No. ______

In the
Supreme Court of the United States

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

Petitioners,

v.

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

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The federal Defend Trade Secrets Act ("DTSA") allows a trade-secret plaintiff to recover damages for *both* "actual loss … *and* … any unjust enrichment caused by the misappropriation" of a trade secret. 18 U.S.C. § 1836(b)(3)(B)(i)(I)-(II) (emphasis added). "Unjust enrichment" damages, unlike a plaintiff's "actual loss" damages, are measured by the benefit *the defendant* receives from the misappropriation. Those damages commonly include any development costs the defendant avoided by misappropriating the trade secrets. But the Second Circuit created a split with the Third, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits by holding a plaintiff cannot recover a defendant's avoided costs as a form of unjust-enrichment damages absent proof that *the plaintiff* suffered "compensable harm *beyond* its lost profits," such as a reduction in the value of the trade secret.

The question presented is:

Whether a plaintiff may seek avoided costs as a measure of unjust-enrichment damages if and only if the plaintiff has suffered a "compensable harm beyond its lost profits"—a novel limitation imposed by the Second Circuit that finds no support in the plain language of the DTSA or the common law.

PARTIES TO THE PROCEEDING

Petitioners are The Trizetto Group, Inc. and Cognizant Technology Solutions Corporation, which were Appellees below and Defendants and Counter-Claimants in the District Court.

Respondents are Syntel Sterling Best Shores Mauritius Limited and Syntel, Inc., which were Appellants below and Plaintiffs and Counter-Defendants in the District Court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, petitioner states as follows:

The TriZetto Group, Inc. is indirectly wholly owned by Cognizant Technology Solutions Corporation. Cognizant Technology Solutions Corporation has no parent corporation and no publicly held corporation owns more than 10% of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings in the U.S. District Court for the Southern District of New York and the U.S. Court of Appeals for the Second Circuit:

Syntel Sterling Best Shores Mauritius Ltd. v. The TriZetto Grp., Inc., No. 15-cv-00211 (S.D.N.Y.), judgment entered on Apr. 20, 2021;

Syntel Sterling Best Shores Mauritius Ltd. v. The TriZetto Grp., Inc., No. 21-1370 (2d Cir.), judgment entered on May 25, 2023.

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PETITION FOR WRIT OF CERTIORARI

In 2016, Congress passed and President Obama signed the Defend Trade Secrets Act. *See* 18 U.S.C. § 1836. Congress's express reason for enacting that landmark legislation was to encourage innovation by providing robust protection for trade secrets and creating a uniform set of clear and predictable nationwide rules for the resolution of trade-secret disputes. In the decision below, however, the Second Circuit ignored Congress's express choice of remedies available under the DTSA and created an acknowledged circuit split by imposing new restrictions on the availability of unjust-enrichment damages that appear nowhere in the statute. That decision tramples on blackletter principles of statutory interpretation (not to mention the common law), frustrates the very reasons for enacting the DTSA in the first place, and will have important consequences for American businesses that rely on trade-secret law to protect their intellectual property.

In adopting the DTSA, Congress copied the Uniform Trade Secrets Act ("UTSA") and provided for three distinct remedies relevant here: [1] an injunction; [2] "damages for actual loss caused by the misappropriation of the trade secret; *and* … [3] damages for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss." 18 U.S.C. § 1836(b)(3)(A)-(B) (emphasis added). And just like the remedies under the Uniform Trade Secrets Act, from which Congress borrowed, each of these remedies serves a distinct purpose. Injunctive relief remedies future harm by preventing future use of the stolen trade secrets. As to past misappropriation, Congress followed the UTSA and provided that trade-secret plaintiffs could seek *both* "actual loss" damages "*and*" "unjust enrichment" damages.

Congress enacted this statutory language against a well-established common-law backdrop differentiating these two distinct damages categories. Actual-loss damages measure the loss sustained by *the plaintiff*, such as the profits the plaintiff lost, the diminution of a trade secret's value caused by the misappropriation, or the value lost if the defendant publicly disclosed and therefore destroyed a trade secret. Unjust-enrichment damages, by contrast, measure the benefit to *the defendant* from the misappropriation, regardless of any separate harm to the plaintiff. One common form of unjust-enrichment damages is disgorging a defendant's profits; another is avoided costs—meaning the costs the defendant avoided by stealing the plaintiff's trade secrets. By using the conjunctive "and," Congress made clear that plaintiffs may recover *both* the loss to the plaintiff *and* the benefit to the defendant, so long as those damages do not result in double counting.

The Third, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits, interpreting the same (or substantially the same) language in the context of the UTSA, have all understood the distinctions between these remedies and permitted trade-secret plaintiffs to recover unjust-enrichment damages, including avoided-costs damages, regardless of whether the misappropriation caused the plaintiff any harm. *See, e.g.*, *PPG Indus. Inc v. Jiangsu Tie Mao Glass Co.*, 47 F.4th 156, 161-64 (3d Cir. 2022); *GlobeRanger Corp. v.*

Software AG U.S., Inc., 836 F.3d 477, 499-501 (5th Cir. 2016); *Caudill Seed & Warehouse Co. v. Jarrow Formulas, Inc.*, 53 F.4th 368, 390-91 (6th Cir. 2022); *Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, 980 F.3d 1117, 1130-33 (7th Cir. 2020); *Bourns, Inc. v. Raychem Corp.*, 331 F.3d 704, 709 (9th Cir. 2003); *Salsbury Lab'ys, Inc. v. Merieux Lab'ys, Inc.*, 908 F.2d 706, 714-15 (11th Cir. 1990).

In the decision below, however, the Second Circuit expressly split with its sister circuits and vacated a $284 million jury award under the DTSA, holding for the first time that the availability of avoided-costs damages as unjust enrichment turns on whether *the plaintiff* suffered "compensable harm beyond" its lost profits. In other words, the availability of unjust-enrichment damages depends on some "actual loss" by the plaintiff (other than profits). That novel limitation is found nowhere in the text of the DTSA, the UTSA, or even the common law of unjust enrichment. Quite the opposite, the DTSA expressly provides for both. And the common law makes clear that unjust-enrichment damages—including avoided-costs damages—do not simply serve as a backstop for "compensable harm beyond" the plaintiff's lost profits. Plaintiffs can instead recover those compensable harms, such as the diminished value of a trade secret, as actual-loss damages under 18 U.S.C. § 1836(b)(3)(B)(i)(I). The separate unjust-enrichment damages available under 18 U.S.C. § 1836(b)(3)(B)(i)(II) instead measure how much the trade-secret theft enriched *the defendant*. Allowing trade-secret defendants to pocket those profits or cost savings unless the plaintiff suffered a corresponding loss will undermine the statutory scheme and afford defendants an undeserved windfall—here, $284 million in value.

The implications of the Second Circuit's approach are profound and will be particularly pernicious in light of Congress's reasons for enacting the DTSA in the first place. The Second Circuit not only ignored Congress's decision to permit damages that measure the benefit to the defendant irrespective of the harm to a plaintiff, it also thwarted Congress's goal of creating a nationwide trade-secrets law. In practice, that means trade-secret plaintiffs in New York will have different remedial options than those in Chicago, Philadelphia, Cincinnati, Los Angeles, New Orleans, and Atlanta (or at least than those plaintiffs without the ability to forum shop for a more favorable location). Worse still, the inevitable consequence of the Second Circuit's decision is to return trade-secret law to the patchwork Congress sought to cure: plaintiffs will invoke state trade-secret law to take advantage of well-established unjust-enrichment remedies most states have recognized, but federal law does not—at least in the Second Circuit.

Meanwhile, the stakes for intellectual property owners are high: because of the significant costs required to develop innovative tools, technologies, and services, avoided-costs damages often total in the millions or even hundreds of millions of dollars, as they did here. Indeed, this case is the archetype of what Congress intended to deter: Syntel engaged in an elaborate plot over many years to gain access to TriZetto's trade secrets by posing as a trusted business partner, then used the misappropriated secrets in an attempt to poach TriZetto's customers, while destroying and covering up the evidence of its theft. But because TriZetto caught Syntel early, under the Second Circuit's no-harm-no-foul approach, such egregious trade-secret theft will result in no more than a slap on the wrist.

The Second Circuit's decision cannot stand. This Court's review is necessary to resolve a square conflict over the meaning and effect of a major congressional enactment with important implications for American innovation. Accordingly, this Court should grant the petition to resolve the circuit conflict and correct the Second Circuit's deeply flawed decision.

OPINIONS BELOW

The Second Circuit's opinion is reported at 68 F.4th 792 and reproduced at App.1-43. The district court's opinion is unreported but available at 2021 WL 1553926 and reproduced at App.44-84.

JURISDICTION

The Second Circuit issued its decision on May 25, 2023. Justice Sotomayor extended the time to file a petition for writ of certiorari until September 22, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The Defend Trade Secrets Act, 18 U.S.C. § 1836, is reproduced at App.89-98.

STATEMENT OF THE CASE

A. Statutory Background

Even before the enactment of any uniform trade-secret laws in the United States, this Court recognized the importance of protecting trade secrets: "Trade secret law encourages the development and exploitation" of inventions, fosters competition, promotes "the efficient operation of industry," and "permits the individual inventor to reap the rewards of his labor." *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 493 (1974); *see also id.* at 485. At base, trade-secret law recognizes that inventors and businesses have a property interest in their proprietary technology and business solutions, and enforcement of such laws permits them to protect their property.

The development of trade-secret law began in the states with a series of common-law decisions across jurisdictions. Eventually the National Conference of Commissioners of Uniform State Laws responded to calls for uniformity. Recognizing "the commercial importance" of trade-secret law and the need for "[c]lear, uniform trade secret protection," the Conference in 1979 "codifie[d] the basic principles of common law trade secret protection" in a model Uniform Trade Secrets Act. Unif. Trade Secrets Act, prefatory note (Unif. L. Comm'n 1985). Over the last three decades, all but one state (New York) has adopted the UTSA in some form. *See The Sedona Conf. Comment. on Monetary Remedies in Trade Secret Litig.*, 24 Sedona Conf. J. 349, 366 (2023). Nonetheless, state differences in trade-secret law have persisted due to state-specific interpretations and state-specific changes to the UTSA's text. *Id.* at 368.

In 2016, Congress stepped in to address the unmet need for uniformity in trade-secret law. Congress recognized that trade secrets are "[o]ften developed at great cost and through years of research and development," and "[i]n a global economy based on knowledge and innovation, trade secrets constitute some of any company's most valuable property." H.R. Rep. No. 114-529, at 2 (2016), *reprinted in* 2016 U.S.C.C.A.N. 195, 197. Congress was therefore concerned that the "existing patchwork of state laws ha[d] become a difficult procedural hurdle for victims" of trade-secret theft, especially when the theft had occurred across state lines. 162 Cong. Rec. S1635 (daily ed. Apr. 4, 2016) (remarks of Sen. Grassley). Congress specifically recognized that U.S. companies lose hundreds of billions of dollars per year "due to the theft of their intellectual property" and that "trade secret theft exacts a cost on U.S. companies of between one and 3 percent of GDP annually." H.R. Rep. No. 114-529, at 3-4, 2016 U.S.C.C.A.N. at 198. So Congress, in an increasingly rare moment of bipartisanship, enacted legislation to "provide a single, national standard for trade secret misappropriation with clear rules and predictability for everyone involved." *Id.* at 6, 2016 U.S.C.C.A.N. at 200.

In so doing, Congress largely codified the text of the UTSA into federal law. Indeed, the DTSA's remedial provisions for injunctive relief and damages were "drawn directly" from the corresponding provisions of the UTSA. *Id.* at 12-13, 2016 U.S.C.C.A.N. at 206-07. The UTSA provides that "[d]amages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss." Unif. Trade Secrets Act § 3(a). That section explicitly "adopt[ed] the principle of the [then] recent cases allowing recovery of both a complainant's actual losses and a misappropriator's unjust benefit." *Id.* § 3 cmt. The DTSA, in turn, picked up that common-law background by adopting language nearly identical to the UTSA—providing for "damages for actual loss caused by the misappropriation … and … damages for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss." 18 U.S.C. § 1836(b)(3)(B)(i)(I)-(II).[1]

In copying from the UTSA, Congress purposefully provided robust remedies for trade-secret misappropriation. The DTSA was "[c]arefully balanced to ensure an effective and efficient remedy for trade secret owners whose intellectual property has been stolen." H.R. Rep. No. 114-529, at 6, 2016 U.S.C.C.A.N. at 200. The statute was designed by Congress to "equip companies with the additional tools they need to protect their proprietary information, to preserve and increase jobs and promote growth in the United States, and to continue to lead the world in creating new and innovative products, technologies, and services." *Id.*

B. Factual Background

TriZetto is a technology company that develops innovative software and provides related services for

[1] The DTSA's other remedial provisions likewise follow the UTSA. Like the UTSA, the DTSA also provides that a plaintiff may, "in lieu of damages measured by any other methods," seek "a reasonable royalty for the misappropriator's unauthorized disclosure or use of the trade secret." 18 U.S.C. § 1836(b)(3)(B)(ii). And the DTSA, like the UTSA, provides for "exemplary damages" and the award of "reasonable attorney's fees" in cases of willful and malicious misappropriation. *Id.* § 1836(b)(3)(C)-(D).

hospitals, doctors, and health-insurance companies. TriZetto's Facets® platform automates and manages healthcare claim adjudication and processing, resulting in faster claims processing, significant administrative savings, and lower premiums. TriZetto also offers consulting services to help its clients upgrade and customize their Facets system. Facets is an "extremely complex application[] that basically runs a health plan," and it is highly customizable to meet the specific needs of individual clients. C.A.App.205. Laying out the full capabilities of the system takes hundreds of user guides and manuals, each one offering extensive detail about how Facets works internally and how to use it. Installing or upgrading a custom system often takes highly skilled consultants, who are intimately familiar with Facets, several months.

TriZetto permits Facets customers to hire third-party service providers, but customers usually hire TriZetto for their most complex projects because of TriZetto's unique software tools (sometimes called accelerators). Those tools include the Data Dictionary, Custom Code Impact Tool, and test cases and automation scripts. Without those tools, customers would struggle to install and develop customized Facets systems, if they could even do so at all.

These software, tools, and guides are TriZetto's trade secrets. They represent "the culmination of … decades of work," and cost TriZetto over $500 million to develop. C.A.App.229. To protect its investments, TriZetto requires its customers to sign non-disclosure agreements, to promise to treat the software, tools, and guides as confidential, and to agree not to use or disclose those materials without TriZetto's express permission.

Although TriZetto performs much of its own customer service directly, it sometimes works through subcontractors. In 2010, TriZetto and Syntel entered into a Master Services Agreement, under which TriZetto promised Syntel approximately $25 million in yearly minimum revenue for providing subcontracted Facets services on TriZetto's behalf.

To avoid any improper use of TriZetto's confidential information, Syntel agreed that TriZetto's data could not be "used by [Syntel] or [Syntel's] Agents other than in connection with providing the Services" or "commercially exploited by" Syntel "[w]ithout TriZetto's approval." C.A.App.659. The contract also included a separate non-compete provision, under which Syntel could not provide "substantially similar" services or offer any "products or services" that "require technical, design, process or architectural knowledge of TriZetto's products or services." C.A.App.664.

Consistent with Syntel's confidentiality obligations, TriZetto treated Syntel as a trusted business partner and gave Syntel's employees access to its trade secrets to perform services for TriZetto. Those employees had an unprecedented level of physical access to TriZetto's buildings, "access to the applications that were behind [TriZetto's] firewall," and "access to [TriZetto's] secure customer portal … exchange." C.A.App.299. Syntel's employees had no prior Facets experience, so TriZetto trained them on its software and proprietary tools to assist TriZetto.

TriZetto ultimately paid Syntel more than $100 million during the parties' relationship.[2]

Unbeknownst to TriZetto, however, Syntel formed a plan in 2012 "to go to war" with a "Trojan Horse" strategy to destroy TriZetto from the inside, using an "arsenal" of tools and accelerators to target TriZetto's customers. C.A.App.462, 737-38. Those tools and accelerators would be *TriZetto's*, which Syntel would steal to achieve its near-term "*$1B goal*." C.A.App.639 (emphasis added). As part of its plan, Syntel employees who were supposed to access the trade secrets only in servicing TriZetto's customers instead shared those secrets with Syntel's internal consulting team.

Syntel then executed a self-described "TriZetto Combat Plan" under which, when the time was right, Syntel would "go for the kill" using TriZetto's own trade secrets against it. C.A.App.704, 1042. That time came in September 2014, when Cognizant announced its acquisition of TriZetto for $2.7 billion. Cognizant's acquisition permitted Syntel to terminate its relationship and start its "open war" with TriZetto and Cognizant. C.A.App.639.

Syntel knew it could not compete for Facets work without TriZetto's confidential information. It also knew that the clock was ticking on its access to

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[2] In 2012, TriZetto and Syntel amended their agreement, but the 2012 amendment did not change the restrictions on Syntel's use of TriZetto's confidential information or TriZetto's understanding of the relationship. Even after the amendment, TriZetto viewed its relationship with Syntel as positive and cooperative.

TriZetto's confidential information. Following instructions from Syntel's Facets Architect, its employees began downloading as many confidential TriZetto materials as they could. Indeed, a forensic examination revealed that "Syntel was actively creating a repository of [TriZetto's] trade secrets on its own or of its own to be used in future work." C.A.App.336 (testimony of technical expert). For example, one Syntel employee asked the others, "[s]end me the list of exact [TriZetto] manuals that you need" so he could add them to Syntel's files. C.A.App.729. Syntel also downloaded more than 700 test cases and automation scripts, and then turned around and told its customers the stolen tools and test cases were "our tools" and "*Syntel's* test asset[s]." C.A.App.710, 735. Syntel continued advertising the stolen tools as its own through trial and admitted using them through at least 2018.

Syntel's strategy to steal TriZetto's trade secrets allowed it to take advantage of the cost savings it incurred from not having to spend hundreds of millions of dollars to develop its own software tools. Leveraging those cost savings, Syntel undercut TriZetto and offered its services for lower prices. Its pricing strategy successfully won the business of a long-time TriZetto customer, United Health Group. Syntel called beating TriZetto out for that contract its "first kill." C.A.App.463.

Syntel also lied to conceal its misappropriation. TriZetto first raised concerns about potential misappropriation in 2014, after discovering suspicious downloads. Syntel assured TriZetto it would honor its confidentiality obligations, even though Syntel had already misappropriated TriZetto's trade secrets. And to facilitate its deception, the head of Syntel's consulting team intentionally misspelled words to frustrate future searches for emails discussing TriZetto's trade secrets.

Even after the start of this lawsuit, Syntel's employees lied in sworn depositions about their access to and possession of TriZetto's trade secrets. And a forensic examination ordered by the district court revealed that Syntel had not only deleted documents but also destroyed several computers and hidden others.

C. The District Court Proceedings

Despite having stolen hundreds of millions of dollars' worth of trade secrets from TriZetto, in January 2015, Syntel sued TriZetto in the Southern District of New York for assorted claims stemming from Cognizant hiring several former Syntel employees. TriZetto counterclaimed for trade-secret misappropriation in violation of the DTSA, the subject of this petition. The district court had subject-matter jurisdiction over that federal claim under 28 U.S.C. § 1331.

After a six-day trial, a jury unanimously found for TriZetto and against Syntel on all claims. As relevant here, it found that Syntel misappropriated TriZetto's trade secrets under the DTSA, and it awarded TriZetto $284,855,192 in damages, which corresponds to the development costs Syntel saved by stealing TriZetto's already-developed trade secrets.

The district court substantially denied Syntel's motion for judgment as a matter of law, a new trial, or remittitur. The court rejected Syntel's argument that avoided-costs damages are legally unavailable where a plaintiff's trade secrets "still ha[ve] value." App.60. It explained that "the DTSA expressly permits recovery of the loss to a claimant and/or the unjust enrichment to a wrongdoer, as long as there is no double counting." App.61. A trade secret's diminished value caused by the misappropriation "belong[s] in the former category—loss to a claimant." *Id.* But "avoided costs damages," by contrast, "are in the latter category of unjust enrichment and represent the wrongful gain to the party that misappropriated the trade secret." *Id.* As the district court put it, "[t]here is no legal or conceptual limitation" on unjust-enrichment damages due to "the continuing value of the trade secret," because unjust-enrichment damages "derive from a policy of preventing wrongdoers from keeping ill-gotten gains, and therefore do not require a corresponding loss to the plaintiff." *Id.*

The district court also separately entered a permanent injunction that, with two exceptions not relevant here, enjoined Syntel from using TriZetto's trade secrets. Syntel did not appeal the entry of the injunction.

D. The Second Circuit's Decision

On appeal, the Second Circuit affirmed that Syntel had misappropriated genuine trade secrets, but vacated the damages award, holding that "as a matter of law, an unjust enrichment award of avoided costs" was unavailable. App.41. The court began by acknowledging that the DTSA permits both "actual loss" damages "and" "unjust enrichment" damages, and it acknowledged that the "parties concede that avoided costs are recoverable as damages for unjust enrichment under the DTSA." App.29-31. But rather than follow those points to their logical conclusion, it instead pivoted to the Third Restatement of Unfair Competition to create and apply a test different from the one provided by the statutory text. It reasoned that under the Restatement, "the amount of avoided costs damages recoverable must still derive from 'a comparative appraisal of all the factors of the case,' among which are 'the nature and extent of the appropriation' and 'the relative adequacy to the plaintiff of other remedies.'" App.33 (quoting Restatement (Third) of Unfair Competition § 45(2) (1995)).

From there, the Second Circuit determined that the "relevant question" for avoided costs is: "[D]id Syntel's misappropriation injure TriZetto *beyond* its actual loss of $8.5 million in lost profits?" App.34. It answered that question in the negative. According to the Second Circuit, TriZetto was not additionally harmed because (i) a permanent injunction bars the future use of TriZetto's trade secrets, and (ii) Syntel's misappropriation did not "diminish" or "destroy … the secrets' continued commercial value." *Id.*; *see also* App.41. TriZetto could not recover avoided-costs damages because "[b]eyond its lost profits [ ] TriZetto suffered no compensable harm supporting an unjust-enrichment award of avoided costs." App.36.

The Second Circuit thus divined a new principle of law for the unjust-enrichment damages available under the DTSA—notwithstanding the long history of precedent interpreting the UTSA to the contrary. Although it hastened to say that its disposition turned on the facts of this case, its reasoning leaves no doubt that avoided costs are now unavailable as a matter of law where the plaintiff cannot demonstrate a "compensable harm beyond [its] actual loss," measured by its lost profits. *Id.* (emphasis omitted); *see also* App.26 n.21 ("The jury award fails *as a matter of law* because the district court's decision to uphold the award is itself 'premised on a legal error ….'" (emphasis added) (citation omitted)).

The Second Circuit's new rule requires some showing of "harm to the trade secret owner" for unjust-enrichment damages, even though such damages are supposed to focus on the benefit to the defendant. App.39; *see also* App.34 (requiring that a trade-secret owner suffer "*compensable harm* beyond its lost profits or profit opportunities"). According to the Second Circuit, focusing "*exclusively*" on the defendant's gain (in avoiding the development costs otherwise required for it to possess the trade-secret information) would "ignore[] the extent to which [the] misappropriation injured [the plaintiff] and impermissibly discount[] the comparative appraisal that governs equitable trade secret remedial determinations." App.34. That would, in the Second Circuit's view, "permit avoided costs awards that are more punitive than compensatory" and risk "an unjust windfall for trade secret holders." App.33-35

The court explicitly acknowledged that its decision conflicted with decisions of the Third Circuit and Seventh Circuit. App.38-39 & n.42 (citing *PPG Indus. Inc*, 47 F.4th at 163; *Epic Sys. Corp.*, 980 F.3d at 1130). The panel "disagree[d]" with those courts because they permitted "avoided costs awards based *solely* on the defendant's cost savings, despite no corresponding harm to the trade secret holder"—a "result" that was "inconsistent with [the panel's] view of when avoided costs are available as unjust enrichment damages." App.39 & n.42.

The Second Circuit also appeared to recognize that its reasoning was inconsistent with decisions of the Fifth and Eleventh Circuits. App.37 (citing *GlobeRanger*, 836 F.3d 477; *Salsbury Lab'ys.*, 908 F.2d 706). It therefore attempted to distinguish those cases on the ground that the plaintiffs there "at least to some degree, lost the value of their misappropriated trade secrets" because the defendants used the trade secrets to create a competing product. *Id.* The court did not explain how the creation of a competing product diminishes the "value" of a trade secret. Nor did it cite any such reasoning in the decisions it sought to distinguish. Nevertheless, the court stressed that, although Syntel and TriZetto competed for services, this case "is different" because "TriZetto offered no proof that Syntel's misappropriation diminished the value of its trade secrets to any degree" and "Syntel never developed or sold a competing software product using TriZetto's trade secrets"—only competing services that leveraged those secrets. *Id.*[3]

[3] After barring TriZetto's unjust-enrichment damages as a matter of law and effectively ruling that a trade-secret plaintiff could only recover actual-loss damages, the Second Circuit went further and seemingly directed the district court not to allow TriZetto to recover even its lost-profit damages. Unprompted by a request from either party, the Second Circuit stated, "[W]e *do not* remand for the [district] court to determine if TriZetto is entitled to lost profit damages under" the DTSA because "at trial, TriZetto took the view that awarding lost profits and avoided

This petition follows.

REASONS FOR GRANTING THE PETITION

The decision below ignores the text of a congressionally enacted statute (not to mention longstanding common-law principles), erodes the distinction between "actual loss" damages and "unjust enrichment" remedies, and frustrates the very reasons behind Congress's enactment of the DTSA to provide a uniform, nationwide regime for protecting trade secrets. It is unsurprising that six other circuits have recognized that unjust-enrichment damages in the form of avoided-costs damages are available regardless of whether there is any showing of harm to the plaintiff. The Second Circuit's decision that, "as a matter of law," App.41, such damages are unavailable, creates a clear split and neuters the DTSA's remedial regime.

This Court's review is necessary to restore the plain meaning of the DTSA, honor the remedial choices Congress made in the DTSA, and resolve a circuit split that will, at the least, result in disunity and, at the most, cause gamesmanship and forum shopping. Without further review, this case will have important and pernicious consequences for the protection of intellectual property and for American businesses that regularly invest millions of dollars to develop valuable and innovative trade secrets to the benefit of American consumers. There is no reason for this Court to wait to resolve this pure question of law, and this case presents an ideal vehicle in which to do

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costs would constitute 'double counting' under the DTSA." App.42.

so, before the Second Circuit's flawed reasoning further undermines trade-secret protections.

I. The Circuits Are Divided Over The Availability Of Avoided-Costs Damages.

The decision below creates a circuit split with the Third, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits on whether a trade-secret plaintiff must demonstrate actual loss to obtain avoided costs as a (well-established) form of unjust-enrichment damages. This split creates an untenable situation where the federal remedies available to trade-secret owners are categorically different depending on where a plaintiff sues.

Starting with the Third Circuit: In *PPG Industries*, which arose under the nearly identical provisions of Pennsylvania's UTSA, the district court (i) entered a permanent injunction against the future use of the defendant's trade secrets and (ii) ordered avoided costs in the form of the plaintiff's development costs (among other remedies) even though it was undisputed that the plaintiff "did not demonstrate actual loss." 47 F.4th at 160-61. On appeal, just as here, the defendant argued that the avoided-costs award was improper given the permanent injunction and because the defendant had "obtained no commercial benefit from any use of [the] trade secrets." *Id.* at 161.

The Third Circuit rejected both arguments. First, the court did not require any showing of harm to the value of the trade secret or any other showing of harm to the plaintiff, *see id.* at 161-62, thus rejecting the very argument the Second Circuit accepted here. Moreover, it made no difference that the *defendant* failed to obtain any "commercial benefit" from the trade secrets it had misappropriated. Rather, the Third Circuit held—consistent with a long line of precedent—that the "benefit [of the misappropriation] need not be a profit that was realized; it can be a cost that was avoided." *Id.* at 162; *see also Oakwood Lab'ys LLC v. Thanoo*, 999 F.3d 892, 914 & n.21 (3d Cir. 2021) (acknowledging the availability of avoided-costs damages under the DTSA even where the defendants did not launch a competing product).

Second, the Third Circuit rejected the argument that the district court erred by "awarding damages on top of issuing a permanent injunction." *PPG Indus. Inc*, 47 F.4th at 163. It explained that the two remedies "covered entirely separate periods of past and potential future use of misappropriated trade secrets." *Id.* at 163-64. The "damages award was for the development costs" the defendant avoided when it used the misappropriated trade secrets in the past, while the "forward-looking permanent injunction" covered potential future uses and was issued "long after [the defendant]'s earlier and unlawful use of [the plaintiff]'s trade secrets." *Id.* at 163. Thus, as the Second Circuit recognized, the Third Circuit permitted avoided-costs damages "based *solely* on the defendant's cost savings"—a remedy the Second Circuit has now rejected as a matter of law. App.39 n.42.

The Seventh Circuit's reasoning in *Epic Systems*, which arose under Wisconsin's UTSA, is similar to the Third Circuit's reasoning. There again, the court permitted avoided-costs damages—to the tune of $140 million—even though the district court had entered a permanent injunction and the plaintiff "did not suffer an actual injury and instead was awarded damages solely based on the benefit [the defendant] received." 980 F.3d at 1137; *see also id.* at 1144 n.5 ("Here, there is hardly evidence that Epic suffered any economic harm …."). That was because unjust-enrichment damages measure "the benefit to the defendant—not the loss to the plaintiff." *Id.* at 1130. Again, the Second Circuit simply disagrees, requiring this Court to decide which is right.

The Fifth, Sixth, Ninth, and Eleventh Circuits have all adopted interpretations consistent with these Third and Seventh Circuit decisions. *See GlobeRanger*, 836 F.3d at 499-501; *Caudill Seed & Warehouse Co.*, 53 F.4th at 390-91; *Bourns, Inc.*, 331 F.3d at 709; *Salsbury Lab'ys*, 908 F.2d at 714-15. Unlike the Second Circuit, those circuits too have permitted avoided-costs damages regardless of whether the plaintiff suffered a "compensable harm." The Second Circuit attempted to distinguish *GlobeRanger* and *Salsbury* based on the assertion that the plaintiffs in those cases, "at least to some degree, lost the value of their misappropriated trade secrets." App.37. That was so, the Second Circuit reasoned, because in both cases, the defendant used the trade secret to develop a competing product, "thereby diminishing the value of the trade secret." *Id.* But the Second Circuit failed to explain how the development of a competing *product* "diminish[es] the value of the trade secret" or how that is different from Syntel using TriZetto's secrets to offer competing *services*. That is because there is no product-services distinction. Regardless, neither the Fifth Circuit nor the Eleventh Circuit imposed any such limitations on their decisions. To the contrary, both courts broadly held that avoided-costs damages are available solely on the basis that such an award represents the benefit that the defendant gained. The Second Circuit's incoherent attempt to distinguish those cases finds no support in law or logic.

To be sure, these circuits' decisions arose in cases involving the UTSA. But that is a distinction without a difference for this issue. As the Second Circuit itself acknowledged, because the DTSA "directly incorporates" the relevant damages provisions from the UTSA, "cases examining state enactments of the UTSA's compensatory damages provision … analyze *identical language* found in the DTSA." App.28 (emphasis added). Against that backdrop, the Second Circuit freely conceded that its decision split from decisions of the Seventh and Third Circuits, both of which interpreted the UTSA's nearly identical language. *See* App.39 & n.42 ("disagree[ing] with the [Seventh Circuit's] reasoning" and "declin[ing] to follow the reasoning" of the Seventh and Third Circuits). Commentators too have recognized that the Second Circuit created a circuit split on the interpretation of the unjust-enrichment remedies found in both the DTSA and UTSA. *See The Sedona Conf. Comment.*, *supra*, at 386 & n.57 (identifying "conflicting authority on the viability and applicability" of unjust-enrichment damages and citing the decisions of the Second and Seventh Circuits); James Pooley, *Let the Jury Decide: Lessons from Syntel v. Trizetto*, IP Watchdog (July 30, 2023), https://tinyurl.com/58r9hs6w. Simply put, either the Second Circuit is right or the other circuits are right—

the decisions cannot be reconciled. This Court should grant certiorari and hold the Second Circuit is wrong.

II. The Second Circuit's Decision Is Wrong, Thwarting The Clear Language Congress Enacted In The DTSA.

The Second Circuit's unprecedented decision is fundamentally wrong and diminishes trade-secret owners' valuable property rights. Under the Second Circuit's new rule, avoided costs are unavailable as a matter of law where the plaintiff "suffer[s] no compensable harm beyond [its] actual loss," a rule that apparently bars avoided costs where the misappropriation fails to "diminish" or "destroy … the secrets' continued commercial value." App.36, 41 (emphasis omitted). But that rule disregards the text and structure of the DTSA, which provides for three separate and distinct remedies: injunctive relief, "actual loss" damages, and "unjust enrichment" damages. 18 U.S.C. § 1836(b)(3)(A)-(B). Indeed, the Second Circuit confused all three of these remedies. It nonsensically transformed unjust enrichment into a proxy for some forms of *actual-loss* damages and held that avoided-costs damages—whether $1 or $100,000,000—are categorically not available if the trade-secret plaintiff obtained an injunction because the trade-secret owner faced no risk of future harm. *See* App.41.

To begin, the Second Circuit conflated "actual loss" damages (which measure the harm to *the plaintiff*) with "unjust enrichment" damages (which measure the benefit gained by *the defendant*). It did so through two intertwined errors, each of which works violence upon the DTSA and its common-law foundations.

First, the court confined "actual loss" damages to lost profits alone, ignoring that actual-loss damages can include, for example, the diminution of a business's value because of the misappropriation, or the costs the plaintiff incurred to develop a trade secret that the defendant publicly disclosed and therefore destroyed. *See e.g.*, *Softel, Inc. v. Dragon Med. & Sci. Commc'ns, Inc.*, 118 F.3d 955, 969 (2d Cir. 1997); *see also The Sedona Conf. Comment.*, *supra*, at 378-86. Only by confining actual-loss damages to lost profits could the court find some other residual "compensable harm" a plaintiff might suffer that the unjust-enrichment damages provision could remedy under the Second Circuit's reasoning. Put differently, if the Second Circuit had not confined actual-loss damages to cover only lost profits, it would have recognized that any harm to TriZetto, including damage to the "commercial value" of its trade secrets, App.36, simply constitutes "actual loss," leaving a null set for when avoided costs would be available under its rationale.

Second, after improperly narrowing the "actual loss" category, the court declared that (at least) avoided-cost "unjust enrichment" damages would only be available to remedy any "compensable harm [*to the plaintiff*] beyond" lost profits—even though unjust-enrichment damages in every other context measure the benefit *to the defendant*, irrespective of harm to the plaintiff. App.41 (emphasis omitted). The confounding result is that a trade-secret plaintiff can obtain avoided costs only if it can show an actual loss—or, as the Second Circuit put it, a "compensable harm" "[b]eyond its lost profits" that would merit "an unjust enrichment award." App.36. That reasoning makes a hash of unjust enrichment and the DTSA's remedial scheme.[4]

From the UTSA through the DTSA and until now, courts and common-law authorities have understood unjust enrichment to measure the defendant's gain irrespective of the plaintiff's loss because it is "grounded on the moral principle that one who has received a benefit has a duty to make restitution where retaining such a benefit would be unjust." *Epic Sys. Corp.*, 980 F.3d at 1129-30 (citation omitted). This foundational principle is reflected in the early common-law authorities that the UTSA codified. The First Restatement of Restitution, for example, contemplated that a defendant may be required to return his unjust gains to the plaintiff *even if "the plaintiff has not suffered a corresponding loss"* or "any loss" for that matter. Restatement (First) of Restitution § 1 cmt. e (1937) (emphasis added). It is well established that this includes making restitution where the benefit obtained is avoided development

[4] Furthermore, the district court's injunction against the *future* use of TriZetto's trade secrets does not (contrary to the Second Circuit's reasoning) supplant the availability of unjust-enrichment damages for Syntel's *past* misappropriation. Injunctive relief and damages, which are delineated in different subsections of the DTSA, "cover[] entirely separate periods of past and potential future use of misappropriated trade secrets." *PPG Indus. Inc*, 47 F.4th at 163-64. The drafters of the UTSA understood as much, explaining that "[m]onetary relief can be appropriate whether or not injunctive relief is granted." Unif. Trade Secrets Act § 3 cmt.

costs of a stolen trade secret. Indeed, consistent with the understanding of unjust enrichment held by the UTSA's drafters, courts applying the UTSA have uniformly "construed 'unjust enrichment' to include … the defendant's savings through avoiding development costs." Victoria A. Cundiff, *New York Rejects Defendant's Avoided Development Costs As A Measure of Damages for Trade Secret Misappropriation*, at 1 & n.4, The Sedona Conf. (Oct. 2018) (collecting cases).

This long-settled view is reflected in the cases and authorities that formed the soil from which Congress then transplanted the language and concepts of the UTSA into the DTSA. The authors of the most recent Restatement of Restitution identified the principle behind unjust enrichment to be that "[a] person is not permitted to profit by his own wrong," while also specifically striking the previous concluding phrase "at the expense of another." Restatement (Third) of Restitution and Unjust Enrichment § 3 & reporter's note a (2011). That change was specifically made to "avoid any implication that the defendant's wrongful gain must correspond to a loss on the part of the plaintiff," *id.*—the exact holding the Second Circuit erroneously imposed. Contrary to the Second Circuit's analysis, the Reporter emphasized that "there can be restitution of wrongful gain exceeding the plaintiff's loss," and "there can be restitution of wrongful gain in cases where the plaintiff has suffered an interference with protected interests *but no measurable loss whatsoever*." *Id.* (emphasis added).

It was against this well-established common-law and UTSA backdrop that Congress enacted the DTSA, incorporating the same principles and in the case of the UTSA, the very same text, that courts had long understood to permit avoided-costs damages as unjust enrichment even without a corresponding loss by the plaintiff. And "where Congress uses a common-law term in a statute, [this Court] assume[s] the 'term ... comes with a common law meaning, absent anything pointing another way.'" *Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 101 (2011) (citation omitted); *see also SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 580 U.S. 328, 344 (2017) (explaining that "Congress legislates against the background of general common-law principles"); Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts*, § 54 (2012) ("If a statute uses words or phrases that have already received authoritative construction by the jurisdiction's court of last resort, or even uniform construction by inferior courts … they are to be understood according to that construction."). The DTSA provides for "damages for actual loss caused by the misappropriation of the trade secret; *and* … damages for any unjust enrichment caused by the misappropriation of the trade secret that is not addressed in computing damages for actual loss." 18 U.S.C. § 1836(b)(3)(B)(i)(I)-(II) (emphasis added). Like the UTSA—which itself reflected the remedial regimes of the common law—the DTSA thus expressly provides that a trade-secret plaintiff may recover *both* types of damages as long as the damages do not overlap and therefore lead to double counting.

It makes no sense then to say, as the Second Circuit held, that the availability of unjust-enrichment damages turns on a showing of actual loss to the plaintiff, such as loss of the value of the trade secret. Loss to the plaintiff is captured by the distinct "actual loss" provision, in which Congress permitted plaintiffs to seek their own actual damages *in addition* to unjust-enrichment damages. Whether TriZetto "lost the value of [its] misappropriated trade secrets," App.37, is simply irrelevant to whether Syntel was unjustly enriched because unjust-enrichment damages (including avoided costs) are different from actual-loss damages. Yet the Second Circuit has now made unjust-enrichment damages unavailable as a matter of law unless they correspond to some form of actual loss. That makes no sense.

That unjust-enrichment damages may exceed any harm to the plaintiff does not make the damages "punitive," as the Second Circuit appears to believe, contrary to every unjust-enrichment decision discussed above. Instead, it "protects the [property] owner's right to insist that any use of property by another—whether or not it diminishes the property's value—be made with the owner's consent and on the owner's terms." Restatement (Third) of Restitution and Unjust Enrichment § 3 cmt. b. And it gives credence to the "moral judgment implicit" in the principle that one should not "profit by his own wrong." *Id.* § 3 & cmt. c.[5] Of course, "profit" in this

[5] In some cases a plaintiff's own development costs may be used as a proxy to measure the plaintiff's losses where the value of a trade secret has been diminished or destroyed. *See, e.g.*, *Softel*, 118 F.3d at 969; *Univ. Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518, 535-37 (5th Cir. 1974). But that does not mean that *unjust-enrichment damages* measured by a defendant's avoided costs require proof that the misappropriation reduced the value of the trade secrets. That would be inconsistent with the nature of unjust enrichment which, again,

context does not literally mean "profit"—it includes the enrichment that comes from *avoiding* development costs the wrongdoer would have otherwise incurred. *See PPG Indus. Inc*, 47 F.4th at 162 (explaining that the "benefit conferred" for unjust-enrichment purposes "need not be a profit that was realized; it can be a cost that was avoided").

This case proves the point. Syntel stole TriZetto's property and used it for its own purposes, reaping the benefits of the $284 million TriZetto spent to develop its trade secrets without having to itself spend a single penny of those development costs. Permitting TriZetto to recover the development costs Syntel avoided protects TriZetto's right to demand that others seek permission to use its trade secrets and ensures that Syntel does not benefit from an unjustified windfall simply because its theft happened not to be as profitable or as economically devastating to TriZetto as Syntel originally hoped. After all, if Syntel had not stolen TriZetto's trade secrets and instead opted to spend $284 million to develop them on its own, it would have suffered a *loss* of at least $257 million—the difference between the cost of development and the $27 million in revenues Syntel claims it made from its Facets consulting work. *See* App.35.

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measures *what a defendant gained* by misappropriating a trade secret, *not what the plaintiff lost*. *See Epic Sys. Corp.*, 980 F.3d at 1130. The development costs Syntel saved do not depend on whether it also deprived TriZetto of the full value of its trade secrets. Syntel's unjust cost savings remain the same regardless of whether the value of the trade secrets to TriZetto went up, down, or remained the same.

The Second Circuit ignored all of this and instead relied on a single quote from the Restatement of Unfair Competition. Section 45 states that "[w]hether an award of monetary relief is appropriate and the appropriate method of measuring such relief depend upon a comparative appraisal of all the factors of the case, including" "the nature and extent of the appropriation" and "the relative adequacy to the plaintiff of other remedies." Restatement (Third) of Unfair Competition § 45(2). But the comments to the Restatement explain that these factors indicate that a plaintiff may recover *both* its actual losses and "also" "any gain acquired by the defendant as a result of the appropriation, subject to the limitation on double recovery." *Id.* § 45 cmt. b. And consistent with the settled UTSA understanding, the prohibition on double counting simply disallows "the counting of the *same item*," such as a single business opportunity, "as *both* a loss to a complainant *and* an unjust benefit to a misappropriator." Unif. Trade Secrets Act § 3 cmt. (emphasis added). That is not at issue in the typical avoided-costs case, much less here. Thus, any suggestion that a plaintiff may recover only actual losses and may not "also" recover the gain to the defendant independent of any loss to the plaintiff is baseless. Even if the *Restatement* limited a plaintiff to only one form of the damages, the *DTSA* (like the UTSA before it) expressly provided plaintiffs with the right to seek *both* types of damages. The authors of the Restatement are not entitled to more deference than the congressionally-enacted text of a federal statute.

III. The Second Circuit's Decision Will Have Significant Consequences For American Innovation.

The Second Circuit's errors are both clear and consequential. Congress enacted the DTSA to "equip companies with the additional tools they need to protect their proprietary information" at a time when the cost of trade-secret theft is rapidly increasing. H.R. Rep. No. 114-529, at 3-4, 6, 2016 U.S.C.C.A.N. at 198, 200. The frequency and cost of trade-secrets litigation demonstrates the importance of trade-secret law. Over 1,000 trade-secret cases were filed in federal district courts in 2022 alone. Lex Machina, *Trade Secret Litigation Report 2023*, at 7 (July 2023). And misappropriation awards are frequently substantial. The jury here awarded TriZetto $284 million in avoided-costs damages, and other cases have resulted in similarly significant awards. *See, e.g.*, *Epic Sys. Corp.*, 980 F.3d at 1127, 1132 (jury awarded $940 million, of which $140 million corresponded to avoided development costs).

The Second Circuit's decision, however, will frustrate the DTSA's goals by (i) handicapping one of the statute's tools for protecting trade secrets and (ii) preventing the DTSA from creating a uniform set of nationwide rules.

First, it will handicap Congress's chosen remedy of unjust enrichment by adding atextual limitations to the avoided-costs remedy. Under the Second Circuit's holding, a plaintiff unable to establish actual harm—perhaps because it swiftly obtained a preliminary injunction—will be unable to recover either actual-loss damages or avoided-costs damages. It will be barred from recovering actual-loss damages because it cannot show actual damages. And it will be unable to recover avoided-costs damages, also because it cannot show actual harm.

Consider a trade-secret defendant that steals features of an efficiency-enhancing (and thus profit-maximizing) process for making new computers but is only able to make a few sales before the trade-secret owner discovers the theft and obtains an injunction. The plaintiff may not be able to establish a right to either "actual loss" or "unjust enrichment" damages under the Second Circuit's decision because it cannot show any harm to itself (including its trade secret). The result is a windfall for the defendant that successfully steals a trade secret from a vigilant plaintiff that obtains an injunction. The cost savings the defendant gets to keep under the Second Circuit's decision can then be reinvested by the defendant in other, profitable parts of its business. This is not speculative: misappropriators are making arguments like those the Second Circuit adopted in cases before other courts. *E.g.,* Def.'s Mot. to Alter or Amend J. or for a New Trial on Damages, *Comet Techs. USA Inc. v. XP Power LLC*, No. 20-cv-06408 (N.D. Cal. Oct. 28, 2022), *appeal docketed*, No. 23-15709 (9th Cir. May 10, 2023).

That example also reveals another perverse consequence of the Second Circuit's decision: a defendant's liability will now turn on when a theft is discovered. Defendants caught before they can turn a meaningful profit or otherwise harm the value of the trade secret will escape both actual-loss and unjust-enrichment liability altogether—no matter the value of the trade secret they stole or the scale of the development costs they avoided through their theft. That result turns the relevant equitable principles on their head and ignores the property-protective purpose of the DTSA. It also incentivizes the very conduct the DTSA was enacted to deter, by allowing defendants to perceive limited risk if their illegal acts are unsuccessful commercially or if they are caught early in the process. Contrary to the reasoning of the Second Circuit, a "wrongdoer should not benefit from [the] hindsight perspective that its gamble of misappropriating the trade secret turned out not to be so profitable." *GlobeRanger*, 836 F.3d at 500.

Second, instead of permitting the DTSA to provide a uniform set of nationwide rules, as Congress intended, the Second Circuit's decision splinters trade-secret law across the circuits and the states. Trade-secret plaintiffs now have a different set of remedial options in New York than Chicago. And that's particularly problematic because New York and Chicago have the second and third most active trade-secrets dockets in the country. *See* Lex Machina, *supra*, at 8. Thus, the decision will at best lead to divergent results across the most active trade-secrets jurisdictions and at worst encourage trade-secret owners to forum shop for a venue in a more favorable circuit.

Beyond the circuit split, the Second Circuit's decision also threatens to return trade-secret law to the patchwork of state laws that Congress sought to mitigate. Because the Second Circuit has imposed unique and atextual limitations on plaintiffs' entitlement to unjust-enrichment damages under the

DTSA, those plaintiffs subject to the Second Circuit's decision (and unable to forum shop in a different circuit) will increasingly turn back to state law when that law provides the full panoply of remedies that Congress intended plaintiffs to have under federal law. The result will be further fragmentation of trade-secret law despite the purpose of the DTSA.

IV. This Case Presents An Ideal Vehicle To Resolve This Important Question.

This case is a pristine vehicle to decide the question presented. The parties' disagreement turns on the purely legal question of when avoided-costs damages are available—a question the Second Circuit determined "as a matter of law." App.41. The jurisdiction of this Court and the courts below is not subject to dispute. And there are no related issues that would interfere with this Court's ability to reach and provide clear guidance on the question.

* * *

Rather than allow the Second Circuit's decision to handicap the DTSA and further metastasize to the detriment of intellectual property owners, this Court should grant review now and answer the purely legal question presented. The Second Circuit's atextual limitations on the right to avoided-costs damages should be rejected, and the DTSA should be restored so that it uniformly equips trade-secret owners across the country with the tools necessary to protect their valuable property.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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