IN THE
SUPREME COURT OF THE UNITED STATES

No. ___

THE TRIZETTO GROUP, INC., COGNIZANT TECHNOLOGY SOLUTIONS CORP.,

Applicants,

v.

SYNTEL STERLING BEST SHORES MAURITIUS LIMITED, SYNTEL, INC.,

Respondents.

APPLICATION TO THE HON. SONIA SOTOMAYOR FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Pursuant to Supreme Court Rule 13(5), The TriZetto Group, Inc. and Cognizant Technology Solutions Corp., hereby move for an extension of time of 30 days, to and including September 22, 2023, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be August 23, 2023.

In support of this request, Applicants state as follows:

1. The United States Court of Appeals for the Second Circuit rendered its decision on May 25, 2023 (Exhibit 1). This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. This case concerns whether avoided cost damages are available under the Defend Trade Secrets Act ("DTSA"). 18 U.S.C. § 1836(b)(3)(B). The Second Circuit held that a prevailing trade-secret plaintiff is not entitled to avoided costs

damages—the money a defendant saves by misappropriating a trade secret—if the trade-secret holder has not suffered "compensable harm beyond [its] actual loss." Ex. 1 at 36 (emphasis omitted). This Court's intervention is necessary because that decision rewrites the remedial scheme Congress put in place and creates a circuit split.

3. The DTSA allows a plaintiff to recover both "damages for actual loss caused by the misappropriation of the trade secret[] *and* damages for any unjust enrichment" the defendant received. 18 U.S.C. § 1836(b)(3)(B)(i)(I)-(II) (emphasis added).

4. By holding that avoided costs—a well-accepted form of unjust enrichment damages—are only available if there is "compensable harm beyond . . . actual loss," the Second Circuit has read the unjust-enrichment remedy out of the statute. Under the Second Circuit's new regime, a plaintiff is limited to recovering "compensable harm," including some undefined category of compensable harm beyond the plaintiff's actual loss. But that is not the purpose of avoided costs or any other form of unjust enrichment. An unjust-enrichment award measures *what a defendant gained* by misappropriating a trade secret, *not what the plaintiff lost*. The Second Circuit made no attempt to reconcile its ruling with the text of the statute Congress enacted.

5. The Second Circuit's decision does not just rewrite the DTSA, it creates a circuit split. The panel below acknowledged that its decision conflicts with the Third and Seventh Circuits, both of which permit a trade secret plaintiff to obtain

avoided costs independent of their actual loss. *See* Ex. 1 at 34-35 & n.42; *see also PPG Indus. Inc v. Jiangsu Tie Mao Glass Co. Ltd*, 47 F.4th 156, 163 (3d Cir. 2022); *Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, 980 F.3d 1117, 1130 (7th Cir. 2020). Though unacknowledged by the Second Circuit, the opinion below also conflicts with the Fifth and Eleventh Circuits. *See GlobeRanger Corp. v. Software AG U.S., Inc.*, 836 F.3d 477, 500 (5th Cir. 2016) (explaining that "plaintiffs are not limited to damages based on the misappropriator's profits" and that "the wrongdoer should not benefit from hindsight perspective that its gamble of misappropriating the trade secret turned out not to be so profitable"); *Salsbury Labs., Inc. v. Merieux Labs., Inc.*, 908 F.2d 706, 714 (11th Cir. 1990) (affirming $1 million avoided-cost award).

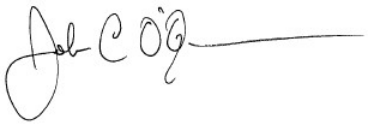
6. This Court should step in to correct the Second Circuit's deeply flawed interpretation of an important, recently enacted federal statute. Congress passed the DTSA to establish a "single, national standard for trade secret misappropriation with clear rules and predictability for everyone involved" and to "foster uniformity among the States." H.R. Rep. No. 114-529, at 6 (2016); S. Rep. No. 114-220, at 14 (2016); 162 Cong. Rec. H2032 (2016). Yet the decision below creates disharmony among the courts of appeals as to the DTSA's carefully drawn remedial framework. It also encourages plaintiffs to assert state-law trade secrets claims—which almost uniformly permit avoided-cost awards—rather than federal DTSA claims, thereby fostering a patchwork of trade secret precedent across the country. That is the exact scenario that Congress sought to avoid in passing the DTSA.

7. There is good cause to grant an extension. Before the current due date of the petition and recently, Applicants' counsel, John C. O'Quinn, has or has had substantial briefing obligations, including: (1) response brief due August 2, 2023, *Jacinta Downing v. Abbott Laboratories*, No. 23-1440 (7th Cir.); (2) opening brief due August 25, 2023, *Deere & Co. v. AGCO Corp.*, No. 23-1811 (Fed. Cir.); (3) opening brief due September 8, 2023, *Global Tubing LLC v. Tenaris Coiled Tubes LLC*, No. 23-1882 (Fed. Cir.); and (4) oral argument on September 8, 2023, *Janssen Pharmaceuticals, Inc. v. Teva Pharmaceuticals USA, Inc.*, No. 22-1258 (Fed. Cir.).

8. Applicants' counsel thus requests a modest extension to prepare a petition that fully addresses the important issues raised by the decision below and that frames the issues in a manner that will be most helpful to the Court.

WHEREFORE, for the foregoing reasons, Applicants request that an extension of time to and including September 22, 2023, be granted within which Applicants may file a petition for a writ of certiorari.

Respectfully submitted,



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