure to state a claim. Dkt. 32 at 19-21 (citing *Nw.*
7
8 *Prod. Design Grp., LLC v. Homax Products, Inc.*, 174 Wn. App. 1002, 1002 (Wash. Ct. App.
9
10 2013), *review denied*, 178 Wn. 2d 1004, 308 P.3d 641 (Wash. 2013); *Hangman Ridge Training*
11
12 *Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn. 2d 778, 719 P.2d 531 (Wash. 1986)).

13
14 **B. T-Mobile Has Failed to Plead an Unfair or Deceptive Act or Practice**

15 With the basis for the CPA claim being the alleged trade secret misappropriation for
16
17 which T-Mobile has failed to state a claim, as detailed *supra* Section II, this claim should be
18
19 similarly dismissed. *See* Dkt. 32 at 21; *see also Hangman Ridge*, 105 Wn. 2d at 793.

20
21
22 **C. T-Mobile's Consumer Protection Act Claim Is Preempted by the Washington**
23 **Uniform Trade Secret Act**

24 WUTSA expressly preempts claims for consumer protection when the claims are based
25
26 on the alleged misappropriation of trade secrets. Here, T-Mobile's consumer protection claim is
27
28 based upon its trade secret claim; and this Court, therefore, should dismiss Count IV of the
29
30 Complaint as preempted by WUTSA. *See* Dkt. 32 at 22-24; *see also Enterprises Int'l*, 2013 WL
31
32 6185241, *10-11.

33
34
35 **CONCLUSION**

36
37 For the foregoing reasons, Defendant Huawei Technologies respectfully requests that this
38
39 Court dismiss the Complaint against it in its entirety for lack of personal jurisdiction, or, in the
40
41 alternative, for failure to state a claim upon which relief can be granted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

DATED this 20th day of April, 2015.

GORDON TILDEN THOMAS & CORDELL LLP
Attorneys for Defendant Huawei Technologies Co., Ltd.

By s/Franklin D. Cordell

Franklin D. Cordell, WSBA #26392
Jeffrey M. Thomas, WSBA #21175
1001 Fourth Avenue, Suite 4000
Seattle, Washington 98154
Telephone: (206) 467-6477
Facsimile: (206) 467-6292
Email: fcordell@gordontilden.com
Email: jthomas@gordontilden.com

STEPTOE & JOHNSON LLP
Attorneys for Defendant Huawei Technologies Co., Ltd.

By s/Timothy C. Bickham

William F. Abrams*
James F. Hibey*
Timothy C. Bickham*
Jessica I. Rothschild*
1330 Connecticut Avenue NW
Washington, DC 20036
Telephone: (202) 429-3000
Facsimile: (202) 429-3902
Email: jhibey@steptoe.com
Email: wabrams@steptoe.com
Email: tbickham@steptoe.com
Email: jrothschild@steptoe.com

* *Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Michael E. Kipling
Marjorie A. Walter
KIPLING LAW GROUP PLLC
3601 Fremont Avenue N., Suite 414
Seattle, WA 98103
kipling@kiplinglawgroup.com
walter@kiplinglawgroup.com

John Hueston
Alison Plessman
Eric Hayden
HUESTON HENNIGAN LLP
523 West 6th Street
Los Angeles, CA 90014
jhueston@hueston.com
aplessman@hueston.com
ehayden@hueston.com

s/ Franklin D. Cordell
Frank D. Cordell, WSBA #26392

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45