text messages, and ordered them to produce the text messages in their entirety or, in the alternative, to produce any text message containing a search term as well as 10 text messages on either side of each responsive text message. ***Management Registry, Inc. v. A.W. Cos.***, 2020 WL 468846 (D. Minn. 1/29/2020).

■ **Request for expedited discovery denied following denial of motion for preliminary injunction.** Having denied plaintiff's request for a preliminary injunction in a purported trade secrets case, Judge Brasel also denied its request for expedited discovery, finding that it would not serve the purposes for which expedited discovery is usually granted. ***Cambria Co. v. Schumann***, 2020 WL 373599 (D. Minn. 1/23/2020).

■ **CAFA; amount in controversy.** Where plaintiffs commenced an action in the District of Minnesota alleging jurisdiction under CAFA, Judge Tostrud dismissed that complaint for failing to plausibly allege the required amount in controversy, plaintiffs amended their complaint in an attempt to address this issue, and defendant moved to dismiss the amended complaint, Judge Tostrud found that plaintiffs' CAFA theory required counting the claims of purported class members who lacked standing or required speculation "not tethered to any plausible factual basis." Plaintiffs' amended complaint was dismissed without further leave to replead. ***Penrod v. K&N Eng'g, Inc.***, 2020 WL 264115 (D. Minn. 1/17/2020).

■ **Forum selection clause; *forum non conveniens*; Fed. R. Civ. P. 14.** While acknowledging the lack of judicial efficiency, Chief Judge Tunheim granted a third-party defendant's motion to dismiss on the basis of *forum non conveniens* in accordance with a forum selection clause that permitted litigation only in Ramsey County District Court, finding that the forum selection clause had "priority" over third-party claims brought pursuant to Fed. R. Civ. P. 14. ***United Fire & Cas. Co. v. Weber, Inc.***, 2020 WL 335360 (D. Minn. 1/21/2020).

■ **Fed. R. Civ. P. 62(c); stay of injunction pending appeal denied.** Rejecting plaintiffs' argument that the settlement agreement underlying the motion was not an injunction subject to stay under Fed. R. Civ. P. 62(c), Judge Frank found that the orders that followed the settlement agreement were "plainly injunctive in nature," but denied defendants' motion for stay pending appeal, finding that three of the four relevant factors favored the plaintiffs and that the fourth factor was neutral. ***Jensen ex rel. Jensen v. Minn. Dept. of Human Rights***, 2020 WL 550209 (D. Minn. 2/4/2020).

JOSH JACOBSON
Law Office of Josh Jacobson
joshjacobsonlaw@gmail.com

IMMIGRATION LAW

JUDICIAL LAW

■ **Inadmissibility and public charge grounds: An update.** On 8/14/2019, the Department of Homeland Security (DHS) published its final rule amending regulations addressing inadmissibility, on public charge grounds, of foreign nationals seeking admission or adjustment of status. The rule was scheduled to go into effect on 10/15/2019. **84 *Fed. Reg.*, 41,292-508** (8/14/2019). *https://www.govinfo.gov/content/pkg/FR-2019-08-14/pdf/2019-17142.pdf*

As noted in the November issue of Bench & Bar, litigation ensued across the nation that involved various states (i.e., New York, Washington, Virginia, Colorado, Delaware, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Rhode Island, California, Maine, Oregon, Commonwealth of Pennsylvania, and the District of Columbia), organizations, and individual plaintiffs. On 10/11/2019, the U.S. District Court in the Southern District of New York issued a nationwide order enjoining and restraining the government from "enforcing, applying or treating as effective, or allowing persons under their control to enforce, apply, or treat as effective, the Rule" until such time as the order is terminated and the rule goes into effect.

On 1/27/2020, the Supreme Court issued a stay of the 10/11/2019 nationwide injunction, thereby allowing the final rule to go into effect pending disposition of the appeal before the Court of Appeals for the 2nd Circuit Court. The sole exception was an injunction issued in the state of Illinois, which was allowed to remain in place. ***Department of Homeland Security, et al. v. New York, et al.,*** 589 U.S. ____ (2020). *https://www.supremecourt.gov/opinions/19pdf/19a785_j4ek.pdf*

On 1/30/2020, USCIS announced that the final public charge rule will go into effect, with the exception of the state of Illinois, for those relevant applications or petitions postmarked or electronically filed on or after 2/24/2020. *https://www.uscis.gov/news/news-releases/uscis-announces-public-charge-rule-implementation-following-supreme-court-stay-nationwide-injunctions*

■ **Reinstatement statute precludes attack on validity of removal order.** On 12/27/2019, the 8th Circuit Court of Appeals denied the petition for review of the Department of Homeland Security's reinstated prior order of removal, finding that it lacked jurisdiction to consider the petitioner's arguments over the validity of his underlying removal order. "Section 1231(a)(5) creates a streamlined process for reinstating prior removal orders, and it authorizes the Attorney General to reinstate a prior removal order after finding that an individual has illegally reentered the United States following removal or voluntary departure pursuant to a removal order." ***Lara-Nieto v. Barr***, No. 18-2232, *slip op.* (8th Cir. 12/27/2019). *https://ecf.ca8.uscourts.gov/opndir/19/12/182232P.pdf*

■ **Petitioner failed to raise a valid constitutional claim or question of law in relation to BIA's cancellation denial.** On 12/27/2019, the 8th Circuit Court of Appeals held that the Board of Immigration Appeals (BIA) did not err when finding the petitioner had failed to satisfy his burden to demonstrate that his children would suffer an "exceptional and extremely unusual hardship" should he be removed to Mexico and they accompany him. Ultimately, the petitioner failed to raise a valid constitutional claim or question of law, thus denying the court jurisdiction to review the BIA's denial of his cancellation of removal application. ***Apolinar v. Barr***, No. 18-2722, *slip op.* (8th Cir. 12/27/2019). *https://ecf.ca8.uscourts.gov/opndir/19/12/182722P.pdf*

■ **No showing of past persecution on a protected ground.** On 12/11/2019, the 8th Circuit Court of Appeals held that the Board of Immigration Appeals (BIA) did not abuse its discretion when it denied the Guatemalan petitioners' request for humanitarian asylum, given that they failed to prove past persecution on a protected ground. ***Mejia-Lopez v. Barr***, No. 18-3651, *slip op.* (8th Cir. 12/11/2019). *https://ecf.ca8.uscourts.gov/opndir/19/12/183651P.pdf*

ADMINISTRATIVE ACTION

■ **USCIS notice of H-1B registration process implementation.** On 1/9/2020, the Department of Homeland Security published registration requirements for petitioners seeking to file H-1B petitions on behalf of cap-subject foreign nationals for

fiscal year 2021. Key points taken from the notice are: 1) The initial H-1B petition registration period will begin 3/1/2020; 2) petitioners, including those eligible for the advanced degree exemption, will first be required to register with USCIS before being able to properly file an H-1B cap-subject petition; 3) USCIS intends to close the initial registration period on 3/20/2020 and will announce the actual end date on its website; 4) following the end of the initial registration period, USCIS will undertake the initial selection process, with those being selected then eligible to file an H-1B cap-subject petition during the associated filing period. **85 *Fed. Reg.* 1176-77** (1/9/2020). *https://www.govinfo.gov/content/pkg/FR-2020-01-09/html/2020-00182.htm*

R. MARK FREY
Frey Law Office
rmfrey@cs.com

INTELLECTUAL PROPERTY

JUDICIAL LAW

Punitive damages and deceptive trade practices pleading standards. Judge Tunheim recently adopted the magistrate's report and recommendation denying defendants' motion to dismiss and motion to strike punitive damages claim. Management Registry, Inc. (MRI) alleged that A.W. Companies, Inc. and three individuals stole MRI's customers, clients, employees, and databases following failed negotiations to acquire MRI's staffing services companies. MRI sued defendants for, *inter alia*, breach of contract, fraud, deceptive trade practices, and tortious interference. Defendants moved to dismiss the Second Amended Complaint and to strike the punitive damages claim. Defendants argued that MRI's attempt to add a punitive damages claim did not comply with Minnesota's statutory procedure for adding punitive damages. Minnesota Statute §549.191 requires a plaintiff, subsequent to filing the civil action, to move a court for permission to amend the pleadings to add a punitive damages claim. The magistrate found that Minn. Stat. §549.191 was incompatible with the Federal Rules of Civil Procedure and applied Rule 15's plausibility standards when reviewing the allegations. Because the magistrate adopted a reasonable interpretation of Minn. Stat. §549.191, no clear error occurred. The court further reviewed defendants' challenge to MRI's deceptive trades practices act claim. Defendants objected that claims under the Minnesota Deceptive Trade Practices Act (Minn. Stat. §325D.44) fall under the heightened pleading standards of Fed. R. Civ. P. 9(b), but the magistrate reviewed this claim under the pleading standards contained in Rule 8, rather than Rule 9(b). The court sustained the objection to proper pleading standard and reviewed the claim under Rule 9(b) standards. MRI adequately pleaded its deceptive trade practices claim, including alleging future harm. The findings of the report and recommendation were accordingly adopted. ***Mgmt. Registry, Inc. v. A.W. Cos.***, No. 17-5009, 2020 U.S. Dist. Lexis 15513 (D. Minn. 1/30/2020).

Trade secrets: Denied injunction against former employee. Judge Brasel recently denied plaintiff Cambria Company LLC's motion for preliminary injunction and request for expedited discovery. Cambria sought an injunction to bar its former employee, Adam Schumann, from working at his new employer, Dal-Tile Tennessee, LLC, a subsidiary of Mohawk Industries, Inc. Mr. Schumann worked for Cambria for 10 years, including in his final position as assistant plant superintendent. In October 2019, Mohawk hired Schumann to be its director of countertop operations. His first day was 12/23/2019—after his non-compete expired. Cambria sought assurances that Mr. Schumann would not disclose Cambria's confidential information. Mohawk's assurances were deemed inadequate. Cambria filed the lawsuit alleging Mr. Schumann would inevitably disclose confidential information and trade secrets he learned while employed at Cambria in violation of his confidentiality agreement and in violation of state and national trade secrets laws. The court considered Cambria's likelihood of success on its trade secrets claims. To succeed on a trade secret claim, a plaintiff must prove the existence of trade secrets and (inevitable) disclosure of said trade secrets. For the present motion, the court accepted that Cambria had trade secrets but found that Cambria had failed to identify them with sufficient specificity. Cambria's description of its trade secrets shifted between the briefing and oral argument, making Cambria's trade secrets a "shifting target." The court then considered the inevitable-disclosure doctrine. Minnesota courts and the 8th Circuit have neither accepted nor rejected the doctrine, though decisions in the District of Minnesota have applied it. To succeed at the preliminary injunction stage, Cambria must prove "a high degree of probability of inevitable disclosure." Cambria did not meet this burden. Accordingly, the preliminary injunction was denied. The request for expedited discovery to build a record before the preliminary injunction hearing was denied, as the parties built a robust record without such discovery. ***Cambria Co., LLC v. Schumann***, No. 19-cv-3145, 2020 U.S. Dist. Lexis 11373 (D. Minn. 1/23/2020).

JOE DUBIS
Merchant & Gould
jdubis@merchantgould.com

REAL PROPERTY LAW

JUDICIAL LAW

Homeowners' association claims untimely under statutes of limitation. After discovering problems with the HVAC systems in units throughout one building in 2014 and in the units in a second building in 2015, and providing notice and a demand for repair in 2015, the homeowners' association sued the developer, the general contractor, and a mechanical subcontractor in 2015, asserting claims for negligence, breach of implied warran-