

Court's \$179 Million Award Underscores Importance of Confidentiality Agreements

by Aaron Goldstein

In an important lesson for both employers and employees, on Wednesday, March 4, 2020, a California superior court judge affirmed a \$179 million arbitration award against a former Uber executive, Anthony Levandowski, for stealing Google's trade secret information and soliciting its employees to benefit Uber. *See Google LLC v. Levandowski et al.*, Case No. CPF-20-516982. Levandowski, who also faces criminal charges from the U.S. Attorney's office for theft and attempted theft of trade secrets, filed for bankruptcy following the judge's order.

The court's ruling underscores the importance of well-crafted confidentiality, non-compete, and non-solicit agreements. Over the course of Levandowski's employment with Google, he signed at least four separate agreements which included either non-compete, non-solicit, confidentiality, and nondisclosure provisions, or a combination thereof. The panel of arbitrators in the underlying case held, among other things, that Levandowski breached these employment contracts with Google by misusing Google's confidential information and attempting to solicit Google employees.

Google hired Levandowski in 2007, where he co-founded the company's autonomous vehicle project, which later became Waymo, LLC.¹ In 2015, Levandowski left Google and formed a new self-driving company, Ottomotto, Inc. In 2016, Uber acquired Ottomotto, Inc. and hired Levandowski to head its autonomous vehicle department. Shortly thereafter, Google filed two arbitration demands against Levandowski and another former Google employee who moved to Uber.

According to the related criminal indictment by the U.S. Attorney's Office, before he left Google, Levandowski downloaded more than 14,000 files containing Google's autonomous-vehicle research. The indictment also states, among other actions, Levandowski made unauthorized transfers of files to his personal laptop, which included proprietary circuit boards, designs for light sensor technology on self-driving vehicles, and instructions on how to calibrate and tune Google's custom light sensor system. While the criminal case is still ongoing, the panel of three arbitrators held in December

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2019 that Levandowski's actions violated his obligations to Google, issuing the \$179 million award.

This judgment is a reminder for employers with confidential trade secret and proprietary information to take deliberate steps to protect their confidential information. This includes drafting strong, but narrowly tailored non-compete and non-solicit agreements. In Washington, while a new non-compete law limits the enforceability of non-compete provisions, non-solicitation and nondisclosure agreements do not face the same scrutiny. Employers should review their agreements and ensure appropriate practices are in place to secure employee signatures.

Companies can also take additional steps to ensure their confidential information is secured, including:

- Monitoring computer access for unusual activity
- Conducting exit interviews and equipment checks before an employee's last day of work
- Issuing reminders of continuing confidentiality obligations or certificates of termination
- Immediately shutting off access to company equipment and systems on an employee's last day of work

While non-compete agreements become increasingly more difficult to enforce across the U.S., employers who take meaningful steps to protect their confidential information will fare better should a dispute with a former employee ever arise.

¹ Waymo, LLC also brought claims against Uber, which settled for \$245 million in pre-IPO stock valuations.